

Present : Lascelles C.J. and De Sampayo A.J.

1912.

SAWER v. TRINGHAM.

86—D. C. Colombo, 33,334.

Action for breach of promise of marriage—Refusal to marry—Refusal inferred from circumstances.

In an action for breach of promise of marriage, though there was no proof of an express refusal to marry, the Court may gather the refusal from the conduct of the defendant and the surrounding circumstances of the case.

Where the defendant (*inter alia*) wrote to the plaintiff asking her to release him from the engagement, and suggested that it was the most honourable course in the interest of both parties, as he was living with a mistress, the Court inferred a refusal to marry.

AN appeal from a judgment of the Acting District Judge of Colombo (F. M. de Saram, Esq.).

A. St. V. Jayewardene (with him F. H. B. Koch), for the defendant, appellant.—There was no express refusal to marry. The promise of marriage was a general promise, and to constitute a breach there must be evidence of an absolute refusal. A refusal to marry cannot be inferred from conduct. *Frost v. Knight*;¹ *Hochester v. De la Tour*;² *Halsbury's Laws of England*, vol. XVI., para. 504.

Elliott, for the plaintiff, respondent (not called upon).

May 23, 1912. LASCELLES C.J.—

This is an appeal from a judgment of the District Judge of Colombo condemning the defendant to pay Rs. 5,000 as damages for breach of a promise to marry the plaintiff.

The case went to trial on two issues, namely: (1) Did defendant in breach of his promise to marry plaintiff refuse to marry plaintiff? And (2) if so, what damages has the plaintiff sustained? The appeal was confined to the former issue, with regard to which it was contended that the learned District Judge was wrong in his finding that the breach by the defendant of his promise to marry the plaintiff was proved. On the appeal the case of *Frost v. Knight*¹ was relied on as an authority for the proposition that an action for breach of promise cannot be maintained unless the defendant has explicitly expressed his intention not to fulfil the contract, and that a refusal to carry out the contract cannot be inferred from

¹ L. R. Ex. 322.

² E. & B. 678.

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the conduct of the defendant. But this case, which follows the principle laid down in *Hochester v. De la Tour*,¹ dealt with the special case where the promise is to marry at or after a certain time or is conditional, and the alleged breach of the promise takes place before the time had elapsed or the condition had been fulfilled. No such consideration can apply to the present case, for it was not of the essence of the contract that the wedding should take place on November 9. That date had been fixed as a matter of convenience, but it was not an essential term in the contract that the marriage should take place on or before that date. Here the question, whether the defendant has committed a breach of his promise to marry the plaintiff, is a simple question of fact, which must be decided, apart from any technical considerations, on a survey of the whole of the evidence.

The learned District Judge has held that the letter P 3 written by the defendant to the plaintiff on September 21, 1911, coupled with the defendant's conduct both before and after he wrote the letter, indicates a clear intention on the part of the defendant to break off the engagement. I entirely agree with the finding of the District Judge, and think that any other construction of the letter would be repugnant to good sense. The letter P 3 is as follows:—

The Grand Oriental Hotel,
 Colombo, September 21, 1911.

MY DEAR BLANCHE,—EXCUSE formality, but under the circumstances I consider it is necessary.

I write to ask you in your own interests as to your future happiness, &c., to release me from my engagement to you.

My letter the other day would have partly explained everything, and all I need further mention is that I have been on Mr. Philpott's track since Tuesday morning. I went up to Yatiyantota by motor with Mr. Sutcliffe last afternoon and returned here at 6 this morning. I am going up again now. You can draw your own conclusions, and it will suffice if I were to say that Mr. Sutcliffe practically knows all details now, and I am sure would be glad to tell either Mr. Sawyer or Alf as much as he knows about the affair. Unfortunately he cannot give any details to any one of the lady members of the family. I am sure that when Mr. Sawyer and the other members of your family hear all details they will agree with me that this is my most honourable course, and is in both of our interests.

Please write on to Rozelle. I am going up by night mail to-night. I shall in all probability leave the Island very shortly.

Yours affectionately,
 HARRY.

[His Lordship proceeded to discuss the facts, and dismissed the appeal.]

DE SAMPAYO A.J.—I agree.

Appeal dismissed.

¹ E. & B. 678.