

Present : Schneider J. and Jayewardene A.J.

1924.

ROSAHAMY v. CAROLISHAMY.

494—D. C. Galle, 20,536.

Seduction—Consent of the woman seduced—Action for damages.

An action for damages for seduction lies even where the woman was a consenting party to the seduction.

H. V. Perera (with him *Rajakariar*), for plaintiff, appellant.

Soertsz, for defendant, respondent.

July 25, 1924. SCHNEIDER J.—

This action was instituted by the plaintiff to recover damages on the ground that she had been deflowered by the defendant under promise of marriage. She claimed a sum of Rs. 1,000. The defendant denied that he had seduced the plaintiff. The learned District Judge appears to have regarded her action as one for damages for breach of promise of marriage, and has dismissed her action as he is very doubtful whether any promise of marriage was made. Upon the evidence, he took the view that the plaintiff went to the defendant to live as his mistress. I think there is sufficient in the evidence, especially in view of the denial of the defendant that he had anything to do with the plaintiff, that the plaintiff had been induced by the defendant to go away with him and live as his mistress upon a promise that he would marry her. I see no reason for rejecting her evidence that the defendant on January 26 promised to marry her and obtained her mother's permission to take her away, that she refused at first, but was persuaded to go with the defendant by his assurance that he would marry her within three months. Now, it seems to me that the plaintiff has been seduced by the defendant, and the learned District Judge has held upon the evidence that she was a *virgo intacta*. She is, therefore, entitled to damages. There is little evidence to prove what damages should be awarded to her. The District Judge in his judgment states that the plaintiff and her mother are poor. In the circumstances I think Rs. 100 as damages and costs in both Courts will meet the justice of the case.

1924. JAYEWARDENE A.J.—

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I agree. The learned District Judge appears to have been under the impression that where a woman is a consenting party to her seduction, she is not entitled to claim damages. This view is clearly erroneous. This action lies, says Van Zyl in his *Judicial Practice of South Africa*, though the seduction may have been with the consent of the woman. In fact all the cases in our reports show that the seduction has been with the consent of the woman.

Set aside.

