

*Maintenance.***No. 19 of 1889.****An Ordinance relating to the Maintenance of Wives and Children.**

WHEREAS it is expedient to amend the law relating to the maintenance of wives and children: Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows:

Preamble.

1 This Ordinance may be cited as "The Maintenance Ordinance, 1889."

Short title.

2 Sub-section 2 of section 3 of the Ordinance No. 4 of 1841, intituled "An Ordinance to amend the Laws relating to Vagrants," is hereby repealed, except as to anything heretofore duly done thereunder, and except so far as may be necessary for the purpose of supporting and continuing any legal proceeding commenced thereunder before the coming into operation of this Ordinance.

Repealing clause.

3 If any person having sufficient means neglects or refuses to maintain his wife, or his legitimate or illegitimate child unable to maintain itself, the police magistrate may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child at such monthly rate, not exceeding fifty rupees, as the magistrate thinks fit, and to pay the same to such person as the magistrate may from time to time direct. Such allowance shall be payable from the date of the order.

Order for maintenance of wife or of legitimate or illegitimate child.

4 If such person offers to maintain his wife on condition of her living with him, the magistrate may consider any grounds of refusal stated by her, and may make an order under section 3, notwithstanding such offer, if the magistrate is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

Where wife refuses to live with her husband.

5 No wife shall be entitled to receive an allowance from her husband under section 3 if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

Where wife is living in adultery, or apart from her husband without sufficient reason, or by mutual consent.

6 On proof that any wife in whose favour an order has been made under section 3 is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the magistrate shall cancel the order.

Circumstances warranting cancellation of order under section 3.

7 In the case of an application for an order under section 3 in respect of an illegitimate child, such application shall not be entertained unless made within twelve months from the birth of such child, or unless it be proved that the man alleged to be the father of such child has at any time within twelve months next after the birth of such child maintained it or paid money for its maintenance, or unless such application is made within the twelve months next after the return to this island of the man alleged to be the father of such

Period within which application for maintenance of illegitimate child should be made.

Maintenance.

- Evidence of mother to be corroborated.** child, and upon proof that he ceased to reside in this island, within the twelve months next after the birth of such child, and no order shall be made on any such application as aforesaid on the evidence of the mother of such child unless corroborated in some material particular by other evidence to the satisfaction of the police magistrate.
- Time of cessation of order.** **8** No order for an allowance for the maintenance of any child, legitimate or illegitimate, made in pursuance of this Ordinance shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of fourteen years, or after the death of such child.
- Proviso.** Provided that the police magistrate may in the order direct that the payments to be made under it in respect of the child shall continue until the child attains the age of eighteen years, in which case such order shall be in force until that period.
- Enforcement of order of maintenance.** **9** If any person against whom an order is made under section 3 neglects to comply with the order, the magistrate may for every breach of the order issue a warrant directing the amount due to be levied in the manner by law provided for levying fines imposed by magistrates in the police courts, and may sentence such person for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to simple or rigorous imprisonment for a term which may extend to one month.
- Application for cancellation of order or alteration in amount of allowance.** **10** On the application of any person receiving or ordered to pay a monthly allowance under the provisions of this Ordinance, and on proof of a change in the circumstances of any person for whose benefit or against whom an order for maintenance has been made under section 3, the magistrate may either cancel such order or make such alteration in the allowance ordered as he deems fit, provided that the maximum monthly rate under the said section be not exceeded.
- Copy of order given to party.** **11** A copy of the order of maintenance certified under the hand of the magistrate shall be given without payment to the person in whose favour it is made, or to his or her guardian, if any, or to the person to whom the allowance is to be paid; and any magistrate having jurisdiction in any place where the person against whom such order is made may be, shall, on the production of such order and on being satisfied as to the identity of the parties and the non-payment of the allowance due, proceed to issue such warrant, and if necessary pass such sentence as a magistrate is empowered to do by section 9.
- Order enforceable in any place.**
- Procedure. Attendance of parties at inquiry.** **12** The person applying for an order of maintenance or for a warrant to enforce such order (hereinafter called the applicant), and the person against whom such order or warrant is applied for (hereinafter called the defendant), may either appear personally or by pleader.
- Provided that it shall be competent to the magistrate to require the personal attendance of either the applicant or the defendant at any stage of the inquiry.

Maintenance.

13 The application for an order of maintenance or for a warrant to enforce such order shall be in writing, and shall be signed by the applicant, and shall bear a stamp of twenty-five cents, and every summons to a defendant or witness shall bear a stamp of fifteen cents; such stamps being supplied by the person at whose instance the defendant or witness is summoned.

