

SETHU v. JANIS.

P. C., Galle, 19,527.

1898;
March 6;

*Maintenance—Child maintained by sustenance afforded by the mother—
Liability of the father.*

Where a child needs no maintenance other than the sustenance afforded by the mother, no order should be made against the father under section 3 of "The Maintenance Ordinance, 1889."

IN this case an application was made by the mother of an illegitimate child for an order on its putative father under section 3 of Ordinance No. 19 of 1889. The accused denied that he was the father of the child, and his liability to maintain it. The Police Magistrate held against him on the question of paternity, and made order as prayed for.

In appeal *Bawa* for accused, appellant.

Jayawardena, for respondent.

BONSEE, C. J.—

In this case I do not feel inclined to disturb the finding of the Police Magistrate as to the paternity. Mr. Bawa has, however, objected that there is no evidence that the defendant neglected or refused to maintain his child; that it does not require maintenance, for being of tender years it should derive its sustenance from the mother. The case should go back to the Magistrate to ascertain these facts:—

(1) Whether the child needs any maintenance other than the sustenance afforded by the mother.

(2) Whether the defendant has neglected or refused to supply such maintenance.

If either question is answered in the negative, then the appeal will be allowed, and that without prejudice to any subsequent application for maintenance for the child when it attains an age at which it will require maintenance.

