H. C. OF A. 1915.

LICENSING COURT FOR THE DISTRICT OF NORTHAM v. WORNER.

Appeal allowed. Order appealed from discharged. Appellants to pay costs of appeal.

Solicitors, for the appellants, *Lawson & Jardine*, for *F. L. Stow*, Crown Solicitor for Western Australia.

Solicitors, for the respondent, *Darvall & Horsfall*, for *Downing & Downing*, Perth.

B. L.

[HIGH COURT OF AUSTRALIA.]

McKINLEY . . . . . APPELLANT;
DEFENDANT,

AND

DELANEY . . . . . RESPONDENT.
COMPLAINANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1915.

MELBOURNE, *March* 25.

Griffith C.J., Isaacs, Gavan Duffy, and Rich JJ.

Maintenance of Children—Evidence of paternity—Corroboration of evidence of mother—Pre-maternity order—Marriage Act 1890 (*Vict.*) (*No.* 1166), *secs.* 42, 43, 48—*Marriage Act* 1900 (*Vict.*) (*No.* 1684), *secs.* 4, 5, 8.

Sec. 42 of the *Marriage Act* 1890 (Vict.) provides (*inter alia*) that when any father deserts his children whether illegitimate or born in wedlock, or leaves them without adequate means of support, if complaint thereof be made on oath to any justice by the mother of the children, such justice may issue his summons calling upon such father to show cause why he should not support his children. Sec. 43 provides that on the hearing the justices may make an order for maintenance against the father. Sec. 48 provides that in any proceedings under Part IV. of the Act, which includes secs. 42 and 43, "no man shall be taken to be the father of an illegitimate child upon the oath of the mother only."

Sec. 4 of the *Marriage Act* 1900 (Vict.) provides that "if any woman, being enceinte, complains on oath to any justice that any person is the father of a child which she believes she will bear, and upon proof that such woman is

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enceinte such justice may issue his summons to such father to show cause why he should not pay confinement expenses to such woman." Sec. 5 provides that at the hearing of the complaint any two justices, upon proof that the woman is enceinte and upon proof sufficient to satisfy them that the defendant is the father of the expected child, may order him to pay a sum for confinement expenses. Sec. 8 provides that in any proceedings under the Act "no man shall be taken to be the father of a child the subsequent birth of which is probable upon the oath of the woman who is enceinte only."

The Supreme Court of Victoria having held that a pre-maternity order made under sec. 5 of the *Marriage Act* 1900 against the defendant for the payment of confinement expenses to a woman who subsequently gave birth to an illegitimate child, in addition to her statement on oath that the defendant was the father of the child, was sufficient evidence to justify an order against the defendant for the maintenance of the child under sec. 43 of the *Marriage Act* 1890,

Held, that special leave to appeal to the High Court should be refused.

Special leave to appeal from the decision of the Supreme Court of Victoria (*à Beckett* J.): *McKinley* v. *Delaney*, (1915) V.L.R., 66; 36 A.L.T., 106, refused.

APPLICATION for special leave to appeal.

In the Court of Petty Sessions at Carlton, on a complaint under sec. 42 of the *Marriage Act* 1890, by Gertrude McKinley against Harold Delaney, for leaving his illegitimate child without means of support, an order was made against the defendant under sec. 43 for the payment of 7s. 6d. per week for the maintenance of the child. The defendant thereupon appealed to the Court of General Sessions at Melbourne. The Chairman of the Court dismissed the appeal, but, at the request of the appellant, stated a case for the determination of the Supreme Court, in which he set out the following facts (*inter alia*):—"On the hearing of the appeal the respondent (the mother of the said illegitimate child) gave evidence that satisfied me that the appellant was the father of such child, and had left it without means of support. The appellant gave evidence denying the respondent's allegations, but I did not believe him. By virtue of sec. 48 of the *Marriage Act* 1890 I was precluded from acting on the evidence without corroboration. The respondent's mother gave evidence that during the period which would cover the time of conception of the said child the appellant used to visit her house, and used to take the

respondent out for walks, and that no other man came to her house to see the respondent. Evidence was also given that a pre-maternity order had been made against the appellant in respect of the child upon a complaint under sec. 4 of the *Marriage Act* 1900, and such order has not been appealed against. On the authority of *Mash* v. *Darley* (1), I held that this pre-maternity order was sufficient corroboration to permit me to act on the evidence of the respondent, and I dismissed the appeal."

The case was heard by *à Beckett* A.C.J., who upheld the decision of the Chairman of General Sessions: *McKinley* v. *Delaney* (2).

The appellant now applied for special leave to appeal to the High Court from the decision of the Supreme Court.

Brennan, for the applicant. The pre-maternity order is not corroborative evidence which supports the oath of the mother. The case of *Mash* v. *Darley* (1), which was relied on as an authority, afterwards went to the Court of Appeal, where it was affirmed on a different ground (3). The proceedings on which the pre-maternity order was made were not between the same parties as the maintenance proceedings (*Baxter* v. *Baxter* (4)), and the question of parentage is therefore not *res judicata*.

GRIFFITH C.J. The application is refused.

Special leave to appeal refused.

Solicitor, for the applicant, *T. B. Fogarty*.

B. L.

(1) (1914) 1 K.B., 1.
(2) (1915) V.L.R., 66; 36 A.L.T., 106.
(3) (1914) 3 K.B., 1226.
(4) (1914) V.L.R., 444; 36 A.L.T., 34.