

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED LEGAL STUDIES
- 9 MAR 1960
25 RUSSELL SQUARE
LONDON, W.C.1
IN THE PRIVY COUNCIL
55505

19, 1959

1.

No. 14 of 1958

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

CYRIL VERNAL UDALAGAMA
(Defendant) Appellant

- and -

IRANGANIE BOANGE
(Plaintiff) Respondent

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CASE FOR THE APPELLANT

Record

1. This is an appeal from a Judgment and Decree of the Supreme Court of Ceylon, dated the 13th December 1953, allowing an appeal from a Judgment and Decree of the District Court of Kegalle, dated the 10th March 1954, dismissing with costs an action instituted by the Respondent, against the Appellant claiming a sum of Rs.20,000/- as damages for breach of promise of marriage.

p.350
p.365
p.317
p.344

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2. Under the law of Ceylon a breach of promise to marry is actionable only if the promise to marry has been made in writing. The relevant law is contained in the Marriages (General) Ordinance, (Volume III, Cap.95, page 126), proviso to Section 19 therein, which is in the following terms:-

"Provided that 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".

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3. Gratiaen J. (who with Swan J. heard the appeal in the Supreme Court) described the parties to the present suit thus:-

"The parties are well-educated Kandyan gentlefolk, and each of them is the child of parents who hold conservative ideas on the subject of marriage."

p.351, 1.3

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4. It is common ground that the "marriage" in the contemplation of the parties concerned was an "arranged marriage", arranged in the conventional manner as is usual among conventional people in the Society to which both parties belonged. The conditions requisite for "arranging" such a "marriage", it is submitted, are :-

- (a) Parties must belong to the same caste, Status, and religion;
- (b) The horoscopes of the two persons whose "marriage" is being "arranged" must be scrutinized by an astrologer and found to "agree"; 10
- (c) The father of the bride-to-be states the extent and nature of the dowry he has provided for her and promises to make it over on a definite date.

p.47

It is true that the Plaintiff in her evidence did say, "This was a purely love match between me and Teddy". It is submitted that this is not inconsistent with the marriage being an arranged marriage all the evidence being to the effect that the two families between them came together for the purpose of agreeing upon the conditions upon which the marriage was to take place. The Appellant therefore respectfully submits he is entitled to say that it is common ground that the marriage was an arranged marriage. 20

5. Once these conditions are satisfied the two persons concerned are allowed to meet and a formal betrothal takes place on an "auspicious date" fixed upon by the astrologer having regard to their horoscopes. 30

6. The Respondent initiated the present proceedings by sending, through her proctor, a Letter of Demand, D.6, dated the 13th September, 1951, the opening paragraph of which was in the following terms:-

p.434

"I write to you on the instructions of my client Miss Iranganie Boange of Boange Walauwa Kadugannawa. My client states that in or about April 1950 you became interested in her and approached her and her people with a proposal of marriage. From that stage onwards, on the footing that you were engaged to her, 40

you regularly met her and corresponded with her. From my instructions you appear to have seriously considered not only the question of marriage with my client at an early date but also to have gone into such matters as the dowry you expected to get and details in regard to the marriage itself."

10 7. Thereafter, in the plaint filed by her in the District Court of Kegalle, the accrual of the cause of action was stated in the following terms:-

"2. In or about April, 1950, the defendant became interested in the plaintiff with a view to marriage and made a proposal of marriage to the plaintiff's parents to which the plaintiff's parents were agreeable.

pp. 22 & 23

3. Thereafter the defendant promised and agreed to marry the plaintiff, which promise the plaintiff accepted and the plaintiff and the defendant became engaged.

20 4. The said promise of the defendant to marry plaintiff is contained in the correspondence he had with the plaintiff in particular in his letter dated 21st December, 1950.

30 5. In pursuance of the said undertaking by the defendant to marry plaintiff, as aforesaid, the plaintiff and defendant got about and were accepted as an engaged couple by friends and relations and arrangements were made by the plaintiffs' parents in regard to the dowry to be given to the defendant and in regard to the solemnisation of the proposed marriage between the plaintiff and the defendant.

40 6. In or about August, 1951, however, the defendant suddenly and without any justification and explanation broke off all association and communication with the plaintiff and wrongfully and unlawfully repudiated his said promise to marry plaintiff. The defendant in or about September, 1951 has got engaged to another lady.

p.23

7. By reason of the defendant's wrongful conduct the plaintiff suffered great humiliation and pain of mind and has sustained

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great loss and damage. The plaintiff assesses the damage she has sustained in a sum of Rs.20,000.00."

