

1922.

Present : Bertram C.J.

KALUHAMY v. MUDIANCE.

405—P. C. Kurunegala, 5,902.

*Maintenance—Sentence of imprisonment for default of payment before issue of warrant of execution—Admission by defendant that he has no property.*

Before a person ordered to pay maintenance under the Maintenance Ordinance is sentenced to imprisonment for default of payment, warrant of execution under section 9 should be issued.

A sentence of imprisonment on his admission that he was not possessed of immovable property was held to be irregular.

**T**HE facts appear from the judgment.

*Sunderam*, for appellant.

August 21, 1922. BERTRAM C.J.—

This is a maintenance case in which the learned Magistrate, having before him a respondent who had failed to pay arrears of maintenance in accordance with the direction of the Court, on the admission of the respondent that he was not possessed of immovable property, sentenced him to undergo one month's rigorous imprisonment, without having first issued a warrant of execution under section 9 of the Maintenance Ordinance, No. 19 of 1889. The learned Magistrate appears to have overlooked the case of *Cornelia v. Sawodis*,<sup>1</sup> which settles the law that such a procedure is irregular. The case must, therefore, go back for the learned Magistrate to deal with it in regular course. As an affidavit has been filed alleging that the wife had lived with the respondent from February 21 up to the middle of December, 1921, and, as this allegation, if true, may effect the amount of the arrears of the maintenance due from the respondent, the learned Magistrate will, before directing the issue of a warrant of execution, inquire into this allegation.

*Sent back.*

<sup>1</sup> (1908) 11 N. L. R. 289.