Present: Fisher C.J. and Drieberg J.

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350—D. C. Kalutara, 14,154.

Seduction—Claim for damages—Defendant denies seduction—Corroboration of plaintiff's evidence—Material particular.

Where, in an action to recover damages for seduction, the defendant denies the seduction, the plaintiff's evidence must be corroborated in some material particular.

APPEAL from a judgment of the District Judge of Kalutara. The facts appear from the judgment.

H. V. Perera (with *Ameresekera*), for appellant.

N. E. Weerasooria (with *Molligodde*), for respondent.

August 29, 1929. FISHER C.J.—

In this case the plaintiff (respondent) sued the defendant (appellant) for damages for seduction. The plaint is dated July 12, 1927, and alleges (paragraph 3) that " on or about January, 1927, the defendant at Palatota aforesaid on a promise of marriage seduced the plaintiff and carnally knew her on several occasions thereafter and the plaintiff is at present bearing a child to the defendant. " On July 24, 1927, the plaintiff gave birth to a child. On July 16, 1928, the action came on for trial and the plaintiff's Advocate then stated that " the seduction took place on December 25, 1926, and the statement in paragraph 3 of the plaint *re* the date is an error. " Considerable stress was laid by Counsel for the appellant on this departure from the date originally given, and it was urged that it indicated that the plaintiff's case against the defendant was false. But the first question we have to consider is whether, apart from the other matters which have been put forward to support the view that the plaintiff's case is false, there is any reliable evidence to corroborate the plaintiff's allegation that the defendant seduced her. It seems to be clear that under Roman-Dutch law an action for seduction, where, as in the present case, the seduction was denied on oath by the defendant cannot succeed unless the plaintiff's evidence is corroborated. In Nathan's *Common Law of South Africa, Vol. III. (1906), section 1638, at page 1679*, the law on the subject is stated to be as follows:—

1638. In cases of seduction, where the defendant alleges that the girl whom he is alleged to have seduced was not a virgin at the time when carnal intercourse took place, the presumption will be that she was a virgin, and

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the defendant must prove that she had actually had sexual intercourse with another man (*XLVIII.*, *5*, *4*). On the other hand, the general rule laid down by the Roman-Dutch authorities is that in an action for seduction or affiliation (*i.e.*, for maintenance of a child of whom the defendant is the father, or for the lying-in expenses of the plaintiff the plaintiff's oath that the defendant is her seducer or the father of her illegitinate child must, if the defendant on oath denies the imputation of seduction or paternity, be corroborated by evidence *aliunde*, that is, by extrinsic evidence (*XLVIII.*, *5*, *6*; *Grot.*, *Int. III.*, *36*, *8*; Van Leewen's *Roman-Dutch Law*, *IV.*, *37*, *6*; *2 K. 303*)). Failing such evidence *aliunde*, the man's oath will be entitled to preference (*Classon v. Durrheim*, Buch. 1868, p. 244), and the benefit of the doubt will be given in his favour (*Botma v. Retief*, Buch. 1875, p. 120). It is impossible to lay down any general rule as to the exact nature of the evidence which is required to fix a person with the paternity of a child . . . . . The plaintiff who seeks to fix the paternity of an illegitimate child on a man must clearly prove it, and must be corroborated by some independent testimony; and in case of doubt judgment must be given in favour of the defendant" (*Le Roux v. Neethling*, *9 S. C. 247*).

The corroboration required must, in my opinion, be corroboration in some material particular, that is to say, (*a*) by evidence as to some fact or state of things pertaining to the view that the relationship or conduct of the parties supports the allegation of the plaintiff that it resulted in sexual intercourse, or (*b*) by evidence as to conduct or action on the part of the defendant which constitutes an acknowledgment by him that the situation and relationship between him and the plaintiff was such as the plaintiff deposes to. With regard to (*a*) corroboration on points which merely go to show that the parties were on ordinary and normal terms of friendship is not enough. The materiality of the point deposed to, if it is to be relied upon to corroborate the plaintiff, lies in the fact that it indicates that the relationship was not merely friendly and platonic. In this case there was no reliable independent evidence of any acts of familiarity between the parties, nor is there anything in the correspondence which is referable either to the promise to marry, which the plaintiff alleges, or to anything which indicates that the parties were on other than merely friendly terms. The plaintiff herself said in her evidence "There is no term of endearment in any of the letters addressed to us," and the mere fact of there being correspondence was not, and could not, under the circumstances, be relied upon by the appellant's Counsel as

corroboration of the plaintiff's story. The absence of any independent evidence as to the defendant's presence in Palatota at the material time is very significant, having regard to the fact that as a former school teacher in the village he must have been well known to a large number of persons and his presence there at Christmas could hardly have escaped notice.

With regard to the view taken by the learned Judge his judgment seems to show that he did not give sufficient prominence to the question of corroboration. In his judgment he says: "The case is ultimately one of plaintiff's word against that of the defendant considered in the light of the letters produced by both sides," and later on he says: "Having carefully considered the evidence in my opinion on the whole the truth is with the plaintiff." The case was originally closed on August 1, 1928, and it was announced that judgment would be delivered on the 16th of that month. Meanwhile, however, the learned Judge thought it desirable to hear further evidence from the plaintiff and on August 27, 1928, she gave evidence which was chiefly directed to letter alleged to have been written by her which was put forward by the defendant (D 2), dated November 21, 1925. On the first occasion she admitted the writing of the letter, it had been read to her and she had been cross-examined as to its contents. On being recalled, however, and examined by the Court the letter was again read to her and shown to her and she then said "I have now read this letter. I deny having written it. At the trial I was only shown my signature. I read the letter now and say that the signature is not mine . . . . . After reading the letter I say the signature is forged. I know that the letter is against my case." From the course adopted by the learned Judge one can fairly infer that but for the explanation given by the plaintiff of the letter D 2 on the second occasion he would not have been prepared to hold that she had proved her case. Commenting on the evidence she gave on the second occasion he says: "I am inclined to accept the plaintiff's explanation . . . . I am therefore not satisfied that the letter D 2 was written by the plaintiff. The case is ultimately one of plaintiff's word against that of the defendant considered in the light of the letters produced by both sides." I think the course adopted was somewhat unfortunate as the learned Judge took a hostile view of the conduct of the defendant, and accepted the explanation of the plaintiff in the face of her very direct evidence given on the first occasion when she admitted the execution of the letter, without giving the defendant an opportunity of meeting and dealing with the question of the letter being forged which had never been suggested up to that moment and was now raised by the learned Judge for the first time. It is difficult to draw the conclusion that the letter D 2 was a forgery, and even had it been

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duly proved so to be I do not think it would have supplied the deficiency in corroboration of the plaintiff's evidence. False evidence put forward to meet a charge of this nature does not of itself necessarily constitute evidence that the charge is true though of course it goes to the credibility of the person putting it forward. It is not enough in a case of this sort to say " I believe the plaintiff rather than the defendant. " To found a judgment for the plaintiff the Court must be in a position to say " I believe the plaintiff's evidence that the defendant seduced her and it is corroborated by reliable evidence on a material point." I do not think it is necessary to deal with the arguments adduced to show that intrinsically the plaintiff's case is unreliable, but after a consideration of the whole of the evidence I am of opinion that there is no corroboration of plaintiff in any material particular and that her action should have been held to have failed on that ground.

The appeal must be allowed and judgment entered for the defendant with costs in this Court and in the Court below.

DRIEBERG J.—I agree.

Appeal allowed.