1948 *Present :* **Nagalingam J.**

CARLINA NONA, Appellant, *and* DE SILVA, Respondent.

S. C. 1,283—M. C. Galle, 4,890.

Maintenance—Civil or criminal proceedings ?—Balance of evidence—Presumption of innocence.

Maintenance proceedings are really civil proceedings though the forum which determines the rights of parties is a Criminal Court. A maintenance case must, therefore, be decided on the balance of evidence and not as a criminal matter in which the innocence of the accused is to be assumed until the contrary is proved.

APPEAL from a judgment of the Magistrate of Galle.

M. L. S. Jayasekera, for the applicant, appellant.

C. R. Gunaratne, for the defendant, respondent.

Cur. adv. vult.

January 5, 1948. NAGALINGAM J.—

This is an appeal from an order of the Magistrate of Galle dismissing the application of the appellant for an order of maintenance against the respondent, the putative father of the applicant's illegitimate child.

[1] *S. C. Minutes of Oct. 23, 1945.*

The learned Magistrate concludes his judgment by stating that the " applicant has not proved beyond reasonable doubt her allegation that the defendant is the father of the child for whom maintenance is calimed ". It has been contended on behalf of the appellant that the learned Magistrate has made a wrong approach to the adjudication of the appellant's case inasmuch as it is clear from the passage quoted from his judgment that he has looked upon these proceedings more in the light of a criminal prosecution rather than one in which the civil rights of parties are involved and that the Magistrate should have decided the case on the balance of evidence and not determined the issues by reference to the principle underlying criminal law that a case against an accused person should be proved beyond reasonable doubt.

That maintenance proceedings are really civil proceedings though the forum which determines the rights of parties is a Cirminal Court has been laid down not, it is true, without previous difference of opinion in the case of *Subalia v. Kannangara* [1] where Bonser C.J. expressed himself thus :—

> " It seems to me that the foundation of the jurisdiction of a Police Court in these matters is the civil liability already existing—this Ordinance simply provides a speedier process."

The learned Chief Justice reaffirmed this view in the later case of *Eina v. Eraneris* [2] in these words :—

> " As I said before, this Ordinance is not one dealing with a criminal matter but it provides a speedy and less expensive way of enforcing a civil obligation which under the common law of the Island rests on the father of an illegitimate child."

This view of the nature of maintenance proceedings has never since been doubted and, to use the language of the learned Chief Justice once again, maintenance cases have been decided " according to the balance of evidence " and not " as a criminal matter " in which the innocence of the accused is to be assumed until the contrary is conclusively proved. Drieberg J. in the case of *Letchimi Pillai v. Kandiah* [3] said :—

> " though this jurisdiction is in the Police Court a maintenance application is really a proceeding for the enforcement of a civil obligation. There are earlier cases where a different view has been expressed but the correct statement of the law in my opinion is to be found in the judgment of Sir Winfield Bonser C.J. in *Subalia v. Kannangara* and *Eina v. Eraneris* . . . . ."

The contention, therefore, on behalf of the appellant is well founded, and the first question I have to decide is whether an order should be mad on this appeal or whether the case should be remitted to the lower Court for an adjudication having regard to the true principle underlying these proceedings. As the learned Magistrate has not disbelieved the applicant or her witnesses, I think a final order can be made on appeal.

The applicant, who is a young woman twenty-one years of age, was at the relevant dates a pupil in the Government Weaving School at Ratgama. The respondent would appear to be the sole instructor in charge of the institution. There were about fifteen pupils, all women students, and all of them bar the appellant who were from the village of Ratgama itself

