

1903  
April 1.

PERERA v. PERERA.

*Addl. P.C., Colombo, 7,648.*

*Maintenance—Ordinance No. 19 of 1889, s. 5—Right of wife who refuses to live with her husband without just cause to maintenance of her children of tender years.*

A wife who refuses to live with her husband without just cause is still entitled to receive maintenance for his children of tender years who are in her custody.

THE Court below having rejected an application for maintenance for herself, as the wife of the defendant, and for her infant children by him, the wife appealed to the Supreme Court.

There was no appearance of counsel for her or for the respondent.

1st April, 1903. WENDT, J.—

The Police Magistrate appears to have dealt with this case as if the application for maintenance was in respect of the wife alone. Section 5 of Ordinance No. 19 of 1889 disentitles the wife to receive an allowance from her husband if, without sufficient reason, she refuses to live with him; but there is not any similar enactment in the case of infant children of the marriage who are in the custody of the wife. The husband cannot compel the wife to live with him, and, considering the tender age of her two children, I think the wife is *prima facie* entitled to their custody.

While, therefore, I refuse to interfere with the order in the case of the wife, I send the case back in order that the Magistrate may after due inquiry direct the payment of such sum as he may consider proper by way of maintenance for the children so long as they remain in their mother's custody.