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Judgment
19 1959

14

1958

Supreme Court of Ceylon
No. 444 (Final) of 1954.

District Court, Kegalle,
No. 7873.

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON.

BETWEEN

IRANGANIE BOANGE of Boange Walauwa, Kadugannawa.

Plaintiff-Respondent

AND

CYRIL VERNAL UDALAGAMA of Kegalle.

Defendant-Appellant.

RECORD
OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED STUDIES
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25 RUSSELL SQUARE
LONDON, W.C.1.

55504

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RECORD
OF PROCEEDINGS

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No. 1.
Journal Entries

No 1
Journal
Entries
19-11-51
to
3-1-56.

IN THE DISTRICT COURT OF KEGALLE.

No. 7873

Class: V.

Amount: Rs. 20,000.00

Nature : Recovery.

Procedure: Regular.

10

IRANGANIE BOANGE of Boange
Walawwa, Kadugannawa.

Plaintiff.

vs

C. V. UDALAGAMA, of Kegalle,
presently of Magistrate's Bungalow,
Point Pedro.

Defendant.

(1)

The 19th day of November, 1951.

Mr. Harry G. Geddes files appointment and Plaint.

Plaint accepted and Summons ordered for 15-1-52.

20

Sgd. N. SIVAGNANASUNDRAM,
District Judge.

(2)

6-12-51 S. S. issued on defendant to N. P. Jaffna
ret'ble on 12-1-52.

Intd. K. S.

10-12-51 Return to S. S. filed.

(3)

15-1-52 Mr. H. G. Geddes for Plff.
Summons served on deft.
Proxy filed.
Vide proceedings.

30

Intd. N. S.

D. J.

(4)

17-1-52 Mr. Abeywickrema for deft. moves under
section 104 of C. P. C. for an order on the
plaintiff to produce for inspection by the
deft's proctor all correspondence she had with
the defendant relied on by the plaintiff
referred to in para 4 of the plaint to permit
the proctor for defendant to take copies

40

No. 1
Journal
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19-11-51
to
8-1-56.
--continued

thereof. He moves in terms of said sect. that a notice be issued on the plff. and that an early date be given for plff. to comply with the provisions of sect. 105 C. P. C.

Issue notice for 29-2-52.

Intd. N. S.

D. J.

- (5)
22-1-52 Notice issued on plaintiff to Fiscal C. P., ret. 10
26-2-52.

Intd. B. H. G.

- (6)
18-2-52 Mr. H. G. Geddes refers to the notice of court dated 22-1-52 directed to the plff. requiring the plff. to produce for inspection of the deft's proctor the documents referred to in para 4 of the plaint and to permit the said proctor to take copies thereof he moves to tender the affidavit of the plff. and his own affidavit in explanation of the plff's inability to give inspection of the said documents to the deft's proctor in terms of the said notice. He further moves to tender photographed copies duly certified by him of the documents which the plff. is required to produce by the said order of the court, to enable the deft's proctor to have inspection and make copies thereof. He also moves to amend para 4 of the plaint by deleting the figures "1951" appearing at the end of the said para and substituting in place thereof the figures "1950". He tenders a fair copy of the amended plaint. Proctor for deft. receives Notice. Call on bench. 20
30

Intd. N. S.

D. J.

- (7)
18-2-52 Mr. H. G. Geddes for plff. 40
Mr. A. I. Abeywickreme for deft.
Case called - vide appliction of plff.
at J. E. (6)

Vide proceedings.
Amended plaint filed.
Answer on 17-3-52.

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to
3-1-56
—continued

Intd. N. S.
D. J.

(8)

17-3-52 Mr. H. G. Geddes for plff.
Mr. A. I. Abeywickreme for deft.
Answer due - filed.

10

Proctor for deft. files petition and affidavit filed and security and costs and undertakes to give copies to platff's proctor today. Mr. Adv. Misso instd. for plff. takes notice of the application and states that the matter can be fixed for inquiry subject to his right to file objections.

Inquiry on 28-4-52.

Intd. N. E.

