

1953

Present : Swan J.

W. SOMAWATHIE, Appellant, and E. JOHN FERNANDO,
Respondent

S. C. 315—M. C. Rakwana, 28,063

Maintenance—Illegitimate child—Quantum of evidence.

Where a Magistrate dismissed an application for the maintenance of an illegitimate child without considering whether the defendant was the father of the child and solely on the ground that there was no evidence to prove that the child had been maintained by the defendant within one year of its birth—

Held, that the paternity of the child was a relevant factor in deciding the question whether or not the child had been maintained by the defendant.

APPPEAL from a judgment of the Magistrate's Court, Rakwana.

M. M. Kumarakulasingham, for the applicant appellant. ,

A. L. Jayasuriya, with *B. E. de Silva*, for the defendant respondent.

¹ (1920) 22 N. L. R. 190.

March 13, 1953. SWAN J.—

I do not think that the learned Magistrate has approached this case from the correct angle. There were two questions he had to consider, namely, whether the defendant was the father of the child for whom the applicant asks for maintenance, and secondly, whether the defendant had maintained the child within one year of its birth. Instead of answering the first question, the learned Magistrate decided the case on the second, namely, that there was no evidence to prove that the child had been maintained within one year of its birth. The learned Magistrate seems to have entirely ignored the circumstance that paternity of the child was a relevant factor in deciding the question whether the child had been maintained or not because, if the defendant was in fact the father of the child, it would have been more probable than not that he would have maintained the child.

I set aside the order made by the learned Magistrate dismissing the application. The case will go back for retrial before another Magistrate. In the circumstance, I make no order as to the cost of this appeal.

Sent back for retrial.

