And the Lords appoint this Act of Sederunt to be inserted in the Books of Sederunt.

T. M. Cooper,
I.P.D.

Edinburgh,
29th June, 1950.

Act of Sederunt (Maintenance Orders Act, 1950, Rules) 1950

1950 No. 2144 (S. 145)

Made - - - - 20*th December*, 1950
Coming into Operation 1*st January*, 1951

The Lords of Council and Session, under and by virtue of the powers conferred on them by the Maintenance Orders Act, 1950(a), and of all other powers competent to them in that behalf, do hereby enact and declare as follows:—

PART I

GENERAL

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Maintenance Orders Act, 1950, Rules) 1950 and shall come into operation on the first day of January, 1951.

(2) In this Act of Sederunt the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them:—

"the Act" means the Maintenance Orders Act, 1950;

"decree" includes an extract decree and a decree granted in the Small Debt Court;

"Deputy Principal Clerk" means the Deputy Principal Clerk in charge of the Petition Department of the Court of Session;

"the High Court in England" means the Supreme Court of Judicature in England;

"the High Court in Northern Ireland" means the Supreme Court of Judicature of Northern Ireland;

"Senior Registrar" in relation to the High Court in England means, in the case of an order for the payment of weekly or other periodical sums made under subsection (2) of section three or subsection (4) of section five of the Guardianship of Infants Act, 1925(b), the Chief Registrar of the Chancery Division, and in any other case the Senior Registrar of the Principal Probate Registry, and in relation to the High Court in Northern Ireland means the Chief Registrar of the King's Bench Division (Matrimonial):

"sheriff-clerk" includes sheriff-clerk depute.

(3) In Part III of this Act of Sederunt any reference to the clerk of a court shall in relation to a county court in England be construed as a reference to the registrar of that court.

(4) The Interpretation Act, 1889(c), shall apply to the interpretation of this Act of Sederunt as it applies to the interpretation of an Act of Parliament.

(a) 14 Geo. 6. c. 37. (b) 15 & 16 Geo. 5. c. 45. (c) 52 & 53 Vict. c. 63.

2. The provisions of Part II of this Act of Sederunt shall have effect for the purposes of the Act in relation to decrees for payment of aliment granted by the Court of Session and maintenance orders made by the High Court in England or by the High Court in Northern Ireland; and the provisions of Part III of this Act of Sederunt shall have effect for the purposes of the Act in relation to decrees for payment of aliment granted by sheriff courts and maintenance orders made by courts of summary jurisdiction or county courts in England and Northern Ireland.

3. Any person who satisfies the Deputy Principal Clerk or the sheriff-clerk, as the case may be, that he is entitled to, or liable to make, payments under a decree for payment of aliment or a maintenance order, or a solicitor acting on behalf of any such person, or, with the leave of the Deputy Principal Clerk or the sheriff-clerk, any other person, may inspect the Maintenance Orders Register concerned, and may take copies of any decree or order registered therein and of any statutory declaration, affidavit or certificate relating thereto.

PART II

COURT OF SESSION

Provisions in relation to decrees for payment of aliment granted by the Court of Session

4.—(1) An application for the registration in the High Court in England or in the High Court in Northern Ireland under the Act of a decree for payment of aliment granted by the Court of Session shall be made to the Deputy Principal Clerk by lodging at the Central Office of the Court a certified copy of the decree together with statutory declaration or affidavit by the applicant (with a copy thereof) setting forth—

(*a*) the name and address of the person liable to make payments under the decree;

(*b*) the reason why it is convenient that the decree should be enforceable in England or Northern Ireland, as the case may be;

(*c*) the amount of any arrears due to the applicant under the decree; and

(*d*) that the decree is not already registered under the Act.

(2) If it appears to the Deputy Principal Clerk that the person liable to make payments under the decree resides in England or Northern Ireland and that it is convenient that the decree should be enforceable there, he shall send the certified copy of the decree and the applicant's declaration or affidavit to the Senior Registrar of the High Court in England or to the Senior Registrar of the High Court in Northern Ireland, as the case may be.

