1941 *Present* : **Keuneman and de Kretser JJ.**

KARUNAWATHIE *v.* WIMALASURIA

66—D. C. Colombo, 9,734

Breach of promise of marriage—Agreement in writing alone—No resort to oral evidence—Marriage Registration Ordinance (Cap. 95), s. 19 (3) Proviso.

An agreement in writing in order to support an action to recover damages for breach of promise to marry must be evidenced in writing and writing alone.

It is not sufficient that the document in the light of oral evidence bears a promise to marry.

Jayesinghe v. Perera (*9 N. L. R. 62*), distinguished.

APPEAL from a judgment of the District Judge of Colombo.

H. V. Perera, K.C. (with him *G. P. J. Kurukulasuriya*), for defendant, appellant.

N. Nadarajah (with him *C. T. Olegasegaram*), for plaintiff, respondent.

Cur. adv. vult.

July 1, 1941. KEUNEMAN J.—

The plaintiff brought this action against the defendant claiming damages for breach of promise of marriage, and seduction. The District Judge found in her favour on both grounds, and awarded damages of Rs. 1,000 for breach of promise, and Rs. 1,000 for seduction. The defendant appeals from this judgment.

As regards the seduction, the evidence of the plaintiff has been corroborated, and in fact to a great extent admitted by the defendant. The

defendant attempted to prove that the plaintiff was not a *virgo intacta*, but this attempt failed completely. The appeal as regards damages awarded on this ground cannot be sustained.

The defendant also contended that the plaintiff had failed to prove that there was a promise of marriage in writing as required under Chapter 95, section 19, and that no damages could be awarded for a breach of the promise.

Several letters between the parties have been put in evidence, and it seems clear that from an early stage, the plaintiff and the defendant had genuinely fallen in love with each other. The plaintiff herself was clearly of opinion that their position should be regularised by the defendant giving her a promise of marriage in writing and on more than one occasion she requested the defendant to do so. This promise the defendant was reluctant to give, and he explained to her the reason why he did not do so. In P 4, probably written in March, 1938, after saying that he could not remain without seeing the plaintiff even at a distance, the defendant explained "I am not a free person. There are many to govern me. Cannot do what I wish in any manner. Therefore Darling should not misunderstand me", but added "you are my only love". D 1, bearing date March 19, 1938, appears to be the plaintiff's reply to P 4. In D 1, the plaintiff proceeded to give instances from ancient history to show that for love persons of high position had sacrificed everything, and princes and Brahmins had married Chandala girls. The reply to D 1 appears to be P 6. In P 6 the defendant begins his letter by saying "I think it is important that we, being Sinhalese Buddhists, should, unlike persons of other communities, not hurt the feelings of our parents who brought us up and be obedient to them. It is our duty more especially if they are aged persons. Darling will agree with me in regard to this". He then proceeded to approve the cases cited by the plaintiff from ancient history, and to cap them with a more modern example, and added "I agree to everything which you have mentioned". I have dealt more fully with these letters, because the plaintiff now contends that they contain the promise to marry in writing. I cannot so read them. Undoubtedly the defendant approved of the noble examples which had been mentioned, and accepted the arguments which plaintiff urged, but it is clear that he was not willing to give a promise of marriage, because he thought he would hurt the feelings of his parents, who "govern" him. Further the plaintiff does not appear to have regarded these letters as a promise of marriage. In D 3 written shortly before the Sinhalese New Year (April 13, 1938), the plaintiff asked for "an agreement or writing stating that you will marry none but me", and promised to give a similar writing. In D 5, also written about this time, she reiterated her request for this agreement.

In the next month, on Wesak day, *i.e.*, May 13, 1938, the plaintiff and the defendant with some others went on an excursion to the Kelaniya Temple, and afterwards had refreshments at the Maliban Hotel. It is in evidence that on this occasion they kissed each other and that the defendant verbally agreed to marry plaintiff. This evidence has been accepted by the Judge, I think correctly. Shortly after this, the defendant wrote letter P 3 in which he said "Darling the enjoyment we had

by meeting each other on that day was immense, was it not? . . . . The love which was confirmed on the 13th has become firmer and not cooler. When I remember how on that day I sucked honey from your lips and how the deliciousness of your lips ran through my veins, my heart and body both get roused and awakened alike". The defendant then expresses his gratitude to a girl friend of the plaintiff. "Had it not been for her assistance we would not have been able to come to this stage nor would there have been a way to confirm our love".

The plaintiff contends that the "confirmation of love" referred to is the promise of marriage I have mentioned. The defendant argues that the "confirmation" consists of the kisses exchanged between the parties. It is perhaps a question of doubt as to which was actually referred to by the defendant. But even if the plaintiff's contention is correct, it has to be remembered that the document itself does not contain the promise of marriage in writing, but the document as interpreted in the light of the oral evidence may perhaps bear that meaning. I do not think this is sufficient to satisfy the requirements of the law. I think the law requires that the promise to marry must be evidenced in writing, and in writing alone.

Great reliance was placed by the plaintiff on the case of *Jayesinghe v. Perera*[1], but that case can be differentiated. The plaintiff in that case wrote a *letter* to the defendant asking for a written record of his verbal promise to marry. This was done at the suggestion of the plaintiff's father. The defendant replied by *letter* that he was not agreeable to the suggestion, that if he trusted the plaintiff, she should in turn trust him, if her parents had no faith in his word, he could not help it, if they did not believe his word, he was not to blame. It is true that the plaintiff's letter was not produced, but as it was in the possession of the defendant, secondary evidence was given of its contents. In deciding the case Wendt J. said, "*So read in connection with the letter to which it was an answer,* the letter contains an unqualified admission under the hand of the defendant of the existence of his promise to marry the plaintiff, and in my opinion that is all the Ordinance requires". Layard C.J. was also of the opinion that the two letters read in conjunction established the promise to marry.

This case has subsequently been subjected to considerable criticism, but it was later supported in *Misi Nona v. Arnolis*[2], by Lascelles J. on the ground that the letters in question amounted to "a *repetition* in writing of a prior verbal promise". I incline to the opinion that this is a better view, than that of Wendt J. who merely stated that it was an *admission* of a verbal promise.

But whatever the correct point of view may be, in this case of *Jayesinghe v. Perera* (*supra*) the whole of the promise was contained in two letters. There was no resort to verbal evidence as such, to establish the promise.

I may mention that in the view of Lascelles C.J. the principle on which *Jayesinghe v. Perera* (*supra*) was decided cannot be carried further "without straining the language of the Ordinance to breaking point".

[1] *9 N. L. R. 62.*

[2] *17 N. L. R. 425*

I do not think this case falls within the principle of *Jayesinghe v. Perera.* The plaintiff's action with regard to the breach of promise of marriage fails, and she is not entitled to damages on that account.

In the result, the judgment of the District Judge is set aside, and judgment entered for the plaintiff in the sum of Rs. 1,000, namely, for the seduction. The plaintiff is entitled to costs in the Court below. In appeal the defendant has succeeded on one point but failed in the other and, in the circumstances of the case, I make no order with regard to the costs of appeal.

DE KRETSER J.—I agree.

Varied.