

1941

Present : Howard C.J.

PERERA v. PERERA.

.587—M. C. Colombo, 16,574.

Maintenance—Application by husband against wife—Burden of proof—Married Women's Property Ordinance (Cap. 46), s. 26.

In an application by a husband for maintenance against his wife under section 26 of the Married Women's Property Ordinance the burden is on the applicant to establish that through illness or otherwise he is unable to maintain himself.

A PPEAL from an order of the Magistrate of Colombo.

Applicant-Appellant in person.

A. H. C. de Silva (with him S. J. Kadirgamar), for the defendant, respondent.

¹ 22 C. L. W. 28.

² (1895) 1 Ch. 341.

November 21, 1941. HOWARD C.J.—

In this case the appellant appeals against an order of the learned Commissioner of Requests of Colombo dismissing an application for maintenance against the respondent, his wife. The application was made under Section 26 of the Married Women's Property Ordinance (Chapter 46). This section reads as follows:—"When a married woman having sufficient separate property neglects or refuses to maintain her husband who through illness or otherwise is unable to maintain himself, the Magistrate within whose jurisdiction such woman resides may, upon the application of the husband, make and enforce such order against her for the maintenance of her husband out of such separate property as by section 2 of the Maintenance Ordinance he may now make and enforce against a husband for the maintenance of his wife".

The question that I have to decide is a very simple one. The burden was on the appellant to prove that through illness or otherwise he was unable to maintain himself. It appears from his own evidence that he was employed by Bois Bros. at a salary of Rs. 125 a month. This employment he lost on April 26, 1939. There is no evidence at all that he has sought any other employment and not been able to obtain other employment. The only evidence in support of his plea that he is unable to maintain himself is the fact that he had a job and lost it. There is not one iota of evidence that through illness or otherwise he is unable to maintain himself. In those circumstances the learned Commissioner was perfectly correct in holding that he had not established a case for maintenance under the section I have cited. There is no need to go into the ethics of the question as to whether it is right that a married woman should maintain her husband. That is beside the point.

The appeal is dismissed without costs.

Appeal dismissed.

