1955 *Present :* Gratiaen, J., and Swan, J.

IRANGANIE BOANGE, Appellant, *and* C. V. UDALAGAMA, Respondent

S. C. 111—D. C. Kegalle, 7,873

Breach of promise of marriage—" Written promise "—Dowry as condition—Quantum of evidence—Marriage Registration Ordinance (Cap. 95), s. 19 (3).

An action for damages for breach of promise of marriage lies if, in a letter addressed by the defendant to the plaintiff, there is either confirmation or at least an unqualified admission of a subsisting oral promise of marriage.

Where there is a written promise to marry, the party who made the promise is not entitled to resile from it on the ground that a dowry, which both parties had confidently anticipated but was not a condition to the promise, was not settled in due course.

APPEAL from a judgment of the District Court, Kegalle.

A marriage had been " arranged " for the plaintiff and the defendant by their respective parents according to Kandyan custom. The terms of the contemplated marriage so arranged between the respective parents acting through an intermediary were that a dowry of Rs. 5,000 in cash and 5 acres of tea were to be given over to the intended bride by her father on the day of the betrothal ceremony. The defendant was aware of the terms agreed upon by the parents. The plaintiff also, according to the conclusion of the learned trial Judge, " did acquaint herself at an early stage of the proceedings with the dowry she was to get ".

Soon after the aforementioned transaction between their parents, the plaintiff and defendant met each other frequently and wrote letters. One question in the present action for damages for breach of promise of marriage was whether one of the letters written by the defendant established a " written promise " to marry within the meaning of the proviso to section 19 (3) of the Marriage Registration Ordinance. The evidence disclosed that the defendant had informed the plaintiff's father that if the dowry was not given before May 21, 1951 (the date fixed for the betrothal ceremony), " the marriage was off ". The plaintiff's father did not make over the dowry on or before that date. The defendant, however, admitted that the first occasion on which this " condition " imposing a time limit for the dowry was communicated by him to the plaintiff's father was at a time subsequent to the date of the defendant's letter which, it was submitted on behalf of the plaintiff, constituted a written promise to marry. Further, the new " condition " imposed by the defendant on the plaintiff's father was not communicated to the plaintiff herself.

C. Thiagalingam, Q.C., with *I. Misso* and *A. Nayendra*, for the plaintiff appellant.

E. G. Wikramanayake, Q.C., with *H. W. Jayewardene, Q.C.*, *J. N. Fernandopulle*, *P. Ranasinghe*, *W. Wickramasinghe* and *Daya Perera* for the defendant respondent.

Cur. adv. vult.

November 25, 1955. GRATIAEN, J.—

This is an action for breach of promise of marriage. The parties are well-educated Kandyan gentlefolk, and each of them is the child of parents who hold conservative ideas on the subject of marriage. The plaintiff, who was born in 1930, had done very well at Hillwood School in Kandy from which she passed out in 1949 as Head Girl after a good scholastic career. It is common ground that she is a well-mannered, good-looking young lady of unquestionable good character.

The defendant was enrolled as an Advocate of the Supreme Court in 1944, and within five years had established himself in a promising professional practice at Kegalle. In 1949, his father, a retired Government servant, decided that the time had arrived to "arrange" a suitable marriage for the young man, who was then about 31 years of age. The procedure which Mr. Udalagama senior proposed to follow in this connection is best explained in his own words :

> " Among the class of persons to whom I belong, marriages come about in this way ; we ordinarily send a man first, and he speaks to the parents of the girl and finds out whether the proposal would be accepted. Thereafter a day is fixed and the father goes there and negotiations are carried on. The first thing in my case is the dowry. I will tell you the reason : I have been so many years in the Government Service, and if the dowry is not properly fixed, the result is in the Divorce Courts. Once the dowry is finalised, a visit is made, and they visit us and a day is fixed. As a matter of fact, in arranged marriages, young couples are not in any way consulted because the parents know whom their sons should marry. "

One gathers from the evidence that, after the dowry has been " finalised ", a formal betrothal ceremony takes place on an auspicious day in the presence of the close relatives of both families ; the intended bridegroom puts a chain round the neck of the intended bride, and she in turn gives him a ring. Thereafter the young couple (being virtually strangers) are given some latitude to get to know each other ; in due course the marriage ceremony takes place.

