Present: Lascelles C.J. and Middleton J.

1911.

ABDUL HAMEED *v.* PEER CANDO *et al.*

306—D. C. Colombo, 32,183.

Marriage brokage—Agreement by a father to give his daughter in marriage to another and to pay damages in default—Legality.

An agreement whereby defendant covenanted to give his daughter in marriage to the plaintiff within six months, and in case of default to pay a sum of Rs. 1,000 to the plaintiff by way of liquidated damages, was held not to be an illegal contract.

MIDDLETON J.—It is certainly not wrong or illegal for a parent to influence his daughter on the subject of marriage, and the presumption would be that such influence was used for her benefit by a person more experienced than herself, and where an agreement has been made apparently with the consent of both daughter and parent that she should marry some one, I can see no evil or illegality in the parent rendering himself responsible in damages if the daughter declines to keep her promise.

LASCELLS C.J.—The agreement now sued on is essentially different from a marriage brokage contract, where one of the parties, in consideration of some benefit to herself, engages to procure or bring about a marriage.

HE facts are set out in the judgment.

Bawa (with him *Samarawickreme*), for defendants, appellants.—The agreement in question is in the nature of a marriage brokage contract, and it is illegal. *Halsbury's Laws of England, vol. VII., p. 397; 3 Maasdorp's Institutes 18, 21; Cole v. Gibson;*[1] *Duke Hamilton v. Lord Mahun;*[2] *Hermann v. Charlesworth;*[3] *Hendrick Sinno v. Harmanis Appu.*[4]

If this contract is recognized by law, the father would not be free to consult the best interests of the child in such an important matter as her marriage. The English law is very clear on the subject; and what is against public policy under the English law is also against public policy under our law. We have, for instance, recognized the principle of absolute privilege of English law as to statements made by a witness in the box.

van Langenberg (with him *Allan Drieberg*), for the respondent.—In this case the marriage was agreed upon before the contract. The agreement was not for obtaining the consent of the daughter;

[1] *(1750) Vesey Senier 503.*
[2] *(1710) 1 Peere and Williams 118.*
[3] *(1905) 2 K. B. 123.*
[4] *(1879) 2 S. C. C. 136.*

1911.

Abdul Hameed v. Peer Cando

that had been obtained before. The cases cited are therefore not in point. Agreements of this kind have always been recognized in Ceylon. See the cases referred to by the District Judge (cited by Middleton J.).

Bawa, in reply.

Cur. adv. vult.

December 12, 1911, MIDDLETON J.—

This was an action to recover the sum of Rs. 1,000 as damages for breach of a notarial agreement. The agreement, dated October 28, 1907, No. 1,165, recited that the plaintiff and first defendant had agreed that the plaintiff should marry his daughter Sittie Johara, and to give a dowry on the marriage, upon which the plaintiff covenanted to marry the first defendant's daughter within six months from the date of the agreement, and the first defendant to give his daughter in marriage within the time stipulated, and to pay and assign the dowry as agreed upon. In case the plaintiff refused, neglected, failed, or objected to marry the said Sittie Johara within the time limited, he agreed to pay the sum of Rs. 1,000 as liquidated damages. And in case the first defendant refused, neglected, failed, or objected to give his daughter in marriage to the plaintiff within the time agreed on, he was to pay a similar sum of money by way of liquidated damages. The second defendant bound himself as a surety for the fulfilment of the agreement.

On the case coming on for trial it was adjourned with a view to a settlement by carrying out the marriage, but when the case came up again, the first defendant's counsel admitted that the first defendant had failed to give his daughter in marriage because she refused to marry the plaintiff.

The learned Judge has framed certain issues, which he states in his judgment he would not have framed had he known that the first defendant was relying on a refusal by his daughter to marry subsequent to the adjournment.

Upon the evidence the District Judge disbelieved the case for the defendant, and, finding that the defendants put off the marriage with a view to evading the agreement entered into, held that he had failed and neglected to give Sittie Johara in marriage to the plaintiff; and upon further issues settled as to whether the plaint disclosed the breach of an agreement enforcible in law, and as to the amount of damages, gave judgment for the plaintiff for Rs. 1,000.

