1914.

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

MISI NONO *v.* ARNOLIS.

158—D. C. Galle, 12,143.

Written promise of marriage—Notice to the registrar of marriages—Marriage Ordinance, 1907.

A notice of marriage given to a registrar of marriages does not amount to a written promise of marriage within the meaning of section 21 of the Marriage Ordinance, 1907.

THE facts are set out in the judgment.

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

E. W. Jayewardene, for plaintiff, respondent.

Cur. adv. vult.

July 14, 1914. LASCELLES C.J.—

This is an action for damages for breach of promise to marry, the decision of which turns on the question whether a notice of marriage given by the defendant to a registrar of marriages amounts

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to " a promise of marriage " within the meaning of section 21 of the Marriage Registration Ordinance, 1907. The material part of the section is as follows :—

> " Provided that no action shall lie for the recovery of damages for breach of promise of marriage, unless such promise of marriage shall have been made in writing."

This rule, it may be noticed, is far more stringent than the English rule (Evidence Further Amendment Act, 1869, section 2), which merely requires the testimony of the plaintiff to be corroborated by other material evidence in support of defendant's promise. It is also the inevitable result of the provision in our Ordinance that cases of great hardship must occur, cases where a promise to marry on the part of the defendant can be proved up to the hilt, but where the plaintiff is, nevertheless, unable to recover damages for want of a promise in writing on the part of the defendant. The present is such a case. On the evidence in the record no jury or Judge, if not fettered by the rule to which I have referred, would hesitate in finding that the defendant had promised to marry the plaintiff. The only question is whether the fact that the defendant gave to the registrar notice of his intention to marry the plaintiff satisfies the requirements of the Ordinance as to the promise of marriage having been made in writing. The learned District Judge in his judgment states that " a notice of marriage has hitherto been regarded as sufficient promise in writing to support an action." No case to this effect has been cited to us.

A " promise " means something in the shape of an engagement from one person to another to do or not to do a specified thing. The statutory notice of an intended marriage is equivalent to the publication of banns. The notice is given, or the banns are published, in order to give an opportunity for objections to the legality of the intended marriage. It is true that notice of an intended marriage is naturally given after a mutual promise to marry has been made. But the act of giving notice of marriage or of causing the banns to be published cannot, even on the most elastic construction of the term, be held to amount to a promise of marriage made in writing. The conception of an engagement or promise has no place in such an act.

The authorities do not support the plaintiff's contention. In *Beling v. Vethecan* [1] Layard C.J. inclined to the opinion that the promise to marry must itself be made in writing, and that it was not enough that there should be a verbal promise corroborated by documentary evidence written by the party sought to be bound by the verbal promise. In *Jayasinghe v. Perera* [2] a different view was taken. It was held that a letter written by the defendant to the plaintiff amounting to an unqualified admission under the hand of

[1] *1 A. C. R. I.*

[2] *9 N. L. R. 62.*

the defendant of the existence of his promise to marry the plaintiff was a compliance with the Ordinance. 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.

The present case is unquestionably a hard one. But hard cases are the inevitable result of a law which, in a transaction where the promise is not ordinarily made in writing, lays down as a rigid and inflexible rule that the promise, in order to found an action, must be in writing. Relief against the hardship of such a rule must come from the Legislature, not from the Courts.

The judgment of the District Court must be set aside, and the plaintiff's action dismissed. With regard to costs, I cannot refuse the appellant the costs of his successful appeal, but I would order each side to pay their own costs in the District Court.

DE SAMPAYO A.J.—I agree.

Set aside.