Negotiations on these lines were initiated by Mr. Udalagama senior with the wealthy parents of a young Kandyan girl whose name was disclosed at the trial. A considerable dowry was " finalised ", and 24th November 1949 was fixed for the betrothal ceremony or, as some witnesses called it, " the formal engagement ". But shortly before that date, the defendant saw the girl for the first time and persuaded his father to discontinue the negotiations : he apparently considered her ill-favoured and insufficiently educated. Accordingly, Mr. Udalagama senior wrote a letter to the girl's father on 10th November 1949 postponing the ceremony on some shadowy pretext, and requesting that no further preparations

be made " *until you hear from me again* ". The request was understood in the spirit in which it was intended. The matter was dropped, presumably without ill-will on either side. Let it be recorded to the credit of the procedure adopted that no hearts were broken on that occasion.

Very soon afterwards, Mrs. Nanda Udalagama (who was related to both the plaintiff and the defendant) wrote to him from Kandy inviting him to call on her as she thought she had found a more suitable " match " for him. It was on this occasion that the defendant first saw the plaintiff, and he later indicated that he was " interested ". Nanda made certain tentative proposals to the plaintiff's father (Mr. Boange) without success. Eventually, the defendant invoked the more mature advocacy of his sister-in-law Mrs. C. H. Udalagama who agreed to help, having first obtained the consent of Mr. Udalagama senior. In due course, as the result of negotiations carried on primarily through Mrs. C. H. Udalagama, the parents on both sides agreed that the plaintiff should be " given in marriage " to the defendant. The horoscopes were compared with favourable results and, after some haggling, the dowry was " finalised " at Rs. 5,000 in cash and 5 acres of tea. The significant reduction in the amount of the dowry stipulated in this case (i.e., from about 2 or 3 lakhs to about Rs. 10,000) is perhaps the best indication of the assessment by the Udalagamas of the plaintiff's suitability as a wife for the young Advocate who had by now applied for appointment as a member of the Ceylon Judicial Service.

The terms of the contemplated marriage so arranged between the respective parents acting through an intermediary need to be elaborated a little further. Mr. Udalagama senior had first consented to the dowry being made over to the intended bride after the wedding, but it was later stipulated that it should be given on the day of the betrothal ceremony. Mrs. C. H. Udalagama, whose evidence was accepted by the learned trial Judge as true on all material issues, explained that the defendant was well aware of the terms agreed upon by the parents ; the plaintiff, on the other hand, " did not know anything : it is not usual to talk to the girl about dowry matters. " She was certainly not a party to the agreement, but I accept, for the purposes of my decision, the conclusion of the learned Judge that she " did acquaint herself at an early stage of the proceedings with the dowry she was to get. "

I now proceed to relate the history of " the arranged marriage " and its ultimate frustration. Formal visits between the two parties were paid and returned. In due course, " experts " were again consulted for advice as to the selection of alternative auspicious times and dates in April and May 1951 for the customary betrothal ceremony. Two dates in April and three in the following month were submitted on 19th March 1951 to the defendant who by then had assumed duties as Magistrate of Point Pedro. He chose the latest point of time suggested, namely, " 6.01 a.m. on 21st May 1951 ", which, according to the editor of the ephemeris almanac maintained by a school of astrology at Peradeniya, was " auspicious for exchange of rings ". The plaintiff had herself written to the defendant on 6th March 1951 pleading that he should select an earlier but equally auspicious date, namely, 11th April, and

expressing a fear that "if we have it in May, he (her father) may delay over the wedding". This plea was ignored by the defendant. The evidence which the learned Judge has accepted is to the effect that, in selecting 21st May for the betrothal ceremony, the defendant orally explained to Mrs. C. H. Udalagama and later to Mr. Boange himself, who visited him at Point Pedro on 20th April, that if the dowry was not given before that particular date, "the marriage was off". The defendant admits that this was the first occasion on which this condition precedent was imposed by him and communicated to Mr. Boange.

