1937 *Present :* **Soertsz J. and Fernando A.J.**

PHILIP *v.* WETTASINGHE.

316—D. C. Avissawella, 1,959.

Breach of promise of marriage—Undertaking not to marry anyone else—No promise to marry—Ordinance No. 19 of 1907, s. 21.

Where the defendant wrote a letter in the following terms to the plaintiff :

"If ever I marry anybody, I assure you that it will be none other than yourself. If, by any mischance, I fail to do so, I will remain single as I am."—

Held, that the words used did not constitute a valid promise to marry.

Beling v. Vethecan (*1 A. C. R. 1*) and *Jayasinghe v. Perera* (*9 N. L. R. 62*) distinguished.

THIS was an action brought by the plaintiff to recover a sum of Rs. 1,000 as damages for breach of promise of marriage. The promise was contained in a letter written by the defendant the material portion of which is set out in the head note.

The learned District Judge held that there was a sufficient promise in writing within the terms of section 21 of Ordinance No. 2 of 1895.

A. L. Jayasuriya, for defendant, appellant.—The point is whether there is a promise in writing in terms of section 21 (3) of the Marriage Ordinance, No. 19 of 1907.

Plaintiff relies on P 1 written by the defendant. It is submitted that P 1 does not contain a promise to marry the plaintiff, and that the promise contained in P 1—if there is a promise, at all—is a promise to remain single in the event of not being able to marry the plaintiff.

On the first submission—P 1, if read in its proper sense, is a statement of reasons showing why defendant is not in a position to give a promise.

On the second submission—the action is for a breach of promise to marry plaintiff. An undertaking not to marry anyone else is no promise to marry the plaintiff and in fact is an agreement in restraint of marriage which is void—vide *Pollock on Contract* (*8th ed.*), *p. 367 ;* and *Lowe v. Peers* [1].

The learned District Judge has relied on the old cases, *Beling v. Vethecan* [2] and *Jayasinghe v. Perera* [3]. In both these cases the letters clearly indicated a definite verbal promise and the subsequent letters were held to be

[1] *(1768) 4 Burr. 2225 at p. 2230.*
[2] *1 A. C. R. 1.*
[3] *9 N. L. R. 62.*

sufficient to establish the written promise necessary for maintaining the action. In this case there has been no such promise and on the contrary reasons have been adduced why the promise could not and cannot be given.

The learned District Judge is not right in interpreting the document P 1 by the subsequent letter of demand sent (P 3). This is a document after action by plaintiff and written by a third party (the proctor) and cannot supplement P 1—vide *Abilinu Hamy v. Appuhamy* [1].

Also strict compliance insisted on the necessity of a promise in writing—a notice written to the Registrar of Marriages has been held insufficient. (*Misi Nona v. Arnolis* [2].)

M. J. Molligodde, for plaintiff, respondent.—It is submitted that P 1 clearly contains a promise to marry. The letter actually uses the word promise.

[SOERTSZ J.—No doubt there is the word promise occurring in the middle of the letter but later in its context does it imply a promise to marry the plaintiff ?]

The letter states that defendant could not give a promise earlier and now she proceeds to give the promise.

Even if it does not contain a promise in itself a prior promise can be relied upon by the plaintiff. The letter indicates that the parties were on friendly terms and the defendant has not denied in her answer that there was an "understanding" which was subsequently released by mutual consent. The burden of proving such release was on the defendant, and she has failed to do so and the appeal must fail.

Cur. adv. vult.

January 25, 1937. FERNANDO A.J.—

The main question that arises on this appeal is whether the defendant, as set out in issue 1, made a valid promise to marry the plaintiff, and as the learned District Judge himself states in his judgment an action for recovery of damages for breach of promise of marriage can lie only if the promise shall have been made in writing.

The plaintiff relied on the letter P 1 written by the defendant, the material portion of which has been translated, apparently by the learned District Judge himself, as follows :—"If ever I marry anybody, I assure you that it will be none other than yourself. If by any mischance I fail to do so, I will remain single as I am. If I can join an order of Nuns, I will do so," and the learned District Judge thought that this portion of P 1 came closer to a written promise to marry, than the words which occurred in the correspondence between the parties in *Beling v. Vethecan* [3] and *Jayasinghe v. Perera* [4].

In *Beling v. Vethecan,* the material portion of the defendant's letter is quoted by Layard C.J. as follows: "I won't tease you till we get married. Shall we fix the happy day for the 8th of April, the day after Easter ?" and the plaintiff in reply consented to marry the defendant on the 8th of April, and the Court held that the letter written by the defendant contained an offer on the part of the defendant in writing to marry the plaintiff, and that that offer was duly accepted by the plaintiff.

