

No. 4.—1865.

1st March.

AN ORDINANCE for providing a summary remedy against persons deserting their Wives and Children.

[L.S.]

J. H. T. MANNERS-SUTTON.

9th March, 1865.

WHEREAS it is expedient that a summary remedy should be provided for compelling persons deserting their wives or children to maintain them: Be it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council, as follows:

Stipendiary justices may make order of maintenance in cases of desertion of wives and children.

1. Where any person shall desert and leave his wife or child (such child being under the age of sixteen years) without sufficient means of support, it shall be lawful for any stipendiary justice of the peace on complaint on oath made by or on behalf of such wife or child, and upon due and satisfactory proof that the person so left is the lawful wife or the lawful child, as the case may be, of the person so complained against, and that the person so complained against is of sufficient ability either by labour or by other lawful means to maintain himself and his wife or child, and that such wife or child is without means of support, to make an order to be called "An Order of Maintenance" for the payment by such person to his wife or to any person having the care or custody of such child, of such weekly or monthly sums for the maintenance and support of such wife or child at such times and at such place as to such stipendiary justice shall seem reasonable.

Order of Maintenance may be enforced by distress or by attachment of rents and profits.

2. If at any time after an order of maintenance shall have been made under this Ordinance it shall be made to appear to any justice of the peace upon oath that any moneys directed to be paid by such order have not been paid according thereto and are in arrear, it shall be lawful for any justice of the peace to issue a warrant under his hand for bringing the person against whom such order shall have been made before any stipendiary justice of the peace, and if such person on being brought

before such stipendiary justice shall fail to show sufficient excuse to be allowed by such stipendiary justice, why such payment has not been made, or if such person cannot be found it shall be lawful for such stipendiary justice to proceed to recover the moneys so unpaid together with the costs of the warrant and the apprehension of such person, by distress and sale of the goods and chattels of such person, or by attaching the rents and profits of the lands and tenements of such person; or it shall be lawful for such stipendiary justice, if he shall see fit, to commit such person to gaol, there to be imprisoned with hard labour for such term not exceeding one day for every shilling of such sum and costs as the stipendiary justice shall see fit, unless such sum and costs be in the meantime paid.

3. Where any stipendiary justice shall see fit to proceed for the enforcement of any order of maintenance by attachment of the rents and profits of any lands or tenements of such person against whom such order of maintenance shall have been made, it shall be lawful for such stipendiary justice to issue a summons requiring the tenant of any lands or tenements of the person against whom such order of maintenance shall have been made to appear before such stipendiary justice at a time to be named in such summons to show cause why any rents due or which may from time to time become due from such tenant should not be paid over to the wife or person having the care of the child of the person against whom such order of maintenance shall have been made; and if no sufficient cause be shown to the contrary it shall be lawful for any stipendiary justice by Order under his hand to be called "An Order of Attachment," to direct such tenant from whom any rent shall be due, or from time to time become due or payable, to pay either in one sum or by such weekly or other instalments as the stipendiary justice shall see fit, and for such time as shall be limited by such Order to such wife or to the person having the care of such child any sum mentioned in the order of maintenance which shall have been unpaid and be in arrear, and also the amount of any future weekly or monthly payments which shall afterwards become and be payable under and by virtue of such order of maintenance; and the payment to and

Order of attachment may issue directing tenant to pay the sum mentioned in order of maintenance; and such order of attachment may be enforced by distress.

receipt of any such wife or person having the care of such child shall be a good discharge to such tenant for so much of any rent as shall be paid by virtue of any such order of attachment; and if any such tenant shall refuse or neglect to pay to the person producing any such order of attachment, the moneys directed to be paid according to the terms of such Order, and at the times thereby fixed for such payment, the same may be levied and recovered, and payment thereof with costs from time to time enforced against such tenant in a summary manner by distress and sale of the goods of such tenant.

In case of adultery of the wife or of inability of the person against whom order of maintenance shall have issued such order to be rescinded or modified.

4. It shall be lawful for any stipendiary justice, on the application of any person against whom any such order of maintenance shall have been made, on its being made to appear to him on oath that the wife of such person is living in adultery, or that such person is no longer of sufficient ability either by labour or other lawful means to maintain himself and his wife or child, to issue his summons for the appearance of the wife or the person having the care of the child for whose maintenance such Order shall have been made, and thereupon, if he shall see fit, by Order in writing, to rescind such order of maintenance, or to reduce the monthly or weekly payments thereby directed to be made to such smaller sums as to the stipendiary justice shall seem fit: And the payment of all such smaller sums shall and may be enforced and recovered in the same manner as if the same had been mentioned in the original order of maintenance.

