

1927

Present: Schneider J. and Maartensz A.J.

NAVARATNE *v.* KUMARIHAMY *et al.*

174—D. C. Kegalla, 7,745.

Kandyan minor—Contract to marry—Ordinance No. 3 of 1870.

A contract to marry is not enforceable against a Kandyan minor.

A PPEAL from a judgment of the District Judge of Kegalla.

H. V. Perera, for plaintiff, appellant.

Hayley, K.C. (with *Navaratnam*) for the 1st defendant, respondent.

Iyer (with *Arulanandan*), for 2nd defendant, respondent.

October 27, 1927. SCHNEIDER J.—

It is only a question of pure law that we need consider for the decision of this appeal. It is this. Is a contract to marry entered into by a minor enforceable against the minor? That question

¹ (1874) L. R. 9 Q. B. 400.

² (1896) 2 N. L. R. 235.

has been considered and decided in the negative in *Hendrick Sinno v. Haramanis Appu and Sirimalhamy*¹ by two very eminent Judges of this Court. Budd Phear C.J. in the course of his judgment said: "Although she appears to be of age to enter into the marriage contract she is not a major to bind herself by a preliminary agreement to marry." That, in my opinion, if I may say so with all deference to the learned Chief Justice from whose judgment the passage is taken, is a correct statement of the law. The appellant's Counsel sought to differentiate the present case. He argued that the female in the present case at the time she made the promise to marry the plaintiff was of the age of nineteen years and could have contracted a lawful marriage according to the provisions of the Amended Kandyan Marriage Ordinance, No. 3 of 1870, by which she is governed, without the previous consent of parent or any other person; whereas in the case cited the female party not being a major could not contract a marriage without the consent of her father according to the provisions of the Ordinance applicable to her. There does exist between the two cases the difference indicated by Counsel, but to my mind that does not matter. The same principle is applicable to both cases. The capacity to enter into a contract to marry must be determined according to the law in regard to capacity to enter into contracts generally. If under this law a minor cannot enter into a contract enforceable against her, she cannot also enter into a contract to marry. It was conceded, and rightly, that the Ordinance No. 7 of 1865, which fixes twenty-one years as the legal age of majority, applies also to persons governed by the Kandyan law. If the argument is sound that the requirement as to consent makes the material difference between the two cases, it must follow that a person not governed by the Kandyan law who is a minor can enter into a binding contract to marry provided she enters into it with the consent of the person, whose consent the law requires to be obtained to enter into a lawful marriage. The very case cited above shows that such a contract is not enforceable. A contract to marry is in no wise different from any other contract in so far as the Kandyans are concerned. The rights and liabilities of the parties to such a contract must be determined by the contract itself, and the validity of the contract must be determined in the same way as the validity of any other contract.

The appeal fails, and I dismiss it with costs.

MAARTENSZ J.—I agree.

Appeal dismissed.

¹ (1879) 2 S. C. C. 136.