

[IN THE PRIVY COUNCIL]

1959 *Present*: Lord Reid, Lord Tucker, Lord Somervell of Harrow,
Lord Denning and Mr. L. M. D. de Silva

C. V. UDALAGAMA, Appellant, and IRANGANIE BOANGE,
Respondent

Privy Council Appeal No. 14 of 1959

S. C. 444—D. C. Kegalle, 7,873

*Breach of promise of marriage—Action for recovery of damages—Promise in writing—
Relevancy of oral promise to marry—Marriage Registration Ordinance (Cap.
95), s. 19.*

By section 19 of the Marriage Registration Ordinance—

“ . . . 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.”

Held, that documentary evidence which does not in express or other unequivocal terms contain a promise to marry is insufficient to prove a promise in writing even though it may afford evidence of an oral promise to marry. The writing required to satisfy the Ordinance must contain an express promise to marry or confirm a previous oral promise to marry, i.e., admit the making of the promise and evince continuing willingness to be bound by it.

Jayasinghe v. Perera (1903) 9 N. L. R. 62, overruled.

APPEAL from a judgment of the Supreme Court reported in 57 N. L. R. 385.

Sir Frank Soskice, Q.C., with *Ralph Millner*, for the defendant-appellant.

No appearance for the plaintiff-respondent.

Cur. adv. vult.

July 29, 1959. [*Delivered by LORD TUCKER*]—

In this case the respondent sued the appellant for damages for breach of promise of marriage. A good deal of oral evidence, conflicting on many points, and some documentary evidence was placed before the trial Judge who held that no written or oral promise to marry was established on the evidence before him. The greater part of the evidence related to the question whether there was an oral promise to marry. For reasons which appear later it will be seen that this evidence was immaterial to a decision of this case and should therefore have been excluded.

On appeal the Supreme Court held that under the earlier decisions of that Court an “action for damages lies if, in a letter addressed by the defendant to the plaintiff, there is confirmation or at least an unqualified admission of a subsisting and binding oral promise of marriage”. It held that the necessary elements existed and, setting aside the order of the District Judge, entered judgment for the respondent. The question is whether this ruling was correct.

It is convenient at this stage to state what in their Lordships' opinion is the law of Ceylon relating to the matter. An action does not lie in Ceylon for every breach of a promise to marry. A restriction is imposed by section 19 of the Marriage Registration Ordinance (Chapter 95. Legislative Enactments of Ceylon, Vol. III, p. 122), which, after making certain provision which has no bearing on cases of breach of promise, enacts as its final provision

“ 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 further in the Ordinance or in any other Statute which has a bearing on the point.

Their Lordships are of opinion that the policy of the Legislature has been to limit the cases in which an action can be brought to those in which the promise itself is in writing. It may be contained in one or more documents. Documentary evidence which does not in express or other unequivocal terms contain a promise to marry is insufficient even though it may afford evidence of an oral promise to marry.

Some confusion seems to have arisen in this case with regard to the meaning of such words as “evidenced in writing” and “confirmation”. The distinction which must always be borne in mind is between writing which contains the promise to marry and writing which may afford corroboration of a previous oral promise. The latter, which is sometimes described as writing “which evidences a previous oral promise” is insufficient to support an action for breach of promise. The writing required to satisfy the Ordinance must contain an express promise to marry or confirm a previous oral promise to marry, i.e., admit the making of the promise and evince continuing willingness to be bound by it.

An illustration of a writing which, while not containing in itself a promise to marry, might be put forward as affording evidence in writing of an oral promise to marry is to be found in the case of a writing which says, “I assure you I will carry out the promise I made last month”. On such a writing the question at once arises, was it a promise to marry? or a promise to lend money? or some other promise. The writing by itself only establishes that a promise was made. If it were possible to establish by oral evidence that the “promise made last month” was a promise to marry, the conflicts and uncertainties which may arise would be almost as much, if not quite as much, as in a case resting on oral testimony alone. In answer to oral evidence that it was a promise to marry, a contesting defendant may say it was a promise other than a promise to marry. Their Lordships are of the view that such a writing is insufficient to satisfy the statute.

The decision in *Jayasinghe v. Perera*¹ has been questioned in subsequent cases. Doubts have been expressed as to whether the writing relied on amounted merely to an admission in writing of a previous oral

¹ (1903) 9 N. L. R. 62.

promise or was a repetition of the promise. If the word repetition imports an express promise to be bound by the previous oral promise this will suffice, but their Lordships are unable to find this in the letter in question in that case which, in answer to a request for a written promise of marriage, said, "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". This is in effect saying, "You must rest content with such remedy as is offered you by an oral promise", and is an express refusal to give what the Ordinance requires. Their Lordships are accordingly of opinion that the decision cannot be upheld.

Extrinsic evidence is only admissible where such evidence is permissible on general grounds, e.g., where the surrounding circumstances may explain some ambiguity or identify some person referred to in the writing.