8. The "correspondence" referred to comprises -
- (a) Letters dated 18.12.50 and 19.12.50 from the Respondent to the Appellant, D.7 and D.8 respectively;
 - (b) Letter dated 21.12.50 from the Appellant to the Respondent, P.1.

9. At the trial of the action, the following issues were raised and answered as under:- 10

	<u>Issue</u>	<u>Answer</u>	
pp. 30 & 31	1. Did the defendant promise to marry the plaintiff?	No.	
	2. If so, has such promise been also made in writing?	No.	
	3. What damages is plaintiff entitled to?	Does not arise.	
	4. Has the defendant made a promise of marriage in writing to the plaintiff.	No.	20
	5. If so, did the defendant in or about March, 1951, wrongfully and unlawfully repudiate the said promise?	No.	
	10. The case for the Respondent rested on her evidence and that of a Mrs. Anula Udalagama, a first cousin of the Respondent, married to a brother of the Appellant, Mr. J.W.B. Udalagama, father of the Appellant, and Mrs. Padmini Udalagama, wife of the Appellant.		30
	11. The Respondent in her evidence-in-chief stated how she first came to hear of the proposed "arranged marriage". To quote her words:-		
p.41, 1.16	"... While I was teaching at Kegalle I was staying at the School Hostel. I was also staying at Mrs. Anula Udalagama's for some time. Her house is on the Colombo-Kandy		

road. Defendant was living opposite her house across the road. While I was there in January, February, and March, 1950, the defendant (i.e. the Appellant) saw me during these months. He met me and spoke to me at Mrs. Udalagama's house. About this time there was a talk between my parents and defendant's parents about a marriage. Mrs. Anula Udalagama told me that."

10 12. Mrs. Anula Udalagama in her evidence-in-chief stated that she had in January 1950, at the request both of the Appellant and his father, moved in the matter of "arranging" the proposed "marriage" between the Appellant and the Respondent. She had obtained the Appellant's hroscope and sent it to the father of the Respondent.

20 In cross-examination she admitted that the dowry was discussed, that a specific dowry was agreed on, that the negotiations concerning the dowry were conducted, between the Appellant's father on the one hand, and the Respondent's father on the other, but through her, and that finally it was agreed that the dowry should be made over completely before the formal engagement or betrothal took place.

In further cross-examination she also admitted that she had written a letter D.16 dated 19.3.51, to the Respondent giving him a list of "auspicious dates" for the formal engagement and containing the following paragraph :-

30 "He (meaning the father of the Respondent) will settle the dowry agreed on before the date of the engagement. Please therefore let me know a date suitable to you so that the deeds etc. may be ready and the money banked so that you may see these for yourself. Uncle himself is anxious to settle up everything before the engagement."

p.404

13. Mr. J.W.B. Udalagama in cross-examination stated:-

40 "I belong to a Kandyan Sinhalese family. Among the class of persons to whom I belong, marriages come about this way: we ordinarily send a man first - Vidane - and he speaks to the parents of the girl and finds out whether the proposal would be accepted. Thereafter a day is fixed and the father goes there and

p.37, 1.11

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negotiations are carried on. The first thing in my case is the dowry. I will tell you the reason. I have been so many years in the Government Service and if the dowry is not properly fixed the result is the Divorce Courts."

Later on he stated:-

p.38, 1.2

"The first thing we discussed was about the dowry. The dowry was Rs.5000/- in cash and 5 acres of tea. I told Anula that if defendant approved it, I have no objection. That was with regard to the dowry also."

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He added :-

"Boange (father of the respondent) came to my house sometime in April 1951. I told him that if the marriage is going to take place, he should finalise the dowry arrangements. I gave him the 21st of May as the last date. I had given him several dates earlier for that. After the dowry had been finalised the engagement would take place. By finalising the dowry I meant the depositing the money and writing of the deed."

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14. Mrs. Padmini Udalagama (wife of the Appellant) in Examination-in-Chief stated:-

p.33, 1.10

Q. "When you marry him, I may be able to spend a week or two with you" - Did you think at that time you wrote the letter that Udalagama was going to marry the Plaintiff?