D. J.

20

(9)

19-4-52 Mr. H. G. Geddes refered to J. E. of the 17th March 1952, in these proceedings, he tenders herewith counter affidavit of the plff. and moves that same be read over in evidence at the inquiry fixed for 28th April, 1952.

Mention on 28-4-52.

Intd. N. E.

D. J.

30

(10)

28-4-52 Inquiry (1)
Mr. H. G. Geddes for plff.
Mr. A. I. Abeywickreme for deft.
Plff's counter affidavit filed Vide - J. E. 9.
Inquiry for 20-6.

Intd. N. E.

(11)

11-6-52 Mr. Abeywickreme for deft. moves for a notice on the plff. and her proctor to produce in court on the 20th day of June, 1952, that being the date on which inquiry into the matter of security for costs of deft. is fixed,

40

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—continued

the original letter dated 21st December, 1950 referred to in the amended plaint together with the envelope in which the said letter was posted.

Call on 12-6-52.

Intd. N. S.
D. J.

- (12)
11-6-52 Mr. Abeywickreme for deft. files list of witnesses and documents due notice of which was given to proctor for plff. by registered post. Receipt hereto annexed. 10
File.
Intd. K. N. S.
D. J.
- (13)
12-6-52 Mr. H. G. Geddes for plff.
Mr. A. I. Abeywickreme for deft.
Case called - Vide J. E. 10.
Application of 11-6-52 alld. 20
Issue notice for 20-6-52.
Intd. N. S.
D. J.
- (14)
13-6-52 Notice issued on the plaintiff to Fiscal, C. P., Kandy and on her proctor to Fiscal W. P., Colombo, ret'ble on 19-6-52.
Intd. K. S.
- (15)
20-6-52 Mr. H. G. Geddes for plff. 30
Mr. A. I. Abeywickrema for deft.
Notice - vide J. E. 13 served, on
(a) Iranganie Boange - Plff.
(b) Mr. H. G. Geddes - Proctor of Plff.
Vide Proceedings.
Intd. N. S.
D. J.
- (16)
27-6-52 Order delivered in open court in the presence of Mr. Adv. Herman insted for plff. and proctor for deft. 40
Trial on 20th, 21st. Nov. 1952.
Intd. N. S.
D. J.

2-7-52 Mr. A. I. Abeywickreme for deft. moves that court do direct the Secretary to hand over to him Document P1 referred to in the proceedings dated 20-6-52 for the purpose of obtaining a copy thereof for the use of the deft's Counsel in the above case.
Give him the photographed copy of the letter for making a copy.

No. 1
Journal
Entries
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to
9-1-56
—continued

10

Intd. N. S.
D. J.

(17)

30-10-52 Mr. Geddes for plff. with notice to proctor for deft. filed list of witnesses and moves for summons.

Allowed. Intd. E. A. V. D. E.
D. J.

(18)

30-10-52 Mr. Geddes for plff. with notice to proctor for deft. filed list of documents.

20

File.
Intd. E. A. V. De S.
D. J.

(19)

4-11-52 Mr. H. G. Geddes for deft. moves that the Trial of the above case fixed for 20th and 21st of November, 1952, be postponed to either the 22nd and 23rd or 29th and 30th January, 1953.
Proctor for deft. consents.

30

Call on bench.
Intd. E. A. V. de S.
D. J.

(20)

4-11-52 Mr. H. G. Geddes for plff.
Mr. A. I. Abeywickreme for deft.
Case called vide J. E. 19. of 4-11-52.
Call case 20-11-52 to fix fresh date or trial suitable to counsel on both sides.

40

Intd. E. A. V. de S.
D. J.

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—continued

- (21)
20-11-52 Trial (1)
Mr. H. G. Geddes for plff.
Mr. A. I. Abeywickreme for deft.
Called to refix Trial.
Of consent Trial refixed for 5th and 13th
March, 1953.

Intd. E. A. V. de S.
D. J. 10
- (22)
13-1-53 Mr. Abeywickreme for deft. files list of wit-
nesses and moves for summons. Copy of list
posted under registered cover to proctor for
plff.

S. S. allowed,
Intd. E. A. V. de S.
D. J.
- (22)
13-2-53 S. S. issued on 1 witness of deft in list (22) 20
to D. F., Kegalle, on 1 wstness to Gampola
and on 3 witnesses to Kandy ret'ble 3-3-53
K. R. for Rs. 20-00 fld.

