1908.
March 23.

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice, and Mr. Justice Middleton.

LUCINAHAMY *v.* DIASHAMY.

D. C., Galle, 8,431.

Seduction—Cause of action—Defloration—Damages—Subsequent acquiescence.

An action for seduction lies in Ceylon at the instance of the party seduced, notwithstanding that the Court has no power to order the specific performance of a promise to marry or to order marriage as an alternative course by reason of seduction.

The essence of the action for seduction under the Roman-Dutch Law is the defloration of a *virgo intacta*, and the action might be brought at once on the completion of the first act of intercourse.

Levo Nona v. Elenis [1] and *Sadrishamy v. Subehamy* [2] followed.

APPEAL from a judgment of the District Judge of Galle. The facts sufficiently appear in the judgments.

Bawa, for the defendant, appellant.

The plaintiff was not represented.

Cur. adv. vult.

March 23, 1908. HUTCHINSON C.J.—

The claim in this action is for damages for seduction of the plaintiff by the defendant under promise of marriage, and also to recover Rs. 88, which the plaintiff alleges that the defendant took from her. The District Judge found, and I see no sufficient reason to dissent from his finding, that no promise of marriage was proved; that the defendant seduced the plaintiff, who was previously of good character; that the plaintiff's parents acquiesced in the defendant keeping her as his mistress at their house; that she left the house, some eighteen months after the first seduction, at the defendant's instigation, and went to another village, where he again seduced her,

[1] *(1896) 2 N. L. R. 173.* [2] *(1882) 5 S. C. C. 38.*

and that on that occasion she took with her Rs. 100, of which the defendant misappropriated Rs. 88. And he gave judgment for the plaintiff for Rs. 300 damages on account of the seduction and for the Rs. 88.

I think we ought to follow the ruling of this Court in *Sadrishamy v. Subehamy*,[1] approved in *Levo Nona v. Elenis*,[2] that an action for seduction can still be maintained in Ceylon.

To succeed in the action the plaintiff must prove that she was a virgin at the time of the first seduction. That, I think, is sufficiently proved by her evidence that she was a virgin, corroborated by her father's evidence that she was of good character, and not in any way contradicted. The fact that after the first seduction she continued for more than eighteen months to allow him to have immoral intercourse with her does not debar her from recovering damages for the first seduction, there being no plea of prescription.

Rs. 300 seems, however, an excessive amount to give as damages, considering the circumstances of the parties. There is no evidence as to the plaintiff's age; and the only evidence as to her occupation is that she made lace in her father's house, and that she worked for a considerable time in the defendant's plumbago shed. Her father is a mason paid by the day. The defendant is a carpenter, and earns, as the plaintiff says, 75 cents a day; he himself says that he earns more than a rupee a day, and that 75 cents is his lowest daily pay; and he also had a plumbago shed. I think it is clear that there was no promise of marriage, and that until she became pregnant she and her parents were content that the immoral connection should continue. Under these circumstances I do not think it is a case for vindictive damages, and that Rs. 100 would be quite enough.

I should amend the judgment of the District Court by giving judgment for the plaintiff for Rs. 188 and the costs of the action. No costs of the appeal.

MIDDLETON J.—

This was an appeal against a judgment ordering the defendant to pay damages Rs. 300 for the seduction by him of the plaintiff, and Rs. 88 for money of the plaintiff appropriated by the defendant for his use.

The plaintiff claimed damages for breach of promise to marry, but the learned District Judge found that no promise had been proved, and I am not prepared to say he is wrong on that point.

The points raised on the appeal were (1) that the evidence did not prove that defendant had seduced plaintiff, being *virgo intacta;* (2) that even if it did she had no right of action; [3] (3) that it was not proved that the defendant appropriated Rs. 88 of the plaintiff's; (4) that in any case the damages were excessive.

[1] *(1882) 5 S. C. C. 38.*
[2] *(1896) 2 N. L. R. 173.*
[3] *2 S. C. R. 91; 5 S. C. C. 214.*

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In *Levo Nona v. Elenis* [1] the Supreme Court, presided over by Bonser C.J., held that although such eminent Judges as Phear C.J. and Burnside C.J. had doubted if this action had not been abolished by section 30 of Ordinance No. 6 of 1847, yet he was bound by the authority of the case reported at page 38 of *5 S. C. C.*, where this Court had held that the action for seduction was not wholly taken away. I think we also are bound by these authorities to hold that the action for seduction still remains, although the law has debarred the Courts from ordering the specific performance of a promise to marry, or ordering marriage as an alternative course by reason of seduction.

It is not necessary for me to express any opinion under the circumstances on section 30, but the terms of its proviso appear to me to warrant the opinion of Clarence A.C.J., enunciated in *5 S. C. C. 38.* I think, therefore, I must hold against the contention of the learned counsel on the second point.

On the first point, I think the evidence is sufficient to prove that the defendant seduced the plaintiff, and that she was at the time *virgo intacta*, although there is no evidence of her age, and not particularly minute details of her association with the defendant or any statement by her mother. At the same time it shows that for long after her seduction she acquiesced, with the consent of her parents, in the further acts of intimacy with the defendant, and that she of her own free will left her father's house and took up her abode with the defendant at Walpita, and that it was only after she was brought back at the instance of her parents and found to be pregnant that she instituted these proceedings against the defendant.

The essence of the action for seduction under the Roman-Dutch Law appears to be the defloration of a *virgo intacta*, when upon the completion of the first act of intercourse the action might at once be brought.

What, then, is the position of a woman who has not only submitted to an illicit intimacy with a man, but has apparently done so with the consent of her parents, and who of her own free will left her parents' house with her seducer?

It is impossible to say on the evidence that the plaintiff was at all unwilling to go and live at Walpita with the defendant, or was in any way coerced or deceived into doing so. She may have been seduced within the true meaning of the word in the first instance, but she has condoned the act and consented to its continuance openly. It may be answered that no other course was open to her under the circumstances than to yield to what her parents acquiesced in. But what has happened here is a recognized condition of things in the villages, which those who have anything to do with the administration of criminal justice are well aware of. I think, therefore, it would neither be equitable nor politic under such

[1] *(1896) 2 N. L. R. 178.*

circumstances to give a woman in the social position of the plaintiff, who appears to be a plumbago sorter, heavy damages against the man who has seduced her. I would therefore reduce the damages allowed to Rs. 100.

As regards the claim for Rs. 88, I somewhat doubt from a comparison of the evidence of her father and herself whether the plaintiff had any such sum with her as she alleges, but the District Judge sees no reason to disbelieve the plaintiff. She says she had saved Rs. 100 from presents given her by her parents for ten years, and her father says she had Rs. 40 of his when she left home, but the defendant does not deny their allegations in his evidence. I would therefore hesitate to interfere with the learned Judge's finding on the fact here. The judgment of the District Judge will therefore stand as to the Rs. 88, but should be varied by reducing the amount of damages for seduction to Rs. 100 only.

The costs of the action will be paid on the District Court scale by the defendant, but there will be no costs of this appeal.

This judgment will not of course affect any claim which the plaintiff may be able to establish against the defendant for the maintenance of her child, if she is in a position to prove its paternity.

Damages reduced.