

1940

*Present : de Kretzer J.*MENIKI *v.* SIYATHUWA714—*M. C. Kurunegala, 59,959**Maintenance—Parties divorced after order for maintenance—Effect of divorce.*

An order for maintenance made in favour of a wife under the Maintenance Ordinance remains in force only so long as the relationship of husband and wife continues between the parties.

A PPEAL from an order of the Magistrate of Kurunegala.

A. S. Ponnambalam, for applicant.

N. K. Choksy (with him *C. C. Rasa Ratnam*), for respondent.

Cur. adv. vult.

October 28, 1940. DE KRETZER J.—

The appellant obtained an order for maintenance against her husband, the respondent. Thereafter the parties were divorced under the Kandyan Marriage Ordinance, No. 3 of 1870. At a later date when she applied for arrears of maintenance she was met with the plea that she had ceased to be the wife of the respondent and therefore could not maintain her claim. The plea was upheld.

It is contended on appeal that the only mode of getting rid of the order for maintenance was to have it cancelled under section 5 of the Maintenance Ordinance and, as none of the conditions prescribed in that section would apply, therefore, the order remains in force and must be enforced.

The answer to this is that the Ordinance only applies while the conjugal relationship exists, and that the very terms of that section and of other sections in the Ordinance indicate that the Ordinance applies only while the relationship of husband and wife continues. It is clear that the Ordinance was intended to apply only while marital relations continued.

The Ordinance is on the same lines as the corresponding provisions in the Indian Criminal Procedure Code. Sohini, in his commentary on that Code, at page 1035, deals with this very position and says "where the cessation of conjugal relations has been proved the responsibility attached thereto must cease, and a Magistrate is competent to stay an order for maintenance already made and to refuse to issue his warrant and to try all questions raised before him which affect the rights of a woman to receive maintenance". He quotes two cases, viz., *Abdur Rahaman v. Sakhina*¹ and *In re Din Muhammad*, both of which clearly support the view he takes.

Under the Kandyan Marriage Ordinance it was open to the Registrar to order maintenance for the wife but he did not do so. There is nothing to indicate whether his attention was invited to the question of maintenance or to show that he did not order maintenance because of the order already in existence. Whatever may have been the reasons which operated, no such order was made. It is unnecessary to discuss what the remedy of the wife is where the Registrar fails to make an order either from inattention to the matter or because of a mistake made by him and the parties. It is sufficient to say that the order for maintenance is now ineffective, that the Magistrate is *functus officio*, and that it was therefore his duty to refuse to continue the proceedings.

There is some doubt as to whether maintenance for the month of March had been paid or not, and Counsel for the respondent was willing that maintenance should be recovered for that month if it had not already been paid. It will be open to the wife to invite the Magistrate to deal with the matter of maintenance due for the month, if any.

The appeal is dismissed.

Appeal dismissed.

