Present : Ennis J. and Schneider A.J.

1916.

MEENADCHIPILLAI *v.* SANMUGAM.

191—D. C. Jaffna, 10,240.

Action for damages for seduction—Knowledge that seducer was a married man.

A seduced girl who knew at the time that the seducer was a married man cannot maintain an action for damages for seduction.

IN this action the plaintiff-respondent sued the defendant-appellant for the sum of Rs. 3,000, being damages consequent on an alleged seduction. The plaintiff admitted in her evidence that at the date of the alleged seduction she was aware that the defendant was a married man, and that he promised to make her his wife. The District Judge entered judgment for plaintiff for Rs. 1,000.

The defendant appealed.

Bawa, K. C. (with him *Rasaratnam*), for defendant, appellant.—The Roman-Dutch authorities are clear that where a woman knows that the seducer is a married man no action for seduction lies. See *4 Maas. 123; Voet, 48, 5, 4; Walter Pereira 722; Grotius 489.*

A. St. V. Jayewardene (with him *Balasingham*), for plaintiff, respondent.—It was held in South Africa that the fact that the girl knew that the seducer was a married man was a circumstance which might be pleaded in mitigation by the defendant. It is not a complete defence (*3 Nathan 1679*). See also *Villiers' De Injuria 56.*

Cur. adv. vult.

June 28, 1916. ENNIS J.—

This was an action for damages for seduction. The learned Judge has found that the seduced girl knew at the time that the seducer was a married man. He stated that by the Roman-Dutch law the plaintiff could not maintain this action, but has held that matters are different to-day, and he has come to this conclusion apparently on the ground that to-day the seducer has not the alternative which used to be available to him either to marry the girl or pay damages, and that the only remedy to-day left would be a claim for damages.

On appeal some South African authorities were cited in support of the reason given by the learned District Judge. A passage from *3 Nathan 1679*, which is based on the authority of two South African cases, which were not before us, and a passage in *De Villiers 56*. The South African authorities are not binding on these Courts, and it is not easy to follow the arguments on which their

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conclusion was arrived at. The Roman-Dutch law on the subject has been clearly cited in Mr. Walter Pereira's book—*Laws of Ceylon 722*—which cites a passage from *Van der Linden*, which is consistent with the passage in *Voet, 48, 5, 4*, that no action would lie against a married man when the woman knew he was married. The Roman-Dutch action appears to have been based on a presumed promise to marry. By the law of Ceylon a promise to marry must be in writing, and in any event a marriage cannot be enforced. The case of *M. A. Sadiris Hamy v. K. Suba Hamy*[1] shows that the Roman-Dutch action has not been entirely done away with by these two facts, and that compensation may still be given in such an action. It is, however, still based on the same reason, and, in my opinion, the Roman-Dutch law being clear must apply to-day in Ceylon, and there seems to be no reason to adopt the extended principle, which appears to be sometimes, at least, adopted in South Africa.

I would allow the appeal, with costs.

SCHNEIDER A.J.—I agree.

Appeal allowed.