

1971

Present : Wijayatilake, J.

M. G. ALLIS, Appellant, and A. D. NANDAWATHIE, Respondent

*S. C. 240/71—M. C. Matale, 32987**Maintenance—Illegitimate child—Proof of paternity—Relevancy of birth certificate—Evidence Ordinance, s. 32 (5).*

Where, in an application for maintenance of an illegitimate child whose birth has been registered, the paternity of the child is disputed, the birth certificate of the child should be produced to assist Court in determining the question of paternity, although the entries in such certificate may not be conclusive.

APPEAL from an order of the Magistrate's Court, Matale.

S. C. Chandrahasan, for the respondent-appellant.

Applicant-respondent absent and unrepresented.

November 15, 1971. WIJAYATILAKE, J.—

Mr. Chandrahasan, counsel for the Appellant, has drawn my attention to the fact that although the applicant in her application for maintenance has stated that a child named Wickremasinghe was born to her on 20.7.69 by the appellant, the certificate of birth has not been produced, and there is nothing to show whether in fact this birth was registered. In the circumstances he submits, that it will be highly unsafe to make any order in favour of the applicant. The principal question arises whether in fact the child in question was born to this woman at all on this date. I am inclined to agree.

Before an order is made in this case it would be satisfactory if the certificate of birth of this child is produced if the birth has been registered. The entries in this certificate would be relevant. In my opinion, where a birth has been registered the certificate of birth should be produced to assist Court in determining this question of paternity although the entries in such certificate may not be conclusive. The declaration of parentage made by a parent has a genealogical value under Section 32 (5) of the Evidence Ordinance (see *Silva v. Silva* 43 N. L. R. 572 and S. C. 239/71 M. C. Dambulla 20925 of 15.11.71).

I would accordingly set aside the order of the learned Magistrate and send the case back for a fresh trial before another Magistrate. I make no order as to costs.

Order set aside.