

Present: De Sampayo J.

1920.

PINCHI AMMA *v.* MUDIYANSE.

37—*P. C. Panwila, 4,349.*

Kandyan marriage—Dissolution by mutual consent—No order for maintenance of children by Provincial Registrar—Order by Police Court.

Where a Provincial or Assistant Provincial Registrar does not make an order for the maintenance of children on the dissolution of a Kandyan marriage, the Police Court may make an order for maintenance under the Maintenance Ordinance of 1889.

THE facts are set out in the judgment.

C. H. Z. Fernando, for the appellant.—Section 4 of Ordinance No. 1 of 1919 gives the Provincial Registrar the power to make an order for the maintenance of children if he thinks it proper to do so. The fact that the Provincial Registrar did not do so is tantamount to a refusal to do so. The only remedy open to a party aggrieved by the order of the Provincial Registrar is to petition the Governor. The respondent cannot proceed under the Maintenance Ordinance.

Spencer Rajaratnam, for the respondent, not called upon.

1920.

January 20, 1920. DE SAMPAYO J.—

*Pitchi
Anna v.
Mudiyance*

This is an application for maintenance by the mother of a child against the father. The parties are Kandiyans. It appears the marriage was dissolved of mutual consent by the Assistant Provincial Registrar on September 26, 1919. This application was made on October 10, 1919. Counsel for the defendant appellant submits that the order allowing maintenance in this case is without jurisdiction. The Amending Kandyan Marriage Ordinance, No. 1 of 1919, provided by section 4 that in making an order for the dissolution of a marriage, the Provincial or Assistant Provincial Registrar "may, if he think fit, order by an entry to that effect in the register of dissolutions that the husband shall pay a certain sum of money periodically, or make other provisions for the maintenance of his wife and of his children." It is quite clear that it is not obligatory on the Provincial or Assistant Provincial Registrar to make such an order, but if he has made an order, it may be that by operation of sub-section (4) and sub-section (5) the order made may prevent the Police Court from making an order again under the general Maintenance Ordinance of 1889, but the Assistant Provincial Registrar in this matter did not make any such order. Consequently, I think, the general provisions of the Maintenance Ordinance, so far as the children are concerned, still apply to the present parties. It is then argued that an agreement which is recorded in the register amounts to a waiver of compensation in respect of the child. The same section of the Amending Ordinance provides that if the parties to the dissolution shall have agreed upon any compensation to be paid to either or both owing to such dissolution, the Registrar shall enter the terms of such agreement in the Register of Dissolutions. Now the agreement the parties came to before the Assistant Provincial Registrar was that of the two children, the male child of the age of four years should be taken by the father, the defendant, and the female child of the age of one year should be taken by the mother, the applicant. The present application is not made in pursuance of the agreement, but the agreement was by no means an agreement as to any compensation. It was merely an agreement as to the custody of the children. The applicant may have the custody of the female child now, but I do not see anything in the Ordinance or any general principle of law by which the defendant can be held to have been relieved of the primary obligation of a father to maintain his children. In my opinion the Magistrate to whom these points of law were submitted took a very accurate view, and I think his order is quite just.

The appeal is dismissed.

Appeal dismissed.