

1965

*Present : H. N. G. Fernando, A.C.J.*

D. JINADASA, Appellant, and M. DINGIRI AMMA, Respondent

*S. C. 1469/64— M. C. Kegalle, 19975**Maintenance—Order in favour of child—Transfer of property in lieu of sum due as arrears and future maintenance—Validity.*

Where an order has been made for the maintenance of a child, the mother may subsequently accept either a sum of money or property in lieu of liability of the father to maintain the child.

**A**PPEAL from an order of the Magistrate's Court, Kegalle.

*M. M. Kumarakulasingham*, for the Respondent-Appellant.

(No appearance for the Applicant-Respondent.)

August 25, 1965. H. N. G. FERNANDO, A.C.J.—

In this case upon the application of the mother of a child an order has been made for the payment of Rs. 15 per month for the maintenance of the child.

After some payments had been made, the respondent, who is now the appellant, fell into arrears and the mother of the child moved for a distress warrant to recover the arrears. At that stage an application was made to the Court to produce a deed alleged to have been executed in lieu of the sum due as arrears and future maintenance. This deed has apparently been executed with the consent of the mother of the child. Thereafter it was alleged that the appellant was still in possession of the land transferred by the deed, but the appellant averred that he had in fact given possession. The question whether possession had been given was fixed for inquiry. By the time of the ultimate date for inquiry another Magistrate has assumed office, and he has taken the view that the interests of a minor cannot be compromised by the execution of a deed. He therefore recorded evidence concerning the arrears and made order for the issue of a distress warrant.

It seems to me that the Magistrate has misunderstood the matter. The application in the first instance although made for maintenance of a child has in fact been made by the mother who is the child's natural guardian; such guardian is quite entitled to accept either a sum of money or property in lieu of liability of the father to maintain the child.

I set aside the order appealed from and send the case back for inquiry into the question whether possession of the land has in fact been given to the mother of the child. If the deed was found to be in order and possession had been given no distress proceedings need be taken.

*Order set aside.*