(3) Particulars of the decree and of the proceedings taken under the last foregoing paragraph for its registration in England or Northern Ireland shall be entered in Part I of a book to be kept in the Central Office of the Court for the purposes of the Act (in this Part of this Act of Sederunt referred to as " the Maintenance Orders Register "). The Deputy Principal Clerk shall be the prescribed officer to whom notice under subsection (4) of section seventeen of the Act of the registration of the decree in the High Court in England or in the High Court in Northern Ireland, shall be sent, and on receipt of such notice he shall note in Part I of the Maintenance Orders Register that the decree has been so registered.

5. The Deputy Principal Clerk shall be the prescribed officer to whom any transcript or summary of evidence adduced in the High Court in England or in the High Court in Northern Ireland under section twenty-one of the Act shall be sent; and any transcript or summary so sent to him shall be lodged by him in the process of the cause to which it relates.

6. Where a decree for payment of aliment which is registered in the High Court in England or in the High Court in Northern Ireland is discharged or varied, the Deputy Principal Clerk shall enter particulars of the discharge or variation in Part I of the Maintenance Orders Register and shall give notice of the discharge or variation to the Senior Registrar of the High Court in England or to the Senior Registrar of the High Court in Northern Ireland, as the case may be, by sending to him a certified copy of the order or interlocutor discharging or varying the decree.

7. Where the registration of a decree for payment of aliment registered in the High Court in England or in the High Court in Northern Ireland is cancelled under subsection (1) of section twenty-four of the Act, the Deputy Principal Clerk shall be the prescribed officer to whom under subsection (3) of that section notice of the cancellation shall be sent; and on receipt of such notice he shall note the cancellation in Part I of the Maintenance Orders Register.

Provisions in relation to maintenance orders made by the High Court in England or Northern Ireland

8.—(1) The Deputy Principal Clerk shall be the prescribed officer for the purpose of subsection (2) of section seventeen of the Act, and on receipt of a certified copy of a maintenance order made by the High Court in England or by the High Court in Northern Ireland, he shall register the order in Part II of the Maintenance Orders Register, and shall send notice to the Senior Registrar of the Court which made the order that this has been done. Any statutory declaration or affidavit sent under subsection (1) of section twenty of the Act with the certified copy of the order as to the amount of any arrears due under the order shall be retained in the Petition Department.

(2) The Deputy Principal Clerk after registering such a certified copy as aforesaid shall on receipt of the dues of extract endorse thereon a warrant for its registration in the Register of Deeds in the Books of the Lords of Council and Session and shall transmit the certified copy to the Keeper of the Registers of Scotland, who shall immediately register the same accordingly; and extract of the registered order may thereupon be issued, with a warrant for diligence in common form to the Deputy Principal Clerk who shall transmit the same to the applicant.

9. An application for leave to enforce the payment of any arrears accrued and due before the first day of January, 1951, under a maintenance order made by the High Court in England or by the High Court in Northern Ireland and registered in the Court of Session shall be made by petition to the Outer House; and the Deputy Principal Clerk shall send notice to the Senior Registrar of the High Court in England or to the Senior Registrar of the High Court in Northern Ireland, as the case may be, of the making of the application and of the manner in which it has been disposed of.

10. The Deputy Principal Clerk shall be the prescribed officer to whom under subsection (2) of section twenty-three of the Act notice shall be given of the discharge or variation of any maintenance order made by the High Court in England or by the High Court in Northern Ireland and registered in the Court of Session; and on receipt of a certified copy of an order discharging

or varying the registered order he shall register it in Part II of the Maintenance Orders Register ; and the provisions of paragraph (2) of Rule 8 shall apply in relation to an order varying an order made and registered as aforesaid as they applied in relation to the original order.

11.—(1) An application for the cancellation of the registration of a maintenance order made by the High Court in England or by the High Court in Northern Ireland and registered in the Court of Session shall be made to the Deputy Principal Clerk by lodging at the Central Office of the Court an application for the purpose (which shall state the date of the registration of the order and which shall be signed by or on behalf of the applicant) together with a copy of the order the registration of which is sought to be cancelled.