A. "Yes, on promising that she gives the promised dowry. She herself told me about the dowry. I cannot remember when she told me that."

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15. The Appellant himself gave evidence and called two main witnesses, viz., a Mrs. Nanda Udalagama, a sister of the witness Mrs. Anula Udalagama, and a Mr. C.H. Udalagama, Proctor, (brother of the Appellant and husband of Mrs. Anula Udalagama).

16. Mr. C.H. Udalagama in Examination-in-Chief stated:-

p.115, 1.1

Q. "What more was conveyed about the dowry to your knowledge?"

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A. "As far as I could say the terms were that money had to be given and the deed written before an engagement could take place. The money was to be given to the girl. It was to be deposited to her credit in the Bank and the deed written in her name before any engagement could take place."

Q. "Was that agreed to?"

A. "It was".

10 Q. "Thereafter was it ever done?"

A. "No."

.....

Q. "Do you know whether plaintiff was aware of these negotiations about dowry?"

p.115, 1.15

.....

A. "She was present on certain occasions when the discussion took place in my house."

p.115, 1.21

20 17. The Appellant in his evidence stated that the proposal of an "arranged marriage" between him and the Respondent was first made in January, 1950, by Mrs. Nanda Udalagama; that the proposal lay in abeyance until about February or March, 1950, until it was revived through the intervention of Mrs. Anula Udalagama; that thereafter the dowry matters were agreed upon; that the final date for settling the dowry was eventually agreed on as being the 21st May, 1951 after which the engagement was to take place; that by the 21st May, 1951, nothing had been done about settling the dowry and that the proposal was in consequence dropped.

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18. On the question of the dowry, the Appellant stated in his evidence:-

"Q. Thereafter was there any definite decision made about the dowry?"

p.160, 1.12

A. Yes, Rs.5000.00 and 5 acres tea, the money to be deposited in the Bank in the name of the plaintiff and a deed to be written for 5 acres in the name of the plaintiff.

Q. So far as your father was concerned what was his attitude to the question of dowry?

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A. He wanted the dowry before any engagement could take place.

Q. Is there any reason among Kandyans for the insistence of dowry more than among others?

A. Yes. Once a girl goes out in deega she loses all rights of inheritance to her father's property and it is therefore necessary to see that question is settled before she goes out in deega. The dowry is for the wife."

In cross-examination he stated the matter thus:-

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p.215, 1.21

"Q. If your father told you that there was no need for a dowry would you have married her without a dowry?

A. No. May I explain. (I allow the witness to explain). I was also interested in her welfare, namely that if she married and went in deega she would have lost all inheritance to the paternal estate and in the event of anything happening to me, she and the children that would have been born to us would have been left destitute. I was anxious to protect her interest also."

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19. At the close of the trial, the learned District Judge (Mr. E.A.V. De Silva) gave judgment dismissing the Respondent's action with costs.

20. In the course of his judgment the learned District Judge dealt with the circumstances in which the Appellant and the Respondent were thrown together:-

p. 319, 1.17

"The proposal having been agreed to by the parents of both parties the horoscopes of the parties were read and compared and the reading was found to be propitious. Negotiations for the dowry were then set afoot by defendant's father through Anula, the defendant himself having indicated what dowry he expected. After certain negotiations Boange promised to give his daughter a dowry of five acres of tea and Rs.5000.00 in cash, and this was agreed to by the defendant and his father. I would note in passing, that though Boange promised to give the dowry mentioned above, he showed a strange repugnance to put pen to paper. He came all the way from Kadugannawa, a distance of about

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15 miles to Kegalle, to deliver orally his replies to Anula's letters on the subject.

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10 After the dowry was agreed upon the defendant was allowed to meet the plaintiff in Anula's house and on one occasion in the month of May 1950, the defendant took the plaintiff to the pictures in Kegalla in the company of Anula and her son. Later the same month the defendant and his mother called on the Boanges at their Walauwa and on that occasion the defendant himself spoke to Boange about the dowry and Boange promised him that he would give the dowry agreed on. Thereafter the parties met frequently at Anula's house. The plaintiff had joined the teaching staff of Balika Vidyalaya in late January or early February and came to reside at Anula's house. Anula's house was on the other side of the road immediately opposite defendant's father's house where the defendant resided. Defendant's car was left in the garage attached to Anula's house and defendant's meetings with the plaintiff became so frequent that Anula remonstrated with the defendant on one occasion and told him that he should not see the plaintiff so often before they were "formally engaged". The defendant replied, "Do not mistrust me." This was some time after May."

