1957 *Present :* **H. N. G. Fernando, J.**

A. P. M. KIRI BANDA, Appellant, *and* P. D. M. BISO MENIKA, Respondent

S. C. 1334—M. C. Kegalle, 14957

Kandyan Law—Maintenance—Order made under Kandyan Marriage and Divorce Ordinance (Cap. 96), s. 20—Jurisdiction of Magistrate's Court to enforce it—Effect of Kandyan Marriage and Divorce Act, No. 44 of 1952, s. 69—Interpretation Ordinance, s. 6 (3).

Where an application for dissolution of a marriage under section 20 of the Kandyan Marriage and Divorce Ordinance was pending before a Registrar at the time when that Ordinance was repealed by Act No. 44 of 1952 and was heard and concluded after the repealing Act came into operation on 1st August, 1954—

Held, that, by virtue of the provisions of section 6 (3) of the Interpretation Ordinance, the order for maintenance made in the application was enforceable by a Magistrate's Court acting under section 20 (5) of the repealed Ordinance.

The position would be no different even if the order for maintenance had been made before the date of the repealing statute.

APPEAL from a judgment of the Magistrate's Court, Kegalle.

P. Ranasinghe, for the defendant-appellant.

B. A. R. Candappa, for the complainant-respondent.

Cur. adv. vult.

July 30, 1957. H. N. G. FERNANDO, J.—

The marriage of the appellant and his wife was dissolved on 13th October 1954 by the Assistant Provincial Registrar in pursuance of section 20 of the Kandyan Marriage and Divorce Ordinance (Cap. 96).

Although the Ordinance had at that date been repealed and replaced by the Kandyan Marriage and Divorce Act No. 44 of 1952 (which came into operation on 1st August 1954) it is conceded that the order for dissolution was duly made because the application therefor was pending before the repeal and was properly heard and determined under the repealed law. It is conceded also that the order for maintenance which is the subject of the present appeal, was duly made under the repealed section 20 (2). These concessions are founded on the transitional provisions in section 69 of the Act of 1952.

In September 1956, the divorced wife, who is the respondent to this appeal, applied to the Magistrate to enforce payment in terms of the order for maintenance—a power conferred on the Magistrate by section 20 (5) of the repealed Ordinance—and order was made accordingly. The present appeal is against that order, the ground of appeal being that the repeal of the Ordinance took away from the Magistrate the jurisdiction to enforce the order for maintenance. Counsel has relied upon the decision of Sansoni, J. in the case of *D. M. Abeysekera v. Somawathie Abeysekera*[1], where after an examination of the transitional sections in the new Act, it was held that nothing in those sections kept alive the provision in section 20 (5) of the former Ordinance conferring the jurisdiction for enforcement on a Magistrate. While considering that the transitional provisions *may* cover a case where application for the enforcement order had been made before the repeal became effective, my brother held that the case of an application made subsequently is not so covered. It seems to me that his attention was not drawn to section 6 (3) of the Interpretation Ordinance which provides in substance that a repeal shall not affect :—

> " (*b*) . . . . any right . . . . . acquired under the repealed written law ;
>
> (*c*) any action, proceeding, or thing pending or incompleted when the repealing written law comes into operation, but every such action, proceeding, or thing may be carried on and completed as if there had been no such repeal. "

The order for the payment of maintenance in this case conferred on the applicant in whose favour it was made a right to receive payments from time to time, and, since the order was made under the repealed law, it follows that the right to the payments was a right *acquired* under that law within the meaning of paragraph (*b*) as set out above. It is idle for the Legislature to declare that such an acquired right is not to be affected by a repeal, unless there was an intention that the right should be enforceable in the same manner as before. This intention is set out quite clearly in the corresponding English Statute : section 38 (2) (*f*) of the English Interpretation Act expressly saves any " remedy in respect of such right ". But I do not think that the absence of similar express provision in our Statute makes any significant difference. The application to the Registrar for an order of maintenance was a " proceeding " which was pending or incomplete when the former Ordinance was

[1] *(1957) 60 N. L. R. 66.*

repealed. Can it be said that that " proceeding " terminated when the Registrar made his order for maintenance ? I think not, for the reason that the order was of such a nature that it would need enforcement (if not complied with) in the manner prescribed by the Ordinance ; and the position would in my opinion be no different even if the order for maintenanace had been made before the date of the repeal. An ordinary civil action does not necessarily terminate with the entry of a decree, and procedure for execution of the decree is a step in the action, however long the interval between the decree and the application for execution. If therefore an action has been instituted under some Statute, section 6 (3) of the Interpretation Ordinance will enable the action to be continued right up to execution despite the repeal of the Statute. In the present case the order happens to be one which may necessitate repeated recourse to execution procedure because the order provides for repeated payments during an indefinite period. But the right to seek enforcement of the order from time to time was a right which the applicant acquired when she first made application to the Registrar under the Ordinance for an order of maintenance, and the repealed provision for enforcement can therefore be invoked so long as the order remains in force.

The appeal is dismissed with costs fixed at Rs. 31/50.

Appeal dismissed.