

1909.
February 26.

Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice.

JANE HAMY v. DARLIS ZOYSA.

P. C., Balapitiya, 29,124.

Maintenance of illegitimate children—Compromise between father and mother—Power of Court—Ordinance No. 19 of 1889.

The provisions of Ordinance No. 19 of 1889 for the maintenance of illegitimate children by their fathers may be enforced by the Court, even if the mother takes no steps for that purpose or if she is dead.

If an application for the maintenance of an illegitimate child has been made by the mother and has been compromised by an arrangement between herself and the father, the Court has still power to order the father to make provision for the maintenance of the child.

A PPEAL by the defendant from an order directing him to pay a sum of money for the maintenance of his illegitimate child. The facts and arguments sufficiently appear in the judgment.

A. L. R. Asserappa, for the defendant, appellant.

No appearance for the complainant, respondent.

Cur. adv. vult.

February 26, 1909. HUTCHINSON, C.J.—

The provisions of the Ordinance No. 19 of 1889 for the maintenance of illegitimate children by their fathers are obviously not intended purely for the benefit of the mother. They can be enforced by the Court, even if the mother takes no steps for that purpose or if she is dead ; and if an application has been made for that purpose by the mother and has been compromised by an arrangement between her and the father, that cannot deprive the Court of the power of afterwards ordering the man to make provision for maintaining the children if he neglects to do so.

In the present case it seems from the Magistrate's note that there had been a previous application by the mother which had been withdrawn, on some terms which are not stated, but which I gather from the woman's evidence that she said the man had not complied with. That withdrawal cannot be any answer to the application, by whomsoever it is made, to compel the father to maintain the child.

As to whether the man is proved to be the father of the child, I must follow the ordinary rule where there is contradictory evidence, oath against oath, that the Appeal Court should accept the finding of the Magistrate unless it is clearly proved to be wrong.

The appeal must be dismissed.

Appeal dismissed.