

GORDON GRANTED DIVORCE DECREE

PATERNITY QUESTION IN ACTION

A BANFFSHIRE domestic servant who gave birth to a child ten calendar months or 305 days after the departure of her husband, a sergeant in the Gordon Highlanders, to join his regiment at Singapore, was successful in her efforts to prove paternity in the Court of Session, Edinburgh, on Friday.

Alexander Ogilvie, the husband, was granted decree of divorce.

The case was not defended by his wife, Mrs Elizabeth Anderson Booth or Ogilvie, 31 North Street, Aberchirder, but questions were raised regarding the custody of two children.

Stating that he hesitated to decide the question of paternity, Lord Jamieson said in his judgment that the maximum period of gestation was generally regarded as ten months, but there was difficulty in deciding whether it meant lunar or calendar months.

The husband left Marypark Farm, near Keith, to join his regiment on January 17, 1934, and the child was born on November 17 of the same year.

The pursuer maintained that he had been absent for ten calendar months and could not have been the father of the child.

NOT IMPOSSIBLE PERIOD

Referring to a previous case, the Judge said that Lord Chancellor Birkenhead held that a period of 331 days was not impossible. The onus was on the husband to prove his case, and as he had not discharged it he must be held to be the father.

Lord Jamieson considered that the woman had produced just sufficient evidence to prove paternity. The authorities did not consider 305 days as an impossible period.

He attached importance to the fact

that the child was expected in October.

All the necessary arrangements were made and a nurse was called into attendance.

POINT IN HER FAVOUR

It was a heavy child, weighing over 9lb.

One point in the woman's favour was that she wrote to her husband before October saying she was expecting a child. There was no attempt at concealment.

Deciding that the woman would have the custody of the two children, the judge said they should remain with the maternal grandmother. The mother, who was in domestic service, would be able to visit them when convenient, and the father could also have ample opportunity.

He did not look on this settlement as necessarily permanent as he had to consider that the woman was the guilty party in the divorce action.

The husband, however, could not keep the children under his personal supervision at the moment, and it would be unwise to move them from their present home with their maternal grandmother, who seemed a capable woman.

Lord Jamieson made an award of 7/6 a week for each child.