

13 GEO. VI. No. 53, 1949. *Maintenance Act.*

MARRIAGE AND DIVORCE.

An Act to Consolidate and Amend the Law relating to the Maintenance of Deserted Wives and Children.

13 GEO. VI.
No. 53.
THE
MAINTENANCE
ACT OF 1949.

[ASSENTED TO 8TH DECEMBER, 1949.]

*Amending Act
of 1954*

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

PART I.—
PRELIMINARY.

1. This Act may be cited as "*The Maintenance Acts* of 1949. *§ 1954*" Short title.

2. This Act is divided into Parts, as follows:— Parts of Act.

PART I.—PRELIMINARY;

Secs 1-7

PART II.—MAINTENANCE OF WIVES AND CHILDREN;

Sec 8-13.

PART III.—ILLEGITIMATE CHILDREN; (*Secs 14-23*)

PART IV.—ENFORCEMENT AND VARIATION OF ORDERS;

Secs 23-27

PART V.—EVIDENCE;

Secs 28-34

PART VI.—GENERAL. *Secs. 35-48*

3. The Acts mentioned in the Schedule to this Act are repealed to the extent in such Schedule indicated: Repeal and savings.

Provided that, but without prejudice to *"*The Acts Shortening Acts*"—

(a) Any and every order made under the provisions of †"*The Deserted Wives and Children Act of 1840*" and ‡"*The Deserted Wives and Children Act Amendment Act of 1858*" or of either of those Acts, or made under the provisions of section sixteen of §"*The Infant Life Protection Acts, 1905 to 1935,*" before and in force at the passing of this Act shall continue in force as if it were a like order made under this Act and the provisions of this Act shall apply to and with respect to any and every such order accordingly;

* 31 V. No. 6 and amending Acts.

† 4 V. No. 5.

‡ 22 V. No. 6.

§ 5 E. 7 No. 19 and amending Acts.

- (b) For the purpose of hearing and determining or completing the hearing and determination of any and every complaint made before the passing of this Act under **“The Deserted Wives and Children Act of 1840”* and †*“The Deserted Wives and Children Act Amendment Act of 1858,”* or made under either of those Acts, or made under section sixteen of ‡*“The Infant Life Protection Acts, 1905 to 1935,”* all such Acts shall be deemed to continue in force as if no provision thereof had been repealed by this Act, and proceedings shall be had and taken or continued accordingly :

Provided that any order made in such proceedings shall have the force of a like order made under this Act and the provisions of this Act shall apply to and with respect to every such order accordingly ;

- (c) Any and every order made before and in force at the passing of this Act in proceedings for enforcing an order made under any provision of any other Act repealed by this Act shall—
- (i.) If a like order for the enforcement of an order made under this Act could be made hereunder, continue in force as if it were such like order under this Act ; and
- (ii.) In any other case continue in force as if no provision of any other Act had been repealed by this Act,
and compliance with the order to be enforced may be enforced or non-compliance therewith punished in terms of the order for enforcing the same accordingly ;
- (d) Where an order made under any provision of any other Act repealed by this Act and in force at the passing of this Act was disobeyed or not complied with before the passing of this Act and proceedings for enforcing that order were not instituted before the passing of this Act, then compliance with that order may be enforced or non-compliance therewith may be punished in proceedings under this Act as if

* 4 V. No. 5.

† 22 V. No. 6.

‡ 5 E. 7 No. 19 and amending Acts.

1949.

*Maintenance Act.*PART I.—
PRELIMINARY.

this Act were in force and the order were a like order made hereunder at the time when it was disobeyed or not complied with ;

- (e) Any and every complaint, application, notice, summons, warrant of apprehension, warrant of execution, or warrant of commitment to prison made or issued in pursuance of any provision of any of the Acts repealed by this Act and in force at the passing of this Act shall continue in force for the purpose for which it was made or issued as if this Act had not been passed ;
- (f) Any and every penalty imposed under a provision of any other Act repealed by this Act and not recovered before the passing of this Act may be enforced as if this Act had not been passed.

4. (1.) This Act shall apply so as not to limit the operation and effect of **“The Wages Attachment Acts, 1936 to 1940.”* **“The Wages Attachment Acts, 1936 to 1940.”*

(2.) Each and every provision of **“The Wages Attachment Acts, 1936 to 1940,”* which applied immediately prior to the passing of this Act to and with respect to an order made under a provision of any other Act repealed by this Act and then in force shall, whilst that order continues in force, continue to apply to and with respect thereto as if this Act had not been passed.

5. This Act shall apply so as not to limit the operation and effect of— Certain other Acts not affected by this Act.

- (a) †*“The Interstate Destitute Persons Relief Acts, 1914 to 1944”* ; or
- (b) ‡*“The Maintenance Orders (Facilities for Enforcement) Act of 1921”* ; or
- (c) §*“The Maintenance and Alimony Relief Act of 1935.”*

6. This Act shall apply to all complaints made after the commencement hereof, whether the matter of the complaint arose before or after the passing of this Act. Application of Act to complaints in respect of matters arising before its commencement.

* 1 E. 8 No. 22 and amending Act.

† 5 G. 5 No. 9 and amending Acts.

‡ 12 G. 5 No. 24.

§ 26 G. 5 No. 29.

Meaning of
terms.

7. In this Act, unless the context otherwise indicates or requires, the following terms shall have the meanings respectively assigned to them, that is to say:—

Child.

