1962 *Present :* Weerasooriya, S.P.J., and H. N. G. Fernando, J.

MUTHUKUDA, Appellant, *and* SUMANAWATHIE, Respondent

S. C. 556—D. C. Kalutara, 31758

Breach of promise of marriage—Promise in writing—Sufficiency of nekath *paper—Acceptance of promise—Writing not necessary—*Injuria *suffered by plaintiff—Right of plaintiff to sue* ex delicto*—Marriage Registration Ordinance, s. 19 (3).*

The proviso to section 19 (3) of the Marriage Registration Ordinance reads as follows :—

> " 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. "

Held, that proof of writing is necessary only in respect of the promise of marriage and not in respect of the acceptance of the promise. Acceptance may be made by the conduct of the parties and by a definite understanding between them that a marriage is to take place.

Plaintiff sued the defendant for the recovery of damages on two causes of action. The first cause of action was based on a breach of promise to marry. The second cause of action was based on *injuria* suffered by the plaintiff by reason of the failure of the defendant to attend the *poruwa* ceremony when the plaintiff and a large number of guests were awaiting the arrival of the defendant.

The only document relied on by the plaintiff as constituting a promise of marriage in writing was the *nekath* paper which was a memorandum of the astrologically auspicious times associated with the wedding fixed to take place on a fixed day between the plaintiff and the defendant. It was written in the first person, the defendant being mentioned by name as the author of it.

Held, (i) that the *nekath* paper constituted a promise in writing by the defendant to the plaintiff.

(ii) that it was not necessary to prove that the promise was accepted in writing by the plaintiff. Acceptance could be inferred from the conduct of the parties.

(iii) that the *injuria* suffered by the plaintiff gave rise to a cause of action *ex delicto* even had there been no breach of promise and the defendant continued thereafter to be ready to marry the plaintiff

APPEAL from a judgment of the District Court, Kalutara.

H. W. Jayewardene, Q.C., with *C. P. Fernando*, for defendant-appellant.

N. E. Weerasooria, Q.C., with *Nimal Senanayake*, for plaintiff-respondent.

Cur. adv. vult.

December 21, 1962. WEERASOORIYA, S.P.J.—

The plaintiff-respondent sued the defendant-appellant on two causes of action. The first cause of action was that the defendant " by his writings and more specially by his letter dated 10.9.56 " promised to marry the plaintiff, that after the parties had given the statutory notice of marriage and exchanged rings, and cash Rs. 5,000 had been paid to the defendant as dowry by the plaintiff's father, the defendant maliciously, fraudulently and with intent to disgrace the plaintiff failed to attend the *poruwa* ceremony and the office of the Registrar of Marriages on the 7th November, 1956, for which date the wedding was fixed, and otherwise failed and neglected, and by his conduct unequivocally refused, to marry the plaintiff. On this cause of action the plaintiff claimed a sum of Rs. 2,500 as damages for breach of promise to marry. The second cause of action was that on the strength of the promise to marry and in the presence of a large number of invited guests, the plaintiff on the 7th November, 1956, attired in her bridal clothes and attended by friends and relations awaited the arrival of the defendant, who maliciously and without any cause whatsoever failed and neglected to attend the *poruwa* ceremony and the office of the Registrar of Marriages, with the result that the plaintiff suffered great pain of mind, humiliation and disgrace in the eyes of her friends and relations and the public, and her chances of marriage were completely blasted. On this cause of action the plaintiff claimed a sum of Rs. 2,500 " on account of *injuria* thus suffered ".

After trial the District Judge entered judgment awarding the plaintiff Rs. 2,000 on the first cause of action and Rs. 1,500 on the second cause of action, and costs. From this judgment the defendant has appealed.

The case for the plaintiff is that her marriage with the defendant, who was previously a stranger to her, was arranged by her parents in the customary way. Preliminary negotiations in regard to the proposal having proceeded satisfactorily, the 10th August, 1956, was fixed for the notice of marriage. On that date the betrothal also took place, rings were exchanged and a sum of Rs. 5,000 representing a part of the agreed dowry was handed to the defendant. Prior to that, the plaintiff's parents had executed in favour of the plaintiff, as a gift in consideration of her marriage, the deed P7 conveying to her a land called Maragahawatte said to be worth about Rs. 25,000. On the 10th September, 1956, the defendant, attended by his elder brother and other closed relatives, visited the plaintiff's residence and brought with him the printed document, P1,

described in the evidence as a *nekath* paper, and about which more will have to be said later. As announced in this document, the wedding was fixed for the 7th November, 1956. The defendant regularly visited the plaintiff up to the 4th November. Even though the parties did not meet thereafter, the defendant gave no indication to the plaintiff or her parents until the 7th November that he did not intend to marry her. The present action was filed on the 7th December, 1956. According to the certificate of marriage P8, the defendant married one Dona Leelawathie Goonetilleke on the 31st January, 1957.

