

1937

c 211 Deserted Wives' and Children's Maintenance Act

Ontario

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CHAPTER 211.

The Deserted Wives' and Children's
Maintenance Act.

Order for
maintenance
of wife.

1.—(1) Where a wife has been deserted by her husband an information may be laid before a justice of the peace and such justice of the peace may issue a summons against the husband in accordance with the form in the Schedule to this Act and if upon the hearing before a magistrate, it appears that the husband has deserted his wife without having made adequate provision for her maintenance and the maintenance of his children residing with her and that he is able to maintain them in whole or in part and neglects or refuses so to do, the magistrate may order him to pay such weekly sum as may be deemed proper, having regard to all the circumstances and such order may be in the form given in the Schedule to this Act. 1935, c. 18, s. 2 (1).

Desertion
of wife.

(2) A married woman shall be deemed to have been deserted within the meaning of this section when she is living apart from her husband because of his acts of cruelty, or of his refusal or neglect, without sufficient cause, to supply her with food and other necessaries when able so to do, or of the husband having been guilty of adultery which has not been condoned and which is duly proved, notwithstanding the existence of a separation agreement, providing there has been default thereunder and whether or not the separation agreement contains express provisions excluding the operation of this Act. 1935, c. 18, s. 2 (2).

What may
constitute
cruelty.

(3) Without restricting in any way the generality of the provisions of subsection 2, conduct causing reasonable apprehension of bodily injury, or of injury to health, without proof of actual personal violence, which renders the home an unfit place, either for a wife or a child, may be held to constitute acts of cruelty within the meaning of subsection 2. 1933, c. 11, s. 2.

Cases of
adultery.

(4) No order shall be made in favour of a wife who is proved to have committed adultery unless the adultery has been condoned, and any order may be rescinded upon proof that the wife, since the making thereof, has been guilty of adultery if it has not been condoned.

(5) A finding by the magistrate that adultery has been proved shall not be evidence of the adultery in any other proceedings. R.S.O. 1927, c. 184, s. 1 (3, 4). Effect of finding of adultery.

2.—(1) A father who has deserted his child may be summoned before a magistrate or a judge of a juvenile court having jurisdiction where the father or the child then resides, who, if satisfied that such father has wilfully refused or neglected to maintain the child and has deserted the child, may order that the father shall pay such weekly sum, not exceeding \$20, with or without costs, as may by order be directed to the person named in the order for the support of such child, as the magistrate or the judge may consider proper, having regard to the means of the father and to any means the child may have for his support. R.S.O. 1927, c. 184, s. 2 (1). Order for maintenance of child

(2) A child shall be deemed to have been deserted by his father, within the meaning of this section, when the child is under the age of sixteen years and when the father has, without adequate cause, refused or neglected to supply such child with food or other necessities when able so to do. R.S.O. 1927, c. 184, s. 2 (2). When child deemed to have been deserted.

3. A complaint under this Act may be laid by a deserted wife or child or by a person having the care and custody of a deserted child or with the consent of the Crown attorney by any other person. R.S.O. 1927, c. 184, s. 3. Who may lay complaint.

4. The judge or magistrate may in any order set a time limit, not exceeding thirty days, within which each sum of money ordered to be paid and the costs shall be paid. R.S.O. 1927, c. 184, s. 4. Time limit.

5. Upon proof that the circumstances of any of the parties have changed since the making of any former order, any order may be varied, or at the instance of either party on notice to the other an application may at any time be reheard, and any order may be confirmed, rescinded, or varied, Varying order or rehearing application.

(a) by the judge or magistrate who made the order; or,

(b) if such judge or magistrate be dead, ill, or absent from his territorial jurisdiction, by any other judge of the juvenile court or magistrate whose jurisdiction in the same locality is such that an information similar to the original information, could be laid before him; or,

(c) in any case, by any judge of the juvenile court or magistrate who has jurisdiction in the locality in

which the person in whose favour the order is made resides. R.S.O. 1927, c. 184, s. 5.

Application may be heard in private.

6. Any application may be heard by the judge or magistrate in private. R.S.O. 1927, s. 184, s. 6.

Payment of expenses.