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21. The learned District Judge went on to say:-

30 "Anula had clearly informed Boange that before the engagement could take place the dowry had to be finalised, as well as the precise mode in which it had to be finalised. The formal engagement among Kandyans of this class takes place in the presence of the close relatives of the parties by the man tying a neck-lace round the neck of the bride-to-be and she in turn placing a ring on the man's finger. The parties are thereafter considered engaged to be married or betrothed to each other. Usually this ceremony is carried out on an "auspicious" day. If the agreement is, as in this case, that the dowry should be given before the engagement, the engagement, would not take place till the dowry was provided, unless of course the bridegroom decided otherwise."

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p.322, 1.17

22. The learned District Judge dealt with the argument advanced against the Appellant that he had

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decided to break off the "engagement" to the Respondent, after his appointment to the Ceylon Judicial Service, in order that he could look for a better "arranged marriage" in the following passage:-

p. 327, 1.30

"Learned Counsel for the plaintiff has stressed the argument that the breaking off of the Boange engagement was not due really to the fact that Boange had failed to finalise the dowry before the 21st May, but because the defendant on being appointed to the Judicial Service thought he could make a better marriage and had early in March made up his mind to break off the engagement to plaintiff on some pretext or other. But the fact remains that the defendant ultimately married no other than the plaintiff's second cousin and if the dowry he obtained were considered, it cannot be said that he made such a magnificent match."

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23. The learned District Judge referred to the relevant law:-

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p.334, 1.31

"The Supreme Court has laid down that the writing relied on to prove the promise of marriage must contain an unqualified and express promise to marry made by the defendant to plaintiff or that such express promise must arise by necessary implication from the writing itself. An admission or repetition in writing of a prior verbal promise would suffice but if the writing affords only written corroboration of a prior verbal promise, such as in the case where one of the parties gives notice of marriage, such writing though it implies a prior verbal promise would not amount to a written promise made by one party to the other, and no action for breach of promise could be maintained upon it."

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24. The learned District Judge next reviewed the Ceylon authorities in point and considered the effect of the three documents relied on by the Respondent as constituting a written promise of marriage, viz., D.7, D.8 and P.1 :-

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p.337, 1.10

"The defendant's reply to this letter D7 and to the letter D8 - written by the plaintiff on consecutive days - is the letter P1 dated 21st December, 1950. The passage in this letter relied on by the plaintiff as constituting a promise to marry read in conjunction with

the letters D7 and D8 is as follows:-

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p.396, 1.20

"Girlie I don't think I need repeat all what you have written to me, because I feel just the same way as you that all the expectations and dreams you have of your future will not be in vain. You can confidently hope. The sooner it is the better I think. So that you should if you possibly can have a chat with your Daddy and tell him that this unnecessary delay is by no means good to either. It has been hanging fire since June, but I find nothing appears to have been done. It is no use delaying now. I can tell your Daddy about it but I don't want to hurt your feelings. It will be better if you can put it to him."

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In the passage quoted above defendant says he is in complete accord with the plaintiff regarding the sentiments she had expressed in her letters and seems to entertain no doubts that she is a girl of pure character and would be steadfast and faithful to him when they are married. He also assures her that she could confidently hope that all the expectations and dreams she has of her future would not be in vain. He adds that if these hopes and expectations are to materialise she should speak to her father to put an end to this "unnecessary delay". There is nothing here either express or implied that could be construed as an unqualified promise on defendant's part to marry the plaintiff. Nor am I able to see in the defendant's words contained in P1 read by itself or conjointly with D7 and D8 an admission by him of an earlier promise to marry, made by him to the plaintiff. If D7 contains no promise to marry, the fact that defendant reiterates the sentiments expressed in D7 would on his part not amount to a promise or the acceptance by him of a promise to marry."

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25. The express finding of the learned District Judge on the documents in question was as follows:-

"After careful consideration of the evidence and the letters D7, D8 and P1, I have come to the conclusion that these letters which are relied on to prove the written promise to marry do not contain a valid promise to marry made by the defendant to plaintiff."

p.341, 1.27.