Intd. K. S.
- (23)
21-2-53 S. S. issued on 1st, 2nd and 7th witness of
plff in list (17) to D. F. Kegalle ret'ble on
3-3-53. K. R. for Rs. 92-00 filed.

Intd. K. S.
- (24)
23-2-53 S. S. issued on 4th, 5th, and 11th witnesses of 30
plff in list (17) to C. P. Kandy, on 10th wit-
nesses (deft) to N. P. Jaffna, on 3rd. witness
to Fiscal Marshall, Gampola, ret'ble on 3-3-53
K. R. for Rs. 65-30 (batta) filed.

Intd. K. S.
- (25)
25-2-53 Mr. Geddes for plff. moves to file plff's addl.
list of witnesses. Copy to proctor for deft.
sent by registered post. Receipt field. 40

File Intd. E. A. V. de S.
D. J.

- (26)
25-2-53 Mr. Geddes for plff. files plff's addl. list of documents copy sent under registered cover to proctor for deft. Receipt filed.
File
Intd. E. A. V. de S.
D. J.
- 10 (27)
25-2-53 Mr. Abeywickreme for deft. files addl. list of deft'ss witnesses and moves for summons on him. Copy sent to proctor for deft. send by registered post. Receipt annexed.
List not filed in compliance with S. O. 195.
Intd. E. A. V. de S.
D. J.
- 20 (28)
5-3-53 Trial (2)
Vide proceedings.
Trial refixed for 14th and 15th July, 1953.
Intd. E. A. V. de S.
D. J.
- (29)
5-3-53 Requisitions for Batta issued as follows:-
Rs. 74-20 to Mr. C. V. Udalagama.
Rs. 23-00 to Mr. T. B. Kempitiya.
Intd. E. A. K. S.
- 30 (30)
7-3-53 Mr. H. G. Geddes, proctor for plaintiff requests that the summons (with precepts etc.) that are unserved, be extracted from the record and forwarded to him. He enclose a registered addressed envelope for same.
Forward. Intd. E. A. V. de S.
D. J.
- (31)
10-3-53 Unserved Summons on the 2, 4, and 11th witnesses forwarded to Mr. Geddes together with the precepts and originals.
Intd. K. S.
- 40 (40)
11-3-53 The A. G. A. Kegalle moves to forward this record to him for reference and return in two day's time. He states that it is required for

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 —continued

administrative purposes for inquiry into a
 complaint against the Service of the S. S.
 Forward record.

Intd. E. A. V. de S.

D. J.

- (41) Record Sent.
 18-3-53 Record received back.
 Intd. K. S.
- (42)
 20-3-53 Mr. Geddes for plaintiff endorses subpoenas
 in the above case duly stamped for perfection. 10
 He requests to forward the subpoenas to the
 respective Fiscals and advice him so that he
 may instruct them to see that the subpoenas
 are served on the witnesses before the date of
 Trial.
 Issue S. S.
 Intd. E. A. V. de S.
- (43)
 23-3-53 S. S. issued on 1 and 7 witnesses of plaintiff 20
 in list (17) to Kegalle; on 5th witness to C. P.
 Kandy ret'urnable 12-7-53
 Intd. K. S.
- (44)
 23-3-53 S. S. reissued on 2nd witnesses of plff. in
 list 17 to Kegalle; and on 4th and 11th wit-
 nesses to C. P. Kandy. Ret'urnable 12-7-53.
 Intd. K. S.
- (45)
 26-3-53 Mr. Abeywickreme for deft. moves to order 30
 reissue of summons on defts witnesses that
 have not been served.
 Reissue accordingly.
 Intd. E. A. V. de S.
D. J.
- (46)
 9-4-53 M. S. S. on the 14, 15 and 17 witnesses of
 defendant in list (22) reissued to Kandy, on
 18th witness to Gampola ret. 12-7-53.
 Intd. K, S. 40

(47)
20-5-53 Mr. Abeywickreme for defendant filed bill of costs ordered on 5-3-53 payable by plaintiff and that the same be taxed. Notice of that bill given to proctor for plaintiff by registered post. Receipt filed.

