Present: **de Kretser J.**

PARUPATHIPILLAI, Appellant, *and* **KANDIAH ARUMUGAM**, Respondent.

534—M. C. Jaffna, 4,174.

Maintenance—Order for maintenance in favour of wife—Application for distress warrant for arrears of maintenance—Compromise by payment of lump sum—Compromise not valid.

The appellant obtained an order for maintenance against her husband, the respondent, under which she was entitled to receive a sum of Rs. 8 per mensem. Subsequently, on an application for a distress warrant against the respondent for arrears of maintenance, the parties entered into a compromise in Court by which the applicant received a sum of Rs. 200, waiving all claims to future maintenance.

Held, that the compromise was not valid and did not relieve the respondent of the obligation of maintaining his wife.

APPEAL from an order of the Magistrate of Jaffna.

N. Kumarasingham for applicant, appellant.

H. W. Thambiah for defendant, respondent.

Cur. adv. vult.

December 21, 1944. JAYETILEKE J.—

The appellant is the wife of the respondent. She married the respondent in 1932 and lived with him till the beginning of 1937. On October 1, 1937, she made an application in case No. 7,369, M. C., Kayts, for an order against the respondent under section 3 of Ordinance No. 9 of 1889 for her maintenance. In the application she said that the respondent was a Police Constable and was drawing Rs. 45 a month. On November 18, 1937, the Magistrate made an order by consent that the respondent should pay to the appellant for her maintenance 1/4th of his nett salary every month. In pursuance of that order the respondent appears to have paid the appellant Rs. 6 a month. On December 14, 1939, the appellant stated that she was entitled to receive more than Rs. 6 a month and moved for an enquiry. On March 29, 1940, the matter was settled and the respondent agreed to pay Rs. 8 a month. On April 15, 1943, the appellant obtained a distress warrant for the recovery of five months' arrears of maintenance. On May 14, 1943, the parties appear to have arranged a comprise. The journal entry reads—

> " Distress warrant twice returned by Fiscal unexecuted as respondent is not possessed of any movable property. Demand made of him was not complied with. The respondent pays Rs. 200 in court. The applicant receives same waiving all future claims for maintenance against the respondent. The applicant signs the record ".

At this date the arrears of maintenance amounted to Rs. 56. The applicant has presumably agreed to accept Rs. 144 in lieu of future maintenance. There can be no doubt that this is a hard bargain.

On March 4, 1944, the appellant made an application in this case alleging that the respondent failed to maintain her for five months. She has not explained in her application what she did with the money that

was paid to her. She was paid sufficient money for her maintenance for 18 months. The Magistrate held that the compromise made by the appellant was binding on her and dismissed the application. The appeal is against that order. The question whether a compromise of this nature is valid in law has been considered in three reported cases.

In *Madduma Hamy v. Kalu Appu* [1] the applicant and the respondent had entered into an agreement in writing by which the applicant agreed to relieve the respondent of the burden of maintaining her and their children. Clarence J. said :—

" Such an agreement as this between husband and wife is invalid ".

In *Nakamuttu v. Kanthan* [2] the applicant received from her husband a sum of Rs. 50 for the maintenance of herself and their children during their lifetime. Grenier A.J. said—

" The obligation on the part of the husband to maintain his wife and children is a continuing one and he cannot relieve himself of the liability by entering into an unconscionable bargain as in this case, with the mother. The case no doubt, would be different if the husband invested some money for his wife and allowed her to take the interest for her maintenance ".

These cases were cited with approval in *Hinnihamy v. Gunawardana* [3] In that case the mother of five children applied for an order of maintenance against their father and the Magistrate made an order requiring the latter to pay a certain sum monthly. Subsequently the respondent applied to the Magistrate and obtained an order sanctioning the payment of a lump sum of Rs. 250 in respect of the claim for maintenance of the children in full discharge of the maintenance payable by him. Sometime later the applicant applied again for an order for maintenance. The Magistrate considered that the compromise did not discharge the respondent and ordered that the maintenance should continue. In affirming the order made by the Magistrate, de Sampayo J. said:

" The Ordinance does not contemplate the settlement of a lump sum. It only provides for making a ' monthly allowance '. The payment of a lump sum may, of course, negative the basis of the application, namely, that the father neglects or refuses to maintain his children. But in such a case the money should be so settled as to ensure the continued maintenance of the children. But in this case the income to be derived from Rs. 250 is by no means sufficient to maintain five children. It was never invested or secured. The mother appears to have exhausted it and the children are presumably left once more without maintenance . . . . The appellant relies on the circumstances that the court had sanctioned the compromise in this, but I do not think it makes any material difference ".

Both under the Roman-Dutch law and the English law the husband is bound to maintain his wife in a manner suitable to her rank and position. The wife can compel her husband to perform this duty by a civil action.

[1] *3 S. C. C. 132.* [2] *1 S. C. D. 48.*

[3] *3 C. L. R. 163.*

The Maintenance Ordinance was enacted to provide a simpler, more speedy and less costly remedy (see *Subaliya v. Kannangara* [1]).

In *Hyman v. Hyman*[2] the question arose whether a wife who covenanted by a deed of separation not to take proceedings against her husband to allow her alimony or maintenance beyond the provision made for her by the deed and thereafter obtains a decree for dissolution of the marriage on the ground of her husband's adultery is not precluded by her covenant from petitioning the court for permanent maintenance. In the course of his judgment Lord Atkin said :

" While the marriage tie exists the husband is under a legal obligation to maintain his wife . . . . But the duty of the husband is also a public obligation, and can be enforced against him by the State under the Vagrancy Acts and under the Poor Relief Acts. When the marriage is dissolved the duty to maintain arising out of the marriage tie disappears. In the absence of any statutory enactment the former wife would be left without any provision for her maintenance other than recourse to the poor law authorities. In my opinion the statutory powers of the Court to which I have referred were granted partly in the public interest to provide a substitute for the husband's duty of maintenance and to prevent the wife from being thrown upon the public for support. If this be true the powers of the Court in this respect cannot be restricted by the private arrangement of the parties. ' *Quilibet potest renunciare juri pro se introductu* '. ' I beg attention to the words ' *pro se* ',' says Lord Westbury in *Hunt v. Hunt*, ' because they have been introduced into the maxim to show that no man can renounce a right of which his duty to the public and the claims of society forbid the renunciation '. To apply another maxim, ' *Privatorum conventio juri publico non derogat* '. In my view no agreement between the spouses can prevent the court from considering the question whether in the circumstances of the particular case it shall think fit to order the husband to make some reasonable payment to the wife ' having regard to her fortune, if any, to the ability of her husband and to the conduct of the parties. The wife's right to future maintenance is a matter of public concern which she cannot barter away' ".

These observations seem to me to indicate that a compromise of the nature entered into by the appellant in this case ought to be set aside on grounds of public policy. I would accordingly set aside the order appealed from and send the case back so that the Magistrate may make an appropriate order under section 5. He will ascertain what sum was due to the appellant as arrears of maintenance on May 14, 1943, and for what period the balance, if any, out of the money paid to her was sufficient for her maintenance. The appellant is entitled to the costs of the appeal.

Appeal allowed.

[1] *4 N. L. R. 121.*

[2] *1929 A. C. 601.*