1936 *Present :* **Abrahams C.J. and Fernando A.J.**

BASTIAMPILLAI *v.* RASALINGAM

128—D. C. Jaffna, 6,030

Promissory note—Agreement by father to give a daughter in marriage—Illegality of consideration—Validity of note.

A promissory note granted in consideration of a promise by a father to give his daughter in marriage to the maker of the note is invalid for illegality of consideration.

De Silva v. Juan Appu (29 *N. L. R.* 417) followed.

THE plaintiff sued the first defendant on a promissory note granted by him to the second defendant and endorsed by the latter to the plaintiff without consideration. The consideration for the note was a promise by the first defendant to marry the daughter of the second defendant. It was contended for the defendant that the note was unenforceable as the consideration was illegal. The learned District Judge gave judgment for the plaintiff following the decision in *Fernando v. Fernando* [1].

H. V. Perera (with him *G. E. Chitty*), for the first defendant, appellant.—It is clear from the circumstances in which the promissory note sued upon was made that there was no consideration good and valid in English law. The English law must be applied in order to determine the question of consideration—Ordinance No. 25 of 1927, section 27 (1). If there was any consideration, it was the promise of the father to give his daughter in marriage to the defendant, a promise which is unenforceable as being contrary to public policy. It renders the consideration illegal. A marriage brokage contract is illegal. (*Herman v. Charlesworth* [2].)

N. Nadarajah, for plaintiff, respondent.—The promissory note was inchoate till delivery was made to the payee. At the time of delivery there was consideration. The first defendant entered into a written agreement with second defendant to marry his daughter. On the day following the first defendant met the daughter and exchanged rings. The daughter must be deemed to have adopted the contract, and the father was acting only as an agent for her. When the first defendant refused to marry, the daughter had a good claim for damages. At that stage the promissory note was delivered to the second defendant. It is submitted that their claim is lawful. The judgment in *de Silva v. Juan Appu* [3] does not apply. It only states that certain contracts are contrary to public policy and does not cover the present case. The case that is on all fours with the present one is the case reported in *Fernando v. Fernando* (*supra*). The second defendant as father and natural guardian of his daughter was under a legal liability to maintain her. The first defendant agreed to marry her in his interest also. From this view also there is consideration. The second defendant agreed to give a dowry of Rs. 5,500 ; in return the first defendant grants

[1] *4 N. L. R. 285.*

[2] *(1905) 2 K. B. 123.*

[3] *29 N. L. R. 418.*

a note to be liable in the event of his refusing to fulfil the contract (*Shadewell v. Shadewell* [1]). There is nothing illegal or improper in the whole arrangement. The promise of Rs. 5,500 is good consideration for the promissory note. From whichever point of view the matter is looked at, it is submitted, that there is valid consideration.

. . . . . .

H. V. Perera, in reply.—The case of *Fernando v. Fernando* (*supra*) has no application to the circumstances of the present case. The principles followed in *de Silva v. Juan Appu* (*supra*) are applicable. In the former case the father contracted as the agent of his daughter who subsequently adopted the contract and herself sued upon it. The promise to give a dowry was not an unconditional offer which the defendant can be said to have accepted. It was only the offer of a promise to give a dowry—mere collateral matter of inducement to the defendant to enter into the substantive agreement. The promise to give a dowry was only the offer of a promise which would become a binding promise by the acceptance of the offer by the defendant, namely, by his marrying the daughter.

[ABRAHAMS C.J.—Even if the promise of a dowry formed part of the consideration for the note and the promise to procure the marriage formed part, would the promises be separable ?]

They would not. A promissory note for which the consideration is even in part illegal would be a note given for an illegal consideration and unenforceable in law. The promise whereby the plaintiff undertook to procure the marriage of his daughter with the defendant is clearly illegal.

Cur. adv. vult.

