

Present : Wood Renton A.C.J.

LIVERA v. GONSALVES.

258—C. R. Negombo, 20,357.

Marriage brokage contract—Illegal.

An agreement with a matrimonial agent for the payment of a reward upon the completion of a marriage brought about by the agent cannot be enforced by an action at law.

THE facts appear from the judgment.

E. W. Jayewardene, for the plaintiff, appellant.—Under the new Stamp Ordinance the agreement sued upon may be stamped in Court. See section 36 of Ordinance No. 22 of 1909. The original was lost in Court. If the document was not lost in Court, the plaintiff could have paid the duty and sued on the document. The plaintiff should not suffer if the original was lost in Court. An agreement of this kind is not illegal under the Roman-Dutch law and our law. See *Van der Keesel* 482. *Abdul Hameed v. Peer Cando et al.*¹ is no authority to the contrary. This point was not expressly decided in that case. It is a very common custom in Ceylon to employ brokers for the purpose of arranging marriages. The state of Ceylon society is far different from English society.

F. de Zoysa (with him E. T. de Silva), for the defendant, respondent.—In *Abdul Hameed v. Peer Cando et al.*¹ It was conceded that a contract of this kind would be illegal. It is on the ground that the agreement is against public policy that it is not enforceable in England. The same considerations would apply to Ceylon. Counsel cited *3 Maasdorp* 18. The agreement sued upon was inadmissible in evidence. The claim is therefore prescribed.

E. W. Jayewardene, in reply.

[*Canskeratne*, as *amicus curiæ*, brought to the Court's notice *King v. Grey.*²]

Cur. adv. vult.

August 8, 1913. WOOD RENTON A.C.J.—

The plaintiff in this case seeks to recover a sum of Rs. 300 from the defendant on an agreement in writing by the latter to pay him that amount if he succeeded in bringing about a marriage between him and a certain lady, who is named in the agreement, with a dowry of

¹ (1911) 15 N. L. R. 91.

² 24 S. C. 544.

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Rs. 5,000. The plaintiff was successful in bringing about the marriage. He now seeks to recover the stipulated consideration. The learned Commissioner has dismissed the action, holding that, because the original written agreement was not properly stamped, and is lost, the claim must be considered as one on an unwritten promise, and that it is now barred by prescription. I do not consider it necessary to express an opinion on this point, because I think that the appeal must fail upon another ground. The contract, which forms the subject of the suit, is clearly one that would be described in English law as a marriage brokage contract, and in England no action of this kind could be successfully maintained. See the case of *Hermann v. Charlesworth*.¹ The defendant raised in his answer the plea that the action was not maintainable in Ceylon. But the Commissioner of Requests has over-ruled that contention on the strength of a statement by Van der Keessel on the authority of Bynkershoek (*Quaestiones Juris Publici 2 and 6*) to the effect that an agreement with a matrimonial agent for the payment of a reward upon the completion of a marriage brought about by his agent may be enforced by an action at law. There is no reported case in which that principle has been accepted in Ceylon, and there are dicta in the recent case of *Abdul Hameed v. Peer Cando et al*² which point strongly in the contrary direction. After the conclusion of the argument my attention was called by Mr. Canekeratne as *amicus curiae*, and I am indebted to the kindness of Mr. E. W. Jayewardene for the same reference, to the case of *King v. Grey*,³ in which the whole question is discussed, and the conclusion arrived at is that such an action as Van der Keessel and Bynkershoek contemplated could not be maintained in the Courts of Cape Colony. In view of the absence of any direct authority to the contrary here in Ceylon, of the dicta of Sir Alfred Lascelles and Sir John Middleton in the case of *Abdul Hameed v. Peer Cando et al*.² and of the decision in *King v. Grey*,³ I think that we cannot do better than bring the law of Ceylon into line with that of South Africa on this important question.

I hold that the action is not maintainable, and the decision of the Commissioner of Requests must be affirmed with costs.

Affirmed.

¹ (1905) 2 K. B. 123.

² (1911) 15 N. L. R. 91

³ 24 S. C. 544.