Tax bill.

Intd. E. A. V. de S.

Taxed at Rs. 771-36 1/2. Intd. *D. B. S.*

3-6-53

10

(47a)
1-6-53 Mr. Ramachandran for plaintiff with notice to proctor for defendant submits revocation of proxy granted by plaintiff in favour Harry G. Geddes proctor and submit proxy of the plaintiff in his favour. Mr. Geddes consents.

Of consent proxy granted to Mr. Geddes is cancelled and proxy granted to Mr. Ramachandran accepted.

Intd. E. A. V. de S.

D. J.

20

(48)
3-6-53 Mr. Ramachandran for plaintiff moves to amend the plaint by substituting the words "In or about August 1951" for "In or about March 1951" in para 6 of the plaint and further move to file a copy of the amended plaint. Proctor for defendant objects, as the case is fixed for Trial. Support.

Intd. E. A. V. de S.

30

(49)
4-6-53 Mr. Abeywickreme for defendant moves to issue writ of execution against plaintiff to recover Rs. 771-36 1/2. Issue writ for Rs. 771-36 1/2.

Intd. E. A. V. de S.

D. J.

(50)
5-6-53 Mr. Ramachandran for plaintiff with notice to proctor for defendant files additional list of documents and witnesses. File.

Intd. E. A. V. de S.

40

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Entries
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to
8-1-56
—continued

No. 1
Journal
Entries
19-11-51
to
3-1-56.
—continued

- (51)
8-6-53 Called to support application at J. E. (48)
Mr. Ramachandran states that he is not ready
today to support his application and moves
that the case be called tomorrow to support
his application. Call case 9.6 to support appli-
cation at J. E. 48.
Intd. E. A. V. de S.
- (52)
9-6-53 Called to support application at J. E. 48. 10
Vide Proceedings. Call on 23-6-53.
Intd. E. A. V. de S.
D. J.
- (53)
18-6-53 Writ for Rs. 771.36 1/2 issued to the Fiscal
C. P. Kandy returnable 30-11-53 against
plaintiff vide J. E. 49.
Intd. K. S.
- (54)
23-6-53 Case called. Amended plaint due. 20
Mr. Ramachandran states that he is not filing
an amended plaint. Mr. Ramachandran
moves to file a motion in writing to the same
effect. This motion is unnecessary and is
rejected as it contains irrelevant matter.
Intd. E. A. V. de S.
- (55)
30-6-53 One S. S. on plaintiffs witness issued to
Fiscal N. W. P. returnable on 12-7-53 K. R. 30
No. 67222 for Rs.25-00 filed.
- (55)
14-7-53 Trial (3)
Vide proceedings.
Further hearing tomorrow, 15-7-53.
Intd. E. A. V. de S.
D. J.
- (56)
15-7-53 Further Hearing (4) 40
Vide Proceedings.
Further Hearing on 15th, 16th and 30th
October, 1953.
Intd. E. A. V. de S.
D. J.

- (57)
23-7-53 Requisitions for Batta issued as follows:-
Rs.25.00 to Mr. C. V. Udalagama.
Rs.21.00 to Mrs. C. V. Udalagama.
Rs. 5.00 to Mr. J. W. Udalagama.
Rs. 5.00 to Mrs. J. W. Udalagama.
Summons in record.
Intd. K. S.
- 10 (58)
30-9-53 S. S. issued on list. witness of plaintiff in
list 17 to D. F., Kegalle returnable on 13-10-53
K. R. for Rs. 5.00 filed.
Intd. K. S.
- (59)
15-10-53 Further Hearing (5)
Vide proceedings.
Further hearing tomorrow.
Intd. E. A. V. de S.
D. J.
- 20 (60)
16-10-53 Further Hearing (6)
Vide proceedings.
Further hearing on 30-10-53
Intd. E. A. V. de S.
D. J.
- (61)
30-10-53 Further Hearing (7)
Vide Proceedings.
Trial refixed for 30-11-53 and 1-12-53
Intd. E. A. V. de S.
- 30 (62)
23-11-53 S. S. reissued on 18th witness of defendant
in list 22 to F.M. Gampola ret'urnable 28-11-53
Intd. K. S.
- (63)
27-11-53 Iranganie Boange the plaintiff in the above
case, moves for a postponement in the above
case fixed for 30-11-53 and 1-12-53 on the
ground that her brother has expired.
Postponement refused.
Intd. E. A. V. de S.
D. J.
- 40