“Child”—A person under the age of twenty-one years: The term includes two or more children;

Clerk of
petty
sessions.

“Clerk of petty sessions”—Includes an assistant clerk of petty sessions and any person carrying out the duties under this Act of a clerk of petty sessions;

Justices.

“Justices”—Justices of the peace;

Maintenance
order.

“Maintenance order”—An order made under or continued in force by this Act whereby a person is directed to pay money, for or in respect of the maintenance of another person: The term does not include an order—

(a) Made under Part III. of this Act; or

(b) Made under the provisions repealed by this Act of **“The Infant Life Protection Acts, 1905 to 1935,”* and continued in force by this Act,

which merely directs the payment of preliminary expenses or of confinement expenses.

PART II.—MAINTENANCE OF WIVES AND CHILDREN.

Complaint
of desertion
or leaving
without
support.

8. In any case where a husband or father—

(a) Has (whether before or after the passing of this Act) deserted his wife or child; or

(b) Has (whether before or after the passing of this Act) left his wife or child without means of support; or

(c) Is about to remove out of Queensland or to some remote part within Queensland without making adequate provision for the support of his wife or child and with the intention of deserting or leaving without means of support his wife or child,

a justice may, upon complaint on oath being made by that wife, or by the mother of that child, or by a reputable person, issue his summons directed to that husband or

* 5 E. 7 No. 19 and amending Acts.

1949.

*Maintenance Act.*PART II.—
MAINTENANCE
OF WIVES AND
CHILDREN.

father, and requiring him to appear upon a day and at a time and place specified therein before such justices as shall then be there to answer the complaint and to be further dealt with according to law.

9. In any case where a summons may be issued upon a complaint on oath under this Act or in any case of a complaint of an offence against section twenty-three of this Act, the justice to whom that complaint is made, or any other justice, may, at any time, if he is satisfied by evidence on oath that it is necessary so to do to prevent the husband or father from defeating this Act, in lieu of issuing a summons, or after the issue of a summons, issue his warrant to apprehend the husband or father and to bring him before justices to answer the complaint and to be further dealt with according to law.

Warrant in
the first
instance.

10. (1.) The justices hearing a complaint made under this Part of this Act, upon proof to their satisfaction—

Hearing.

(a) Of the truth thereof; and

(b) That the defendant husband or father is able to maintain or to contribute towards the maintenance of his wife or, as the case may be, child; and

(c) That such wife or, as the case may be, child is or (in the case of a complaint under paragraph (c) of section eight of this Act) will be in fact left without means of support,

shall make a maintenance order against that husband or father.

(2.) A maintenance order—

Maintenance
order.

(a) Shall direct the husband or father against whom it is made to pay towards the maintenance of the wife or, as the case may be, child at such reasonable rate per week as the justices specify in the order;

(b) Shall direct that payment as aforesaid at the rate per week specified in the order shall be made to the clerk of petty sessions at a place stated in the order at such periodical times and in such manner as the justices specify in the order;

- (c) (Where the maintenance order is made in respect of two or more children) shall direct separately the rates per week of the respective payments thereunder towards the maintenance of each and every child ; and
- (d) May direct that the order shall take effect as from the date upon which the complaint was made or, if the complaint was made earlier than three months before the making of the order, as from a date not earlier than three months immediately preceding the date of the order.

In such case the order shall further direct whether the moneys payable in respect of the period before the making of the order for which it is effective shall be paid in a lump sum or by way of instalments and, if payment thereof by instalments is directed, shall specify the instalments.

The order shall also specify the time or times when and the manner in which such moneys or instalments thereof shall be paid.

(3.) Subject to this subsection a direction under paragraph (d) of subsection two of this section may be made in a maintenance order in respect of a wife or child who died before the making of that maintenance order where the adjudicating justices are satisfied that such deceased wife or child was in fact left without means of support as at the date of her or his death :

Provided that proceedings upon the complaint of a deceased wife shall not be continued for the purpose of obtaining a maintenance order containing a direction under the said paragraph (d) unless and until another person authorised by this Act to make that complaint has applied to justices having jurisdiction to hear that complaint for leave to continue the proceedings as complainant and has been granted leave accordingly.

Refusal of
maintenance
order.

11. Justices may, in their discretion, decline to make a maintenance order if reasonable cause is shown to their satisfaction for the desertion or leaving without means of support by the defendant husband of his wife or, as the case may be, by the defendant father of his child.

1949.

*Maintenance Act.*PART II.—
MAINTENANCE
OF WIVES AND
CHILDREN.

12. (1.) A wife compelled to leave her husband's residence under reasonable apprehension of danger to her person, or under other circumstances which may reasonably justify her withdrawal from such residence, shall, for the purposes of this Act, be deemed to have been deserted without reasonable cause.

Construc-
tive
desertion.

(2.) Where a wife has been so compelled to leave her husband's residence and has taken with her any child, the justices, upon the hearing of a complaint made under this Part of this Act in respect of the child, shall, if it appears to them to be just to do so having regard primarily to the welfare of the child, make a maintenance order notwithstanding that the father is willing to receive and maintain such child in his own home or elsewhere.

When
maintenance
order not
debarred by
willingness to
maintain
child.

13. An agreement by a husband or father shall not be effective to take away or restrict any of his liabilities under and in pursuance of this Act in respect of the maintenance of his wife or any child, or affect the operation of any maintenance order against him, or the right of justices to make any such order, but the justices may, having regard to the existence of the agreement and to all the circumstances of the case, refuse to make any such order.