In the answer filed by the defendant he admitted that notice of marriage was given on the 10th August, 1956, but denied that the marriage ceremony was fixed for the 7th December, 1956. By way of further answer the defendant averred that—(*a*) "a proposal of marriage was made to the defendant by the plaintiff's father on the understanding that a house and property worth Rs. 40,000 and a cash dowry of Rs. 2,500 would be given to the defendant on the day of the engagement between the plaintiff and the defendant" ; (*b*) "on the day of the engagement contrary to the aforesaid promise the defendant was given only a sum of Rs. 500 as dowry, thereby deceiving the defendant which fraudulent conduct resulted in the marriage falling through" ; (*c*) "the defendant informed the plaintiff and her father that owing to the fraud and deception practised on him he was unable to agree to the proposal of marriage".

The evidence given at the trial by the defendant and his witnesses in support of the averments at (*a*), (*b*) and (*c*) above was rejected by the District Judge. The defendant said that as a result of what took place on the 10th August, 1956, there was no question of his marrying the plaintiff either on the 7th November, 1956, or at all, and that shortly after the 10th August he made that quite clear to the plaintiff and her parents. The defendant's evidence on this point is, however, flatly contradicted by the document P1, which bears the date 10th September, 1956, and refers to the wedding ceremony fixed for the 7th November, 1956. The defendant's evidence that the date 10th September, 1956, in P1 is a mistake for the 10th August, 1956, was also rejected by the District Judge. These findings of fact were not seriously challenged by Mr. Jayewardene who represented the defendant at the hearing of the appeal.

Under the proviso to section 19 (3) of the Marriage Registration Ordinance (Cap. V) 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. Although the plaint averred that the defendant had "by his writings and more specially by his letter dated 10.9.56" promised to marry the plaintiff, the only document relied on by plaintiff's counsel at the trial as constituting a promise of marriage in writing was the document referred to as the "letter dated 10.9.56", which is the *nekath* paper, P1. Unless, therefore, P1 constitutes a promise of marriage in writing within the terms of the proviso to section 19 (3), the plaintiff's claim on the first cause of action must fail. The substantial point urged by Mr. Jayewardene in regard to this claim at the hearing of the appeal

was that P1 does not constitute such a promise in writing and that the learned District Judge was wrong in holding that it did. Mr. Jayewardene argued, firstly, that P1 is not a promise of marriage, secondly, that even if it is a promise of marriage, it is not a promise by the defendant and, thirdly, that even if it is a promise of marriage by the defendant, it is not a promise made to the plaintiff.

P1 purports to be a memorandum of the astrologically auspicious time associated with the wedding fixed to take place on the 7th November, 1956, between the plaintiff and the defendant. It is written in the first person, the defendant being mentioned by name as the author of it. It recites *inter alia* as follows—

> "I, native Physician Somatilleke Muthukuda being their son in anticipation of the marriage to be taken place according to ancient customs and rites with Sumanawathie Liyanage the daughter of Liyanage James Appuhamy and K. D. Mary Nona shall step out with the right foot, front facing East, at the auspicious hour at 7.59 a.m. on the 7th day of November, 1956 A.D. with my relations to your residence.
>
> On the same day at 9.45 a.m. facing East I shall ascend the bridal throne with the bride, present jewellery and clothes and offer betel and linen, accomplishing Sinhalese customs and rites, and shall enter into the Assembly Hall."

According to Mr. Jayewardene, the portion of P1 quoted above is at the most only a declaration of intention and is not a promise. I am unable to agree, for there is not only a declaration of intention to do the acts specified, but there is also an undertaking or assurance that they will be performed. In my opinion this part of P1 constitutes a promise to marry.