The defendant seems to have suspected that Mr. Boange would not make over the promised dowry before the stipulated date, and secretly communicated his prophecy to his father in a letter dated 7th May 1951. "Hence", he advised, "without kicking up a row, slowly drop it; keep everything to yourself, and communicate everything only with me. Don't tell anyone anything, even those at home for they cannot keep their tongues quiet". One gathers from this attitude that the defendant, knowing Mr. Boange's tendency to procrastination, was not averse to considering himself released from his obligation to marry the plaintiff. A week later he wrote another letter to his father in the same strain, and raised the question of an alternative plan for marriage. "If some other proposition is to be arranged," he said, "I want a minimum dowry of Rs. 25,000. The girl must be educated, good-looking, respectable and young . . . . Please keep anything you do to yourself and me."

As prophesied, Mr. Boange did not make over the dowry on or before the 21st May 1951. In the result, the defendant adopted the attitude (which was not, however, notified to the plaintiff) that he was again free to enter the "arranged marriage" market; and his father, unknown to other members of the family circle, made discreet inquiries for another candidate answering to the description given in the defendant's letter dated 14th May. On this occasion, everything went smoothly and according to plan. On or about 20th July 1951 a marriage was arranged with the parents of Miss Nugawela. But the present action relates to the mutual promises which, according to the plaintiff, were contemporaneously but independently made by herself and the defendant to marry each other. She alleges that in or about August 1951 the defendant wrongfully repudiated his personal promise to marry her and she claimed Rs. 20,000 as damages on this account.

The defendant, who had married Miss Nugawela before he filed his answer, pleaded by way of defence that he at no time made any promise, orally or in writing, to marry the plaintiff. His position was that he had merely "intimated" (whether to Mr. Boange or to the plaintiff was not expressly stated in his pleadings) that he "would be willing to become engaged to or to promise to marry" the plaintiff in a certain eventuality which did not arise.

In the sharp conflict of testimony which characterised a protracted and bitterly contested trial, the learned Judge was called upon to decide whether the young couple, quite independently of the transactions which took place between their parents, had in fact bound themselves by mutual promises to marry one another; and if so, whether the defendant's promise

had been made " in writing " within the meaning of the proviso to section 19 (3) of the Marriage Registration Ordinance (Cap. 95). In the absence of such writing, of course, the claim for damages would not be enforceable.

For the purposes of our decision we must be guided generally by the learned trial Judge's findings of fact, based on his assessment of the credibility of witnesses. What is the effect of the evidence which the learned trial Judge believed ?

It would appear that, shortly after the plaintiff left school, she was persuaded early in 1950 by Mrs. C. H. Udalagama to accept an appointment as a teacher in a well-known Government school in Kegalle, of which Mrs. Udalagama was the Principal. Tentative arrangements had also been made for the plaintiff to attend a school in Colombo in May 1950 with a view to offering herself as a candidate for the University Entrance examination.

During the first school term of 1950 the plaintiff resided at the teachers' hostel at Kegalle, visiting Mr. and Mrs. C. H. Udalagama's home during the week ends. But from about May 1950 she stayed with this couple in their bungalow opposite that in which the defendant lived with his father. By this time, the dowry conditions agreed upon between the parents had been "finalised " and Mr. Boange had been invited to fix the betrothal ceremony " for any date convenient to him " (P11). On 15th June 1950 formal visits between the families were also exchanged.