Appeal may be had against decisions of stipendiary magistrate.

5. In all cases where any stipendiary justice shall make or refuse to make an order of maintenance, or to make an Order for rescinding any such order of maintenance, it shall be lawful for any party dissatisfied with the decision of such stipendiary justice to appeal to the Supreme Civil Court as a Court of Appeal under the Ordinance No. 5 of 1852, entitled "An Ordinance for facilitating the performance of the duties of justices of the peace with respect to summary convictions and Orders, and for establishing a Court of Appeal in respect of the same;" and such Court shall thereupon hear and determine such Appeal, and shall have the power, if it shall see fit, to make an Order of

maintenance, or to set aside any Order or decision made by such stipendiary justice, and shall make such Order as to the costs of such Appeal, as to the Court shall seem fit, and any Order of maintenance which may be made by such Court of Appeal shall have the same force and effect, and such proceedings may be had thereon by and before any stipendiary justice of the peace for enforcing or obtaining the payment of the moneys which shall be payable under such Order, as if such Order had been made by a stipendiary justice of the peace.

6. The evidence of the husband or of the wife shall be admissible in any case to prove or disprove the fact of marriage or of desertion, but such evidence shall not be admissible to prove or disprove the adultery of the wife. Evidence of husband and wife admissible for certain purposes.

7. The several forms in the schedule to this Ordinance or forms to the like effect shall be deemed good and sufficient in law. Forms to be good in law.

Passed in Council this first day of March in the year of Our Lord one thousand eight hundred and sixty-five.

R. LECHMERE GUPPY,

Clerk of the Council.

SCHEDULE.

A.

Summons.

Whereas complaint upon oath has been made unto me Stipendiary Justice of the Peace for the County of _____ in the Island of Trinidad by C. D. the Wife (or E. F. a Child under the age of sixteen years) of you A. B. of the Ward of _____ (or by G. H. of _____ on behalf of C. D. the Wife (or E. F. a Child under the age of sixteen years) of you the said A. B.) that you the said A. B. have deserted the said C. D. your Wife without reasonable cause (or the said E. F. your Child) and that the said C. D. or E. F.) is without sufficient means of support: I do hereby require you the said A. B. to appear at the _____ in the Town of _____ on the _____ day of _____ then and there to answer the matter of the said Complaint.

B.

Order of Maintenance.

Whereas on complaint on oath made before _____ Stipendiary Justice of the Peace of the County of _____ that A. B. of _____ has deserted C. D. his Wife (*or* E. F. a Child under the age of sixteen years of the said A. B.) without means of support, the said A. B. being summoned appeared before me the undersigned Stipendiary Justice of the Peace to answer the matter of the said Complaint (*or* being summoned failed to appear to answer the matter of the said Complaint, although a copy of such Summons was duly served on the said A. B. by delivering the same to him personally, or leaving the same at _____ being his last known place of abode on _____ the _____ day of _____ last), and it was thereupon made to appear to me that the said A. B. had deserted the said C. D. without reasonable cause (*or* the said E. F. his Child being under the age of sixteen years) and that the said C. D. (*or* E. F.) is without sufficient means of support, and that the said A. B. is able either by labour or other lawful means to maintain himself and the said C. D. (*or* E. F.) I do hereby in pursuance of the Ordinance in that case made and provided, Order that the said A. B. do pay to the said C. D. for her maintenance and support (*or* to _____ being the person having the care of the said E. F. for the maintenance and support of the said E. F.) from and after the date of this Order the weekly (*or* monthly) sum of _____ to be paid before the hour of Twelve in the forenoon of the _____ day of each week (*or* on the (*specify the day*) of each month) at (*specify place where payment to be made.*)

C

Summons in case of Default of payment of sum mentioned in Order of Maintenance.

To A. B.

Whereas complaint has been made to me _____ Justice of the Peace for the County of _____ on the oath of _____ that you A. B. have made default in payment of the sum [*or* sums *if more than one*] of _____ which was [*or* were] payable by you to C. D. your Wife [*or* _____ having the care of E. F. a Child under the age of sixteen years of you the said A. B.] on the _____ day of _____ [*specify day or days when moneys in arrear were payable*] under and by virtue of a certain Order of Maintenance made on _____ the day of _____ by _____ Stipendiary Justice of the Peace for the County of _____ : These are to command you the said A. B. to appear before _____ Stipendiary Justice of the Peace for the _____ at _____ in the _____ on the _____ day of _____ then and there to answer in the premises.