September 9, 1936. ABRAHAMS C.J.—

The appellant in this case agreed with the second defendant-respondent that he would marry the latter's daughter. The second defendant-respondent at the same time agreed that he would give his daughter in marriage to the appellant. For the purpose of securing the due fulfilment of this bargain, each party made out a promissory note agreeing to pay to the other a sum of Rs. 1,000 alleging that each had received this amount in full. Both these notes were deposited with a third party on the understanding that the note of the party breaking his undertaking would be handed over to the other party, who will receive back his own note. The appellant subsequently met the lady, and they exchanged rings presumably to symbolize their engagement. It is not denied by the appellant that he did promise the lady that he would marry her, but shortly after their betrothal he refused to carry out his promise alleging that he did not find her sufficiently attractive.

The appellant's promissory note was then handed over to the second defendant-respondent, who endorsed it without consideration to the plaintiff-respondant who sued the appellant.

It was argued at the trial that the action could not be maintained as the note was given in the first instance for an illegal consideration, namely, the promise by the father of the girl to give his daughter in marriage to the maker of the note, and the case *de Silva v. Juan Appu* [2],

[1] *9 C. B. 159.*

[2] *29 N. L. R. 418.*

was cited in support of this argument. The learned Judge, however, held that that case did not apply to the facts of this case which appeared to him to resemble closely the facts in *Fernando v. Fernando*[1], and he gave judgment for the plaintiff-respondent.

I have no hesitation in agreeing with the submission that this note was given for an illegal consideration. The law relating to Bills of Exchange in this country is identical with that which obtains in England and in English law this consideration will certainly be held to be illegal. Further, the case falls within the reasons for the decision in *de Silva v. Juan Appu* (*supra*) and does not seem to us to have any resemblance to *Fernando v. Fernando* (*supra*), beyond the fact that there was a marriage contract and that the father of the lady was a party to it. In that case the lady herself sued on the ground that the father had entered into the contract on her behalf and that she had adopted it. There is not a wisp of evidence in this case to show that the second defendant-respondent was acting on behalf of his daughter or that the daughter in becoming enagaged to the appellant was adopting what the father had arranged.

It is, however, argued for the plaintiff-respondent that even if an agreement on the part of the father to give his daughter in marriage is illegal (and Counsel did not appear to dispute that proposition), nevertheless it does not follow that the note was given for an illegal consideration because at the time that it was actually made out it was inchoate, and did not in law become a promissory note until it was handed over to the person for whom it was intended. The consideration for that note, it is argued, was a consideration that existed at the time that the note was handed over and this consideration was, in point of fact, damages due to the lady for breach of a promise to marry her. It seems to me that the facts do not support this hypothesis, since, even assuming that the lady had a claim in damages, and I am certainly not going to give an opinion on that, the note was not given to discharge any claim for damages which she might have, because there was no agreement with her that if the appellant broke his promise to marry he would pay Rs. 1,000 or any sum at all by way of damages. It is then argued that in receiving the note as he did, the father was a trustee for his daughter and therefore had a right to do what he liked with the note in her interest. That argument adds nothing to the argument with which I have just dealt. There is not the slightest evidence that the lady knew anything whatever of the existence of this promissory note, and I would add that if the submission of the plaintiff-respondent were accepted, it would mean one of two things, namely, that the lady whether she liked it or not would have to be content with Rs. 1,000 damages assuming that she desired to bring, and could legally bring, an action for breach of promise of marriage, or that the appellant having paid the amount of the promissory note would also be liable to pay damages to the lady.

Finally, it is said that as the father promised to give a dowry of Rs. 5,000 with his daughter, that is a legal consideration to support the validity of the appellant's promissory note. That there was an agreement to give a dowry appears to have been admitted at the trial by the appellant, but what were the exact conditions of that undertaking

[1] *4 N. L. R. 285.*

was not ascertained and we cannot go into it in default of any further evidence. But even if we were told that the promise to give a dowry was clearly and categorically proved, it would not act as a sort of antiseptic to what we have held to be an illegal consideration, for if a note is given partly on good and partly on illegal consideration, the good consideration cannot prevail over the other, and it seems to me that in this case the foundation of the appellant's promise was the promise of the father to give his daughter in marriage and that the dowry that was promised was an additional inducement to the appellant to marry the lady.

I would allow this appeal with costs in both Courts.

FERNANDO A.J.—I agree.

Appeal allowed.