1955 *Present* : **Sansoni J.**

M. K. AMBALAVANAR *et al.*, Appellants, *and*
A. NAVARATNAM, Respondent

S. C. 63—C. R. Kayts, 7,155

Maintenance—Destitute parent—Right to maintenance from children.

The Roman Dutch Law rule that children are liable to support their parents who are in indigent circumstances obtains in Ceylon.

APPEAL from a judgment of the Court of Requests, Kayts.

C. Renganathan, for the plaintiffs appellants.

No appearance for the defendant respondent.

Cur. adv. vult.

April 6, 1955. SANSONI J.—

The two plaintiffs are the parents of the defendant, who is their eldest son. Admittedly the defendant has not been maintaining the plaintiffs, and in this action they plead that they are in indigent circumstances and ask that the defendant be ordered to pay them a monthly sum for their maintenance. Several issues were framed at the trial but the learned Commissioner dismissed the action on the purely legal ground that in Ceylon today a child is under no legal liability to maintain his parents. He held that there is no evidence that such a liability was ever part of the law of Ceylon, even though the authorities cited at the trial seemed to establish that such a liability existed under the Roman Dutch Law.

I think the first question to be decided is whethér under the Roman Dutch Law children are liable to support their parents who are in indigent circumstances. It is enough to quote from the judgment of Tindall, J. A., in *Oosthuizen v. Stanley*[1]—" The liability of children to support their parents, if these are indigent (*inopes*), is beyond question ; see *Voet 25.3.8; van Leeuwen Cens. For. 1.10.4.* The fact that a child is a minor does not absolve him from his duty, if he is able to provide or contribute to the required support ; see *In re Knoop* (10 S. C. 198). Support (*alimenta*) includes not only food and clothing in accordance with the quality and condition of the persons to be supported but also lodging and care in sickness ; see *Voet 25.3.4, van Leeuwen, Cens. For. 1.10.5 ; Brunnemann, in Codicem 5.25.* Whether a parent is in such a state of comparative indigency or destitution that a court of law can compel a child to supplement the parent's income is a question of fact depending on the circumstances of each case. I find, in an old Scottish case quoted by Fraser (*Parent and Child, 3rd ed. p. 137*) and in *Green's Encyclopaedia of Scots Law* (*vol. I., p. 300*), that a widow having an annual income of £60 was held to be not entitled to claim additional aliment from a son who had an income of £1,500 a year. No doubt the higher value of money 80 years ago was an important factor in the failure of the parent's claim in that case. However, though each case must depend on its own peculiar circumstances, that decision supports the view, I think, that the parent must show that, considering his or her station in life, he or she is in want of what should, considering his or her station in life, be regarded as coming under the head of necessities. It must also be mentioned that a parent is not entitled to claim support from a child if the parent is able to maintain himself by working ; see *2 Holl. Cons. No. 279.*" Van Leeuwen says in the passage referred to "As children are entitled to support from their parents, so also are parents entitled to be supported by their children who are in wealthy circumstances. I say, by their children who are in wealthy circumstances, for children who are in poverty are not bound to support their parents. So that there is between relatives in the ascendant and descendant lines an inherent duty of mutual support ".

Several other cases to the same effect have been cited in *Spiro's Law of Parent and Child (1950), page 247* and the learned author comments :— " The duty of support prevailing between parents and children may, therefore, be said to be reciprocal, and here again South African Law

[1] *(1938) A. D. at page 327.*

differs from the Common Law in England and in the United States of America where neither parent nor child is bound to support the one or the other ".

The enactment of the Maintenance Ordinance, Cap. 76, has no bearing on this matter since it does not purport to deal with the entire law of maintenance but only with the maintenance of wives and children. The absence of any reference in the Ordinance to the maintenance of parents by their children therefore seems to be no argument at all. Bonser, C. J., in *Subaliya v. Kannangara* [1], Wood Renton, J., in *Justina v. Arman* [2], and Schneider, A. J., in *Lamahamy v. Karunaratne* [3] have taken the view that that branch of Roman Dutch Law which dealt with maintenance did form a part of the law of this Island while Ennis, A. C. J., in *Lamahamy v. Karunaratne* [4] doubted if the Roman Dutch Common Law in this respect was ever introduced into Ceylon. Is the rule in question, then, part of the law of Ceylon?

Now the question as to how much of that system of law was imported into Ceylon was considered in *Samed v. Segutamby* [4], where Bertram, C. J. said that the propositions that the Roman Dutch Law pure and simple does not exist in this country in its entirety, and that it is not the whole body of Roman Dutch Law, but only so much of it as may be shown or presumed to have been introduced into Ceylon that is now applicable here, do not apply to fundamental principles of the Common Law enunciated by authorities recognized as binding wherever the Roman Dutch Law prevails. " Such principles " he said, " may in course of time become modified in their local application by judicial decisions, but it would be only by a series of unbroken and express decisions that such a development could take place ". Jayawardene, A. J., in the same case, speaking of the Roman Dutch Law on the subject of damage by fire, used words which, I think, are appropriate in this connection also :—" But there is no decision by which this Court has declared that the Roman Dutch Law on the subject of damage by fire is inapplicable in this Colony by its being obsolete or for any other reason. It is not a special or local law which is only suited to conditions in Holland and unsuited to local conditions. It is a law of general application, and it cannot be suggested that it was not imported to Ceylon. This law is to be found in the works of institutional and other writers on the Roman Dutch Law recognized in Ceylon and appealed to in the Colony upon all questions of Roman Dutch Law. As this Court said in 1835: ' If the right exists, it is not the less law because hitherto suitors may not have thought it expedient to exercise it' ". Undoubtedly the rule which requires children to maintain their indigent parents obtains in South Africa and I think it may be properly regarded as a fundamental principle of our Common Law. It is also interesting to find two cases decided in the District Court of Jaffna in 1803 reported in *Mutukisna's Thesawaleme p. 572*, where parents who were in indigent circumstances successfully claimed maintenance from their children. In my opinion the rule that children are liable to support their parents who are in indigent circumstances obtains in Ceylon.

[1] *(1899) 4 N. L. R. 121.*
[2] *(1908) 12 N. L. R. 263.*
[3] *(1921) 22 N. L. R. 289.*
[4] *(1924) 25 N.L.R. 481 at page 497.*

I therefore set aside the order of dismissal and send the case back in order that the parties may lead evidence on the other issues of fact and law already framed and any further issues which may be raised on the pleadings. The appellants are entitled to the costs of this appeal. All other costs will abide the result of the action.

Order set aside.