It was now confidently assumed by everyone that the marriage between the young couple, as arranged between their respective parents, would take place in due course. Pending that anticipated event, the plaintiff continued to be a school teacher at Kegalle, having abandoned the idea of entering the University for higher studies. And, from this point of time, the plaintiff and the defendant, who met frequently at the home of Mr. and Mrs. C. H. Udalagama, fell violently in love with each other. The romantic courtship which followed, though perfectly proper and honourable according to modern standards of behaviour, was apparently contrary to what is expected in conservative Kandyan circles from young persons who are not yet " formally engaged ". Mrs. C. H. Udalagama took the matter up with the defendant who, being an Advocate of 6 years standing, was in a better position to understand the delicacy of the situation than a girl who had just left school. Mrs. C. H. Udalagama's version of this conversation is to the following effect :

> " I thought Teddy (i.e. the defendant) should not come so often to my house. I thought there should be a formal engagement before Teddy continued to meet the plaintiff so frequently in my house. Teddy replied ' You need not mistrust me '. I understood by that that he would not let down the girl. "

Mrs. Udalagama accepted the defendant's assurance as to his intentions, which were certainly quite honourable at that stage. The young couple continued to meet regularly on this basis throughout the rest of the year 1950, and, indeed, until the defendant left Kegalle at the end of February 1951 in order to take up his first Judicial appointment in Point Pedro.

The learned Judge was satisfied that during the period May 1950 to February 1951, many acts of endearment passed between them; the defendant gave her presents (all of which she produced at the trial); they promised eternal loyalty to one another, and discussed their plans for their future happiness together as man and wife.

The defendant denied that he had given the young lady the presents referred to, or that any "acts of endearment" had taken place between them. He was disbelieved on these points and considerable significance should be attached to these false denials. It suffices only to quote his own words of explanation:

Q.—"Why didn't you give her presents?"

A.—"Because there was no formal engagement."

The inference to be drawn from these denials is to my mind irresistible. The defendant was well aware that much that had taken place (though perfectly innocent) in anticipation of the betrothal ceremony would be regarded in the conservative society to which he belonged as appropriate only to couples who were in fact bound to one another by mutual promises of marriage. Having regard to the evidence which the learned trial Judge has accepted, it is purposeless to speculate further as to whether the defendant had "in so many words" promised to marry the girl. The proved conduct and behaviour of these two young persons towards one another establishes more convincingly than any "express words" which passed between them that they now regarded themselves as solemnly engaged to be married.

Let it be said in fairness to the defendant that this conclusion is far more favourable to his sense of honour than the inference which he himself had invited the Court to draw from his own version of the facts. He admitted in re-examination that he had no doubt in his own mind at any time of his courtship that the marriage "arranged" by the parents would ultimately materialise. It occurred to nobody that Mr. Boange (unwisely, as things turned out) insisted on postponing the betrothal ceremony until he had renovated his house so as to entertain his guests on a far more lavish scale than was necessary. The learned Judge's theory that the defendant had merely agreed to marry the plaintiff "subject to the condition that the promised dowry would be provided" is unacceptable for more than one reason. In the first place, this was not the defendant's case. In the second place, the theory was categorically put to him in the witness box, and he repudiated it:

Q.—"Did you make it clear to the plaintiff that you would marry her only if you got the dowry?"

A.—"No."

Finally he admitted that the purported imposition of a condition as to the settlement of dowry did not arise until the end of April 1951:

Q.—"Did you ever tell Mr. Boange or his wife that unless the dowry was given by a particular date the marriage was off?"

A.—"I told Boange."

Q.—" When ? "

A.—" *When he came to see me at Point Pedro (i.e. on 20th April 1951)* ".

I am perfectly satisfied that long before 1st March 1951 the defendant had on many occasions promised the plaintiff at Kegalle that he would marry her, and that she in turn promised to marry him. The promises were not conditional but were made at a time when both parties confidently anticipated that the dowry would be settled in due course. In other words, they agreed to marry *when* (and not if) the dowry was forthcoming ; and the question of either party being free to resile from the engagement was neither discussed nor contemplated. There is no doubt that by the end of 1950 they were growing increasingly impatient over Mr. Boange's delay. But they still regarded the ultimate implementation of his part of the bargain with Mr. Udalagama senior as certain. It is in this context that one must examine the letters D7, D8 and P1 which were relied on by the plaintiff as constituting a " written promise " sufficient to support the present action.

