1923.

Present : Fisher C.J. and Drieberg J.

COORAY *v.* COORAY.

489—D. C. Colombo, 22,999.

Breach of promise of marriage—Marriage settlement—Recital of agreement to marry—Valid promise—Ordinance No. 19 of 1907, s. 21.

A marriage settlement contained a recital that a marriage between the parties had been arranged and was shortly to be solemnized and that, in consideration of the said intended marriage, the present plaintiff and her mother had agreed to convey to the defendant certain properties and that the transfer was to take effect after the solemnization of the marriage. The document was signed by the plaintiff and her mother, and also the defendant.

Held, that there was a promise by the defendant to marry the plaintiff, within the meaning of the proviso to section 21 of Ordinance No. 19 of 1907.

PLAINTIFF sued the defendant to recover damages for breach of promise of marriage. The main question argued was whether the document P1, which was in the form of a marriage settlement, contained a valid promise to marry. It contained a recital that a marriage has been arranged between the parties and is shortly to be solemnized, and that in consideration of the said marriage the plaintiff and her mother had agreed to convey to the defendant certain properties, and that the transfer was to take effect

after the solemnization of the said marriage. The document was signed by the plaintiff, her mother, and the defendant. The learned District Judge gave judgment for the plaintiff.

H. H. Bartholomeusz (with *Canakaratne* and *R. C. Fonseka*), for defendant, appellant.

Hayley, K.C. (with *H. V. Perera*), for plaintiff, respondent.

July 11, 1928. FISHER C.J.—

In this case the appellant was sued by the respondent for breach of promise of marriage. There are three questions which we are called upon to consider in this case :—

(1) Whether a promise of marriage was "made in writing" within the meaning of section 21 of Ordinance No. 19 of 1907 ;

(2) Whether the defendant was justified in refusing to perform his promise by reason of misrepresentation as to age made by or on behalf of the plaintiff ; and

(3) Whether the damages, namely, Rs. 5,000, are excessive.

As to (1) the answer to this question depends upon what is the proper construction to be put on the words of the enactment mentioned above. The construction of these words has been considered on several occasions. In the case of *Beling v. Vethecan*,[1] which turned on the construction of section 21 of Ordinance No. 2 of 1895, in which the words are exactly similar to the enactment now applicable, the plaintiff and defendant had verbally agreed to marry and the defendant wrote the following words :—" I won't tease you till we get married. Shall we fix the happy day (D. V.) for the 8th of April, the day after Easter ? " It was held that the letter amounted to a written promise and that the previous verbal agreement did not prevent the plaintiff from relying on the promise in the letter. In giving judgment Layard C.J. said the letter " contains an offer on the part of the defendanti n writing to marry plaintiff naming a day, and that offer was duly accepted by the plaintiff. The latter offer would be sufficient alone, if accepted by the plaintiff, to sue for a breach of promise of marriage."

In the case of *Jayasinghe v. Perera*[2] the plaintiff and the defendant had agreed to marry, and the plaintiff at the request of her father wrote to the defendant asking for a written promise of marriage. In reply to this letter the defendant wrote as follows :—" I am not agreeable to what Papa says for this reason : that is, if I trust darling, should not darling trust me ? . . . . If they have no faith in my word, I cannot help it. If they don't believe my word, I am not to blame."

[1] *(1903) 1 A. C. Reports I.*

[2] *(1907) 9 N. L. R. 62.*

1928.

FISHER C.J.

Cooray v. Cooray

It was held that this letter was a sufficient compliance with the requirement of the proviso in section 21 of the Ordinance No. 2 of 1895, notwithstanding that on the face of it the letter would appear to amount to a refusal on the part of the defendant to put his promise into writing. Layard C.J. in giving judgment said that the letter referred to "read with the one to which it was in answer, and of which there is secondary evidence, sufficiently complies with the requirements of section 21 of Ordinance No. 2 of 1895."

And Wendt J. in giving judgment said—

> "I think we may presume that the intention of the legislature was the same as actuated the passing of the Statute of Frauds, requiring a written record as a condition precedent to the enforcement of certain contracts."

This decision seems to me to be as expansive a construction of the words of the enactment as it is possible to give.

