

Present : Wood Renton J.

1911.

PERERA v. FERNANDO

341—P. C. Colombo, 26,504

Maintenance—Evidence of mother that child was supported within twelve months of its birth need not be corroborated—Ordinance No. 19 of 1889, s. 7.

Under section 7 of the Maintenance Ordinance corroboration of the mother's evidence is necessary only on the question of paternity.

The testimony of the mother that the defendant had paid money for the maintenance of her illegitimate child within twelve months of its birth need not be corroborated.

THE facts are set out in the judgment.

Vernon Grenier, for appellant.

June 9, 1911. WOOD RENTON J.—

This case raises rather an interesting and important point under section 7 of Ordinance No. 19 of 1889, and I regret that there are no previous local decision, so far as I am aware, except several of my own, to help me in dealing with it. The appellant was the applicant in the Police Court of Colombo for a maintenance order against the respondent, whom she alleged to be the father of her illegitimate child. Under section 7 of Ordinance No. 19 of 1889 (I will take for the moment only the clause that is specifically applicable to this case), it is provided that "such an application shall not be entertained unless it be proved that the man alleged to be the father of such child has, at any time within the twelve months next after the birth of such child, maintained it, or paid money for its maintenance." The appellant gave evidence at the trial, which, if believed by the Police Magistrate, would, apart from the question of corroboration, to which I will refer presently, have been sufficient to satisfy the statutory conditions. She stated that the respondent supported her child up to two months prior to the trial. The learned Police Magistrate does not say whether or not he accepted that evidence. The appellant further called her mother as a witness, and the mother said that the respondent had sent money, in the hands of a child of two years, for two months after the birth of the child, and none since. The Police Magistrate thereupon said that upon that evidence he was not prepared to hold that the respondent had supported the child within the last twelve months, and accordingly he made no order on the application. Although the Police Magistrate does not

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expressly say so, I think that his order can only be explained on the theory that he held that the latter part of section 7 of the Ordinance, in which the evidence of the mother of an illegitimate child is required to be corroborated in some material particular by other evidence, is applicable to the alternative conditions stated in the earlier part of the section. I am unable to interpret section 7 in that sense. The three alternative conditions, which are stated to be conditions precedent to the application being "entertained," are as follows: (1) Unless it is made within twelve months from the birth of such child; or (2) unless it be proved that the man alleged to be the father of such child has at any time within the twelve months next after the birth of such child maintained it or paid money for its maintenance; or (3) unless such application is made within the twelve months next after the return to this Island of the man alleged to be the father of such child, and upon proof that he ceased to reside in this Island within the twelve months next after the birth of such child. Then follows the clause as to corroboration: "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 by other evidence to the satisfaction of the Police Magistrate." I think that this clause applies only to applications which the Court can entertain. It is clearly directed to those parts of the case which are dependent on the evidence of the mother. It is obvious, if we look back at the alternative conditions stated above, that the proof of some of them might be in no way dependent upon the mother's evidence, even if she had to be called as a formal witness. For instance, the date of the birth of the child and of the application for maintenance being made would be established in most cases by documentary evidence. If the latter part of the section as to corroboration is to apply to the conditions precedent at all, it must apply to all of them, and the fact that, as regards the first of these conditions, the evidence of the mother would, in most cases, not really be of great importance, strongly points, in my opinion, to the conclusion that the rule as to corroboration was intended to apply only to those parts of her case that come before the Court after her application has been entertained and has reached the point of trial. I am indebted to Mr. A. St. V. Jayewardene for calling my attention, as *amicus curiae*, to the English case of *Hodges v. Bennett*,¹ where, in the construction of sections 2 and 3 of 7 and 8 Vict., c. 101, it was held by the Court of Exchequer not to be necessary that the testimony of the mother that the defendant had paid money for the maintenance of her illegitimate child within twelve months of its birth should be corroborated. Sections 2 and 3 of that statute correspond closely to section 7 of Ordinance No. 19 of 1889. I may direct special attention to the words of Wilde B.: "The 3rd clause" (that is to say, the section dealing with corroboration)

¹ (1860) 5 H. & N. 625.

“ has reference only to the proceedings which are taking place upon the hearing when the question is whether the person alleged to be the father is really so. There must be some evidence to corroborate the woman's testimony on that point.”

I set aside the order appealed against, and send the case back to the Itinerating Police Court of Colombo for further inquiry and adjudication on its merits, provided always that the Police Magistrate is prepared to accept the applicant's evidence in regard to the maintenance of her child by the respondent within twelve months after its birth. The appellant is entitled to the costs of this appeal, if any. All other costs must abide the event

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Set aside and sent back.