The plaintiff had returned to her parents' home for the Christmas holidays, and she kept her promise to write to the defendant who remained at Kegalle but was himself expecting to visit Nuwara Eliya for a few days. This correspondence is the best evidence of the state of mind of the parties and of their sincerity at the time. In D7 dated 18th December 1950 she writes :

> " It has always been my one idea to love only one. Take my word for it. I am not a person who is easily tempted. I have always aimed at having a pure character and *you can be sure that in rain or sunshine I will stand by you till the end of my life.* It was my ambition to find a man too with a pure character and I have found it in you. Therefore don't fear. *I will always be faithful to you, my darling.* "

To this part of the letter the defendant replied as follows in P1 of 21st December :

> " Girlie dear, I have been missing you very badly these days. Indeed the evenings are very dull and boring without you . . . . I am much thankful to you and for the kind thoughts you have been thinking about me. Girlie, *I don't think I need repeat all what you have written to me, because I feel just the same way as you have explained. I can assure you that all the expectations and the dreams you have of your future will not be in vain ; you can confidently hope. The sooner it is the better, I think.* "

The defendant's suggestion that these words of reply, read in conjunction with what the plaintiff had written, should be construed as a mere " intimation that he would be willing to be engaged to, or promise to marry the plaintiff *if and when* the (father's) agreement with regard to the dowry was finalised " was quite fanciful. I find myself equally unconvinced by the learned Judge's theory that the promise of marriage contained in P1 was unenforceable because it was qualified by a condition which has not been satisfied.

Does P1, read in conjunction with the letters D7 and D8, constitute a "written promise" within the meaning of the proviso to section 19 (3)? The Ordinance does not declare that oral promises of marriage are null and void; it merely renders them unenforceable unless they be evidenced in writing. The object is to avoid the risk of vexatious actions based on perjured testimony. The earlier authorities of this Court were all discussed during the argument, and it is settled law that an action for damages lies if, in a letter addressed by the defendant to the plaintiff, there is either confirmation or at least an unqualified admission of a subsisting and binding oral promise of marriage. This is the effect of *Jayasinghe v. Perera*[1], *Missi Nona v. Arnolis*[2], and *Karunawathie v. Wimalasuriya*[3]. The letter P1 completely satisfies this minimum test.

After the letter P1 was written, the young couple met frequently in Kegalle. She accepted an invitation from his parents to join them and the rest of the family in celebrating his appointment to the Judicial Service, and, as Mrs. C. H. Udalagama explained, everybody present "considered her as the person whom Teddy was going to marry".

The relationship in March 1951 between the newly-appointed Magistrate of Point Pedro (aged 33) and the young school teacher of Kegalle (aged 21) was perfectly clear. A marrige had been "arranged" for them by their respective parents according to Kandyan custom; at the same time there was a subsisting private agreement whereby they were pledged to become man and wife. On 6th March 1951 he wrote from Point Pedro professing his love for her, and expressing the wish that she should visit him during her Easter vacation chaperoned by his brother and sister-in-law. She replied confirming how much she missed his companionship, and mentioning that she had summoned sufficient courage to persuade her father to fix tentative dates in April and May for the betrothal ceremony. She expressed a personal preference for April 11th, and promised that if he agreed to that date "I will see that we get married soon . . . . If April is convenient for you, why not have it then? In any case in your next letter to me please let me know about your arrangements."

The defendant's reply of 16th March evaded this special request and merely stated that he was expecting a letter from Mrs. C. H. Udalagama on the subject. However, he indicated that he would not be able to leave Point Pedro during the Easter vacation, and hoped that she would accompany the C. H. Udalagamas on their visit to him in April.

