Present : Middleton J. and Grenier J.

1911.

In re the Estate of ILLANGAKOON.

194—D. C. (Interlocutory) Colombo, 538.

Maintenance—Parent's liability to maintain child who has means.

The duty of a parent to provide maintenance ceases when the children are earning their own livelihood and capable of maintaining themselves, and when the children are possessed of property of their own, upon the income derived from which they may maintain themselves, in which later case the parents may claim a reasonable proportion of such income for their maintenance.

THE facts are set out in the judgment.

F. M. de Saram, for the appellant.—The minors are possessed of property and are able to maintain themselves out of their income.

The mother is entitled to get an allowance for the maintenance of the children from the estate of the children. See *1 Maasdorp 232* and *2 Williams on Executors. 10th ed., p. 1051.*

No appearance for the respondent.

Cur. adv. vult.

December 18, 1911. MIDDLETON J.—

This is an appeal against an order by the District Judge refusing to allow the guardian of certain minors to draw out of a sum in Court belonging to the minors a sum of Rs. 4,315.12 for the maintenance of the minors from July 1, 1907, till March 31, 1911. It would seem that the Court has held that a proper sum to be appropriated for the maintenance of the minors was, in the case of four of them, Rs. 50 per mensem, and in the case of one Rs. 30 per mensem, and the sum for which payment is sought from the Court, I understand, the aggregate of such monthly allowances for the period in question.

We are informed that the curator of these minors has no objection to the order being made, and that would appear to be the case, as there is no appearance in opposition to this appeal. The learned District Judge bases his order upon the fact that the mother has the means to maintain the children, and he seems to be surprised that she should, under these circumstances, apply to the Court for an order for their maintenance from their own property. He has not given any other reason apparently than this for refusing the application. The proposition that minors, who have means to do so, should be called upon to maintain themselves does not appear to be either unreasonable or improper, and I believe that under the English practice that occasionally maintenance is allowed in the lifetime of a father, even if he be of ability to maintain the infant (*2 Williams on Executors, 10th ed., p. 1051*), as in the case of *Jervois v. Silk*[1], where a father having an income of six thousand pounds a year, twelve hundred pounds a year was allowed for the maintenance of a minor out of property of his own. We have been referred by Mr. de Saram to the first volume of *Maasdorp 232*, in which it is laid down that "the duty to provide maintenance ceases when the children are earning their own livelihood and capable of maintaining themselves, and when the children are possessed of property of their own, upon the income derived from which they may maintain themselves, in which latter case the parents may claim a reasonable proportion of such income for their maintenance. So much is this the case that even when a stranger has left property to a minor upon the express condition that the income derived from it is to be allowed to accumulate and to be added to the capital, the parents may, nevertheless, demand that maintenance shall be allowed out off it to the children."

[1] *Cooke 52.*

1911.

MIDDLETON J.

In re the Estate of Illangakoon

This authority seems to demonstrate what is the Roman-Dutch law on the subject. I am of opinion that the learned District Judge was not right in refusing to make the order here, and I think that the appeal should be allowed, and that an order should be made in terms of the application made on behalf of the guardian. I think also that as the affidavit shows that she was in reality maintaining the children from the date from which she computes the sum sought for in her application, there is no impropriety in granting her application *in toto*. As regards costs we make no order.

GRENIER J.—I entirely agree.

Appeal allowed.