[1] *(1899) 4 N. L. R. 121.* [2] *(1900) 4 N. L. R. 4.*
[3] *(1928) 9 C. L. Rec. 191.*

went to their respective homes for the noonday meal. The appellant attended the school from her village of Hagoda which is about two miles away. She took her noonday meal, which either she carried with her when she went to the school or was brought for her by one James, in one of the rear rooms of the school premises. The respondent himself used to go to his house, which was stated by the appellant to be ¼ mile away, and by the respondent to be ½ mile away from the school. According to the appellant, the respondent became intimate with her in March, 1946, and had sexual commerce with her in the rear room of the school on his return from his noonday meal, when the school building was otherwise deserted. There is also evidence that the appellant used to be accompanied by a little girl about ten years of age and that that little girl also used to take her meals with the appellant but that on the occasions when the defendant used to have sexual union with the appellant he used to send out the little girl on errands to post letters at the post box a little distance away. The appellant further says that the respondent had been in the habit ever since March, 1946, till close upon the time she ceased to attend school, to have sexual union with her twice or three times a week. She also testified to the fact that the respondent had made a present to her of a ring bearing his initials in April, 1946, and that he also wrote to her a letter affirming the oral promise to marry he had made to her before he seduced her. She further alleged that in September, 1946, when her physical condition disclosed unmistakable signs of her pregnancy, the respondent asked her not to attend school but to remain at home and to take some decoction from a vederala in order to cause an abortion but that she declined to fall in with his plans. The appellant's mother also became aware of her condition about that period, and on a statement made by the appellant to her she questioned the respondent who denied paternity, whereupon petitions were sent to the manager of the school, Mr. P. R. Gunasekera, and to the Director of Education. While inquiries into these petitions were going on, the appellant was delivered of a child and she filed these maintenance proceedings shortly thereafter, and in consequence the inquiries into the petitions sent to Mr. Gunasekera and the Director of Education were abandoned. Apart from the mother, James gave evidence and stated that he had seen the appellant and the respondent talking to each other on the verandah of the school on one occasion and that he noticed no one else about the place and that he had also seen the respondent in the house of the appellant on about twelve Sundays ; this latter fact was corroborated both by the applicant and her mother.

The letter the respondent was said to have written to the applicant was not, however, produced, but the applicant explained her inability to produce it by stating that on one occasion when she was coming to the Courts with her mother the two of them were confronted by two men who attempted to snatch away the child and that in the scuffle the letter which she had with her got lost. That there is a case pending against those two men and the respondent in regard to the incident deposed to by the appellant is admitted by the respondent himself.

The defendant's case was a complete denial and he suggested that this was a false case engineered by a cousin of his, the Village Headman of

Gemmeddegoda. This headman did not give evidence although he was present in Court, and it may, therefore, be assumed that there was some enmity between the headman and the respondent. It is also true that the applicant's mother stated that she had asked this headman to assist her in regard to this case. While it may be true to say that owing to the animosity the headman bore towards the respondent he may have been prepared to assist the applicant in prosecuting this case, especially as there were no males upon whose assistance the applicant or her mother could have relied upon for that purpose, it does not follow that the headman would have taken upon himself to fabricate a false case against the respondent.

It was suggested on behalf of the defendant that the applicant was a woman of loose morals and that she had a couple of years earlier been admitted to hospital for a miscarriage. But this suggestion was completely denied and her good character was spoken to by the principal of the previous school which she had attended at the date when she is alleged to have entered hospital.

The learned Magistrate has referred to two contradictions in the testimony of the applicant and of her mother but which to my mind are unimportant especially when it is remembered that it is an old woman of fifty-eight who gives evidence in regard to dates and the number of letters which the daughter is said to have had with her.

The unlikelihood of any sexual act having taken place between the applicant and the defendant was emphasised by reference to the fact that the Weaving School stands on the same premises as the Devapathiraja School which is in two divisions, one for boys and one for girls, and that the noonday interval in that school overlaps that of the Weaving School and that there would be a number of children about the place. One does not require any great imagination to visualise the school children being away in the compound or in the vicinity of their own school, and it would not be difficult for a couple to secrete themselves in a room of the Weaving School, especially if the room is one that is set apart for the instructor.

It is significant that an attempt should have been made to take away the applicant's child on her way to the Courts. I cannot bring myself to believe that the applicant or those interested in her would have gone to the extent of having a ring made with the initial of the respondent, and the ring that was produced furnishes very strong corroborative evidence of the applicant's case. Having regard to the probabilities and the balance of evidence adduced in the case, it is not difficult to reach the conclusion that the respondent is the father of the applicant's child.

There remains for consideration the quantum of maintenance that should be ordered. The respondent is in receipt of an income of Rs. 120 a month, and the sum of Rs. 25 claimed by the applicant for the maintenance of the child cannot be deemed to be excessive. I would therefore fix the maintenance at Rs. 25 a month and direct the order to be operative from the date of the application. The appellant will be entitled to her costs both of this Court and of the Court below.

Appeal allowed.