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Journal
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-continued

- Plaintiff informed by wire.
Intd. D. B. S.
27-11-53.
- (64)
30-11-53 Further hearing (8)
Vide proceedings.
F. M. on 15 and 19 January, 1954.
D. J.
- (65)
16-12-53 Mr. Ramachandran for Plaintiff with notice
to proctor for defendant moves for summons
on C. V. Udalagama the defendant to produce
notices of Assessments of income Tax from
the years 1944, 1945 - 46, 1946 - 47, 1947 - 48,
1948 - 49 1949 - 50, 1950 - 51.
Allowed.
Intd. E. A. V. de.
D. J. 10
- (66)
21-12-53 S. S. issued on defendant ret'urnable 12-1-54
Intd. K. S. 20
- (67)
4-1-54 Fiscal C. P. reports that the plaintiff was not
found at the given address. The defendant
did not point out any property for seizure and
sale.
Intd. R.
- (68)
15-1-54 Further Hearing.
Vide proceedings. 30
Further Hearing on 19th and 22nd. January,
1954.
D. J.
- (69)
19-1-54 Further hearing.
Vide proceedings.
Further hearing on 8, 9, and 10 Feb'54
D. J.
- (70)
8-2-54 Further Hearing. 40
Vide proceedings.
Further Hearing on 10 and 13 Feb'54.
Pl to Pl 3 filed with list.
D. J.

Pl to Pl 3 in order.

Intd. W. S.

(71)

10-2-53 Called for addresses.
Documents on 11-2-54.
Judgment 10-3-54.

Intd. E. A. V. de S.

D. J.

(72)

10 11-2-54 Documents Pl to Pl 3 already filed
D1 to D31 due filed.

Intd. E. A. V. de S.

D. J.

Documents in order.

Stamp duty - /24 cts on defendant documents
due.

(73)

20 10-3-54 Judgment due. Vide Judgment delivered.
Plaintiff's action dismissed with costs.
Stamp duty -/24 cts on defendants documents
due.
Supplied.

Intd. E. A. V. De. S.

D. J.

(73)

30 17-3-54 Mr. Ramachandran for plaintiff-appellant files
petition of appeal and tenders notice of appeal,
notice of security. He further tenders stamps
Rs. 30.00 for S.C. Judgment and Rs. 15.00 for
certificate in appeal. He also files application
for typewritten copies with K.R. for Rs. 50.00
being fees for 2 sets. He also files K.R. for
Rs. 215.00 being security for costs in appeal
and moves that the Court be pleased to for-
ward the said appeal to S.C. for disposal after
the said appeal has been perfected.

1. Accept petition of appeal.
2. Issue notice of security for 25-3-54.

Intd. E. A. V. de S.

D. J.

40

- (74)
18-3-54 Notice of Security issued on defendant-respon-
dent to Fiscal N. W. P., Kurunegala, ret'urna
ble on 23-3-54.

Intd. N. S.
- (75)
25-3-54 1. Notice of security served on defendant.
He is absent.

2. Mr. Ramachandran proctor for plaintiff
appellant moves to file security Bond hypothe- 10
cating a sum of Rs. 215.00 already deposited
and moves that the court be pleased to accept
same.

Mr. Abeywickreme moves to file written ob-
jections.
Objections on 29-3.

Intd. E. A. V. de S.
- (76)
29-3-54 Objections of defendant to security due filed. 20
Inq. 6-4. Intd. E. A V. de S.

D. J.
- (77)
30-3-54 Mr. A. I. Abeywickreme proctor for defendant
respondent with notice for proctor for plaintiff
appellant files list of witnesses and moves for
summons.