Agreement
not to
debar
maintenance
order.

PART III.—ILLEGITIMATE CHILDREN.

PART III.—
ILLEGITIMATE
CHILDREN.

14. (1.) The provisions of Part II. of this Act in respect of any child shall extend to and include any illegitimate child as well as any child born in wedlock.

Application
of Part II.
to
illegitimate
children.

(2.) A complaint under the said Part II. in respect of an illegitimate child may be made by the Director State Children Department or a person thereunto authorised by him as well as by any of the persons competent under the said Part II. to make such complaint.

15. If it appears to the justices hearing a complaint under Part II. of this Act in respect of an illegitimate child that both the father and the mother of that child are able to contribute to its support, the justices may make a maintenance order directing both the father and the mother to contribute towards the maintenance of the child in such proportions respectively as the justices think fit; and if it appears to such justices that the mother only is able so to contribute, the justices may make a maintenance order directing payment towards the maintenance of the child by her alone.

When
maintenance
order may
be made
against
mother of
illegitimate
child.

Such order if made against both the father and the mother of an illegitimate child shall specify separately the rates per week of the payments to be made by the father and by the mother respectively.

An order as aforesaid shall not be made against the mother of an illegitimate child unless she has had an opportunity to be heard why that order should not be made.

Preliminary
expenses.

16. (1.) In relation to an illegitimate child “ preliminary expenses ” mean, whether the child is born alive or dead, reasonable medical, hospital, and nursing expenses attendant upon the confinement of the mother, her maintenance for the period commencing one month before and ending two months after the birth of the child, and the clothing necessary for the child for two months after its birth :

Provided that where a mother has been delivered of a stillborn illegitimate child (born dead after the commencement of the sixth month of pregnancy), “ preliminary expenses ” shall also mean reasonable medical, hospital, and nursing expenses attendant upon that stillbirth, and the maintenance of the mother for one month after the stillbirth.

Remedies
against
father of
illegitimate
child to
include
recovery of
preliminary
expenses, &c.

(2.) Remedies against the father of an illegitimate child (including the father of an illegitimate child born before the passing of this Act) shall include the recovery of—

- (a) A sum not exceeding fifty pounds for preliminary expenses ;
- (b) The reasonable funeral expenses of the mother in case of her death at or in consequence of her pregnancy, or at or in consequence of the birth of the child ; and
- (c) The reasonable funeral expenses of the child if the child has been stillborn or dies after birth.

The right to recover any expenses as aforesaid shall be in addition to and not in lieu of the right to recover maintenance in respect of the illegitimate child.

1949.

*Maintenance Act.*PART III.—
ILLEGITIMATE
CHILDREN.

17. In any case where the father of an illegitimate child fails to make adequate provision for any of the expenses recoverable from him under subsection two of section sixteen of this Act (including one or more than one of the classes of expenses specified), a justice may, upon complaint thereof upon oath being made by the mother of that illegitimate child, or by the Director State Children Department, or by a person thereunto authorised by the said Director, or by some other reputable person, issue his summons directed to that father, and requiring him to appear upon a day and at a time and place specified therein before such justices as shall then be there to answer the complaint and to be further dealt with according to law.

Complaint
for failure to
make
adequate
provision for
preliminary
expenses,
&c.

18. (1.) The justices hearing the complaint, upon proof to their satisfaction of the truth thereof and that the defendant father is able to contribute towards the expenses the subject of the complaint, shall make an order against the father in accordance with subsection two of this section.

Order for
preliminary
expenses,
&c.

(2.) The order referred to in subsection one of this section—

- (a) Shall direct the father against whom it is made to pay in respect of expenses the subject of the complaint such amount as the justices think reasonable in the circumstances ;
- (b) Shall direct that payment as aforesaid shall be made to the clerk of petty sessions at a place stated in the order ;
- (c) (Where the complaint is in respect of more than one of the classes of expenses specified in subsection two of section sixteen of this Act) shall direct separately the amount to be paid in respect of each class of expenses ;
- (d) May direct that the moneys payable under the order shall be paid by way of instalments, and in that case shall also specify the instalments and the times when such instalments shall be paid :

Provided that unless instalments are directed by the order the moneys shall be payable in a lump sum ; and

- (e) (In the case of an order in respect of preliminary expenses made before the child is born) may direct that the order shall take effect as and from a date after the making thereof but not later than two months after the date of the birth of the child in respect of whom the complaint was made.

Order for preliminary expenses, &c., may be made on complaint for maintenance.

19. Any expenses recoverable under this Part of this Act against the father of an illegitimate child may (without the making of any complaint in respect thereof) be claimed at the hearing of a complaint made under Part II. of this Act in respect of that child.

The justices hearing the complaint, upon proof to their satisfaction that the defendant has not made adequate provision for the expenses so claimed and that he is able to contribute towards such expenses, shall make an order in accordance with subsection two of section eighteen of this Act against the defendant in respect thereof.

Such order may be made separately or may be included in a maintenance order, in which latter case, notwithstanding anything to the contrary in this Act contained, it shall be deemed to form part of the maintenance order.

Ante-natal complaints and orders.

