

Present: Mr. Justice Wood Renton.

1908.
September 9.

CORNELIA v. SAWODIS.

P. C., Matara, 22,212.

*Maintenance Ordinance, s. 9—Imprisonment before execution of warrant—
Warrant for more than one month's arrears of maintenance.
Ordinance No. 19 of 1889, s. 9.*

Where a Magistrate ordered the defendant in a case under the Maintenance Ordinance (No. 19 of 1889) to give certified bail in Rs. 200 to pay Rs. 50 arrears of maintenance for ten months at the rate of Rs. 5 a month, or in default of such payment within one month to undergo rigorous imprisonment for fifteen days for each month,—

Held, that the order of the Magistrate was wrong, inasmuch it was not competent for the Magistrate under section 9 of Ordinance No. 19 of 1889 to pass a sentence of imprisonment, except for the amount remaining due after the warrant for the levy has been executed.

Held, also, that it is competent under the said section to issue one warrant for the recovery of more than one month's arrears of maintenance.

APPPLICATION in revision. The facts and arguments sufficiently appear in the judgment.

Walter Pereira, K.C., S.-G., in support of the application.

September 9, 1908. WOOD RENTON J.—

In this case the Police Magistrate of Matara has made an order requiring the respondent to give certified bail in the amount of Rs. 200 to pay Rs. 50 arrears of maintenance for ten months at the rate of Rs. 5 a month, or in default of such payment within one month to undergo rigorous imprisonment for fifteen days for each month.

The Attorney-General contends that this order is bad in law, and asked that the proceedings be quashed in revision, on the grounds, first, that it is incompetent for a Magistrate under section 9 of the Maintenance Ordinance, No. 19 of 1889, to pass a sentence of imprisonment, except for the amount remaining due after the warrant for the levy has been executed; and, in the second place, that section 9 only authorizes the issue of a warrant for a single month's arrears of maintenance.

It is quite clear that on the first ground the proceedings must be quashed. It has been held by the High Courts in India under the corresponding section (section 488, sub-section 3) of the Indian

1908. Criminal Procedure Code that a Magistrate must be satisfied that
 September 9. the execution of the warrant has proved ineffective before he
 passes sentence of imprisonment (see *Prinsep, Code of Criminal*
 WOOD
 RENTON J. *Procedure, p. 478*).

In my opinion, on the construction of section 9 of our own Ordinance, this interpretation of the law is clearly right. It is only in respect of what remains unpaid after the warrant has been executed that the Magistrate has any power to order imprisonment. I therefore quash the proceedings in revision. But at the same time I think it right to say that I do not agree with the contention of the learned Solicitor-General that there is anything in section 9 of the Maintenance Ordinance to prevent a Magistrate from issuing one warrant for the recovery of more than one month's arrears of maintenance. Section 9 merely provides that when a month's maintenance is in arrears, the Court may issue a warrant for its recovery. It does not in terms prohibit the issue of a single warrant for the recovery of more than one month's arrears, and, as a matter of convenience, I think that it is desirable that there should be power to issue such a warrant. I am struck by the fact that Form 3 in the schedule to the Ordinance which section 18 directs to be used contemplates in its recital the recovery of maintenance for more than one month, and I find that the view of the law I am now taking is supported by a High Court ruling in Madras.¹ It is true that a contrary view was taken by Mr. Justice Hill and Mr. Justice Stevens in the case *Bhiku Khan v. Zahuran*.² I prefer to follow the earlier decision.

Order quashed.

¹ See 6 Madras High Court Reports, *Appendix, pp. xxii and xxiii*

² (1897) I. L. R. 25 Cal. 291.