

[FULL BENCH].

1921.

Present : Bertram C.J. and Ennis and De Sampayo JJ.

FERNANDO v. FERNANDO.

845—P. C. Panadure, 70,377.

Appeal—Maintenance Ordinance—Is there a time limit—Criminal Procedure Code, s. 338.

There is no time limit to the right of appeal in an appeal under the Maintenance Ordinance. Section 338 of the Criminal Procedure Code has no application to proceedings under the Maintenance Ordinance.

THE facts appear from the judgment.

J. S. Jayawardene, for appellant.—An appeal from an order in a suit for maintenance lies even after the lapse of ten days. Section 17 of Ordinance No. 19 of 1889 insists on conformity to section 340 of Ordinance No. 15 of 1898 (*i.e.*, Criminal Procedure Code) alone. In view of section 10 (1) of the Interpretation Ordinance, No. 21 of 1901, no other section of the Criminal Procedure Code *re* appeals may apply. There is authority to support this contention, *viz.*, 12 *N. L. R.* 263. The absence of a time limit for appeals is clearly a *casus omissus*.

1921. November 1, 1921. BERTRAM C.J.—

Fernando
v.
Fernando

The only point on which this case has been referred to the Full Court is the question whether the appeal lies. The order for maintenance was made on August 18, and the appeal was presented on August 26. It appears to have been assumed that, under section 17 of the Maintenance Ordinance, No. 19 of 1889, the appealable time was the same as that fixed for ordinary criminal appeals. The point taken in this case is that no time is fixed. The only section of the Criminal Procedure Code which is embodied by section 17 is section 407 of the Criminal Procedure Code of 1883. By the effect of section 10 of the Interpretation Ordinance, No. 21 of 1901, section 340 of our present Criminal Code must be considered as substituted for section 407 of the repealed Code. There is nothing in that section which deals with the time within which the petition of appeal must be presented. This is dealt with by section 338, which is not embodied in the Maintenance Ordinance.

It has been pointed out in a previous case—*Anna Perera v. Emaliano Nonis*¹—that only those sections of the Criminal Procedure Code which are expressly incorporated in the Maintenance Ordinance are applicable to proceedings under the Ordinance. The case, therefore, appears to be a *casus omissus*. There is no time limit to the right of appeal. The matter is one which could only be dealt with by the Legislature. The case must now be dealt with in the ordinary course by a single Judge.

ENNIS J.—I agree.

DE SAMPAYO J.—I agree.

The appeal on the facts was dismissed.

Appeal dismissed.