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26. The learned District Judge thereafter made the following comment on the respective roles of parents and dowry in regard to marriage :-

p.342, 1.25

"The way in which this vengeful legal battle has been fought out gives one to think that it would be worth considering whether our law relating to breach of promise of marriage should not be amended or even repealed altogether as not being in harmony with the customs of our country, where Dowry is the best maker of marriages and where the consent of parents to the marriage of their children plays such an important part; some parents wishing to control the marriage of their children even from the grave."

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27. At all times the onus it is respectfully submitted was upon the Plaintiff to establish affirmatively a positive promise by the Defendant to marry her and furthermore a positive promise independently of any conditions precedent. The Plaintiff's evidence with regard to this is to be found in the main in the following passage :-

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p.41, 1.30

'During this period' that is during the Easter holidays of 1950 'I went to the pictures in the company of defendant ... I was seated between the defendant and Mrs. Anula Udalagama at the pictures. At the picture-palace defendant promised to marry me. He asked me to give up studying and to continue teaching at Balika Vidyalaya. I said that I wished to continue my studies. Then he told me that he did not wish me to go to the University. I made up my mind to marry defendant.'

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The Defendant's evidence on this point is mainly to be found in the following passage :-

p.167, 1.14

"Q. Plaintiff has told us that at the picture-palace you promised to marry her. Is that correct?

A. No.

Q. Have you at any time promised to marry Plaintiff either orally or in writing?

A. No.

Q. Is it true that at the picture-palace you asked her to give up studying and teach at the Balika Vidyalaya?

A. No.

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Q. Is it true that you asked her not to go to the University?

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A. No."

The learned District Judge with regard to this evidence found as follows :-

10 "Defendant's position is that there was no need for him to make such an express promise of marriage to plaintiff and that the occasion for making such a promise or a personal proposal of marriage to plaintiff as stated by her never arose as the parents of the parties have consented to the marriage and that it was only thereafter the plaintiff showed her willingness to meet him and did in fact meet him and converse with him on the footing that each was willing to marry the other. I accept this evidence." p.331, 1.26

20 It is respectfully submitted that the learned District Judge finding himself here confronted with a flat conflict of evidence on a pure question of fact decided this question of fact in favour of the Defendant. The onus was on the Plaintiff and it is submitted that the learned District Judge must in arriving at this conclusion of fact had in mind the demeanour and credibility of the Plaintiff and Defendant.

28. For the reasons given by him in his judgment, the learned District Judge dismissed the Respondent's action with costs.

30 29. The Respondent thereupon appealed to the Supreme Court of Ceylon and the appeal was heard by Gratiaen J. and Swan J.

30. In his judgment Gratiaen J. referred in the following terms to the circumstances in which the Appellant was first introduced to the Respondent with a view to a "match" being "arranged" and to the events that led to the matters being finalised :-

"..... Mrs. Nanda Udalagama (who was related to both the plaintiff and the defendant) wrote to him from Kandy inviting him to call on her as she thought she had found a more suitable "match" for him. It was on this occasion that the defendant first saw the plaintiff, and he later indicated that he was "interested".

p.352, 1.25

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Nanda made certain tentative proposals to the plaintiff's father (Mr. Boange) without success. Eventually, the defendant invoked the more mature advocacy of his sister-in-law Mrs. C.H. Udalagama who agreed to help, having first obtained the consent of Mr. Udalagama senior. In due course, as the result of negotiations carried on primarily through Mrs. C.H. Udalagama, the parents on both sides agreed that the plaintiff should be "given in marriage" to the defendant. The Horoscopes were compared with favourable results and, after some haggling, the dowry was "finalised" at Rs.5000/- in cash and 5 acres of tea. The significant reduction in the amount of the dowry stipulated in this case (i.e. from about 2 or 3 lakhs to about Rs.10,000/-) is perhaps the best indication of the assessment by the Udalagamas of the plaintiff's suitability as a wife for the young Advocate who had by now applied for appointment as a member of the Ceylon Judicial Service.

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The terms of the contemplated marriage so arranged between the respective parents acting through an intermediary need to be elaborated a little further. Mr. Udalagama senior had first consented to the dowry being made over to the intended bride after the wedding, but it was later stipulated that it should be given on the day of the betrothal ceremony. Mrs. C.H. Udalagama, whose evidence was accepted by the learned trial Judge as true on all material issues, explained that the defendant was well aware of the terms agreed upon by the parents; the plaintiff on the other hand, "did not know anything: it is not usual to talk to the girl about dowry matters." She was certainly not a party to the agreement, but I accept, for the purposes of my decision, the conclusion of the learned Judge that she "did acquaint herself at an early stage of the proceedings with the dowry she was to get."

