

The reasons for judgment of the Court were delivered orally by:

HALLETT, J.A.:

This is an appeal from a decision of a Supreme Court Judge finding that s. 36 of the **Family Maintenance Act**, R.S.N.S. 1989, c. 160 is *ultra vires* the Legislature. Section 36 states:

" 36 (1) Where a court of competent jurisdiction orders the payment of maintenance pursuant to this or any other enactment, the court may require the person obliged to pay maintenance to give such security, including a charge on property, that the court orders, for the performance of the order respecting maintenance.

(2) A court which requires a person to give security pursuant to subsection (1) may, on application, direct the sale or other realization of the security upon such terms and conditions as the court considers appropriate."

Section 10(2) of the **Constitutional Questions Act**, R.S.N.S. 1989 c. 89

provides:

" 10(2) Where, in a court in the Province, in a proceeding other than a proceeding where the Attorney General for the Province is a party, is represented by counsel or has appointed counsel,

(a) the constitutional validity or constitutional applicability of any law is brought into question; or

(b) an application is made to obtain a remedy,

the court shall not adjudge the law to be invalid or inapplicable nor shall it grant the remedy until after notice is served on the Attorney General in accordance with this Section."

The Attorney General for the Province was not a party to the proceedings. The learned Supreme Court judge did not have authority to adjudge that s. 36 of the **Family Maintenance Act** was invalid as the notice required under s. 10 of the **Constitutional Questions Act** was not served on the Attorney General. Furthermore, the issue between the parties is moot. The \$2,800 which the Family Court judge ordered to be secured by a

mortgage on the payor's property has subsequently been paid. The appeal is allowed. The decision of the learned Supreme Court judge is set aside. There will be no order for costs.

Hallett, J.A.

Concurred in:

Chipman, J.A.

Roscoe, J.A.