[1] *21 N. L. R. 442.*
[2] *17 N. L. R. 425.*
[3] *1 A. C. R. 1.*
[4] *9 N. L. R. 62.*

The offer made by the defendant if accepted by the plaintiff, would alone be sufficient to enable the plaintiff to sue for a breach of promise of marriage. In the same case, Layard C.J. was inclined to think that the contention for the defendant that the production of documentary evidence showing that the defendant admitted a verbal promise, would not be sufficient to entitle the plaintiff to bring an action on the original verbal promise, as the Ordinance provides for the promise itself being in writing, and not for the case in which a verbal promise is corroborated by some other material documentary evidence, was correct in law.

The case of *Jayasinghe v. Perera* (*supra*) came before Layard C.J. and Wendt J. a few months after *Beling v. Vethecan* (*supra*), and the facts in that case are set out by Wendt J. as follows :—"The defendant who had courted the plaintiff asked her father's consent to the marriage, and the young couple promised to marry each other. At the father's suggestion, the defendant undertook to send him a formal written solicitation of the plaintiff's hand. This he did not send, and in consequence the plaintiff at her father's request wrote defendant a letter asking him to put his promise in writing. In his answer, the defendant wrote, "I am not agreeable to what Papa says for this reason : that is, if I trust darling, should not darling trust me ? If they have no faith in my word I cannot help it. If they don't believe my word, I am not to blame." This letter read in connection with the letter to which it was an answer, as Wendt J. said, "contains an unqualified admission under the hand of the defendant of the existence of his promise to marry the plaintiff, and in my opinion that is all the Ordinance requires." Layard C.J. agreed with the order of Wendt J. affirming the judgment of the District Court in favour of the plaintiff because he considered the construction placed on the defendant's letter a reasonable one, and because that letter read with the one to which it was an answer, sufficiently complied with the requirements of section 21 of Ordinance No. 19 of 1907. It would appear therefore, that Layard C.J. agreed with Wendt J. in holding that an unqualified admission under the hand of the defendant of the existence of a promise by him to marry the plaintiff would be sufficient to enable the plaintiff to maintain an action for breach of promise of marriage.

Now the learned District Judge thought that the words used in P 1 came closer to a written promise to marry than the words used in either of the cases referred to above. I regret that I cannot agree. The words used in *Beling v. Vethecan* clearly contain an offer by the defendant to marry the plaintiff on the date named, and if such an offer is accepted by the person to whom the letter is written, that would be a clear promise to marry. It may be that the offer is not expressed in the words, "I shall marry you," but the words themselves do contain a promise to marry because the words are, "Shall we fix the happy day for the 8th of April ?" and it is clear from the letter that the happy day meant the day on which the parties were to get married. In *Jayasinghe v. Perera* (*supra*) the Court did not hold that there was an express promise in writing, but only that there was a writing in which an earlier verbal promise was admitted. The learned Judge here probably intended to emphasize the words quoted by him, namely, "If ever I marry anybody, I assure you that it will be none other than yourself. If by any mischance I

fail to do so, I will remain single", but these words clearly mean, "I will not marry anyone except you," and do not contain any express promise to marry the plaintiff, nor is it possible to find anywhere in the long letter P 1 any statement that either contains a promise to marry the plaintiff or admits an earlier verbal promise to marry the plaintiff.

On the other hand, the defendant sets out reasons which prevented her from giving any promise to the plaintiff. "Had my beloved father been alive, I would have certainly given a definite word at once without any fear or doubt." (The translation filed in Court appears to me to be incorrect when it reads, "would have given", whereas the original should more correctly be translated as, "would give"). "I remind you", the letter goes on, "that I am in fear of knowing that it is very hard to escape from my mother, *did not give a definite word.* If God likes this matter between we two, I hope that there will be Divine help to change the minds of the opponents. What our duty now is to pray only to God for the success of our matter." It seems clear therefore, that P 1 does not itself contain any promise by the defendant to marry the plaintiff, nor is it possible to find in P 1 any admission of any earlier promise by the defendant.

I would accordingly hold on the first issue against the plaintiff. His action must therefore fail, and I would set aside the order of the learned District Judge, and enter decree dismissing plaintiff's action with costs here and in the Court below.

SOERTSZ J.—I agree.

Appeal allowed.