20. A complaint under this Act in respect of an illegitimate child may be made and heard and (subject as hereinafter provided in this section) an order thereon may be made either before or after the birth of that child :

Provided that—

- (a) An order shall not be made before the birth of the child unless, in addition to the evidence proving paternity, it is proved by the evidence of some duly qualified medical practitioner that the alleged mother is quick with child ; and
- (b) An order made before the birth of the child shall specify a date not later than six months thereafter, when the order shall lapse if the child shall not have been born.

1949.

*Maintenance Act.*PART III.—
ILLEGITIMATE
CHILDREN.

21 (1.) All moneys for maintenance or preliminary expenses, or both, payable under an order made before the birth of an illegitimate child and paid to the clerk of petty sessions at the place specified in that order shall be applicable and shall be applied as directed by that order.

Application
of moneys
paid under
order before
birth of
illegitimate
child.

(2.) The clerk of petty sessions shall retain all moneys paid to him under an order made before the birth of an illegitimate child until the birth of the illegitimate child (if the child is born before the order lapses), when he shall apply in terms of the order all moneys so paid to him.

(3.) If—

- (a) The child shall not be born before the order lapses, the clerk of petty sessions shall return to the alleged father all moneys paid to him under the order; or
- (b) The mother is delivered of a stillborn child (born dead after the commencement of the sixth month of the pregnancy) before the order lapses, the clerk of petty sessions shall apply in terms of the order the moneys in respect of preliminary expenses so paid to him and shall return to the father all moneys so paid to him by way of maintenance.

22. Any complaint or order authorised by this Act in respect of an illegitimate child may be made notwithstanding the death of the mother of that child prior to the making of the complaint or order or the death of the complainant prior to the making of the order:

Order
where
complainant
dies.

Provided that the proceedings shall not be continued after the death of the complainant unless and until another person authorised by this Act to make the complaint has applied to justices having jurisdiction to hear that complaint for leave to continue the proceedings as complainant and has been granted leave accordingly.

PART IV.—ENFORCEMENT AND VARIATION OF ORDERS.

PART IV.—
ENFORCEMENT
AND
VARIATION OF
ORDERS.

23. (1.) A person who fails to make in terms of any maintenance order or order (other than a maintenance order) under Part III. of this Act any payment or payments directed by that order to be made by him or who otherwise fails to comply with any maintenance order or order (other than a maintenance order) under Part III. of this Act shall be guilty of an offence.

Disobedience
of order.

An offence under this subsection may be prosecuted in a summary way under **"The Justices Acts, 1886 to 1949,"* upon the complaint of the clerk of petty sessions to whom payments under the order are thereby directed to be made or of any person in favour of whom the order has been made or of any reputable person on behalf of such lastmentioned person.

(2.) Upon convicting a person of an offence under subsection one of this section the adjudicating justices may—

- (a) Impose a penalty of not more than one hundred pounds ; or
- (b) Order payment of a sum of money equal to the payments (or, in the exercise of their discretion under subsection three of this section, part of the payments) under the maintenance order or order (other than a maintenance order) under Part III. of this Act in arrears and not paid at the date of the conviction ; or
- (c) Both impose a penalty and order payment of a sum of money as aforesaid.

For the purposes of **"The Justices Acts, 1886 to 1949,"* the whole of any sum of money ordered under this subsection to be paid shall be deemed to be the amount of penalty imposed notwithstanding that such whole sum exceeds the maximum penalty which may be imposed under this Act or that it consists wholly or partly of moneys ordered to be paid otherwise than by way of penalty.

(3.) Where the adjudicating justices are satisfied by the evidence at the hearing of a complaint for an offence under this section—

- (a) That there has been undue delay in making the complaint ; or
- (b) That any of the matters set out in paragraphs (i.) to (v.), both inclusive, of section two of †*"The Maintenance and Alimony Relief Act of 1935"* applies in the case,

they may, in their discretion, order payment of part only, as fixed by them, of the payments under the maintenance order or order (other than a maintenance

* 50 V. No. 17 and amending Acts.

† 26 G. 5 No. 29.

1949.

*Maintenance Act.*PART IV.—
ENFORCEMENT
AND
VARIATION OF
ORDERS.

order) under Part III. of this Act the subject of the complaint, which are in arrears and not paid at the date of the conviction.

(4.) For the purposes of making an order under subsection two of this section, the adjudicating justices may receive evidence of any and every payment directed to be made by the maintenance order or order (other than a maintenance order) under Part III. of this Act the subject of the complaint, which having become payable after the making of the complaint was in arrears and not paid at the date of the conviction, as if the complaint had been duly made in respect both of such payments and of like payments in arrears and not paid at the date of the making thereof.

24. (1.) When a maintenance order or an order (other than a maintenance order) under Part III. of this Act is made—

Security for
payment of
main-
tenance, &c.

- (a) The justices making that order may forthwith ;
or
- (b) Any two justices may at any time and from time to time thereafter while that order is in force,

require the husband or father against whom that order is or has been made to enter into a recognizance with or without such sureties as the justices require for the due compliance with that order for a period not exceeding twelve months at any one time.

(2.) A husband or father shall not be required to enter into a recognizance (with or without sureties) as aforesaid unless and until—

- (a) If the recognizance is required forthwith upon the making of the order, that husband or father having been called upon then and there to show cause why the recognizance should not be required, fails to do so to the satisfaction of the justices by whom the order is made ; or
- (b) If the recognizance is required at any time after the making of the order, that husband or father having been called upon by a justice by notice in writing to appear upon a day and at a time and place specified in that notice before such justices as shall then be there to show cause why the recognizance

should not be required, fails to appear in obedience to that notice or, having so appeared, fails to show cause as stated by the notice to the satisfaction of the justices before whom he appears.