The basis of the judgment of the Supreme Court is to be found in the following passage on page 361 of the Record:—

"Does P. 1, read in conjunction with the letters D. 7 and D. 8, constitute a 'written promise' within the meaning of the proviso to section 19 (3)? The Ordinance does not declare that oral promises of marriage are null and void; it merely renders them unenforceable unless they be evidenced in writing. The object is to avoid the risk of vexatious actions based on perjured testimony. The earlier authorities of this Court were all discussed during the argument and it is settled law that an action for damages lies if, in a letter addressed by the defendant to the plaintiff, there is either confirmation or at least an unqualified admission of a subsisting and binding oral promise of marriage. This is the effect of *Jayasinghe v. Perera*¹, *Missi Nona v. Arnolis*² and *Karunawathie v. Wimalasuriya*³. The letter P. 1 completely satisfies this minimum test."

Their Lordships have already indicated that the test referred to in this passage is not entirely satisfactory and has in fact given rise to differences of interpretation in its application.

As stated in the judgment of the Supreme Court, "The parties are well-educated Kandyan gentlefolk, and each of them is the child of parents who hold conservative ideas on the subject of marriage". Negotiations for a marriage between them took place in the manner customary to such persons and various things had been done including the fixing of a dowry to be given by the plaintiff's father. If a marriage had gone through the next step would have been a betrothal at which a certain ceremony would have been performed. This did not take place. It will appear from what is stated later that it is not necessary to examine the reasons for the failure. The parties saw each other and some letters passed between them. Their Lordships will now examine the documentary evidence to ascertain whether a promise to marry can be said to be contained in it. Three letters were relied on, two from the respondent to the appellant and one from the appellant to the respondent.

¹(1903) 9 N. L. R. 62.

²(1914) 17 N. L. R. 425.

³(1941) 42 N. L. R. 390.

These are the documents referred to in the judgment of the Supreme Court as D. 7, D. 8 and P. 1. The first is the following :—

Boange Walawwa,
Kadugannawa.
18.12.50.

My darling Teddy,

I asked Mumy if I may write to you, and though she did not say no, she does not like me corresponding fearing that I might fall into trouble. But I thought it is my duty to write to you, and keep to my promise inspite of any obstacle standing in my way.

The other day I was anxiously waiting to meet you before leaving, but I had to come away with a heavy heart, as Daddy came early. I am still feeling wretched without you. The evenings are unbearable. When I think of you darling, I wish I could fly back to you. I don't know how I will stay here all alone till the 7th.

I would have liked to spend even the whole holiday there, but I have to please so many, with the result that I am unable to do what I want. I hope you understand me, my darling, and will not get angry with me for leaving you, in spite of you worrying me so much to stay behind. To spend even a minute with you is a great joy to me, though you seem to think that I was impatiently waiting to come home.

I am eveready to do anything for you, but unfortunately it is my fate that I am forbidden to do all I can for you, whom I love more than any one in this world. I know you always think that I don't care for you because I say can't for anything at all. Please don't think that I have no love for you, as I will truthfully tell you that I really love you from the very bottom of my heart.

—came here a few minutes after we came home. He was very good and did not try any of his pranks on me. Please don't tell anything to—because I don't want the others to say that I made up false stories about an innocent man. I am sure, now you have room to think that I too encouraged him ; that is why I don't want you to speak to—about this. I am not boasting, but it is the actual fact. I have never had anything to do with another person, and it has always been my one idea to love only one. Take my word I am not a person who is easily tempted. I have always aimed at having a pure character and you can be sure that in rain or sunshine I will stand by you till the end of my life. It was my ambition to find a man too with a pure character and I have found it in you. Therefore don't fear. I will always be faithful to you, my darling. I hope you are going for a change. If you are going to N'Eliya please

be careful the way you drive the car. Can't you get someone to accompany you, without going alone? I think I had better stop writing as I am getting late for the post. I will write to you again on Thursday.

With much love and kisses.

from

Yours for ever,

Girlie.

Certain initials irrelevant for the purposes of this appeal appear in the spaces left blank.

The next letter is :—

Boange Walauwa.

Kadugannawa.

19.12.50.

My darling Teddy,

I hope my letter has reached you safely. Please be careful with my letters because there are silly people waiting to make unnecessary fuss.

Where did you all go yesterday? I heard that you were going home last evening.

A little while ago we returned after a days outing in Kandy. I had a long jaw with Aunt about the girl whom—and sister went to see at Kurunegala. As for me I was anxiously waiting to come back soon, so that I may keep to my promise.

Have you decided about your holiday? Darling, you must go somewhere and have a good time. Again I am telling you, if you are going to N'Eliya please be careful the way you drive your car.

Though I am here my thoughts are with you my love. Day and night, I think of nothing else but you my darling. The house is still been built. My one work is telling Mummy how unfair they are in delaying like this. She too agrees with me, but I haven't got the courage to go and tell Daddy. He doesn't understand our position and is ready to get upset for the least thing. That is why I am telling you that I am placed in such a difficult position where I have to please so many.

Only I know what a lot of mental agony I have to undergo. In spite of everything I never show it because I don't wish others to say that I can't get on in life.