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31. It is respectfully submitted that Gratiaen J. in his judgment affirms the following findings of the learned trial Judge:-

- (a) A marriage had been "arranged" for the Appellant and the Respondent by the respective parents according to Kandyan custom;

(b) The Respondent "did acquaint herself at an early stage of the proceedings with the dowry she was to get";

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(c) Appellant and Respondent met each other in consequence of, and as parties to, an "arranged marriage".

32. These findings, it is submitted, may therefore be regarded as concurrent.

33. Gratiaen J. however, went on to say:-

10 "In the sharp conflict of testimony which
characterised a protracted and bitterly con- p.355, 1.28
tested trial, the learned Judge was called
upon to decide whether the young couple,
quite independently of the transactions which
took place between their parents, had in fact
bound themselves by mutual promises to marry
one another; and if so, whether the defendant's
promise had been made "in writing" within the
20 meaning of the proviso to section 19(3) of the
Marriage Registration Ordinance (Cap.95). In
the absence of such writing, of course, the
claim for damages would not be enforceable."

It is submitted that this position appears to have been taken up by the Respondent only at a late stage in the trial before the District Judge. The learned District Judge dealt with it thus:-

30 "Learned Counsel for the plaintiff pressed
the argument that the dowry arrangement, nego- p.341, 1.3
tiated and arrived at between the parents of
the two parties with the knowledge and acquie-
scence of the defendant, and the love episode
between the plaintiff and defendant should be
considered as falling into two separate and
watertight compartments and should be considered
independently and apart from each other when
weighing the evidence in the case. This is a
new position for the plaintiff to take up and
is different to the position taken up in the
40 plaint itself, wherein the case for the plain-
tiff is that in or about April, 1950 defendant
became interested in the plaintiff with a view
to marriage and made a proposal to plaintiff's
parents, to which proposal the plaintiff's par-
ents were agreeable. The same position is
taken up in the letter of demand D6 with the

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amplification that thereafter the defendant regularly met and corresponded with the plaintiff and that the defendant went into such matters as the dowry he expected to get. By way of drawing a contrast Mr. Thiagalingam drew attention to the Kempitiya proposal, but the Kempitiya proposal broke off because the defendant's heart was not in it at all. In this case the evidence clearly establishes that it was only after the proposal was accepted by plaintiff's parents and the dowry agreed on that the plaintiff and defendant met each other, and that the defendant's agreement to marry the plaintiff was subject to the condition that the promised dowry would be provided."

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34. At a further stage in his judgment Gratiaen J. stated :-

p.359, 1.17

"I am perfectly satisfied that long before 1st March 1951 the defendant had on many occasions promised the plaintiff at Kegalle that he would marry her and that she in turn promised to marry him. The promises were not conditional but were made at a time when both parties confidently anticipated that the dowry would be settled in due course. In other words, they agreed to marry when (and not if) the dowry was forthcoming; and the question of either party being free to resile from the engagement was neither discussed nor contemplated. There is no doubt that by the end of 1950, they were growing increasingly impatient over Mr.Boange's delay. But they still regarded the ultimate implementation of his part of the bargain with Mr. Udalagama senior as certain. It is in this context that one must examine the letters D7, D8 and P1 which were relied on by the plaintiff as constituting a "written promise" sufficient to support the present action."

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35. Graitaeen J. thereafter "examined" the letters D.7, D.8 and P.1 :-

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p.361, 1.3

"Does P1, read in conjunction with the letters D7 and D8, constitute a "written promise" within the meaning of the proviso to section 19(3) ? The Ordinance does not declare that oral promises of marriage are null and void; it merely renders them unenforceable unless they be evidenced in writing. The object is to avoid

10 the risk of vexatious actions based on perjured testimony. The earlier authorities of this Court were all discussed during the argument and it is settled law that an action for damages lies if, in a letter addressed by the defendant to the plaintiff, there is either confirmation or at least an unqualified admission of a subsisting and binding oral promise of marriage. This is the effect of Jayasinghe v. Perera (1903) 9 N.L.R. 62, Missi Nona v. Arnolis (1914) 17 N.L.R. 425, and Karunawathie v. Wimalasuriva (1941) 42 N.L.R. 390. The letter P1 completely satisfies this minimum test."

