

Present: Wood Renton J.

1912.

MICHO HAMINE *v.* GIRIGORIS APPU

125—P. C. Matala, 37,042.

Maintenance—Wife living separately from her husband by mutual consent—Wife cannot claim maintenance.

There is nothing contrary to public policy in a husband and wife agreeing to live separately where they find that it is impossible for them to live together. Where a husband and wife agree to live separately by mutual consent, the wife cannot thereafter compel the respondent either to take her back as his wife or to pay her maintenance.

THE facts appear sufficiently from the judgment.

Vernon Grenier, for appellant.

Balasingham, for respondent.

February 29, 1912. WOOD RENTON J.—

In this case I think that the learned Police Magistrate has interpreted the facts correctly. I see no reason to doubt the truth of the respondent's story—supported as it is by respectable headmen of long standing, against whose credibility nothing has been urged—that the applicant parted from him a great number of years ago on her own initiative, and that since then, to all intents and purposes, they have been living separate by mutual consent. The question arises, therefore, whether under such circumstances the separation by mutual consent can be revoked by one party without the consent of

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the other, and whether here the applicant can compel the respondent either to take her back as his wife or to pay her maintenance. No local authority has been cited to me on that point, and I am not myself aware of any. Deeds of separation between husband and wife by mutual consent have long been treated in England as not being contrary to public policy, and as being enforceable as against both parties to them. I do not think that there is anything contrary to public policy under our law in a husband and wife agreeing to live separately where they find that it is impossible for them to live happily together, and, in my opinion, such a case comes under section 5 of "The Maintenance Ordinance, 1889" (No. 19 of 1889), which provides that no wife shall be entitled to receive a maintenance allowance from her husband if they are living separately by mutual consent. The last words in the section mean, I think, "if they have separated by mutual consent." On the grounds that I have stated I dismiss the appeal without costs.

Affirmed.

