

1920.

Present: Ennis J. and Loos A.J.

ABILINU HAMINE *v.* APPUHAMY

326—D. C. Ratnapura, 3,239.

Written promise of marriage—Notice of marriage—Letter by defendant's proctor.

A notice of marriage given to the Registrar and a letter written by the defendant's proctor after the plaintiff had made a claim for breach of promise of marriage were held not sufficient to constitute a written promise of marriage within the meaning of section 21 of the Marriage Ordinance of 1907.

THE facts are set out in the judgment of the District Judge (F. D. Peries, Esq.):—

In this case there is ample documentary proof of the defendant's promise to marry the plaintiff, who in this action is represented by her next friend her mother.

This evidence is supported by the copy of the letter written to the plaintiff's proctor by the defendant's proctor (P. 6). In the appeal decision in D. C. Galle, No. 6,132, Wendt J. has in detail gone into the requirement in section 21 of Ordinance No. 2 of 1895. In the present case the notice of marriage (P. 1) signed by the defendant and the invitation to the wedding feast (P. 2) show that the defendant himself had beyond all possibility of any doubt promised to marry the defendant, and this evidence is confirmed by the defendant's proctor acting for him. These documents, in my opinion, sufficiently meet the provisions of section 21 of the Ordinance. On issue 1 I hold in the affirmative.

The plaintiff has claimed expenses incurred, including money gifted to the defendant, Rs. 417.71, and damages by failure of contract Rs. 500, aggregating Rs. 917.71. The evidence in regard to these items have not been disputed.

On issue 2 I hold in the affirmative, and on issue 3 I assess damages, &c., at Rs. 917.71. On issue 4 I hold in the affirmative for the reasons stated above.

I accordingly enter judgment for the plaintiff for Rs. 917.71, with costs.

The document P 6 was as follows:—

SIR,—WITH reference to your letter of demand dated 1st instant, addressed to D. C. D. Wijesundera Appuhamy of Panawenna, I am instructed by him to inform you that he is not liable to pay your client any damage, and that there was absolutely no breach of promise of marriage on his part.

I am further instructed by him to inform you that there was a talk of marriage, and that even notice was given, but as your client failed to give the dowry that was promised¹ and fulfil other agreements, my client is unable to marry.

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I am, Sir,
Yours faithfully,
(Signed) R. N. ASIRWATHAM,
Proctor.

A. St. V. Jayawardene, for defendant, appellant.

J. S. Jayawardene (with him P. M. Jayawardene), for plaintiff, respondent.

March 5, 1920. ENNIS J.—

This was an action for breach of promise of marriage. The plaintiff is a minor, and sues by her next friend her mother. Two objections have been taken to the decree in favour of the plaintiff: (1) That the learned Judge had failed to notice that Rs. 417.71 of the damages claimed were for expenses incurred by the mother, with regard to which the minor plaintiff has no direct claim; (2) it was objected that no written promise of marriage had been proved. The first objection appears to be good on the evidence of the mother. With regard to the second objection, the learned Judge, in finding there was a written promise, has relied upon the notice of marriage given to the Registrar of Marriages, and a letter written by the defendant's proctor after the plaintiff had made a claim for breach of promise. In holding this a sufficient compliance with the Marriage Ordinance of 1907, section 21, the learned Judge cited the case of *Jayasinghe v. Perera*.¹ That case was decided on the interpretation of a letter written by the defendant himself, which the Court held to be a promise of marriage. The learned Judge's attention does not appear to have been called to the case of *Misi Nona v. Arnolis*,² where it was expressly held that a notice given to the Registrar of Marriages does not amount to a written promise within the meaning of section 21 of the Marriage Ordinance of 1907.

On the authority of that case I would allow the appeal, with costs.

Loos A.J.—I agree.

Appeal allowed.

¹ (1906) 9 N. L. R. 62.

² (1915) 17 N. L. R. 425.