

LOUISE M. SAMUELS, Appellant, v. L. EBEN-
EZER SAMUELS, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
MONTERRADO COUNTY.

Argued April 13, 1955. Decided August 5, 1955.

1. An award of one-third of a husband's salary to his wife for maintenance and support is not contrary to law or necessarily inadequate.
2. A decree awarding maintenance and support by a husband to a wife is enforceable only from the date of such decree.

On appeal from a decree of the court below upon an application for support and maintenance by summary proceedings, *decree affirmed* with modifications.

Nete Sie Brownell for appellant. *R. A. Henries* for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.

In January, 1953, before the Circuit Court of the Sixth Judicial Circuit, Montserrado County, Louise M. Samuels, entered a suit against her husband, L. Ebenezer Samuels, for maintenance and support. When the case came for trial before the Judge then presiding, a decree was entered in favor of the plaintiff, providing as follows:

"That since the defendant voluntarily placed on record that he has been, and is still, contributing a monthly allowance of \$55 to the plaintiff, which remains unimpeached by the plaintiff, the defendant shall, as from the date hereof, deposit with the sheriff of the county an allowance of \$58.34, being one-third of his salary, to be paid over to the plaintiff, his wife, without fail; and in the event he fails to comply with this decree, or any part thereof, he shall undergo the

penalty of the law in such cases made and provided. Costs against the defendant. And it is hereby so ordered."

The decree was entered on April 26, 1954, and it is worthy of mention that the defendant did not enter any exceptions thereto, whereas the plaintiff did. It is, however, also worth noting that the wording of said decree is so peculiarly framed as to leave the impression that the trial judge seemed not to have been convinced of the plaintiff's right to recover, and would not have so decreed had not the defendant "voluntarily placed on record that he had been, and is still contributing a monthly allowance of \$55 to the plaintiff." It appears that the trial Judge overlooked the fact that the payment of \$55 which the defendant was regularly contributing did not all go toward the plaintiff's allowance, but included the sum of \$25 in satisfaction of a judgment of the Stipendiary Magistrate's Court of Monrovia for the support of the children.

The award of \$58.34 made to the plaintiff as allowance and support is, in our opinion, adequate, being one-third of defendant's salary. However, we are in disagreement with the decree in so far as it directs the payment to commence as from the date of said decree. We are therefore amending the said decree by extending the time of payment to commence as from the time of the filing of the suit in January, 1953.

It also appears that an attempt was made to introduce evidence concerning certain allegations not material to the determination of a maintenance suit. We commend the trial court for not allowing such matters to influence the decision. But we note that, in disregard of statutory provisions controlling the enforcement of such decrees, the trial court was apparently inveigled into enforcing the regular payment of the amount awarded monthly during the pendency of the appeal by the defendant.

It is therefore hereby adjudged that, immediately upon

the filing of this judgment, the court below shall forthwith proceed to enforce same and, in so doing, shall collect all the monthly arrears as from January, 1953, to the present, and at the same time place the defendant under a proper and accepted recognizance for the prompt and regular payment of all subsequent monthly allowances. This is without prejudice to the judgment of the Stipendiary Magistrate respecting the support of the children. Costs against appellee, defendant below. And it is hereby so ordered.

Affirmed as modified.