

1965

*Present : Sri Skanda Rajah, J.*T. E. MACK, Appellant, *and* L. M. MACK, Respondent*S. C. 1008/1964—M. C. Colombo, 31736/AMC*

Maintenance—Provisional maintenance order made in the United Kingdom—Enforcement of it in Ceylon—Scope—Maintenance Orders (Facilities for Enforcement) Ordinance (Cap. 92), s. 6.

Where a court in England has made against a father residing in Ceylon a provisional order concerning the maintenance and custody of his children, that part of the order concerning maintenance may be enforced in Ceylon in accordance with the provisions of section 6 of the Maintenance Orders (Facilities for Enforcement) Ordinance.

APPEAL from an order of the Magistrate's Court, Colombo.

E. A. G. de Silva, with *B. T. Eliyatamby*, for Defendant-Appellant.

J. W. Subasinghe, for Applicant-Respondent.

Cur. adv. vult.

January 13, 1965. SRI SKANDA RAJAH, J.—

This appeal is from an order made by the learned Chief Magistrate of Colombo in respect of a provisional order for maintenance of the defendant-appellant's two children made in the United Kingdom and sought to be enforced by the Magistrate's Court of Colombo within whose jurisdiction the defendant father is said to be resident.

The appellant contends that—

1. the Magistrate's Court of Colombo has no jurisdiction to enforce this order ;
2. the English Court had no jurisdiction to transmit this case to the Ceylon Courts ;
3. where there is a valid marriage in existence the father is the guardian of the child, unless it is detrimental to the welfare of the child ;
4. the Magistrate's Court of Colombo should not have confirmed the order because it is against natural justice and the public policy in Ceylon.

What the Magistrate's Court of Colombo is called upon to enforce is that part of the order concerning maintenance and not that part regarding custody of the children. It is conceded that the English Court had jurisdiction to make an order for maintenance when it made order for the custody of the children, to make which it had undoubted jurisdiction. The order that was made by the English Court is divisible : The order for maintenance was the main order and the order for custody was incidental thereto.

The Maintenance Orders (Facilities for Enforcement) Ordinance (Cap. 92) deals with the enforcement of maintenance orders. Section 6 confers jurisdiction on Magistrates' Courts in Ceylon to enforce such provisional orders for maintenance. The evidence given by the applicant wife and that of the defendant would show that the defendant lives in Sunethra Lane, Thimbirigasyaya, Colombo 5, within the jurisdiction of the Magistrate's Court of Colombo. I would hold that the Magistrate's Court of Colombo has jurisdiction to enforce this order and that the English Court had jurisdiction to transmit the order for enforcement by the Ceylon Courts.

The defendant as father may be the natural guardian of the children. That would entitle him to get their custody by proper means subject to their welfare which is the paramount consideration. But as long as they are in the applicant's custody by a lawful order made by the English Court and the defendant has neglected to maintain them he is liable to pay maintenance. Section 6 (2) restricts the defences that can be raised by the defendant to what could have been raised in the original proceedings in England had he been a party thereto. No other defence can now be raised. This provision also indicates that the order in question could have been lawfully made by the English Court without his being even made a party to the proceedings. That is why the order is only provisional and needs the confirmation by the Magistrate's Court of

Colombo, after the defendant is afforded the opportunity of being heard so that he may not complain that the *audi alteram partem* rule has been violated. For these reasons the second and third objections too fail.

The amount of maintenance ordered by the English Court is £2 per week. That is not too large an amount. Therefore, I would set aside the Magistrate's order regarding the variation of the amount and confirm the original provisional order for maintenance.

Provisional order for maintenance confirmed.