(2) Where the Deputy Principal Clerk, in pursuance of an application made under the foregoing paragraph, cancels the registration of an order he shall note the cancellation in Part II of the Maintenance Orders Register and shall send notice of the cancellation to the Senior Registrar of the High Court in England or to the Senior Registrar of the High Court in Northern Ireland, as the case may be, and to the person liable to make payments under the order.

12. In relation to a maintenance order which has been made in a cause or matter proceeding in one of the district registries of the High Court in England and is registered in the Court of Session the provisions of Rules 8 and 11 of this Act of Sederunt shall have effect with the substitution for references to the Senior Registrar of references to the registrar of the district registry concerned.

PART III

SHERIFF COURTS

Provisions in relation to decrees for payment of aliment granted by Sheriff Courts

13.—(1) Every initial writ by which proceedings are begun in a sheriff court having jurisdiction under or by virtue of Part I of the Act against a person residing in another part of the United Kingdom, and all minutes and writs (other than productions) lodged in any proceedings taken in a sheriff court under or by virtue of the Act, shall be headed " Maintenance Orders Act, 1950 ".

(2) The warrant of citation granted upon any writ which by virtue of the Act is to be served upon a person residing in another part of the United Kingdom shall be in ordinary form and shall proceed upon fourteen days' induciae, to be reckoned from the date of service, and such warrant of citation may be signed by the sheriff-clerk. In connection with the service under section fifteen of the Act of an initial writ from a sheriff court the expression " initial writ " in the said section and in the forms contained in the Second Schedule to the Act shall include the warrant of citation relative to the said writ.

(3) The provisions of Rule 15 of the First Schedule to the Sheriff Courts (Scotland) Act, 1907(**a**) (which relate to edictal citation) shall not apply to service made in terms of section fifteen of the Act.

14.—(1) An application for the registration in a court of summary jurisdiction in England or Northern Ireland under the Act of a decree for payment of aliment granted by a sheriff court shall be made to the

(**a**) 7 Edw. 7. c. 51.

sheriff-clerk of that court by lodging at his office a certified copy of the decree together with a statutory declaration or affidavit by the applicant (with a copy thereof) setting forth—

(*a*) the name and address of the person liable to make payments under the decree;

(*b*) the reason why it is convenient that the decree should be enforced in England or Northern Ireland, as the case may be;

(*c*) the amount of any arrears due to the applicant under the decree; and

(*d*) that the decree is not already registered under the Act.

(2) If it appears to the sheriff-clerk that the person liable to make payments under the decree resides in England or Northern Ireland and that it is convenient that the decree should be enforceable there, he shall send the certified copy of the decree and the applicant's declaration or affidavit to the clerk of the court of summary jurisdiction in England or Northern Ireland having jurisdiction where the person liable to make payments under the decree appears to be.

(3) Particulars of the decree and of the proceedings taken under the last foregoing paragraph for its registration in a court in England or Northern Ireland shall be entered in Part I of a book to be kept by the sheriff-clerk (in this Part of this Act of Sederunt referred to as "the Maintenance Orders Register"). The sheriff-clerk shall be the prescribed officer to whom notice under subsection (4) of section seventeen of the Act of the registration of the decree shall be sent, and on receipt of such notice he shall note in Part I of the Maintenance Orders Register that the decree has been so registered.

15.—(1) An application to a sheriff court under subsection (5) of section twenty-two of the Act to adduce evidence in connection with a decree for payment of aliment granted by that court and registered in a court in England or Northern Ireland shall be made by initial writ.

Any evidence adduced in pursuance of such an application shall be taken and recorded in the manner prescribed by Rule 65 of the First Schedule to the Sheriff Courts (Scotland) Act, 1907, and the transcript or summary of the evidence so adduced shall be sent to the clerk of the court in which the decree is registered.

(2) The sheriff-clerk of the court by which a decree for payment of aliment registered in a court in England or Northern Ireland was granted shall be the prescribed officer to whom any transcript or summary of evidence adduced in a court in England or Northern Ireland under subsection (5) of section twenty-two of the Act in connection with that decree shall be sent; and any transcript or summary so sent to him shall be lodged by him in the presence of the cause in which the decree was granted.

