1971 *Present :* **H. N. G. Fernando, C.J., and Alles, J.**

G. S. WIJEWEERA, Appellant, *and* T. M. D. NANAYAKKARA, Respondent

S. C. 12/68 (F)—D. C. Colombo, 65251/M

Action for breach of promise of marriage—Requirement of promise in writing—Quantum of evidence—Damages.

The writing required to found an action for breach of promise of marriage may not only contain an express promise to marry but also confirm a previous oral promise to marry, i.e., admit the making of the promise and evince continuing willingness to be bound by it.

A promise by A to marry B, after a period of intimacy, cannot avail B much in claiming that she has suffered substantial damages in consequence of the breach of that promise.

APPEAL from a judgment of the District Court, Colombo.

H. W. Jayewardene, Q.C., with *K. Jayasekera* and *Mark Fernando,* for the plaintiff-appellant.

C. Ranganathan, Q.C., with *W. D. Gunasekera,* for the defendant-respondent.

Cur. adv. vult.

May 30, 1971. H. N. G. FERNANDO, C.J.—

In this action for breach of promise of marriage, the learned District Judge has held that the plaintiff failed to prove either that there was a written promise to marry or that there had been confirmation in writing of a previous oral promise of marriage. In reaching his conclusion, the learned Judge correctly directed his attention to the judgment of the Privy Council in *Udalagama v. Boange*[1] (61. N. L. R. 25); but he reached the conclusion that the test laid down in that judgment was not satisfied in the instant case. That test was stated in the judgment as follows :—

> "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."

Their Lordships did not in their judgment pronounce that nothing short of a written statement "I promise to marry you", or "I will marry you", can constitute an express promise of marriage. Indeed, the letters re-produced in the judgment, although they did contain clear expressions of endearment and affection, included no hint of any promise of marriage. What was emphasised in the judgment was only that oral evidence is not admissible to establish that some written statement of a defendant was intended to be a promise of marriage or a confirmation of a previous such promise made orally.

In the later case of *Mutukuda v. Sumanawathie*[2] (65 N. L. R. 205), there as no statement by the defendant in terms promising to marry the plaintiff. There was instead a statement communicated to the plaintiff's father, that on the day named in the statement, the defendant will perform the customary ceremonies of marriage with the plaintiff. That statement was construed by this Court to constitute a promise of marriage.

In the instant case there was no written statement identical with that which was made by the defendant in the case just cited. But the defendant in this case did in his letter P9 commit himself as follows :—

> "It is the real fact that I am not going to take the hand of another except you even if any one tells me".

> "If any one says it will never happened, treat it as a joke or words of mad people".

[1] *(1959) 61 N. L. R. 25.*

[2] *(1962) 65 N. L. R. 205*

"Our firm love cannot be broken by anybody. The love we had for two and a half years, there remains only two or three months more. Thereafter is it not that we get married and face the world without fear and shame. Sudu, then it is a pride to you. When we travel in a Motor Car, keep a refrigerator, keep a set of furniture and live on carpet floor, the neighbourers will curse us. Then Sudu, I told you to have little patience. It is very near for our marriage."

An issue was framed by the plaintiff's Counsel in this case which raised the question whether the defendant's letters constitued confirmation in writing of a prior oral promise of marriage, and Counsel for the defendant in appeal perhaps rightly contended that the issue was correctly answered against the plaintiff.

It seems to me that the plaintiff's Counsel impaired his case by raising that issue. But the real question for determination was whether, on a proper construction of the passages which I have cited from the defendant's letter P9, he did in that letter assure the plaintiff that he will marry her. What else, *in the context of P9,* did the defendant mean when he said "it is very near for our marriage"?

Without difficulty, and without reference to the oral evidence in this case, it is clear that the defendant did in his letter P9 state in writing that he will in the near future marry the plaintiff and I hold that he thus made a promise of marriage in writing.

The plaintiff claimed damages in a sum of Rs. 20,000. But she was a married woman, whose prior marriage had been dissolved, and she became the defendant's mistress thereafter. Her evidence that she became defendant's mistress only because of an oral promise of marriage is scarcely credible. Thus my finding that the defendant did promise to marry her, after a period of intimacy, cannot avail her much in regard to her claim that she has suffered substantial damages in consequence of the breach of that promise.

In these circumstances, I allow the appeal. But decree will be entered for the plaintiff only in the sum of Rs. 1,000, and for costs of action and appeal in that class.

ALLES, J.—I agree.

Appeal allowed.