D.

Order of Commitment in default of payment of Maintenance.

To Serjeant of Police and all other Police Constables,
and to Keeper of the Gaol.

Whereas by an Order under the hand of Stipendiary Justice of the Peace for the County of bearing date the day of and made in pursuance of the Ordinance in that behalf made and provided, it was Ordered that A. B. of should pay to C. D. his wife (or to having the care of E. F. a Child under the age of sixteen years of the said A. B.) from and after the date of the said Order of Maintenance the weekly (or monthly) sum of for or towards the maintenance and support of the said C. D. (or E. F.): And whereas it has been made to appear to me on the Oath of that the sum (or several sums of) being the weekly (or monthly) payment (or payments) which by virtue of the said Order became and was (or were) payable on the day of (if more than one specify when payable) was (or were) not paid, and is (or are) still unpaid: And the said A. B. having heard the said evidence doth not say anything or offer any evidence to gainsay the same (or the said A. B. although duly summoned to answer in the premises doth not appear): These are therefore to command you to apprehend the said A. B. and him safely to convey to the Gaol, and there deliver him to the said Keeper thereof together with this precept: And these are to command you the said Keeper of the said Gaol to receive the said A. B. into your custody in the said Gaol, and him there safely to keep without bail or mainprize for the space of days to be computed from the day on which he shall be delivered into your custody, unless the said sum of together with the further sum of which I do hereby allow to the said C. D. for costs be sooner paid. And for so doing this shall be your sufficient warrant.

E.

Summons to show cause why Wages should not be attached.

To N. O. [name of Tenant] of

Whereas complaint on Oath hath been made before Stipendiary Justice of the Peace for the County of that default has been made by A. B. in payment to C. D. his Wife [or having the care of E. F. a Child under the age of sixteen years of the said A. B.] of the sum or several sums of which was [or were] payable to the said on the day of [specify the day or days if more than one sum be in arrear] under and by virtue of a certain Order of Maintenance made on the day of by

Stipendiary Justice of the Peace for the County of _____ : And it has been made to appear to me that you are in possession as tenant of the said A. B. of the Messuage [*specify number of Street and situation of Messuage or Tenement*] at a yearly [monthly or weekly as the case may be] rent of _____]: I do hereby require you the said N. O. to appear before _____ Stipendiary Justice of the Peace for the County of _____ on _____ the _____ day of _____ at the Police Office in _____ in there to show cause why the rent now payable or hereafter to become payable by you to the said A. B. should not be attached in your hands to be paid in whole or in part to the said C. D. [*or to the said _____ for the use of the said E. F.*]

F.

Order of Attachment.

To _____ N. O. of _____
Whereas on complaint on Oath made before me _____ Stipendiary Justice of the Peace for the County of _____ it has been made to appear that A. B. of _____ has made default in payment of the sum of _____ which sum was payable by him to C. D. his Wife [*or _____ having the care of E. F. a Child under the age of sixteen years of the said A. B.*] under and by virtue of a certain Order of Maintenance made by _____ Stipendiary Justice of the Peace and bearing date the _____ day of _____ in the year 18 _____ : And it has been also made to appear to me that you the said N. O. are in possession as Tenant of the said A. B. of the [*describe the property*] at a _____ rent of _____ ; and you the said N. O. having been summoned to answer in the premises have appeared and have not shown sufficient cause why this Order should not be made [*or being summoned have not appeared by yourself or any other person*] : I do therefore order and direct you the said N. O. to pay unto the said C. D. [*or _____ having the custody of the said E. F.*] on his or her demanding the same, the sum of _____ being the sum [*or sums*] so unpaid and in arrear, together with the further sum of _____ for costs allowed by me against the said A. B. out of the rent of the said Messuage or Tenement now due or which shall become due by you as Tenant of the said A. B. and also the weekly [*or monthly*] sum of _____ from this time until the _____ day of _____ which will be in the year _____ ; and the receipt of receipts of the said C. D. [*or _____ as the case may be*] shall be to you a good and sufficient discharge [*or discharges*] for all money hereby directed to be paid.

Given under my hand this _____ day of _____ in the Year _____ of our Lord 18 _____