

1946

Present : Wijeyewardene S.P.J.

ASILIN PEIRIS, Appellant, and WIMALASENA PERERA,
Respondent.

478—*M. C. Panadure, 38,485.*

Maintenance—Appeal against order refusing maintenance—Death of appellant pending appeal—Abatement of appeal—Maintenance Ordinance (Cap: 76), s. 17—Criminal Procedure Code, s. 351.

An appeal preferred by a woman against an order refusing maintenance in respect of her illegitimate child shall abate on her death during the pendency of the appeal.

A PPEAL against an order of the Magistrate of Panadure.

D. D. Athulathmudali, for the applicant, appellant.

S. C. E. Rodrigo, for the defendant, respondent.

Cur. adv. vult.

July 23, 1946. WIJEYWARDENE S.F.J.—

The appellant instituted these proceedings claiming maintenance for her illegitimate child. The respondent denied paternity and the Magistrate held in his favour. The appellant preferred the present appeal against the order of the Magistrate, but died during the pendency of the appeal.

The only point for my decision is the order I should make in these circumstances.

Section 17 of the Maintenance Ordinance makes section 351 of the Criminal Procedure Code applicable to appeals under that Ordinance and section 351 of the Code states that an appeal “ shall finally abate on the death of the appellant ”.

I direct, therefore, that an order of abatement be entered in this case.

Order of abatement entered.