In the case of *Misi Nona v. Arnolis*[1] the question for decision was whether a notice of marriage to a Registrar amounted to a promise of marriage in writing. It was held that it did not, and Lascelles C.J. in giving judgment, commenting on the decision in *Jayasinghe v. Perera* (*supra*), said—

> "The decision in this case has not been accepted entirely without question; but I think, if I may respectfully say so, that the decision arrived at is quite right. The letter addressed by the defendant to the plaintiff amounted to a repetition in writing of a prior verbal promise. It was not the less a promise in writing to marry because a verbal promise had already been given. But I do not think that the principle on which that case was decided can be carried any further without straining the language of the Ordinance to the breaking point."

Had the words of the enactment merely required evidence of a promise, no doubt the decision in *Misi Nona v. Arnolis* (*supra*) would have been the other way, but in view of the fact that the notice of marriage was a document addressed to a third party and a stranger it would have been in the words of Lascelles C.J. "straining the language of the Ordinance to the breaking point" to hold that it was a promise of marriage in writing.

In *Abilinu Hamine v. Appuhamy*[2] notice of marriage to a Registrar and a letter written by the defendant's Proctor after the plaintiff had made a claim for breach of promise were held not to constitute a written promise of marriage on the authority of *Misi Nona v. Arnolis* (*supra*).

[1] (*1914*) *17 N. L. R. 425.*

[2] (*1920*) *21 N. L. R. 442.*

This Court has therefore held that the words " promise of marriage in writing " do not mean a promise in so many words, and so to construe them with strict literal and verbal exactness would probably be equivalent to precluding the bringing of any such actions and quite outside the intention of the enactment. According to the true construction of these words, it would appear that if from the language used in any letter or document a promise to marry is necessarily implied that amounts to a promise in writing within the meaning of the enactment, that is to say, the promise is embodied in writing. The question is whether there is such writing in this case. In my opinion there is. The document P1 is in the form of a marriage settlement. It contains a recital " that a marriage between the parties has been arranged and is shortly to be solemnized " and that in consideration of the said intended marriage the plaintiff and her mother had agreed to convey to the defendant certain properties and that the transfer is to take effect " after the solemnization of the said intended marriage." This document is signed by the plaintiff and her mother, and also by the defendant. Cases were cited to us in which recitals were constructed, having regard to the object and effect of the deeds in question, as covenants (see *e.g.*, *In re Weston, Davies v. Targart*[1]). It is not necessary to say that a covenant must be implied from the recitals in the document referred to (P1), but the language itself would, in my opinion, form a good foundation for and would bear such an implication, and I therefore think that it can and must be construed as embodying a promise to marry the plaintiff and that there is a promise of marriage in writing within the meaning of the proviso to section 21.

As regards the 2nd question, there was considerable conflicting evidence and the criticisms on the evidence of the plaintiff's mother appear to me to have been amply justified. Whether or not she represented to the defendant that the age of her daughter was 31 by sending him her horoscope, or a copy of the horoscope containing that statement, she was quite prepared to make and did make in the witness box a very obviously inaccurate statement as to her daughter's age. I think it is quite probable that a copy of the horoscope was in fact sent to the defendant, but I do not think it is necessary to decide this question, because in my opinion a perusal of all the correspondence since September 29, 1926, when the defendant wrote that he would not be able to be present on the day originally fixed for the ceremony, taken with the evidence of the defendant himself, clearly shows that the matter of age was not regarded by him as vital and conclusive. The evidence indicates that he was going to benefit very considerably by the settlement and that had the

[1] *(1900) L. R. 2 Ch. 164.*

1928.

FISHER C.J.

Cooray v. Cooray

plaintiff or her mother been willing to add to the property transferred in consideration of the marriage he would have gone through with it. In the result I am of opinion that the learned Judge's finding that the defendant was not justified in his refusal to carry out his promise cannot be said to be wrong.

The sole remaining question is the question of the amount of damages. On the face of it they seem to me to be excessive. Undoubtedly on the basis of the finding of the learned Judge the defendant treated the plaintiff in a manner which calls for some degree of exemplary damages. In my opinion the damages should be Rs. 2,000, and I would order that judgment should be entered for that amount with costs in the Court below as ordered by the learned Judge and in this Court.

DRIEBERG J.—I agree.

Appeal dismissed.