

Present: Mr. Justice Wendt.

1908.
October 22.

SELESTINA FERNANDO v. MOHAMADO CASSIM.

P. C., Colombo (Addl.), 8,586.

Maintenance—Jurisdiction of Court—Illegitimate child—Residence of child—
Residence of defendant—Ordinance No. 19 of 1889.

The Court within the local limits of which an illegitimate child resides has jurisdiction to entertain an application for the maintenance of such child against its putative father, although he may be resident outside the local limits of such Court.

THIS was an application by the mother for an order under section 3 of Ordinance No. 19 of 1889 condemning the defendant to pay a reasonable monthly allowance for the maintenance of his illegitimate child. It was admitted by the complainant's proctor that the defendant resided outside the jurisdiction of the Police Court of Colombo. The Magistrate (M. S. Pinto, Esq.) dismissed the application, holding that he had no jurisdiction to entertain it.

The complainant appealed.

R. L. Pereira, for the appellant.

There was no appearance for the respondent.

Cur. adv. vult.

October 22, 1908. WENDT J.—

The question upon this appeal is as to the proper Police Court to entertain the complainant's application for a maintenance order in respect of her illegitimate child aged four years. The defendant, the alleged father, is resident at Beruwala, in the District of Kalutara. When he began to reside there does not appear. The complainant deposed that defendant had kept her in a house at Panchikawatta in Colombo, where she was keeping an eating-house; that defendant was residing in her house and maintaining her and child till six months ago; that from Panchikawatta they removed to Gintupitiya street, where they lived together, and defendant, continued to maintain her. Upon objection taken by the defendant, the Magistrate held that he had no jurisdiction. He referred to the case of *In re Sheik Fakrudin*,¹ as having decided that in India maintenance proceedings can be instituted only in the Court of the district in which the husband or father resides. He also held that the offence of non-maintenance was a continuing offence, and since defendant was now residing outside the jurisdiction, that offence was now committed outside the jurisdiction. He therefore dismissed the application.

Our Maintenance Ordinance is taken from the Indian Criminal Procedure Code of 1882, sections 488 to 490 (under which the case

¹ (1884) I. L. R. 9 Bom. 40.

1908. referred to by the Magistrate was decided), and there is sufficient
 October 22. analogy between the constitution of the Indian Magistrates' Courts
 WENDT J. and our Police Courts to make that decision relevant to the question
 now before the Court. That was an application of a wife against
 her husband whom she had left. As the husband was entitled to
 have his wife living with him, the Court rightly regarded his offence
 (if any) as having been committed at the place of his residence, and
 that therefore the Court of the district to which the wife had removed
 could not take cognizance of it. But can that *ratio decidendi* be
 applied to the case of a man who neglects to maintain his illegitimate
 child, whose residence is properly with its mother and not its
 putative father? In my opinion, in such a case the default of the
 defendant is committed at the place where his obligation had to be
 fulfilled, viz., at the place of residence of the child, and I am disposed
 to agree with the reasoning by which the Court in the case
 cited supported the conclusion that that default was an offence within
 the meaning of the definition contained in section 4 of the Indian
 Criminal Procedure Code, which has been adopted in section 3 of our
 Code. Section 9 of the Ceylon Criminal Procedure Code gives the
 Police Court summary jurisdiction over offences committed wholly
 or in part within its local jurisdiction, and section 135 enacts that
 every offence shall ordinarily be inquired into and tried by a Court
 within the local limits of whose jurisdiction it was committed.
 Section 136 gives jurisdiction to the Court within whose limits the
 accused is found only in the case of an offence committed in the
 territorial waters of the Colony, and therefore outside the local
 limits of any Court in the Colony. There is no general provision
 that the complaint against any person shall or may be inquired into
 by the Court within whose local limits that person resides. An
 exception is expressly made in the case of security to keep the peace
 (section 81), but in such cases no unlawful act has as yet been done.
 Even then the normal rule of jurisdiction is respected by giving
 jurisdiction, not only to the Court of the place where the person is
 found, but also to that of the place where the breach of the peace is
 apprehended.

By an amendment introduced into the Indian Criminal Procedure
 Code of 1898 proceedings may now be instituted against the accused
 either in the district where he resides or is where he last resided
 with his wife or (as the case may be) the mother of the illegitimate
 child.

For the reasons I have given I hold that the Police Court of
 Colombo is the proper Court to take cognizance of the present complaint.
 The order of the Magistrate is therefore set aside, and the
 case sent back to be proceeded with in due course. The respondent
 will pay the appellant Rs. 10.50 by way of appeal costs.

Appeal allowed; case remitted.