1911.

Present : Wood Renton J.

ANGOHAMY *v.* KIRINELIS APPU.

769—P. C. Negombo, 15,889.

Maintenance—Corroboration of mother's evidence—Previous statements made to third parties by the mother as to paternity—Ordinance No. 19 of 1889, s. 7.

Previous statements as to paternity made by the mother of an illegitimate child to third persons, proved by such persons at the inquiry in the Police Court, would be sufficient corroboration for the purpose of satisfying section 7 of Ordinance No. 19 of 1889.

THE facts are set out in the judgment.

Bawa, for the appellant.

Aserappa, for the respondent.

November 23, 1911. WOOD RENTON J.—

The defendant-appellant has been ordered to pay to the applicant-respondent Rs. 3 a month for the maintenance of her illegitimate child. The only question in the case is whether or not the evidence of the mother as to the paternity of the child has been corroborated. The learned Police Magistrate in his judgment places considerable emphasis on certain physical resemblances which he thought that he saw between the appellant and the child. But I see no reason to doubt that he accepted the other evidence in the case as true, and in my opinion that evidence affords in law sufficient corroboration of the respondent's story. It is proved that within a few months after conception her parents discovered her condition, and that she then gave to them the appellant's name as that of the father of her child. The parents spoke to the police vidane, who placed himself in communication with the appellant on the matter and told him what the respondent's parents alleged. The appellant denied that he was the father of the child, but at the same time expressed his willingness to marry the respondent if a certain dowry was given along with her. The negotiations for the marriage broke down in a dispute over the dowry. The respondent in her evidence distinctly states that the appellant had promised to marry her if the dowry was satisfactory. It appears to me that the circumstances just mentioned disclose corroboration of a two-fold character. In case No. 251—P. C. Colombo, 9,187,[1] I had before me the question whether previous statements made by the mother of an illegitimate

[1] *S. C. Mins., May 11, 1911.*

child to third persons, and proved by such persons at the inquiry in the Police Court, would not be sufficient for the purpose of satisfying section 7 of Ordinance No. 19 of 1889. In that case it was unnecessary to decide the point expressly. But I indicated a strong opinion that, in view of the provisions of section 157 of the Evidence Ordinance, the question ought to be answered in the affirmative. On full reconsideration I adhere to that opinion for the following reasons. Section 157 provides, in effect, that the former statement of a witness relating to a fact which is the subject of subsequent judicial inquiry, if made at or about the time when the fact took place, may be proved for the purpose of corroborating later statements by that witness in the same sense. It appears to me that, although the Maintenance Ordinance is prior in date to the Evidence Ordinance, when the section speaks of the corroboration of the evidence of the mother, it must be taken to include any kind of corroboration which is recognized by law at the time that her evidence is given. If that view is correct, then the only further point arising under section 157 is whether or not the previous statement which it is sought to prove was made at or about the time when the fact under judicial investigation took place. The words " at or about " are, I think, relative terms.

In the present case the evidence shows that within a few months after conception, and when her condition was discovered, the respondent made a statement to her parents, who on their part complained to the police vidane. Under these cirumstances, I think it may fairly be said that the previous statement was made at a point of time sufficiently near to the fact which the Court had to ascertain to make it admissible under section 157. I am indebted to Mr. Bawa, the appellant's counsel, for having called my attention in the course of the delivery of this judgment to the point that section 7 of Ordinance No. 19 of 1889 requires the evidence of the mother of the child to be corroborated in some material particular by " other evidence " to the satisfaction of the Police Magistrate. I quite see the force of the argument that Mr. Bawa suggests. But it seems to me that when the Legislature speaks in section 7 of the evidence of the mother of the child, it means her evidence as given at the actual hearing of the application, and that proof that she had made previous statements to the same effect would, in view of the provisions of section 157 of the Evidence Ordinance, be corroboration in law of the evidence that she gives in the maintenance inquiry.

The facts of the present case disclose, however, independent corroboration of another kind. It is clearly settled that, while the corroboration contemplated by the section is corroboration as to the paternity of the child, it will be sufficient if the evidence of the mother is corroborated on that point indirectly. Here we have evidence from the mother herself that the appellant, although aware of her condition, was prepared to marry her. The police vidane

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has corroborated the respondent on that point, for he tells us that when he spoke to the appellant, the latter, while denying the paternity of the child, was prepared to negotiate with a view to marrying the mother. The fact that a man who knows that a woman is pregnant is prepared to marry her, even if he denies the paternity of the child that she has conceived, and stipulates for a dowry as the price of the marriage, is, in my opinion, relevant evidence corroborating the mother of the child in regard to the question of paternity. The only other point to which it is necessary to refer is Mr. Bawa's contention that section 7 of Ordinance No. 19 of 1889 requires an express finding by the Magistrate that he is satisfied with the corroborative evidence. I have taken a different view of that question in the case of *Mangohamy v. Abraham*,[1] and I adhere to the view therein expressed. On the grounds stated, I dismiss the appeal with costs.

Appeal dismissed.