The evidence of Weerasinghe, the manager of the printing press where P 1 was printed, is that the defendant himself brought the manuscript P2, on the lines of which P1 was to be printed. The defendant, at the request of Weerasinghe, signed P2 and paid an advance of Rs. 10. On the 9th September, 1956, the defendant came again and removed P1, and paid the balance Rs. 10 out of the sum of Rs. 20 charged for printing P1. Both the plaintiff and her father stated that the defendant brought P1 to their residence on the 10th September, 1956, and in their presence P1 was formally read out by the defendant's brother and thereafter handed to the plaintiff's father. The District Judge held that in the circumstances P1 was a promise made by the defendant to the plaintiff. It seems to me that the learned Judge's findings on these points are amply supported by the evidence.

Lastly, Mr. Jayewardene argued that even though P1 be construed as a promise in writing by the defendant to the plaintiff, no written acceptance of the promise having been proved, there was no "promise" of marriage within the meaning of the proviso to section 19 (3) of the Marriage Registration Ordinance. It is an elementary rule that every contract

requires an offer and an acceptance. An offer or promise which is not accepted is not actionable, for no offer or promise is binding on the person making the same unless it has been accepted. These principles would, of course, be applicable to a promise of marriage. The promise, or offer, proceeding from one of the parties would not be binding on him or her unless accepted by the other. Under the common law mutual oral promises of marriage constitute a binding contract which is actionable on a breach therof. Section 19 of the Marriage Registration Ordinance does not declare such a contract to be null and void. It only provides that no action shall lie for the recovery of damages for a breach of *promise* of marriage unless such promise is in writing. While I agree with Mr. Jayewardene that the promise of marriage contemplated in the section is a binding promise, i.e., a promise which has been accepted by the other party, I am unable to agree with his further contention that the true construction of the section is that the acceptance also has to be in writing. Such a construction would mean that the entire contract must be in writing which, however, is not what the section states. In the preceding provisions of section 19 there is a distinction between a contract of marriage and a promise of marriage. In view of this distinction, the expression " promise of marriage " in the final provisions of the section cannot, in my opinion, be construed as meaning a contract of marriage.

In *Udalagama v. Boange*[1] the Privy Council held that the kind of writing required under the proviso to section 19 (3) of the Marriage Registration Ordinance " must contain an express promise to marry or confirm a previous oral promise to marry, i.e., admit the making of the promise and evince continuing willingness to be bound by it ". In my opinion, P1 satisfies the requirement stipulated by the Privy Council, in that it contains an express promise to marry. There is no specific evidence that this promise was accepted by the plaintiff, " but acceptance may be made by the unequivocal conduct of the parties and by a definite understanding between them that a marriage is to take place "—*Chitty on Contracts*[2]. The conduct of the plaintiff subsequent to the 10th September, 1956, being the date on which P1 was brought by the defendant, was such that acceptance by her of the promise contained in P1 may reasonably be inferred.

As for the second cause of action, Mr Jayewardene submitted that the claim under it also arises from the alleged breach of promise of marriage and not from a distinct cause of action ; and he relied on the same objections against the maintainability of this claim as were advanced by him in regard to the claim on the first cause of action. As these objections have been rejected by me for the reasons already given, the appeal against the award of damages on the second cause of action also fails, even if the claim did arise from the breach of promise of marriage. No doubt, as Mr. Jayewardene contended, a breach of promise of marriage would give rise to an action *ex contractu* as well as *ex delicto*. It would

[1] *(1959) 61 N. L. R. 25.*

[2] *Vol. 2 (1955 edition) 498.*

appear, however, from the plaint that the claim under the second cause of action is not based on the delictual element of the breach of promise, but is in respect of pain of mind, humiliation and disgrace suffered by the plaintiff as a result of the events of the 7th November, 1956, for which the defendant was responsible and which caused *injuria* to the plaintiff independently of the breach of promise. Although these events coincided with the breach of promise, I do not think that they were a necessary consequence of it, for even if the defendant did not intend to marry the plaintiff he need not have exposed her to the pain of mind, humiliation and disgrace which she suffered on the day in question. In my opinion, the events referred to would have given rise to a cause of action *ex delicto* even had there been no breach of promise and the defendant continued thereafter to be ready to marry the plaintiff.

The appeal is dismissed with costs.

H. N. G. Fernando, J.—I agree.

Appeal dismissed.