

1931

*Present: Macdonell C.J.*RODRIGO *v.* RODRIGO.335—*P. C. Colombo, 14,564.*

Maintenance—Cost of education—Recoverable under Maintenance Ordinance, No. 19 of 1889, s. 3.

Maintenance contemplated in section 3 of the Maintenance Ordinance includes the cost of education.

A PPEAL from an order of the Police Magistrate of Colombo.

F. A. Hayley, K.C. (with him *Navaratnam*), for appellant.

R. L. Pereira, K.C. (with him *Rajapakse*), for respondent.

November 9, 1931. MACDONELL C.J.—

In this appeal I reserved judgment on the question whether the word “maintenance” in section 3 of Ordinance No. 19 of 1889 was wide enough to cover education. Here it had been argued that in making the

order of maintenance under that section the Magistrate had no power, in fixing the amount to be paid monthly, to take into account the educational needs of the children to be affected by the order; as they grew older their schooling would cost more, but this increased cost in their education must not be reflected in any order against the father for maintenance under the section. I have examined cases for what seems to be the local practice on the matter, from which it is clear that it has been the practice to increase a maintenance order with the increasing educational requirements of the child affected. There is no authority that I can discover which prevents it being held that the word "maintenance" in the section is wide enough to cover education, and to hold otherwise would be to give the word a very restricted application. If a father maintains his children himself, part of that maintenance will be for the education of them, the cost increasing as the children grow older. The father does not say, "When John was a year old he needed no schooling or expenditure thereon, therefore John needs none now that he is 10 years old", nor does he argue that the schooling expenses of John when 15 must be rigidly kept to what they were when he was 10. This is surely reasonable, and as far as the authorities go, it certainly seems open to me to hold that the word "maintenance" in section 3 is wide enough to cover "education", and it would, I think, be taking an unreasonably narrow view of what seems to be the intention of the Statute were I to rule otherwise.

This was really the whole point in this appeal. The Magistrate had made an order, and in argument for the respondent it was suggested as a compromise that Rs. 60 per month be deducted from the amount of the Magistrate's order, but this is just about the amount that the schooling of the three children affected by this order will come to. If so, I cannot interfere with the order.

The appeal must be dismissed with costs.

Appeal dismissed.