16.—(1) Where a decree for payment of aliment granted by a Sheriff court and registered in a court in England or Northern Ireland is varied under subsection (1) of section twenty-two of the Act by the Court in which it is registered, the sheriff-clerk of the court by which the decree was granted shall be the prescribed officer to whom under subsection (1) of section twenty-three of the Act notice of the variation shall be given; and on receipt of such notice he shall enter particulars of the variation in Part I of the Maintenance Orders Register.

(2) Where a decree for payment of aliment granted by a sheriff court and registered in a court in England or Northern Ireland is discharged or varied by that sheriff court, the sheriff-clerk shall enter particulars of the discharge or variation in Part I of the Maintenance Orders Register and shall give

notice to the clerk of the court in which the decree is registered by sending to him a certified copy of the order or interlocutor discharging or varying the decree.

17. An application under subsection (2) of section twenty-four of the Act in connection with a decree for payment of aliment granted by a sheriff court and registered in a court in England or Northern Ireland shall be made to the sheriff-clerk of that court by lodging at his office a statutory declaration or affidavit by the person liable to make payments under the decree stating the facts on which the application is founded ; and if it appears to the sheriff-clerk that that person has ceased to reside in England or Northern Ireland, as the case may be, the sheriff-clerk shall send notice to that effect to the clerk of the court in which the decree is registered.

18. Where the registration of a decree for payment of aliment made by a sheriff court and registered in a court in England or Northern Ireland is cancelled under subsection (1) or subsection (2) of section twenty-four of the Act, the sheriff-clerk shall be the prescribed officer to whom notice under subsection (3) of that section shall be sent ; and on receipt of such notice he shall note in Part I of the Maintenance Orders Register that the registration of the decree has been so cancelled.

Provisions in relation to maintenance orders made by courts in England or Northern Ireland

19.—(1) The sheriff-clerk shall be the prescribed officer for the purposes of subsection (2) of section seventeen of the Act, and on receipt of a certified copy of a maintenance order made by a court in England or Northern Ireland, he shall register the order in Part II of the Maintenance Orders Register, and shall give notice to the clerk of the court which made the order that this has been done. Any certificate, statutory declaration or affidavit sent under subsection (1) of section twenty of the Act with the certified copy of the order as to the amount of any arrears due under the order shall be retained in the office of the sheriff-clerk.

(2) The sheriff-clerk after registering such a certified copy as aforesaid shall endorse thereon an attestation, signed by himself, of the registration thereof in the form set out in the Schedule to this Act of Sederunt, and thereupon the certified copy, registered as aforesaid and with the attestation thereon by the sheriff-clerk, shall be of the like force and effect and may be enforced in all respects as if it were an extract decree of the sheriff court in which it is registered with a warrant for diligence in common form.

20. An application to a sheriff court for leave to enforce the payment of any arrears accrued and due before the first day of January, 1951, under a maintenance order made by a court in England or Northern Ireland and registered in that sheriff court shall be made by initial writ ; and the sheriff-clerk shall send notice to the clerk of the court by which the order was made of the making of the application and of the manner in which it has been disposed of.

21. An application to a sheriff court for the variation under subsection (1) of section twenty-two of the Act of the rate of the payments under a maintenance order made by a court in England or Northern Ireland and registered in that sheriff court shall be made by initial writ.

22.—(1) An application to a sheriff court under subsection (5) of section twenty-two of the Act to adduce evidence in connection with a maintenance order made by a court in England or Northern Ireland and registered in that sheriff court shall be made by initial writ.

Any evidence adduced in pursuance of such an application shall be taken and recorded in the manner prescribed by Rule 65 of the First Schedule to the Sheriff Courts (Scotland) Act, 1907, and the transcript or summary of the evidence so adduced shall be sent to the clerk of the court by which the order was made.

(2) The sheriff-clerk of the court in which a maintenance order made by a court in England or Northern Ireland is registered shall be the prescribed officer to whom any transcript or summary of evidence adduced in England or Northern Ireland under subsection (5) of section twenty-two of the Act in connection with that order shall be sent; and any transcript or summary so sent to him shall be lodged by him in the process of any proceedings before that sheriff court for the variation of the order.