(3.) When justices require entry into a recognizance (with or without sureties) by a husband or father, they may order him to be imprisoned for a period not exceeding one year unless in the meantime he duly enters into that recognizance.

(4.) (a) The provisions of **"The Justices Acts, 1886 to 1949,"* relating to the service of summonses shall apply to and with respect to notices issued under paragraph (b) of subsection two of this section.

(b) Sections ninety-four, 94A, and ninety-five of **"The Justices Acts, 1886 to 1949,"* shall apply with respect to any recognizance required to be entered into under this section.

Variation of
order.

25. (1.) Subject to this section, a maintenance order or order (other than a maintenance order) under Part III. of this Act may be varied, suspended, or discharged, or a new order may be substituted therefor, upon application made by or on behalf of—

- (a) The person against whom that order lies ; or
- (b) The wife or child named in that order ; or
- (c) In the case of an order in respect of an illegitimate child, the Director State Children Department, or a person thereunto authorised by the said Director ; or
- (d) Any other person upon complaint by whom the order was made.

(2.) The application may be heard and determined by justices sitting as a court of petty sessions at the place where payments under the order the subject of the application are directed by that order to be made.

Upon proof to their satisfaction—

- (a) That the order was made or obtained by fraud or perjury ; or

* 50 V. No. 17 and amending Acts.

1949.

*Maintenance Act.*PART IV.—
ENFORCEMENT
AND
VARIATION OF
ORDERS.

- (b) That since the making of the order new and material evidence has been discovered and that such evidence was not available to the applicant when the order was made ; or
- (c) That since the making of the order the circumstances have so changed that the order ought to be varied, suspended, or discharged, or that a new order ought to be substituted therefor,

the justices hearing the application, according as they think just, may vary, suspend, or discharge the order, or substitute a new order therefor.

(3.) The application shall be commenced by complaint on oath made to a justice who thereupon shall issue his summons directed—

- (a) If the application is made by or on behalf of the person against whom the order was made, to the wife or mother or, if the order was not made on her complaint, to the person upon whose complaint the order was made (unless such wife or mother or person is dead or cannot be found or for any reason the justices hearing the application dispense with the service of such summons), and to any other person interested in maintaining the order ; or
- (b) If the application is made by or on behalf of any person other than the person against whom the order was made, to the person against whom the order was made,

and requiring him or her to appear upon a day and at a time and place specified in the summons before such justices as shall then be there to answer the complaint.

(4.) An order may be varied, suspended, or discharged, or a new order may be substituted therefor as from the date upon which the complaint was made.

Any such variation, suspension, or substituted new order may be made at any time and from time to time.

(5.) An application made under this section upon grounds other than any of those set out in paragraphs (a) and (b) of subsection two of this section by or on behalf of a person who is in default in complying with

the maintenance order or order (other than a maintenance order) under Part III. of this Act the subject of the application may be heard and determined by justices—

- (a) Upon proof to their satisfaction that such default was caused by one or more of the matters set out in paragraphs (i.) to (iv.), both inclusive, of **The Maintenance and Alimony Relief Act of 1935*”; or
- (b) If upon applying paragraph (v.) of such last-mentioned Act, or if for any other reason, they are of the opinion that it is just and equitable that the application should be heard, and not otherwise.

Plural
births—
variation of
order.

25A.
25B. 26. Where a maintenance order or an order (other than a maintenance order) under Part III. of this Act in respect of an illegitimate child is made before the birth of that child, and two or more children are born, an application may be made under this Part.

Order
directing
payment to
clerk of
petty
sessions at a
place other
than where
the order
is made.

27. (1.) Where a maintenance order or an order (other than a maintenance order) under Part III. of this Act directs any payment or payments thereunder to be made to the clerk of petty sessions at a place other than the place where that order is made, a copy of the complaint and depositions, if any, and of the remainder of the record of the proceeding (including a copy of such order) certified as a true copy by the clerk of petty sessions at such lastmentioned place shall be transmitted by him to the clerk of petty sessions to whom such payment or payments are to be made.

(2.) For the purposes of any and every provision contained in this Part of this Act, and for the purpose of enforcing any order referred to in subsection one of this section (whether in pursuance of the provisions of this Act or any other Act), every such order shall be deemed to have been made by the adjudicating justices sitting as a court of petty sessions, with jurisdiction to there hear and determine the matter, at the place where the payment or payments thereunder are to be made, and, for such purposes as aforesaid, the clerk of petty sessions at such place shall be deemed to be the officer having ordinarily the custody of the record of that proceeding.

*New Sections
1954 Act
(G.B. 10-11-54)*

1949.

*Maintenance Act.*PART V.—
EVIDENCE.

PART V.—EVIDENCE.

28. Where a complaint under this Act is made in respect of a wife, her marriage to the defendant shall be proved at the hearing by direct evidence or, in the case of the inability of the complainant to produce such direct evidence, by other evidence proving that marriage to the satisfaction of the justices hearing the complaint. Proof of marriage.

29. Where a husband has quitted his wife or a father his child for a period exceeding sixty days, during seven at least of which that wife or child has been left by him without means of support, that husband or father shall *primâ facie* be deemed to have deserted that wife or child. Evidence of desertion.

