

1914.

Present : Pereira J.

## REGINAHAMY v. JOHNA

139—P. C. Galle, 5,976.

*Maintenance—Wife living in adultery.*

In the case of an application for maintenance under the Maintenance Ordinance, 1889, the fact that the wife had at one time anterior to the application been living in adultery is insufficient to disentitle her to an order under the Ordinance.

THE applicant in this case claimed maintenance for herself and her son from her husband. The learned Magistrate refused the application. He said : “ Her counsel contends that she is entitled to maintenance now that she is not living in adultery. I cannot uphold this contention. It would be dangerous to society to do so. ” The applicant appealed.

*E. T. de Silva*, for the appellant.—The Magistrate is wrong in holding that the wife is disentitled to maintenance merely because previous acts of adultery have been admitted. The Ordinance contemplates living in adultery at the time of the maintenance (5 S. C. D. 32). A husband is bound to maintain children in lawful custody of wife though she may be living in adultery (3 Bal. 253).

*De Jong*, for the respondent.—It is not clear that the son is entitled to maintenance.

*Cur. adv. vult.*

February 14, 1914. PEREIRA J.—

The Magistrate has refused to make an order for maintenance in this case because the applicant had at one time been living in adultery. This is not a sufficient ground under the Maintenance Ordinance, 1889, to disentitle a wife to maintenance. Section 5 speaks of the wife living in adultery at the time of the application under the Ordinance (see 5 S. C. D. 32). If a husband chooses to let the marriage tie remain in spite of adultery on the part of his wife, and the wife from choice or necessity returns to an honourable life, the husband's liabilities unquestionably revive. Considerations of expediency like those referred to by the Magistrate cannot be allowed to enter into account. I set aside the order appealed from, and remit the case to the Court below to fix the amount payable for the maintenance of the applicant and her son, and to make order accordingly. In the case of the latter, he must of course be of such an age as to justify a claim for maintenance under the Ordinance.

*Set aside.*