23.—(1) Where a maintenance order made by a court in England or Northern Ireland and registered in a sheriff court is varied by that sheriff court, the sheriff-clerk shall enter particulars of the variation in Part II of the Maintenance Orders Register and shall give notice of the variation to the clerk of the court by which the order was made by sending to him a certified copy of the order or interlocutor varying the order.

(2) Where a maintenance order made by a court in England or Northern Ireland and registered in a sheriff court is discharged or varied by any court other than that sheriff court, the sheriff-clerk shall be the prescribed officer to whom, under subsection (2) of section twenty-three of the Act, notice of the discharge or variation, as the case may be, shall be sent; and on receipt of a certified copy of an order discharging or varying the registered order, he shall register it in Part II of the Maintenance Orders Register; and the provisions of paragraph (2) of Rule 19 shall apply in relation to an order varying an order made and registered as aforesaid as they applied in relation to the original order.

24.—(1) An application for the cancellation under subsection (1) of section twenty-four of the Act of the registration of a maintenance order made by a court in England or Northern Ireland and registered in a sheriff court shall be made to the sheriff-clerk by lodging at his office an application for the purpose (which shall state the date of the registration of the order and which shall be signed by or on behalf of the applicant) together with a copy of the order the registration of which is sought to be cancelled.

(2) The sheriff-clerk of the court in which a maintenance order made by a court in England or Northern Ireland is registered shall be the prescribed officer to whom any notice under subsection (2) of section twenty-four of the Act shall be sent by the appropriate authority.

(3) Where under subsection (1) or subsection (2) of section twenty-four of the Act the sheriff-clerk cancels the registration of a maintenance order, he shall note the cancellation in Part II of the Maintenance Orders Register and shall send notice of the cancellation to the clerk of the court by which the order was made and to the person liable to make payments under the order.

And the Lords appoint this Act of Sederunt to be inserted in the Books of Sederunt.

T. M. Cooper, I.P.D.

Edinburgh.

20th December, 1950.

SCHEDULE Rule 19 (2)

FORM OF ATTESTATION

I hereby declare that the foregoing certified copy of a maintenance order has been duly registered by me in Part II of the Maintenance Orders Register kept in this court in terms of the Maintenance Orders Act, 1950, and Rule 19 (2) of the Act of Sederunt (Maintenance Orders Act, 1950, Rules) 1950. [Place and date].

A.B. Sheriff-clerk [depute] of

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt, but is intended to indicate its general purport.)

This Act of Sederunt provides the detailed procedural machinery for giving effect in Scotland to the Maintenance Orders Act, 1950.

SHERIFF COURT, SCOTLAND

Act of Sederunt (Sheriff Court Rules Amendment) 1950

1950 No. 1157 (S. 83)

Made - - - - *29th June*, 1950
Coming into Operation *2nd October*, 1950

The Lords of Council and Session under and by virtue of the powers conferred on them by section 34 of the Administration of Justice (Scotland) Act, 1933(a), do hereby enact as follows:—

1. The Rules contained in the First Schedule to the Sheriff Courts (Scotland) Act, 1907(b), as amended, shall be amended as follows:—

(i) Omit Rule 18 and in lieu thereof insert: "18. In an action in which appearance has been entered the pursuer shall, at tabling, lodge with the sheriff-clerk the initial writ, principal and duplicate interlocutor sheets, principal and borrowing inventory of process and a copy of the initial writ and warrant thereon, certified by the pursuer or his solicitor, which may thereafter be borrowed by the solicitor of any party to the process and such certified copy shall be sufficient warrant where competent, to arrest on the dependence. The sheriff-clerk shall endorse upon all pleadings the date when the same are lodged. The principal interlocutor sheets and the borrowing inventory shall remain in the custody of the sheriff-clerk. Separate precepts of arrestment may be issued by the sheriff-clerk upon production to him of a writ containing pecuniary conclusions upon which a warrant of citation has been granted, or of a liquid document of debt."

(ii) In Rule 42 omit "thereafter", and insert "or such other period thereafter as the sheriff may appoint"; and at the end insert "and at the same time the solicitor for the defender shall send a copy thereof to the solicitor for the pursuer".

(a) 23 & 24 Geo. 5. c. 41. (b) 7 Edw. 7. c. 51.