This was the last letter which the defendant wrote to his fiancee. He did not directly communicate with her regarding the fresh condition which (so he says) he had subsequently imposed on Mr. Boange to the effect that the marriage would not take place unless the dowry was deposited before 21st May; nor did he give her the slightest indication that he had in anticipation advised his father "slowly" to let the matter drop. This behaviour would have been less inexcuseable if his obligations towards the girl were regulated solely by the terms of a "quasi-commercial" contract arrived at for his benefit between his parents and hers. But, examined

[1] (1903) 9 N. L. R. 62. [2] (1914) 17 N. L. R. 425.
[3] (1941) 42 N. L. R. 390.

in the light of his commitments voluntarily undertaken under a private agreement with the young lady herself, his behaviour deviated from a course of conduct which had previously been honourable. He gave the plaintiff no opportunity to exercise her personal influence over her father to deposit the cash and the title deeds before 21st May. His sister-in-law, who had been the intermediary in the dowry arrangements, was also kept in the dark as to the new plans which were on foot—so much so that even in August 1951 Mrs. C. H. Udalagama re-assured the girl concerning rumours that the defendant was now contemplating marriage to Miss Nugawela.

In August 1951, the defendant received three letters from the plaintiff which admittedly led him to realise that she was heartbroken by his silence. He ignored them all. Mr. Boange's letters to the effect that the house would soon be ready for the betrothal ceremony, and that the dowry would be made over, were treated with equal discourtesy. In September, he became formally engaged to another lady and a few months later he married her. This was an unequivocal repudiation of the solemn promise of marriage which he had given to the plaintiff. In her shame and humiliation, she left Kegalle and returned to her parents' home. He had irrevocably put it out of his power to redeem his pledge, and the plaintiff's cause of action was complete.

The learned Judge seems to have taken a most unfavourable view of Mr. Boange's conduct. But the gentleman concerned was not a witness in the case, and the plaintiff did not need to call him to rebut an issue as to whether the defendant's *personal* promise to marry the plaintiff was qualified by any conditions. Nor was the question raised as to whether a reasonable time for implementing the dowry arrangements had elapsed so as to release the defendant from his obligations. The plaintiff's objections to the admissibility of certain statements alleged to have been made by Mr. Boange were over-ruled on the ground that he was her agent with implied authority to make admissions that bound her under section 18 of the Evidence Ordinance. I really cannot understand how anything that Mr. Boange said or did could fairly be construed to have any bearing on the terms of a private contract of which he was completely unaware.

Let it be recorded in fairness both to Mr. Boange and to Mr. Udalagama senior that neither parent had the slightest idea that, apart from the "arranged marriage" which they had negotiated, the young couple had independently pledged themselves to marry one another. If the parents had realised this, I do not doubt that Mr. Boange, out of respect for his daughter's feelings, would have ceased to dawdle over the arrangements for the betrothal ceremony; nor would Mr. Udalagama senior, mindful of his son's honour, have countenanced the suggestion that he should drop the matter "slowly" as he did. Perhaps the most reprehensible aspect of the defendant's conduct was that he kept both parents in ignorance of the extent to which he had personally committed himself and compromised the girl. These conservative gentlemen did not know that he was no longer in a position, either in law or in decency, to back out of the marriage "arranged" for him without committing a breach of his private obligations.

The defendant did not inform the plaintiff after 20th April 1951 of the new "condition" that "time was of the essence of the contract". As a matter of law, this uncommunicated stipulation did not bind her.

On the issue as to damages, the learned Judge considered that the amount to be awarded the plaintiff should not exceed Rs. 5,000 in the event of his decision on the other issues being set aside by this Court. I take the view that this amount is in no way excessive if one takes into account only the personal unhappiness that has been caused to her by the defendant's later conduct in repudiating his obligations (honourably undertaken in the first instance) without so much as an expression of regret for what he had done. At the trial, she was publicly cross-examined on the basis of his instructions that she was a liar and a "gold-digger". To his knowledge, she deserved neither condemnation. I would allow the appeal and enter judgment for the plaintiff for Rs. 5,000 with costs in both Courts.

SWAN, J.—I agree.

Appeal allowed.