Inquiry how applied for.

Requirement as to stamps.

Provided that the application may be made orally to the magistrate, who shall, upon the necessary stamp being supplied, reduce the application to writing and cause it to be signed by the applicant.

Proviso.

Provided also that it shall be lawful for the magistrate, on being satisfied that the applicant has not sufficient means to defray the cost of such stamps, to dispense with stamps and to entertain the application and issue process as if stamps had been supplied by the applicant.

Proviso.

14 Upon application being made for such order or warrant as aforesaid, the magistrate shall commence the inquiry by examining the applicant on oath or affirmation, and such examination shall be duly recorded. If after such examination there is in the judgment of the magistrate no sufficient ground for proceeding, he may make order refusing to issue a summons.

Commencement of inquiry.

15 The magistrate may proceed in manner provided in chapters VI. and VII. of "The Criminal Procedure Code, 1883," to compel the attendance of the defendant and of any person required by the applicant or defendant or by the magistrate to give evidence, and the production of any document necessary for the purposes of the inquiry.

Attendance of defendant and witnesses how enforced.

16 All evidence taken by the magistrate under this Ordinance shall be taken in the presence of the defendant, or, when his personal attendance is not required by the magistrate, in the presence of his pleader, and shall be recorded in the manner prescribed for trials in the police court.

Form of proceedings.

Provided that it shall not be necessary to frame a charge or to record the statement of the defendant in the manner prescribed in sections 352, 368, 369, and 370 of "The Criminal Procedure Code, 1883."

Proviso.

Provided also that in any proceedings under this Ordinance it shall be competent to the defendant to give evidence upon oath or affirmation as an ordinary witness, and that a wife shall be a competent witness against her husband.

The parties competent witnesses.

17 Any person who shall be dissatisfied with any order made by a police magistrate under section 3 or section 14 may appeal to the Supreme Court, and every such appeal shall be subject to the provisions of section 407 of "The Criminal Procedure Code, 1883."

Right of appeal.

18 The forms set forth in the schedule, with such variations as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Forms.

Maintenance.

SCHEDULE.

I.—Summons to a Defendant.

To _____, of _____.

Whereas your attendance is necessary to answer to a charge of not maintaining your wife (*name*) (or legitimate or illegitimate child) (*name, or say child by _____, giving mother's name*):

Or:

Whereas your attendance is necessary to answer to a charge of having committed a breach of an order of maintenance made against you under the Ordinance No. 19 of 1889 by non-payment of the allowance due to your wife (or child) _____ (*give name or describe as above*) for _____ (*state period*):

You are hereby required to appear in person (or by pleader, *as the case may be*) before the Police Court of _____, on the _____ day of _____, 18—. Herein fail not.

Dated this _____ day of _____, 18—.

Signature of Chief Clerk.

II.—Warrant of Imprisonment on failure to pay
Maintenance.

To the Fiscal of the _____ Province.

Whereas (*name, description, and address*) has been proved to be possessed of sufficient means to maintain his wife (*name*) (or his child) (*name, or describe as in summons*), who is unable to maintain herself (or himself) and to have neglected (or refused) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (or child) for maintenance the monthly sum of _____ rupees; and whereas it has been further proved that the said (*name*), in wilful disregard of the said order, has failed to pay _____ rupees, being the amount of the allowance for the month (or months) of _____, and thereupon an order was made adjudging him to undergo simple (or rigorous) imprisonment for the period of _____:

This is to authorize and require you, the said Fiscal, to receive the said (*name*) into your custody in the prison at _____, together with this warrant, and there carry the said order into execution according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand this _____ day of _____, 18—.

Signature _____.

III.—Warrant to enforce the Payment of Maintenance by
Distress and Sale.

To the Fiscal of the _____ Province.

Whereas an order has been duly made requiring (*name*) to allow to his wife (or child) for maintenance the monthly sum of _____ rupees; and whereas the said (*name*), in wilful disregard of the said order, has failed to pay _____ rupees, being the amount of the allowance for the month (or months) of _____;

This is to authorize and require you to make distress by seizure of any movable property belonging to the said (*name*) which may be found within the district of _____, and if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or forthwith*), to sell the movable property distrained, or so much thereof as shall be sufficient to satisfy the said sum; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand this _____ day of _____, 18 —.

Signature _____.

31st December, 1889.