Nothing in this section shall prevent justices from adjudging the fact of desertion on other evidence or on proof of abandonment for a less period than sixty days if they think fit.

30. A man shall not be taken to be the father of an illegitimate child upon the oath of the mother only. Illegitimate child.

31. In any proceedings under this Act the husband and the wife shall be competent and compellable witnesses both on his or her own behalf and for or against the other, but no admission or statement then made by either shall be used on any other occasion except in proceedings for perjury committed in the course of giving evidence as aforesaid. Husband and wife competent and compellable witnesses.

32. (1.) Every clerk of petty sessions shall make and keep or cause to be made and kept in his office a record of all payments directed by a maintenance order or order (other than a maintenance order) under Part III. of this Act to be made to him and so made, and evidence proving that any payment directed by a maintenance order or order (other than a maintenance order) under Part III. of this Act to be made is not recorded in the office of the clerk of petty sessions to whom payments under the order are thereby directed to be made shall be *primâ facie* proof that the payment is in arrear and was not made to that clerk of petty sessions. Record of payments to clerk of petty sessions.

(2.) A certificate purporting to be under the hand of the clerk of petty sessions at the place at which payments under a maintenance order or order (other than a maintenance order) under Part III. of this Act are thereby directed to be made—

(a) That any such payment is or is not recorded in his office at that place ; or

(b) That an amount, stated in such certificate, in respect of such payments was in arrears and not paid at a date specified therein, shall be received in evidence and shall be *primâ facie* proof of the matters certified to therein.

Resumption
of
cohabitation,
&c.

33. For the purposes of this Act—

- (a) The resumption of cohabitation by husband and wife, and the maintenance of the wife by the husband, for a continuous period of one month or longer shall be *primâ facie* evidence of intention to abandon a maintenance order in favour of the wife in force at the date of resumption of cohabitation ; and
- (b) The return of a child to his father with the consent of the mother or other person interested in maintaining a maintenance order in favour of that child in force at the date of such return, and the maintenance by that father of that child, for a continuous period of one month or longer, shall be *primâ facie* evidence of intention by the aforementioned mother or person to abandon that maintenance order.

Proof of
earnings.

34. Where, in proceedings under this Act, **“ The Wages Attachment Acts, 1936 to 1940,”* †*“ The Interstate Destitute Persons Relief Acts, 1914 to 1944,”* or ‡*“ The Maintenance Orders (Facilities for Enforcement) Act of 1921,”* or any Act passed hereafter in amendment of or substitution for any of these Acts, it is material to ascertain the earnings of any person, the adjudicating justices may, in their absolute discretion, accept as *primâ facie* proof of those earnings a statutory declaration made by—

- (a) The employer of the person whose earnings are in question ; or
- (b) A person employed by such employer as manager, secretary, accountant, or in such other capacity as in the opinion of the adjudicating justices qualifies him to testify of his own knowledge to the earnings of the person whose earnings are in question.

* 1 E. 8 No. 22 and amending Act.

† 5 G. 5 No. 9 and amending Acts.

‡ 12 G. 5 No. 24.

1949.

*Maintenance Act.*PART VI.—
GENERAL.

PART VI.—GENERAL.

35. All proceedings authorised by this Act to be taken to enforce any order under this Act, or otherwise in pursuance of any order under this Act, may be taken concurrently or successively with any other proceedings authorised by this Act or, as respects the recovery of any moneys payable under an order under this Act, authorised by any other Act. Procedure.

36. Where the hearing of a complaint under this Act in respect of a wife or of any legitimate child is adjourned for any period exceeding one week, the justices may order the husband or father to contribute towards the maintenance of the wife or child named in the complaint until the final determination of the case. Interim order.

The justices may by that order give any and every direction authorised by this Act as if that order were the final determination in the case :

Provided that an order under this section shall not remain in operation for more than three months from the date upon which it was made and provided further that the justices may vary or rescind such order at any time.

Any such order may be enforced in the like manner as if it were the final order.

37. On the death of any person against whom a maintenance order or an order (other than a maintenance order) under Part III. of this Act has been made, any payments under that order in arrears and not paid at the time of his death shall constitute a debt payable out of his estate to the clerk of petty sessions to whom those moneys were payable under the order, but no future payments under that order shall be enforceable or recoverable, whether out of the estate or otherwise. Moneys due at death of person liable under order payable out of estate.

Moneys payable out of the estate of a deceased person under this section may be recovered by the clerk of petty sessions to whom those moneys were payable by the deceased person by action as for a debt in any court of competent jurisdiction.

38. All moneys payable under an order made or continued in force under this Act and paid to or recovered by a clerk of petty sessions shall be applied by him for the use of the person or persons in respect of whom the order was made : Application of moneys paid under order.

Provided that in respect of the application as aforesaid of such moneys the clerk of petty sessions shall observe all such directions as may have been given by justices or by a stipendiary magistrate, it being hereby declared that the justices making the order may, when making the same or at any later time, or a stipendiary magistrate may at any time after the making of the order, with or without any application for that purpose, give such directions as they or he thinks necessary for better securing and regulating the application in terms of the order of all moneys received by a clerk of petty sessions thereunder.

Application
of penalty.

39. Not more than one moiety of any penalty imposed for an offence under this Act may, in the discretion of the justices imposing that penalty, be appropriated for the use of the person or persons in aid of whom the order the subject of the complaint for that offence was made.

