1926.

Present: Schneider A.C.J. and Maartensz A.J.

SOPIE NONA ABEYADEERA *v.* PODISINGHO.

76—D. C. Matara, 1,815.

Seduction—Claim for damages—Prescription—Section 10 of Ordinance No. 22 of 1871.

A claim for damages, arising from seduction, is prescribed in two years from the date of defloration.

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

H. V. Perera, for defendant appellant.

Navaratnam, for plaintiff, respondent.

October 14, 1926. MAARTENSZ A.J.—

The defendant appeals from a decree directing him to pay to plaintiff a sum of Rs. 300 as damages for seducing her.

The plaint was filed on June 25, 1925. The seduction according to the plaint took place on or about December 8, 1921; according to the evidence, on October 26 in the same year.

The only question argued in appeal was whether the claim was prescribed. The answer to the question depends on whether the prescription began to run from the date of the seduction or from a subsequent date and on the section of the Prescription Ordinance applicable to the claim.

Injuries are classified by Voet as (1) real, (2) verbal or oral, (3) literal or written, and (4) consensual.

Real injuries include seducing a virgin (*48.5.1.*). The foundation of the Roman-Dutch law action for seduction of a virgin arises from the injury to herself. I am therefore of opinion that the section governing the claim is section 10 of Ordinance No. 22 of 1871, which enacts that no action shall be maintainable for any loss, injury, or damages unless the same shall be commenced within two years from the time when the cause of action shall have arisen.

My opinion is supported by the judgment of Withers J., with which Bonser C.J. agreed, in an anonymous case reported in *Koch's Reports at page 59*, where he held that actions for damages for seduction came within the provisions of section 10 of the Ordinance. It was in effect held in the case that prescription began to run from the date the seduction took place.

Respondent's counsel, however, contended that in this case the cause of action arose from the date when the defendant by his marriage with another woman put it out of his power to marry the plaintiff. This argument is based on the facts. The learned District Judge has found that the defendant lived with the plaintiff under a promise to marry from 1921 to 1924, and then deserted her and married another woman.

I am unable to agree with this argument put forward by respondent's counsel that the cause of action must be taken to have arisen from the date of defendant's marriage. It bears, I think, its own condemnation, for carried to its logical conclusion if defendant deserted plaintiff but did not marry another woman she would have no cause of action. Such a result must follow the attempt to fix the date of the cause of action arising from one injury by reference to the date on which another injury was committed.

Kotze in his translation of *Van Leeuwen's Commentaries, Vol. II., page 303*, notes that the action for defloration and lying-in expenses is prescribed in five years quoting from *Cons. Bat Vol. I. cons. 148.* Van Zyl quoting from the same authority says definitely that the action for seduction becomes prescribed and cannot be brought after a lapse of five years from the alleged date of defloration. See *Judicial Practice, page 42.*

It may be taken, therefore, that under the Roman-Dutch law prescription begins to run from the date the injury was committed.

The same view was expressed in the anonymous case referred to above. The facts in that case are very similar, the plaintiff having lived with the defendant after seduction for two years before he deserted her. Again, in the case of *Lucinahamy v. Diashamy* [1]

[1] *(1908) 9 N. L. R. 242.*

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Mr. Justice Middleton observed that an action for defloration must be brought at once on the completion of the first act of intercourse.

The authorities, in my opinion, clearly establish that prescription begins to run from the date of defloration. I accordingly hold that the present action is prescribed and would allow the appeal and dismiss plaintiff's action, but in the circumstances I am of opinion that there should be no order as to costs in either Court.

SCHNEIDER, A.C.J.—I agree.

Appeal allowed.