1896.
September 23.

LEVO NONA *v.* ELENIS.

D. C., Galle, 2,135.

Action for seduction—The Roman-Dutch Law and the English Law as to damages for seduction—Ordinance No. 6 of 1847, s. 30.

By the Roman-Dutch Law, if a girl of previous good character was seduced by a man, she had the right to sue him, and to require that he must do one of two things—either marry her, or provide her with a dowry suitable to her condition in life; while under the English Law the girl could not bring an action, but it was open to her father or guardian to sue the seducer for damages for loss of her services by reason of the seduction.

Sadrishamy v. Subehamy (*S. C. C. 38*), in which it was held that the Roman-Dutch Law action for seduction was not taken away by section 30 of Ordinance No. 6 of 1847, followed.

IN this case the plaintiff sued the defendant for damages and breach of promise of marriage and seduction. The District Judge held that no promise to marry was proved, but condemned the defendant in Rs. 250 as damages for seduction. The defendant appealed.

Sampayo, for appellant.

Dornhorst, for defendant.

23rd September, 1896. BONSER, C.J.—

This is an action for seduction under the Roman-Dutch Law, which in this respect is, to my mind, superior to the English Law. By the Roman-Dutch Law, if a girl of previous good character is seduced by a man, she has the right to sue him, and to require that he must do one of two things—either marry her, or, if unwilling or unable to do that, provide her with a dowry suitable to her condition in life. The object of this is, that the woman may not be turned out on the streets penniless to swell the ranks of prostitutes, but that some provision may be made for her in order that she may either support herself or induce some other man to marry her. As I have already observed, the English Law in this respect affords a much less satisfactory remedy for the injury done to the girl. The English Law does not look to the interests of the girl. The girl herself cannot bring an action. It is the father or the master who does that. The right to bring an action is based on the fiction that he has lost the value of her services. The interests of the girl are not regarded, for the parent or master may recover heavy damages against the seducer and then turn the girl on the streets.

It has been suggested by two eminent Judges of this Court—Chief Justice Phear and Chief Justice Burnside—that this action

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was abolished by section 30 of Ordinance No. 6 of 1847. If it were so it would be a most unfortunate thing. But in my opinion, as at present advised, it is not necessary to come to that conclusion; and even if I were of that opinion, I am bound by the decision of this Court in the case of *M. A. Sadrishamy v. K. Subehamy*, reported *5 S. C. C. p. 38*, where the matter was fully argued, and it was held that this action still existed. In the present case the action was brought on the promise to marry, but the seduction was alleged and damages were claimed, so that it was a two-fold action.

The District Judge has found the promise not proved, but he has given Rs. 250 damages for the seduction. The defendant swore that he had made provision for the plaintiff by giving her a sum of Rs. 240, and it was proved that he had deposited this sum in the Post Office Savings Bank in the name of her younger brother, and that he had subsequently withdrawn it. He alleges that he paid it to the plaintiff. The plaintiff gave no evidence at all on this point—she was asked no question about it. The District Judge said that he was not satisfied that the plaintiff ever had the money. He ought to have called on her to swear one way or the other, whether she had received the money. The defendant's statement was clear. It was not a vague general statement that he had given her money, but it was a precise statement that he had given her a particular sum. The fact of the deposit in the Savings Bank corroborated to a certain extent the defendant's statement.

Again, the authorities lay down that the damages are to be computed in the nature of a *dos*, and are to be proportioned to the social status of the woman. Now, the District Judge had no evidence before him of the social status of the plaintiff to determine what would be a proper dowry to give to a girl of her station in life. Therefore the case should go back in order that further inquiry may be made on these two points, viz. :—

(1) What sum would be an adequate provision by way of dowry for a girl in the station in life of the plaintiff.

(2) Whether the defendant has already made any adequate provision for the girl.

WITHERS, J., concurred.