Any amount of a penalty as aforesaid so appropriated as aforesaid shall upon recovery be paid to the clerk of petty sessions to whom payments under the order are thereby required to be made and shall be applied by him for the purpose for which it was so appropriated.

In the case of a conviction for an offence under section twenty-three of this Act, any sum additional to the penalty imposed ordered to be paid under that section shall not be accounted as penalty in making an appropriation under this section.

Maintenance
order not to
be made
where order
or petition
for alimony
or mainten-
ance made by
or pending
before
Supreme
Court.

40. A maintenance order shall not be made under this Act in respect of a wife or child at any time when that wife or child is entitled to payment of alimony or maintenance under an order of the Supreme Court or a Judge thereof or at any time when a petition for alimony or maintenance for that wife or child has been filed in the Supreme Court and is then pending.

When
maintenance
order to be
discharged
consequent
on Supreme
Court
ordering
payment of
alimony or
main-
tenance.

41. (1.) Upon proof to the satisfaction of justices sitting as a court of petty sessions—

- (a) That a marriage has been dissolved or declared null and void by decree absolute ; or
- (b) That the Supreme Court or a Judge thereof has by order directed alimony or maintenance to be paid,

1949.

Maintenance Act.

and upon further proof to their satisfaction that the decree absolute or order for alimony or maintenance of the Supreme Court or a Judge thereof has not been appealed against or, if appealed against, that the result of the appeal has been that the marriage has been dissolved or declared to be null and void or, as the case may be, that alimony or maintenance is payable otherwise than under a maintenance order under this Act, then such justices shall direct—

- (a) In the case of a decree absolute, that any maintenance order under this Act directing payments to be made in respect of the wife whose marriage was dissolved or declared to be null and void by that decree absolute shall be discharged on and from the date of the decree absolute ; or
- (b) In the case of an order of the Supreme Court or a Judge thereof directing the payment of alimony or maintenance, that any maintenance order under this Act directing payments to be made in respect of a wife or child for whom alimony or maintenance is payable under the order of the Supreme Court or a Judge thereof shall be discharged on and from the date upon which the alimony or maintenance commenced under the order of the Supreme Court or a Judge thereof.

(2.) An application under this section may be commenced by complaint on oath made to a justice of the peace.

Unless the justices hearing the application so direct, no person other than the applicant need be summoned to appear at the hearing.

(3.) The discharge of a maintenance order under this section shall not affect liability for payments thereunder which, having become payable before the date upon which such discharge takes effect, are in arrears and not paid at that date, and all such proceedings may be instituted, and all such steps may be taken and things done under this Act or any other Act, for the enforcement of the order and for the recovery of all or any payments in arrears up to the time of the discharge thereof as if the maintenance order had not been discharged.

Hearing of
complaints
in camera.

42. Notwithstanding the provisions of section seventy of **“ The Justices Acts, 1886 to 1949,”* justices sitting as a court of petty sessions to hear and determine any complaint or application under this Act (including any complaint of an offence under this Act)—

- (a) Shall, if that complaint or application relates to an illegitimate child, or to a maintenance order or an order (other than a maintenance order) under Part III. of this Act in respect of an illegitimate child ; and
- (b) May, in the case of any other such complaint or application,

exclude from the room or place in which such justices so sit all persons except officers of the court, the complainant or applicant, his counsel and solicitor, the defendant or respondent, his counsel and solicitor, the Director State Children Department or a representative of his department, any wife, mother, child, or guardian of any child, to whom the complaint or application relates, the mother or sister or other relative or friend of a wife or mother who is the complainant or applicant or to whom the complaint or application relates, and (whilst any other child under the age of seventeen years is giving evidence in the case) any parent or guardian of such other child, and any representative of any organisation or institution interested in the care of deserted wives, deserted children, illegitimate children, or the mothers of illegitimate children.

Publication
of
proceedings.

43. (1.) It shall be unlawful to publish in any newspaper a report or account of the proceedings or any part of the proceedings upon a complaint or application specified in paragraph (a) of section forty-two of this Act.

(2.) The justices sitting as a court of petty sessions to hear and determine a complaint or application under this Act (other than a complaint or application specified in paragraph (a) of section forty-two hereof) may by order prohibit the publication in any newspaper of—

- (a) Any report or account of the proceedings or any part of the proceedings upon the complaint or application ; or

1949.

*Maintenance Act.*PART VI.—
GENERAL.

(b) The name or names, or address or addresses, or the name and address, or names and addresses, of all or any of the following persons—that is to say, the complainant or applicant, defendant or respondent, any wife, mother, child, or guardian of any child to whom the complaint or application relates, any witness, or any other person interested in the proceedings.

(3.) If—

- (a) Any report or account of the proceedings or any part of the proceedings upon a complaint or application specified in paragraph (a) of section forty-two of this Act is unlawfully published in a newspaper ; or
- (b) Any report or account of the proceedings or any part of the proceedings upon a complaint or application under this Act (other than a complaint or application specified in paragraph (a) of section forty-two hereof), or the name, or address, or name and address, of any person is published in any newspaper in contravention of an order made under subsection two of this section,

the proprietor, publisher, and printer of that newspaper shall each be guilty of an offence and liable to a penalty of not more than one hundred pounds.

