

Present : Wood Renton C.J. and De Sampayo J..

MENIKA v. NAIDE.

1916.

1,019—P.C. Kurunegala, 22,070.

*Maintenance—Kandyan Marriage Ordinance, No. 3 of 1870, s. 23—
Divorce—Compensation by husband to wife—Claim for main-
tenance on behalf of children.*

The compensation for which section 23 of the Amended Kandyan Marriage Ordinance, No. 3 of 1870, provides is in the nature of compensation to the spouse, to whom it is made for the loss of the conjugal society, and it does not interfere with the rights of a child entitled to maintenance, for whom the compensation does not make express provision.

THE facts appear from the judgment.

E. T. de Silva, for appellant.—If provision is made under the Civil Procedure Code for children in a matrimonial action, the mother cannot proceed under the Maintenance Ordinance. The same principle will apply even when compensation is given to the mother under the Kandyan Marriage Ordinance of 1870.

1916. November 7, 1916. WOOD RENTON C.J.—

*Menika
v. Naide*

I referred this case to a Bench of two Judges because it raises an interesting point of law, in regard to which counsel for the appellant was unable to adduce any authority at the original argument. The appellant, who is a Kandyan, was divorced from his wife under the provisions of the Amended Kandyan Marriage Ordinance, 1870,¹ last year. The certificate of dissolution states that the parties had agreed that compensation should be made by the husband to the wife by the transfer of a certain land in favour of one of the three minor children of the marriage. The wife subsequently obtained in the Police Court of Kurunegala a maintenance order in favour of another child. The eldest child is with the father. The appellant contended that the compensation he had made to his wife on the dissolution of the marriage was a bar to the subsequent proceedings for maintenance in the Police Court. The learned Police Magistrate has over-ruled this contention, and I think that he is right. The relevant provisions of the Amended Kandyan Marriage Ordinance, 1870,¹ are to be found in section 23, and are in these terms:—

“ If the parties to such dissolution shall have agreed upon any compensation to be made to either or both, owing to such dissolution, it shall be the duty of the Provincial or Assistant Provincial Registrar to enter the same in the register of dissolutions; and the entry so made shall have all the effect of the order or decree of a competent Court and may be enforced as such.”

As I have already mentioned, no authority was cited by counsel as to the construction of this enactment, and I have not myself been able to find any decision upon the point. It appears to me, however, that the compensation for which it provides is in the nature of compensation to the spouse, to whom it is made for the loss of the conjugal society, and that it ought not to be regarded as in any way interfering with the rights of a child entitled to maintenance, for whom the compensation does not make express provision.

On these grounds I would dismiss the appeal.

DE SAMPAYO J.—

I am of the same opinion.

Appeal dismissed.

¹ No. 8 of 1870.