36. It is submitted that this is a mistaken view of the relevant law and a wrong application of the legal principle involved. The correct view, it is submitted, is that the promise must be contained in writing and in the writing alone.

20 37. Mr. Justice Gratiaen dealt with the issue of fact as to whether the Defendant promised in terms to marry the Plaintiff in the following passages of his Judgment which it is submitted should be read together :-

30 "In the sharp conflict of testimony which characterised a protracted and bitterly contested trial, the learned Judge was called upon to decide whether the young couple, quite independently of the transactions which took place between their parents, had in fact bound themselves by mutual promises to marry one another;

p.355

"For the purposes of our decision we must be guided generally by the learned trial Judge's findings of fact, based on his assessment of the credibility of witnesses. What is the effect of the evidence which the learned trial Judge believed?"

40 "I am perfectly satisfied that long before 1st March 1951 the defendant had on many occasions promised the plaintiff at Kegalle that he would marry her, and that she in turn promised to marry him."

p.359

It is respectfully submitted that the Supreme Court ought not to have overruled the finding of the

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learned District Judge on what it is submitted was a question of pure primary fact, namely whether or not it was proved that the Defendant promised unconditionally to marry the Plaintiff."

38. For the reasons given in his judgment Gratiaen J. (Swan J. agreeing) allowed the appeal of the Respondent with costs. He entered judgment for the Respondent and, accepting the assessment of the District Judge, awarded her Rs.5,000/- as damages.

39. The Appellant applied to the Supreme Court for leave to appeal to Her Majesty in Council and Final Leave was granted on the 6th day of March, 1956. 10

40. The Appellant humbly submits that this appeal should be allowed, the Judgment and Decree of the Supreme Court set aside, and the Judgment and Decree of the District Court restored, with costs, for the following among other

R E A S O N S

1. BECAUSE the document P1 read by itself does not contain a promise to marry within the meaning of the proviso to Section 19 (3) of the Marriages (General) Ordinance; 20
2. BECAUSE the document P1 read with the two documents D7 and D8 does not contain a promise to marry within the meaning of the said proviso;
3. BECAUSE in any event the document P1 examined in the context and against the background in which it was written, even if it is permissible so to examine it, does not contain a promise to marry within the meaning of the said proviso; 30
4. BECAUSE in any event the documents P1, D7 and D8 examined in the context and against the background in which they were written even if it is permissible so to examine them, do not refer to a promise to marry within the meaning of the said proviso;
5. BECAUSE the Supreme Court in holding that there was an alleged "independent" promise to marry did not correctly appreciate the reality of the situation which was that both Appellant 40

and Respondent had only met as parties to (and subsequent to) an "arranged marriage" and had not otherwise committed themselves;

6. BECAUSE the Supreme Court failed to give adequate consideration to the social set-up in which the "arranged marriage" was negotiated;
- 10 7. BECAUSE the Supreme Court failed to attach due significance to the various matters and circumstances that govern an "arranged marriage" in conservative Kandyan society;
8. BECAUSE the concept of "arranged marriage" involves not merely a contract between the two persons to the marriage but also the fulfilment of conditions precedent thereto;
9. BECAUSE the Supreme Court did not attach due weight to the findings of fact of the District Court and the effect of such findings;
- 20 10. BECAUSE in particular the Supreme Court ought not to have overruled the finding of fact by the learned District Court Judge that the Defendant did not unconditionally promise to marry the Plaintiff.
11. BECAUSE the Supreme Court drew conclusions adverse to the Appellant which conclusions were not warranted either by the findings of the District Court or by the evidence;
- 30 12. BECAUSE the Supreme Court considered, in isolation, certain questions and answers asked of and given by the Appellant and held these to be conclusive against the Appellant, when, rightly and properly these questions and answers should have been considered in the context of the position taken up by the Appellant regarded as a whole;
13. BECAUSE the Judgment of the District Court is right and the Judgment of the Supreme Court is wrong.

FRANK SOSKICE

SIRIMEVAN AMERASINGH

No. 14 of 1958

IN THE PRIVY COUNCIL

ON APPEAL FROM
THE SUPREME COURT OF CEYLON

B E T W E E N:

CYRIL VERNAL UDALAGAMA
(Defendant)
Appellant
- and -

IRANGANIE BOANGE
(Plaintiff)
Respondent

CASE FOR THE APPELLANT

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