(4.) In this section the terms “newspaper,” “proprietor,” “publisher,” and “printer” shall respectively have the meanings assigned to them by **“The Printers and Newspapers Act of 1914.”*

(5.) This section and any order under this section shall apply so as not to prevent or prohibit the publication of a report of any proceedings upon a complaint or application under this Act—

- (a) In, or in any separate volume or part of, any *bonâ fide* series of law reports not forming part of any other publication and comprising solely reports of proceedings in courts of law ; or
- (b) In any publication of a technical character *bonâ fide* intended for circulation amongst members of the legal or medical professions :

* 5 G. 5 No. 20.

Provided that a report as authorised by this subsection shall not contain any name, or address, or name and address, the publication of which is prohibited by an order under this section and, in any event, a report as authorised by this section of proceedings upon a complaint or application specified in paragraph (a) of section forty-two of this Act shall not contain any name or address whatsoever or any other particulars whatsoever identifying, or capable of being used to identify, any person.

Conciliation.

44. (1.) If upon the hearing of a complaint or application under this Act it appears to the adjudicating justices—

(a) That the proceedings under this Act upon that complaint or application or the original proceedings the subject of that complaint or application resulted directly or indirectly from a dispute or difference between husband and wife ; and

(b) That there are reasonable prospects of settling that dispute or difference by conciliation, those justices may, at any stage of the proceedings, do all such things and take all such steps as will or may in their opinion effect a settlement of the dispute or difference by conciliation.

(2.) If the husband and wife fail to be reconciled, the justices may complete the hearing and determination of the proceedings unless, in their absolute discretion, one or more of them is or is likely to be biased by any statement or admission not provable or admissible in evidence made by the husband or wife, or by his or her demeanour, in the course of any thing done or step taken by the justices under the authority of this section.

(3.) Neither the fact that a husband or wife made a statement or admission in the course of any thing done or step taken by justices to effect a reconciliation under this section nor such statement or admission shall be used in evidence in any proceedings under this Act or under any other Act or law.

Costs.

45. In the case of any conviction, or the making of any order, or the dismissing of any complaint or application under this Act, the adjudicating justices may, in their discretion, order the payment of such costs, and by such parties, as to them seem just and reasonable.

1949.

*Maintenance Act.*PART VI.—
GENERAL.

46. (1.) This Act shall be read and construed with Application of **The Justices Acts, 1886 to 1949.*” and the provisions of that Act, including (but without limit to the generality of this section) the provisions thereof relating to—

- (a) The making of complaints, the issue and service of summonses or the issue and execution of warrants of apprehension in lieu of summonses thereon, and the hearing and determination of such complaints ;
- (b) The making of orders ;
- (c) The discretion of adjudicating justices in directing that the amount of a penalty or costs shall be recoverable by execution against the goods and chattels of the offender (and in such case as part of their decision ordering the term for which the offender is to be imprisoned in default of sufficient distress) or in the alternative in directing that in default of payment of such penalty or costs either immediately or within a time to be fixed by the adjudicating justices the offender shall be imprisoned for any period not exceeding the maximum period fixed by the scale of imprisonment for non-payment of money ;
- (d) Payment and part payment of penalties or costs and the issue and execution of warrants against offenders either of execution or of committal to prison or both of execution and of committal to prison ;
- (e) Costs and charges of executing warrants ;
- (f) The payment of penalties or costs by instalments and the effect of proceedings consequent on a failure to pay any one instalment ;
- (g) The recovery of costs in proceedings ;
- (h) Transfer of jurisdiction as to enforcement of penalties or costs ;
- (i) The allocation of part payments ; and
- (j) Appeals from decisions of justices,

shall apply to and with respect to all proceedings under this Act.

PART VI.—
GENERAL.*Maintenance Act.* 13 GEO. VI. No. 53, 1949.Prosecution
of offences.

(2.) All offences under this Act may be prosecuted in a summary way under **“ The Justices Acts, 1886 to 1949.”*

(3.) Section fifty-two of **“ The Justices Acts, 1886 to 1949,”* shall not limit the time for making complaint of an offence under section twenty-three of this Act which complaint it is hereby declared may be made at any time.

Common
law
liability of
husband
preserved.

47. Nothing in this Act shall take away or diminish the common law liability of a husband in respect of contracts made by a wife deserted by her husband without reasonable cause.

Rules of
Court.

48. The Governor in Council, with the concurrence of a majority of the Judges of the Supreme Court, may from time to time by Order in Council make Rules of Court providing for all or any purposes, whether general or to meet particular cases, that may be convenient for the administration of this Act or that may be necessary or expedient to carry out the objects and purposes of this Act.

The provisions of section two hundred and sixty-seven of **“ The Justices Acts, 1886 to 1949,”* shall apply in respect of any Rule of Court made under this section.

SCHEDULE. [Section 3.]

SCHEDULE.

Year and Number of Act.	Short Title.	Extent of Repeal.
4 Vic. No. 5 ..	† <i>“ The Deserted Wives and Children Act of 1840 ”</i>	The whole
22 Vic. No. 6 ..	‡ <i>“ The Deserted Wives and Children Act Amendment Act of 1858 ”</i>	The whole
5 Edw. VII. No. 19 and amending Acts	§ <i>“ The Infant Life Protection Acts, 1905 to 1935 ”</i>	Section 16

* 50 V. No. 17.

† 4 V. No. 5.

‡ 22 V. No. 6.

§ 5 E. 7 No. 19 and amending Acts.