

[TYSER, C.J. AND BERTRAM, J.]

MARIA KYRIAKOU

v.

CONSTANTI BASILI.

TYSER, C.J.  
&  
BERTRAM,  
J.  
1909  
Jan. 5

## CANON LAW—MAINTENANCE—MONTHLY ORDER—PROCEDURE.

In applying the Canon Law of the Orthodox Church in matters within their competence the Courts in questions of procedure are governed by their own rules.

An order against a husband for the maintenance of his wife may be in the form of a general order for a monthly payment, and need not be limited to past maintenance.

Such an order may be varied according to the circumstances, and it is open to either party at any time to apply for its increase, diminution, suspension or final discharge.

This was an appeal from a decision of the District Court of Famagusta.

The action was an action for maintenance brought by a wife against her husband, on the ground that he had turned her out of the house.

At the settlement of issues Vassif, J., effected a temporary reconciliation between the parties, and the husband undertook to receive the wife back into his house. On returning to the village however the husband put his wife into a separate room and refused to cohabit with her. The wife accordingly returned to her father's house and resumed her action.

The defence of the husband with regard to his treatment of the wife was that his children (who were step-children of his wife) were suffering from ophthalmia, and that (according to the belief of the peasantry) under such circumstances, if the parents of the children sleep together the children will become blind. The wife also alleged and the husband denied, that the husband has not supplied her with food.

The majority of the District Court (the President dissenting), not considering that the husband had received the wife back into his house in any effective sense, made an order upon the husband to pay the sum of 10s. per month for the maintenance of the wife until the husband should take her back to live with him.

The Defendant appealed.

*Loizo* for the Appellant. On the facts there was no liability on the husband. He was willing and is still willing that his wife should live with him. In any case the Court has no power to make an order for future maintenance. This order imposes a perpetual burden on the husband from which he has no means of relieving himself. The wife should be made to apply for an order monthly.

*Chacalli* for the Respondent was not called upon.

The Court dismissed the appeal.

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*Judgment.* CHIEF JUSTICE: This case is a question of fact. The husband now appeals against the finding of the District Court but he does not give us any real reason why we should interfere with that finding, nor does he shew that he has made any genuine effect to resume conjugal relations with the Plaintiff.

As to the point of law raised by Mr. Loizo it is argued that the Court cannot make an order for a monthly payment but must make an order each month for the amount spent on maintenance in the past.

An order for maintenance of wife or children, it is said, cannot be made except as regards past expenditure.

This is not the law in England and not the law according to the Sher' and Mr. Loizo cannot cite any law in the world which deprives any Court of the power to make such an order.

Mr. Loizo says that it is the practice in the Civil Courts in Greece (which administer the law of the Orthodox Church—the same as that which in these matters we here administer) only to make orders in regard to past maintenance, but he does not cite any authority to show that they cannot make an order for future maintenance. Even if such an authority existed it would not bind this Court.

As the jurisdiction which we are exercising in this case is the same as that of the Patriarchal Court at Constantinople, the procedure of that Court, if it were brought before us, might be a guide, but it would not be a conclusive guide.\*

The question is a mere question of procedure, and the most convenient course in such a case is to make a general order, which can be subjected to revision if the circumstances change.

BERTRAM, J.: I agree. The question we have to decide here is whether the District Court was justified in making this order at the date of the judgment.

As to the form of the order, that is a mere question of procedure. The right of maintenance exists according to the law which the Court administers but it is for the Court to say in what manner it shall be granted.

The order once made can be varied from time to time with the circumstances. It is open to the husband or the wife to apply to the Court at any time for its increase, diminution, suspension, or final discharge.

*Appeal dismissed.*

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\* It appears from Karavokyros. *Ελευθέρως τῆς Ὀθωμανικῆς Νομοθεσίας*, pp. 264-267 that it is the practice of the Patriarchal Court of Constantinople in cases where an order for the maintenance of a wife is made pending a suit for divorce, to make an order for a monthly payment until such suit is decided.