7. Where it is necessary to incur expense in serving a warrant or summons or in carrying out any of the provisions of this Act, and the complainant is unable to pay such expenses, they may be paid out of such sum as may be appropriated by the Legislature for that purpose. R.S.O. 1927, c. 184, s. 7.

Application of Rev. Stat. c. 136.

8.—(1) Save where otherwise provided proceedings under the provisions of this Act shall be in accordance with the provisions of *The Summary Convictions Act*, and any order for the payment of money made hereunder may be enforced as if it were an order or conviction made under the said Act but imprisonment shall only be ordered under subsection 2.

Enforcement of order.

(2) Whenever default is made in the payment of any sum of money ordered to be paid the judge of the juvenile court or magistrate who made the order, or, any other judge of the juvenile court or magistrate before whom an information similar to the original information could be laid, or any judge of the juvenile court or magistrate who has jurisdiction in the locality in which the person in whose favour the order is made resides,—

By summons.

(a) may from time to time summon the person in default to explain the default; and

By warrant to arrest.

(b) may, where service of the summons has been proved, and the person summoned does not appear or sufficient reason for his absence is not given, or where it appears that the summons cannot be served or where an order of imprisonment has been made, issue a warrant for the arrest of such person; and

By imprisonment.

(c) may, when a warrant has been issued, or where the person in default fails to satisfy the magistrate that such default is due to inability to pay, order and adjudge such person to be imprisoned for a term not exceeding three months unless the sums of money payable under the order or such lesser sums as the judge may see fit to designate, are sooner paid. R.S.O. 1927, c. 184, s. 8 (2); 1935, c. 18, s. 3.

Enforcement of order for payment of money.

9. Any order for payment of money may also be filed with the clerk of any division court and enforced by execution and by judgment summons as in the case of a judgment in the division court. R.S.O. 1927, c. 184, s. 9.

SCHEDULE.

THE DESERTED WIVES' AND CHILDREN'S MAINTENANCE ACT.

SUMMONS.

(Section 1 (1).)

County (or District)
of

To A.B., of

Whereas application has this day been made by your wife (or child), C.B., to the undersigned Magistrate (or Justice of the Peace, *as the case may be*) for a summons under *The Deserted Wives' and Children's Maintenance Act*, for that you have wilfully refused or neglected to maintain your said wife (or your wife and family, *as the case may be*) or your child, and have deserted your said wife or child. These are, therefore, to command you to appear before the undersigned or such magistrate or justices as may then and there be present in my (or our) stead, at _____ on the _____ day after the service hereof, at the hour of _____ in the _____ noon, to show cause why an order should not be made against you, to pay to your said wife for her support (or for the support of her and your family, *as the case may be*, or to your child for his support), such weekly sum not exceeding \$20 (*where application is for maintenance of wife omit the words and figures "not exceeding \$20"*), as may be considered to be in accordance with your means and with the means of your said wife (or child).

Given under _____ hand and seal _____ day of _____ 19 ____
J.S. (L.S.)

THE DESERTED WIVES' AND CHILDREN'S MAINTENANCE ACT.

ORDER.

(Section 1 (1).)

County (or District)
of

Upon reading the summons dated the _____ day of _____, 19 ____, issued by _____, Magistrate for the _____ (or Justices of the peace for _____), upon the application of C.B., wife or child of A.B., under the provisions of *The Deserted Wives' and Children's Maintenance Act*, and upon hearing all the parties (or, *as the case may be*), and the evidence adduced, and it appearing that the said C.B. is entitled to the benefit of the said Act: I (or we), the undersigned, do hereby order that the said A.B. do pay hereafter to his said wife, or her agent (or his child or his child's agent), authorized in writing, at _____, the sum of \$ _____ per week for her support (or for the support of her and the family of the said A.B. or for support of the child), the first weekly payment to be made on the _____ day of _____, 19 ____, together with the costs of these proceedings, which amount to \$ _____, which shall be paid on or before the _____ day of _____, 19 ____.

Given under _____ hand and seal _____ day of _____, 19 ____
J.S. (L.S.)

R.S.O. 1927, c. 184, Sched.