Present: Jayewardene A.J.

1925.

JUSTINA HAMY *v.* GUNASEKARA.

591—P. C. Avissawella, 40,751.

Maintenance—Evidence of opportunity for intimacy—Corroboration of mother's evidence—Ordinance No. 19 of 1889, s. 7.

Evidence of mere opportunity for intimacy is not sufficient corroboration of the mother's evidence in terms of section 7 of the Maintenance Ordinance.

Burbury v. Johnson[1] followed.

APPEAL from an order for maintenance made by the Police Magistrate of Avissawella.

The facts appear from the judgment.

H. V. Perera (with him *Sri Nissanka*), for appellant.

October 21, 1925. JAYEWARDENE A.J.—

In this case the appellant has been condemned to pay Rs. 2·50 per mensem for the maintenance of his illegitimate child. He appeals against the order, and it is contended for him that the evidence of the child's mother has not been corroborated in any material particular, as required by section 7 of the Maintenance Ordinance. The learned Police Magistrate says that there is such corroboration in three facts proved by the witnesses for the applicant. They are: (1) that the mother told her father that she was pregnant to the appellant, the father informed the Police Vidane, and at the latter's request petitioned the Police Magistrate alleging that the appellant had seduced his daughter one night at the house of her uncle, Andris, where she was staying; (2) that the applicant and the appellant were living in the house of the former's uncle, Andris, at the date of conception; and (3) that when the applicant became pregnant the appellant left the village.

As regards (1), the statement was made about five or six months after she had become pregnant.

Now, it has been held in *Ponnamah v. Sinnetamby*[2] by a Bench of three Judges of this Court, that section 7 must be read in the light of section 157 of the Evidence Ordinance, and that a statement made by the mother as to the paternity of her child would not be corroborative of her evidence, unless it was made at or about the time when sexual intimacy was continuing between the

[1] *(1917) 1 K. B. 16.*

[2] *(1921) 22 N. L. R. 395.*

1925.

JAYEWARDENE A.J.

Justina Hamy v. Gunasekera

parties. The statement of the mother, which was made some months after conception, and some months after intimacy had ceased—the appellant left the village five months before the statement was made—cannot, therefore, be regarded as corroboration of her evidence in Court.

As regards (2), the learned Police Magistrate says that the Police Vidane stated that the defendant was "found" in Andris' house at the time the applicant was there. I do not know what the Police Magistrate means when he uses the word "found." Does he mean that the appellant was living there, or came there for his meals as the appellant admits? The Police Vidane did say in his examination in chief that the applicant was living in Andris' house for a long time, and that the appellant used to take his meals there and used to be seen there most of the time, but in cross-examination he said he could not swear that the defendant lived in Andris' house. The appellant admits he used to take his meals at Andris' house, but he denies he ever slept there. There might have been opportunity for intimacy, but that is not sufficient, as it does not give rise to any presumption in the circumstances of this case. The Police Vidane does not say that he noticed any familiarity in the conduct of the parties. See the case of *Burbury v. Johnson* (*supra*) cited by appellant's Counsel.

As regards (3), the appellant left the applicant's village about the time she became pregnant—that is, in October, 1924. The applicant does not say that the appellant left when he became aware of her pregnancy. In fact, no point was made of his departure at this time by the applicant herself. It is an inference drawn by the learned Police Magistrate from a statement made by the appellant in his evidence.

His departure for his village at that time might be a suspicious circumstance, but it might also be merely a coincidence. No conclusion adverse to him can be drawn from it.

I find, therefore, that there is no corroboration of the mother's evidence in any material particular by other evidence, and for that reason the appeal must be allowed, and the application for maintenance dismissed.

Appeal allowed.