

1928.

Present : Drieberg J.

## LETCHEIMAN PILLAI v. KANDIAH.

559—P. C. Jaffna, 155.

*Maintenance—Application based upon customary marriage—Respondent contracts registered marriage with another woman—Order staying proceedings.*

The appellant, alleging that she was married to the respondent, according to Tamil custom, made an application for maintenance.

At the trial, it was brought to the notice of the Court that, since the proceedings were instituted, the respondent had contracted a registered marriage with another woman.

The Police Magistrate then ordered the stay of proceedings pending an investigation with a view to the prosecution of the respondent for bigamy.

*Held*, that the order staying the proceedings was wrong and that the Magistrate should have proceeded to a final determination of the application.

**A** PPEAL from an order of the Police Magistrate of Jaffna.

*Ramachandra*, for applicant, appellant.

*Gnanaprakasam*, for defendant, respondent.

October 19, 1928. DRIEBERG J.—

The appellant, who says she was married to the respondent according to Tamil custom, though the marriage was not registered, claims maintenance from him. On an appeal from a previous order this Court on March 30 last ordered a trial *de novo*.

At the new trial the appellant was examined and it was then brought to the notice of the Court that after these proceedings were instituted the respondent on February 26, 1928, contracted a registered marriage with another woman. The appeal to the Supreme Court was then pending.

The Police Magistrate was of opinion that he could not or should not proceed with this inquiry as the question whether the first union was a legal marriage was one which should be decided by a jury in a trial of the respondent for bigamy. He, therefore, ordered a stay of these proceedings, and with a view to initiating criminal proceedings against the respondent he referred the matter to the Maniagar for investigation. The appeal is from this order.

This order is not right. Though the jurisdiction is in the Police Court, a maintenance application is really a proceeding for the enforcement of a civil obligation. There are earlier cases where a different view has been expressed, but the correct statement of the law, in my opinion, is to be found in the judgments of Sir Winfield Bonser C.J. in *Subaliya v. Kannangara*<sup>1</sup> and *Eina v. Eraneris*,<sup>2</sup> where he deals with the father's liability to maintain his illegitimate children ; a wife's claim to maintenance is on the same footing, and it has been held that the Common law right of action does not now exist and she can claim relief only under the Maintenance Ordinance (*Menikhamy v. Loku Appu*,<sup>3</sup> *Iamahamy v. Karunaratna*<sup>4</sup>).

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A conflict in the conclusions of a Civil and of a Criminal Court is sometimes inevitable. It must be remembered that the standard of proof in the two cases is not the same. A maintenance application being a civil matter can rightly be decided on the balance of evidence (*Eina v. Eraneris (supra)*), whereas in a criminal matter the innocence of the accused must be assumed until the contrary be conclusively proved. It is sufficient to base my judgment on these reasons alone, but I might further point out that it may well be that though evidence of marriage be led which would convince the Police Magistrate and justify his making an order for maintenance, the Attorney-General might in his discretion decide on not committing for trial a case in which the alleged first marriage depended for proof of its validity on oral evidence of witnesses regarding compliance with the ceremonial rites of marriage, and on which of these rites are essential.

I, therefore, set aside the order of the Police Magistrate and direct that he should proceed with the investigation of this claim and adjudicate upon it.

*Set aside.*<sup>1</sup> (1899) 4 N. L. R. 121.<sup>2</sup> (1898) 1 Bal. 161.<sup>3</sup> (1900) 4 N. L. R. 4.<sup>4</sup> (1921) 22 N. L. R. (Full Bench) 289.