

ESTE v. SILVA.

P. C., Galle, 3,179.

*Maintenance—Ordinance No. 19 of 1889, s. 8—Terms of original order of maintenance—Subsequent order enlarging previous order.*

Under section 8 of the Ordinance No. 19 of 1889, if a Police Magistrate thinks that a child should be maintained until he or she attains the age of eighteen years, such time must be specified in the order of the Police Magistrate.

If an order is silent as to the time, it has no force after the subject of the order has attained the age of fourteen years, and a subsequent order extending the allowance for the maintenance until the child attains the age of eighteen years is *ultra vires*.

IN this case for maintenance, the defendant, in obedience to an order of Court, had been paying monthly to his wife, the complainant, Rs. 6 for her maintenance and that of his two children. Subsequently the defendant refused to pay for the maintenance of his eldest daughter, on the ground that she had attained her fourteenth year. The Police Magistrate ordered that the maintenance should be continued till the child attained her eighteenth year, as she appeared to be not more than ten years, and was unable to earn her livelihood.

The defendant appealed.

*Aserappa*, for appellant.

27th March, 1895. WITHERS, J.—

This order must be vacated.

The Magistrate had no power to order the appellant to continue the allowance to his daughter until she had attained the age of eighteen years, inasmuch as that age had not been fixed in the original order for the child's maintenance.

The original order made on the 30th January, 1891, was based on the submission of the appellant to deposit Rs. 6 before the

10th February following, and a similar sum on every succeeding month before the 10th day of such month. The terms of that order were unlimited as to time. Now, section 8 of Ordinance No. 19 of 1889 enacts as follows :—

“ No order for an allowance for the maintenance of any child, legitimate or illegitimate, made in pursuance of this order shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of fourteen years, and after the death of such child. Provided that the Police Magistrate may *in the order* direct that the payments to be made under it in respect of the child shall continue until the child attains the age of eighteen years, in which case such order shall be in force until that period.”

It is clear that if a child has to be maintained until he or she attains the age of eighteen years, that time must be limited in the original order. As, however, the original order was silent as to the time, it has no vigour after the subject of the order has reached the age of fourteen years. An order cannot be made upon an order.

