1903.
*November* 20.

WENDT J.

*Present :* Sir Charles Peter Layard, Kt., Chief Justice, and Mr. Justice Wendt.

JAYESINHE *v.* PERERA.

*D. C., Galle*, 6,132.

*Breach of promise of marriage—Promise in writing—Sufficiency of writing —Ordinance No. 2 of 1895, section 21.*

The plaintiff and the defendant had promised to marry each other and the plaintiff, at the request of her father, wrote to the defendant asking for a written promise of marriage. In reply to this letter the defendant wrote as follows:—"I am not agreeable to what papa says, for this reason: that is, if I trust darling, should not darling trust me? . . . . If they have no faith in my word, I cannot help it. If they don't believe my word, I am not to blame."

In an action by the plaintiff for breach of promise of marriage—

*Held*, that this letter was a sufficient complaince with the requirements of section 21 of Ordinance No. 2 of 1895, which enacts that "no action shall lie for the recovery of damages for breach of promise of marriage unless such promise of marriage shall have been made in writing;" and that the plaintiff was entitled to maintain the action.

APPEAL by the defendant from a judgment of the District Judge of Galle awarding the plaintiff Rs. 5,000 damages for breach of promise of marriage.

*Dornhorst, K.C.*, and *Sampayo, K.C.* (*H. J. C. Pereira* with them), for defendant, appellant.

*Walter Pereira, K.C.* (*Bawa* with him), for plaintiff, respondent.

*Cur. adv. vult.*

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This is an action for damages for breach of defendant's promise to marry the plaintiff, and the question is whether the promise has been made in writing, so as to satisfy the requirement of section 21 of Ordinance No. 2 of 1895. This section, up to the end of the first proviso, is a substantial re-anctment of section 30 of Ordinance No. 6 of 1847, which abolished actions to compel marriage, but by that first proviso saved the right to recover damages. The second proviso, upon which the present case turns, is an advance upon the law as declared in 1847, and it restricts the applicability of the remedy in damages by enacting that "no action shall lie for the recovery of damages for breach of promise of marriage unless such promise of marriage shall have been made in writing." There is nothing in the preamble or other part of the Ordinance expressly declaratory of the

object of the Legislature in inserting this proviso, but seeing that marriage (and consequently the promise of marriage) is not an institution which the law views with disfavour, but rather the contrary, I think we may presume that the intention of the Legislature was the same as actuated the passing of the Statute of Frauds, requiring a written record as a condition precedent to the enforcement of certain contracts. "Its object," said Kindersley, V.C. in *Barkworth v. Young* (1) "was to prevent the mischief arising from resorting to oral evidence to prove the existence of the terms of an alleged verbal agreement in certain specified cases, and amongst the rest an agreement made in consideration of marriage, it having been found that in actions and suits to enforce such agreements they were, in the language of the preamble, commonly endeavoured to be upheld by perjury and subornation of perjury. Now, it is obvious that there can be no ground to apprehend any such mischief in any case in which you have, under the hand of a party sought to be charged, a written statement of the agreement which he entered into and of all its terms; and for this purpose, as it appears to me, it can signify nothing what is the nature or character of the document containing such statement, provided it be signed by the party sought to be charged." And Lord Hardwicke, in *Welford v. Beazely* (2) said: "The meaning of the Statute is to reduce contracts to a certainty, in order to avoid perjury on the one hand, and fraud on the other, and therefore, both in this Court and the Court of Common Law, where an agreement has been reduced to such a certainty, and the substance of the Statute has been complied with in the material part, the forms have never been insisted upon." These statements of the law not only bear upon the intention of the Legislature, but are also useful guides in ascertaining whether the letters put in evidence establish the promise of marriage.

The circumstances under which those letters were written are found by the District Judge and stated in his judgment. It is only necessary here to say that the defendant, who had long courted his cousin, the plaintiff, asked her father's consent to the marriage and the young couple promised to marry each other. At the father's suggestion the defendant undertook to send him a formal written solicitation of the plaintiff's hand. This he did not send, and in consequence the plaintiff at her father's request wrote defendant a letter asking him to put his promise in writing. This letter, defendant says, he destroyed along with plaintiff's other letters. But his answer (letter D) has been produced. With the exception of the last thirteen words, which are in English, this letter was in Sinhalese, and a translation has been put in and is not disputed. In it the defendant

(1) 26 *L. J. ch.* 153. (2) 3 *Ath.* 503.

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meets the request for a written record of his verbal promise in this way; he says he is not agreeable to plaintiff's father's suggestion, for the reason that if he (defendant) trusts the plaintiff she should in turn trust him: if plaintiff's parents have no faith in his word, he cannot help it; if they don't believe his word, he is not to blame. The District Judge has disbelieved the defendant's story that the reference here is to his promise to lend plaintiff's father some money, and not only the letters themselves but the paral testimony proves that story to be false. The District Judge believes plaintiff's evidence that the allusion is to defendant's promise of marriage. So read in connection with the letter to which it was an answer, the letter contains an unqualified admission under the hand of the defendant of the existence of his promise to marry the plaintiff, and in my opinion that is all the Ordinance requires.

In the case of *Beling v. Vethecan* (1), the parties had verbally promised to marry each other some considerable time before the date of the letters there relied upon. The defendant then wrote to the plaintiff, referring to the time when they should be married and asking plaintiff, "Shall we fix the happy day for the 8th of April?" Plaintiff wrote back consenting to marry defendant on that day, and this Court held that defendant's letter sufficiently complied with the requirements of the Ordinance. It will be observed that there too the defendant's original contract was not in writing. Unlike contracts which the Statute of Frauds requires to be in writing—such, for instance, as contracts for the sale of goods, in which the commodity, the price, &c., may vary—a contract to marry admits of very little, if it admits of any, variation. "In consideration of your promising to marry me, I promise to marry you," is its ultimate legal form. If this is to be unequivocally gathered from the writing, I think it is sufficient. And it is to be so gathered in this case.

I think the District Judge's decree should be affirmed, and the appeal dismissed with costs.

LAYARD C.J.—I agree with my brother in affirming the judgment of the District Judge, because I consider the construction placed by him on document D is a reasonable one, and that letter read with the one to which it was an answer, and of which there is secondary evidence, sufficiently complies with the requirements of section 21 of Ordinance No. 2 of 1895.

(1) *S. C. Min. 26th May*, 1903.