1953 *Present :* **Gratiaen J.**

L. WIMALAWATHIE KUMARIHAMY, Appellant, *and* W. S. B. IMBULDENIYA, Respondent

S. C. 785—M. C. Kandy, 30,754

Kandyan Marriage Ordinance (Cap. 96)—Dissolution of marriage—Maintenance—Temporary re-union—Effect on future maintenance—Section 20 (6).

Where a wife obtains an order of maintenance against her husband on dissolution of their marriage under the provisions of the Kandyan Marriage Ordinance, a temporary re-union between them subsequently with a view to re-marriage does not amount to a waiver of her right to future maintenance if the contemplated re-marriage does not take place.

APPEAL from an order of the Magistrate's Court, Kandy.

N. D. M. Samarakoon, with *C. Manohara*, for the applicant appellant.

H. V. Perera, Q.C., with *Ivor Misso*, for the respondent.

Cur. adv. vult.

February 23, 1953. GRATIAEN J.—

The appellant was until March 29th, 1949, the respondent's wife. On that date their marriage was dissolved by an order made by the Provincial Registrar, Kandy, under the provisions of the Kandyan Marriage Ordinance. This order also directed that the respondent should pay to the appellant a sum of Rs. 75 per mensem for her future maintenance.

On 21st January, 1952, the appellant applied to the Magistrate's Court of Kandy for the enforcement, in terms of sec. 20 (6) of the Ordinance, of the order for maintenance in her favour in respect of the months of October, November and December, 1951. A distress warrant was duly issued by the learned Magistrate, but the respondent intervened and moved that the warrant be recalled on the ground that the appellant had, on 21st June, 1951, entered into an agreement with him whereby she waived her right to claim future maintenance under the Registrar's order.

After inquiry the learned Magistrate upheld the respondent's objection and recalled the warrant.

The parties gave conflicting versions as to the circumstances in which the appellant had signed a document dated 21st June, 1951, whereby, *inter alia*, she " promised not to proceed with the case or claim any money from (the respondent) ". It is common ground that in or about February, 1951, after their marriage had been dissolved, the parties lived together for approximately three months as if they were still man and wife. The learned Magistrate has found as a fact that the applicant signed the

document in question " with full knowledge of the contents thereof and . . . with a view to remarrying the respondent ". He held that in the circumstances she had " waived all her rights to enforce the order of the Registrar ".

The learned Magistrate seems to have taken the view that when the parties resumed their association with one another they genuinely contemplated remarriage, and that this contemplated regularisation of their renewed relationship formed the basis of the appellant's so-called waiver of her right to future maintenance. It is unnecessary for me to consider Mr. Samarakoon's submission that such a waiver would be contrary to public policy, because it is clear that in the present case the entire foundation for the alleged agreement disappeared when the respondent decided (as he was undoubtedly entitled to do) not to remarry his former wife. It is impossible to interpret the document in question as an unconditional promise by the woman to release the respondent from his obligation even if the contemplated remarriage did not take place.

Mr. H. V. Perera submitted that, upon the admitted facts, the respondent is entitled to a cancellation of the Registrar's order for maintenance because the appellant has been " habitually cohabiting with a man "—namely, the respondent himself—within the meaning of the proviso to sec. 20 (6) of the Ordinance. Suffice it to say that no application for cancellation on this ground has yet been made to the Registrar. If the question were to arise for consideration in proper proceedings, I should certainly hesitate, without further consideration of the true meaning of the proviso, to hold that a man's temporary irregular cohabitation with his former wife would relieve him for all time of his obligation to maintain her in terms of an order previously pronounced against him. In any event, I am not disposed to pronounce an *obiter dictum* on the point.

I set aside the order made by the learned Magistrate and direct that the appellant's application dated 21st January, 1952, be allowed. The appellant is entitled to her costs both here and in the Court below.

Appeal allowed.