The defendants appealed, and for them it was contended that the agreement in question came within the evil of marriage brokage contracts, or contracts for the purpose of procuring a marriage, and the case of *Duke Hamilton v. Lord Mahun*[1] and other cases cited at page 397 of vol. VII. of the *Laws of England* were relied upon. It

[1] *(1710) Peere and Williams 118.*

seems that the evil aimed at under these decisions was the introduction of a money payment for the procuring of a marriage, which should be free from any such taint—per Collins M. R. in *Hermann v. Charlesworth*.[1]

The agreement in this case under consideration was not to procure a marriage between the parties for a money payment, but a covenant by a father of a promise to marry already made by him for and on behalf of his daughter, to which she apparently assented at the time the promise was made. It is not tainted with the evil aimed at in *Cole v. Gibson*[2] or the cases already referred to, nor can I see that the obligation of the father to pay money on the breach of the promise to marry by the daughter involves any greater evil or is more contrary to the policy of the law than obligation of the daughter herself to pay damages in case of a personal breach by her.

In the case of *Tollegodegamegay v. Balagamegay* (*1838*), reported in *Morgan's Digest* in pp. 206 and 211, the judgment of the Supreme Court says: "It appears, however, to have been universal in this Island, under every system of law that obtains here, to introduce the parents on these occasions (marriage contracts) and to render them responsible *in Solidum* with the children, whatever their age, to marriage engagements entered into, though verbally with their consent; and as there is nothing unreasonable or contrary to an express law in this usage, the Court does not feel inclined to disturb it."

The cases of *Abeyratne v. Perera et al.*,[3] D. C. Negombo 447,[4] D. C. Colombo 68,034,[5] *Hendrick Sinno v. Harmanis Appu*,[6] *Tammodarampillai v. Tangamuttupillai*,[7] and *Fernando v. Fernando*[8] cited by the learned District Judge, would appear to countenance the legality of the contracts referred to in *Morgan's Digest*. It is argued that it is illegal for a parent to bind himself under a penalty to influence the feeling of his daughter towards a marriage; but this is not the case here, as the agreement to marry had been made when the contract was entered into. It is certainly not wrong or illegal for a parent to influence his daughter on the subject of marriage, and the presumption would be that such influence was used for her benefit by a person more experienced than herself, and where an agreement has been made apparently with the consent of both daughter and parent that she should marry some one, I can see no evil or illegality in the parent rendering himself responsible in damages if the daughter declines to keep her promise. In my opinion the decision of the learned District Judge is right and should be affirmed, and I would dismiss the appeal with costs.

[1] (*1905*) *2 K. B. 123 C. A.*
[2] (*1750*) *Vesey Senier 503.*
[3] (*1859*) *3 Lor. 235.*
[4] (*1871*) *Vanderstraaten 177.*
[5] *Ram.* (*1877*) *362.*
[6] (*1879*) *2 S. C. C. 136.*
[7] (*1887*) *2 S. C. R. 51.*
[8] *4 N. L. R. 285.*

1911.

Abdul Hameed v. Peer Cando

LASCELLES C.J.—

I entirely agree with the judgment of my brother Middleton. The agreement now sued on is essentially different from a marriage brokage contract, where one of the parties, in consideration of some benefit to herself, engages to procure or bring about a marriage.

In the present case the marriage had been arranged, and the father binds himself under a penalty that he will give his daughter in marriage within a stated period, meaning that he would use his *patria potestas*, which in persons of his class is very great, to have the marriage celebrated. The District Judge, I think, has rightly rejected the evidence that first defendant's daughter had refused or was unwilling to marry the Plaintiff. There is, therefore, no question in the present case of any attempt on the part of the first defendant to coerce his daughter to marry against her will, or of any inducement to run or take that course.

Appeal dismissed.