1950 *Present:* **Swan J.**

KARUPPIAH KANGANY, Appellant, *and* RAMASAMY KANGANY, Respondent

S. C. 701—M. C. Badulla, 8,754

Maintenance Ordinance (Cap. 76)—Section 6—Application for maintenance of illegitimate child—Evidence of mother of child—Not an essential requirement.

Defendant was sued for maintenance for an illegitimate child born to one K, a deaf and dumb woman. The application was made by K's father, and K herself did not give evidence.

Held, that section 6 of the Maintenance Ordinance cannot be interpreted to mean that the evidence of the mother is an essential requirement, that without it a Magistrate would have no jurisdiction to make an order for the maintenance of an illegitimate child.

APPEAL from a judgment of the Magistrate's Court, Badulla.

H. W. Tambiah with *V. Ratnasabapathy*, for the defendant-appellant.

No appearance for the applicant-respondent.

Cur. adv. vult.

September 15, 1950. SWAN J.—

In this case the defendant-appellant was sued for maintenance for an illegitimate child born to one Kadiraie, a deaf and dumb woman. The application was made by Kadiraie's father who is the respondent to this appeal. Kadiraie herself did not give evidence. Although she is a deaf and dumb person her evidence could have been given by signs. Section 119 of the Evidence Ordinance makes provision for the reception of such evidence.

Mr. Thambiah, who argued the appeal, strenuously maintained that without the evidence of the mother the application could not succeed. He contended that under section 6 of the Maintenance Ordinance the evidence of the mother was necessary to entitle a Magistrate to make an order for the maintenance of an illegitimate child. That section primarily deals with the period within which an application for the maintenance of an illegitimate child should be made. It concludes thus :

"And no order shall be made on any such application as aforesaid *on the evidence of the mother of such child unless corroborated in some material particular to the satisfaction of the Magistrate.*"

In support of his contention Mr. Thambiah cited the case of *The Queen v. Armitage and another, Justices of the West Riding of Yorkshire*[1]. It was there held that a bastardy order could not be made without the mother of the child being examined as a witness. In that case the mother died after the issue of summons and before the hearing, and the Court upon the construction of the particular enactment which governed the matter held that, in the circumstances, the justices had no jurisdiction to make an order.

The relevant sections of the enactment are set out as a footnote to the case. It would appear from a perusal thereof that the mother's evidence was a requirement that could not be dispensed with. Hannen J. who delivered the judgment of the Court said: "But we are further of opinion that it was the intention of the legislature, having regard to the peculiar nature of such inquiries, that the mother should support her accusation by her oath and submit herself to cross-examination. The paternity of the child is a fact as to which no evidence can be satisfactory without the statement of the mother; *and* the peculiar language of the statute requiring that the evidence of the mother shall be corroborated by other testimony cannot, as it seems to us, be given effect to without holding that the mother herself must be a witness on her own behalf."

In my opinion the language of section 6 of our own Ordinance cannot be interpreted to mean that the evidence of the mother is an essential requirement, that without it a Magistrate would have no jurisdiction to make an order for the maintenance of an illegitimate child. All it says is that upon the uncorroborated testimony of the mother a Magistrate cannot make an order against the putative father.

It should be noted that our Ordinance provides for the maintenance of wives and both legitimate and illegitimate children. The procedure is the same in each case. With regard to illegitimate children there is a time limit within which the application should be made and a further requirement regarding corroboration of the mother's testimony. I can only interpret the latter provision to mean that where the mother gives evidence a Magistrate cannot make an order on that evidence alone without corroboration, however much he is impressed with the mother's evidence and accepts it as true. It is inconceivable that the legislature intended to deprive an illegitimate child of maintenance where the mother is dead and the person applying for maintenance can satisfy the Court that the defendant is the father of the child by cogent evidence such as, for example, the defendant's own admission of paternity.

I shall now deal with the appeal on the merits. On the evidence led I cannot understand how the learned Magistrate could have held that the defendant was the father of the child. As I have already said the mother herself did not testify. The respondent's evidence is that the appellant lived in the adjoining room in the same lines; that when

[1] *1871 (1872) Law Reports Q. B. Vol. 7, p. 773.*

he found his daughter pregnant he asked the conductor, Richard, to find out who was responsible, and that at an identification parade she pointed out the appellant as the culprit. In cross-examination he stated that twice or thrice he heard somebody getting into the room and on one occasion, about a month before he discovered his daughter's condition, he saw the appellant running away when he opened the door. This last bit of evidence if accepted would have been corroborative evidence had the applicant herself testified that the appellant had intercourse with her. By itself, however, it is inconclusive and of no value at all. He said he told the conductor about this incident the following day but the conductor denies it.

The only other witness was the conductor, Richard. He stated that he held an identification parade and that Kadiraie pointed out the appellant as the person who was responsible for her pregnancy. Counsel for the appellant objected to this evidence as it amounted to hearsay and the Court upheld the objection. But even if the evidence was admissible I do not think it carried the case any further because Richard says that he questioned the appellant and the appellant denied that he was the culprit.

It is curious that the learned Magistrate, who upheld the objection that the evidence that Kadiraie pointed out the appellant was not admissible, has more or less based his judgment on that fact.

In my opinion the evidence is entirely insufficient to justify the conclusion that the appellant was the father of the child. The order appealed from is set aside. In the circumstances I make no order as to the costs of the appeal.

Order set aside.