Present : De Sampayo and Schneider JJ.

1922.

JOHN SINNO *v.* WEERAWARDANE *et al.*

197—D. C. Kalutara, 10,103.

Donation in contemplation of marriage—Right to recover present when marriage falls through.

Plaintiff under the belief that defendant was employed as a clerk consented to defendant marrying his daughter, and agreed to give a dowry of Rs. 1,000. On the day notice of marriage was given, plaintiff gave defendant Rs. 500 out of the dowry. The proposed marriage was broken off, as the defendant was not as employed.

Held, that plaintiff was entitled to recover the money given to defendant.

"A donation made in contemplation of marriage must be returned in case the marriage does not take place."

H. J. C. Pereira, K.C. (with him *Zoysa*), for defendants, appellants.

E. W. Jayawardene (with him *Soertsz*), for plaintiff, respondent.

December 21, 1922. DE SAMPAYO J.—

This appeal of the defendants has been pressed on the facts. The argument that the plaintiff, in the course of his evidence, made a number of false statements is justified. The learned Acting District Judge himself has fallen into the error of supposing that the letter P 2 dated January 4, 1919, was written to the plaintiff about a proposal of marriage of the first defendant's eldest son, the second defendant, to the plaintiff's daughter. It is obvious from internal evidence and from all the circumstances of the case that the letter

1922.

DE SAMPAYO J.

John Sinno v. Weerawardane

was written to Wastuhamy, the marriage broker, about a marriage of the first defendant's second son to some other girl. The question, however, is whether the plaintiff was not substantially right as regards the main incident which constitutes his cause of action. Wastuhamy, who appears to have been a relative of both parties, suggested to the plaintiff that if the plaintiff was agreeable a marriage might be arranged between the plaintiff's daughter and the second defendant. The plaintiff being willing, the first defendant and his son, the second defendant, visited the plaintiff's house for the purpose of concluding a formal engagement. This was on or about February 21, 1919. The plaintiff then agreed to give his daughter in marriage to the second defendant, and February 24 was fixed for giving notice of registration. The plaintiff also agreed to give a dowry of Rs. 1,000, and on February 24, when the notice of marriage was in fact given, the plaintiff paid to the second defendant a sum of Rs. 500 as part of the agreed dowry. The plaintiff's case is that at the first visit of the defendants to his house, the defendants falsely represented to him that the second defendant was at that time employed as a clerk in the National Bank of India and received a salary of Rs. 100 a month, that they thereby induced the plaintiff to give his consent to the marriage and to promise the dowry, and that the proposed marriage was broken off when the plaintiff discovered the defendants' representation to be false. The plaintiff claims a refund of the sum of Rs. 500 paid to the second defendant, and a further sum of Rs. 250 as damages in respect of expenses incurred by him in connection with the preparations for the marriage. It appears that the second defendant was at one time employed in the Bank, but had some time before February, 1919, given up his office owing to illness, and was unemployed at that time, but the defendants deny that they made the alleged representation. The District Judge found in favour of the plaintiff on the issue between the plaintiff and the defendants, and gave plaintiff judgment for the Rs. 500, and for a further sum of Rs. 100 as damages.

It is probable that the plaintiff's account of the matter is somewhat exaggerated, and that the District Judge went too far in accepting the plaintiff's evidence in all its details. But it is well known that people of the class to which the parties belong place much value on offices and names, and probably the plaintiff satisfied himself as to the position of his future son-in-law. It is also not an uncommon practice to describe a person by his office even if he has given it up or lost it. For instance, the second defendant, even after he left the Bank, called himself, or was called, *liyana mahatmaya;* literally, "writer gentleman." Counsel, for the defendants, allows that at the interview with the plaintiff the defendants may have in this way referred to the second defendant as *liyana mahatmaya*, I think that this is not unlikely. Even so, the plaintiff was through this inaccurate description misled into the belief that the second

defendant was at that time, in fact, a clerk, and gave his consent to the marriage on that footing. The appeal is strongly pressed, because it is said the defendants resent the implied imputation on their character. But I think that the defendants need have no apprehension in this respect. I do not myself believe that they were guilty of anything beyond a bit of vanity.

The legal aspect of the case must be touched upon. The Roman-Dutch law recognizes the right to recover a wedding present when the marriage falls through. *Grotius* 3, 2, 20 puts it broadly thus : " A donation made in contemplation of marriage must be returned in case the marriage does not take place." There is one local decision in which the law so stated was applied. See *Appuhamy v. Mudalihamy*.[1] In that case the party receiving the gift had refused to carry out the promise to marry, but I do not think such default is essential for the obligation to restore the gift. The matter may be referrable to the general principle that when the consideration fails, the subject of the transaction may be reclaimed.

I therefore think that the judgment for the return of the Rs. 500 to the plaintiff is right, but as regards the damages I do not see any legal basis for the claim. In the circumstances I would modify the decree by deleting the order as to payment of Rs. 100 as damages. The appeal should, I think, be otherwise dismissed, with costs.

SCHNEIDER J.—I agree.

Appeal dismissed.