I am also very anxious to know about your arrangements etc. therefore please write to me on Saturday. I can send one of my brothers to the post on that day. So please don't fail to let me know all about yourself. I am taking a great risk in asking you to write to me, but I hope everything will be O. K. Another thing, if you are going anywhere or not please let me know your holiday address.

I am sending you the Observer Crossword-puzzle. If it is possible please do it and send it to me.

I have sat up till late today because I wanted to write to you somehow, when no one is about the place. It's past one o'clock and I am feeling sleepy too, so I think I had better conclude. Now please don't disappoint me.

With much love and kisses.

From

Yours for ever,

Girlie.

The third letter, from appellant to respondent, is :

Kegalle,

21st December, 1950.

My darling dearest Girlie,

I received both your letters safe & sound. It was indeed sweet of you to have written to me exactly as promised. As you wanted to know my arrangements for the holiday—well here they are. Tomorrow morning I will be going to Kandy and Katugastota. As a matter of fact as the Post Mark will show you, I am posting this letter from Kandy. I will try to pick up Shelly and failing I will go up alone to Nuwara Eliya. If I go up alone I will stay at the Grand Hotel, Nuwara Eliya. Otherwise I cannot definitely tell you where I will stay. I shall send you a Christmas Card from Nuwara Eliya to reach you on the 25th Morning. Thank you Darling for the anxiety you have expressed regarding my driving up. I shall indeed try to be careful as possible. Somebody has given you some wrong information, since I have not left Kegalle since you left on the 16th instant.

I am glad to hear that you have been getting out a bit. I think Darling if you can manage it, you too, should take a holiday somewhere, why not induce your Daddy to go somewhere for a few days. You have been working very hard and I think you fully well deserve a good holiday.

Girlie dear, I have been missing you very badly these days. Indeed the evenings are very dull and boring without you and I am waiting to go somewhere for a little rest. I am much thankful to you for the kind thoughts you have been having about me. Girlie I don't think I need repeat all what you have written to me, because I feel just the same way as you have expressed. I can assure you that all the expectations and the dreams you have of your future will not be in vain, you can confidently hope. The sooner it is, the better, I think. So that you should, if you possibly can, have a chat with your Daddy and tell him that this unnecessary delay is by no means good to either. It has been hanging

fire since June but I find nothing appears to have been done. It is no use delaying now. I can tell your Daddy about it, but I don't want to hurt your feelings, it will be better if you could put it to him.

. . . . is yet down with measles and it looks as if Sister and them will not be going anywhere for the holidays.

Darling I hope you are keeping good health. Please be careful of yourself and don't fall ill like last time what happened. I suppose the mornings are bitterly cold there.

Daya and I just returned from seeing "The Prince and the Pauper". It was a nice picture with a fine story of how Henry VIII's son Edward for a lark exchanged place with a pauper's son and it became a serious matter and it was with great difficulty that the Prince managed to convince the people that he was the real Prince. I wonder whether you have seen any picture since you left on the 16th. Yes, that day, I thought you might still be there, when I came after the pictures and it was with great sorrow that I learnt from Daya that you had left. Darling my thoughts are always of you every day and I am most anxiously waiting till the 7th of next month. So please on no account must you keep away from coming on the 7th.

Don't worry I will not tell—a word of what you have told me, nor will I tell anyone a word of it. But Darling you must be extremely careful of yourself and don't allow people to treat you in the same manner that you were treated when you were a small girl of 8 or 9 years. Show them a little reserveness on your part and I am sure they will understand.

As regards the Puzzle I don't think you are in a hurry. I think the closing date is 16th January. I will have it made and give it to you when you come on the 7th.

Well, Girlie my sweetheart, what do you want from Nuwara Eliya—don't tell me you want the lake, or the park. I always think how wonderful it would have been if you could have accompanied me on this holiday—just you and me with all the cares and worries of this world forgotten for ten glorious days!

L. B. and Nanda were here last Friday evening. They too don't intend going anywhere. L. B. it seems is going to take a course of medicine at Galagedera and I suppose Nanda too will be there. Daya told me today that Nanda's little daughter is also down with measles—that means they too will have to stick at Yatiyantota.

Well Darling I think I better stop, now it is nearly 11.30 p.m. In the Christmas Card I shall give you my address in Nuwara Eliya and the date of my last day of stay there. Write to me then if you can.

Cheerio my sweetheart.

With love,

Teddy.

Neither of the Courts in Ceylon has been able to find in the correspondence above a promise to marry. Their Lordships are in the same position. The letters on the construction most favourable to the plaintiff

do no more than assume that a marriage will take place as a result of an oral promise. Whether such promise was conditional or unconditional, and if the former, whether the condition was ever fulfilled, is not stated. Extrinsic evidence being inadmissible to supply the deficiencies in the correspondence the action necessarily failed.

For the reasons which they have given their Lordships will humbly advise Her Majesty that the appeal be allowed, the judgment and decree of the Supreme Court be set aside and the decree of the District Court restored. The respondent must pay the costs of this appeal and of the appeal to the Supreme Court.

Appeal allowed.