S. S. allowed.
Intd. E A V de S.

D. J.
- (78)
31-3-54 S. S. issued on 1 witness of defendant - Res- 30
pondent returnable

Intd. K. S.
- (79)
6-4-54 Inquiry (1)
Vide Proceedings.
Order on 9-4-54

Intd. E. A. V. de S.

D. J. 40

(80)
9-4-54

Order Due- Vide order delivered.
Accept security.
Issue Notice of appeal for 4-5-54
Intd. E. A. V. de S.

D. J.

(81)
9-4-54

10

Notice of Appeal issued on defendant
Respondent. to D. F. Kurunegala with copy
of petition of Appeal, ret'urnable 1-5-54.
Intd. K. S.

30-4-54 Return to notice filed.

(82)

4-5-54 Notice of appeal served on defendant-Respon-
dant. He is absent.
Forward Record to S. C. in due course.
Intd. E. A. V. de S.

D. J.

20

(83)
21-5-54 Dicree entered.

Intd. K. S.

(84)

3-1-56 The Registrar Supreme Court forwards Sup-
reme Court Judgement as follows:- "It is
considered and adjudged that this appeal be
and the same is hereby allowed of judgment
is entered in favour of the Plaintiff for
Rs. 5000/- with costs in both Courts".

0

(1) File (2) Proctors concerned to note.

Intd. D. J.

No. 2
Plaint of the
Plaintiff.
19-11-51.

No. 2

Plaint of the Plaintiff.

IN THE DISTRICT COURT OF KEGALLE.

No. 7873.

IRANGANIE BOANGE of Boange
Walauwa, Kadugannawa.

Plaintiff.

vs

C. V. UDALAGAMA, of Kegalle and
presently of Magistrate's Bungalow,
Point Pedro.

10

Defendant.

On this 19th day of November, 1951.

The plaint of the plaintiff above named appearing by Harry G. Geddes her proctor states as follows:-

1. The defendant resides, the contract sought to be enforced was made and the cause of action hereinafter set forth arose all at Kegalle within the jurisdiction of this court.
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. 20
3. Thereafter the defendant promised and agreed to marry the plaintiff which promise the plaintiff accepted and the plaintiff and the defendant became engaged.
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, 1951.
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 plaintiff's 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. 30

6. In or about March, 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.

No. 2
Plaint of the
Plaintiff
19-11-51
—continued

10

7. By reason of the Defendant's wrongful conduct the plaintiff suffered great humiliation and pain of mind and has sustained great loss and damage. The plaintiff assesses the damage she has sustained in a sum of Rs. 20,000-00.

8. A cause of action has accrued to the plaintiff in the premises to sue the defendant for the recovery of the said sum of Rs. 20,000-00 which sum or any part thereof the defendant has failed and refused to pay though demanded.

Wherefore the plaintiff prays:

1. For judgment against the defendant in the sum of Rs. 20,000-00.
2. For costs of suit, and
3. For such other and further relief as to this court shall seem meet.

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Sgd. HARRY. G. GEDDES.
Proctor for Plaintiff.

Settled by
Mr. Ivor Misso
Advocate.

No. 3.

Amended Plaintiff of the Plaintiff.

IN THE DISTRICT COURT OF KEGALLE.

No. 7873.

IRANGANIE BOANGE of Boange
Walauwa, Kadugannawa.

*Plaintiff.**vs*

C. V. UDALAGAMA of Kegalle and
presently of Magistrate's Bungalow,
Point Pedro.

10

Defendant.

On this 18th day of February, 1952.

The Amended plaint of the plaintiff abovenamed appearing by
Harry G. Geddes her Proctor states as follows :-

1. The defendant resides, the contract sought to be enforced was made and the cause of action hereinafter set forth arose all at Kegalle within the jurisdiction of this Court.
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. 20
3. Thereafter the defendant promised and agreed to marry the plaintiff which promise the plaintiff accepted and the plaintiff and the defendant became engaged.
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.
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 plaintiff's 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 30

6. In or about March, 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.
7. By reason of the Defendant's wrongful conduct the plaintiff suffered great humiliation and pain of mind and has sustained great loss and damage. The plaintiff assesses the damage she has sustained in a sum of Rs. 20,000-00.
8. A cause of action has accrued to the plaintiff in the premises to sue the defendant for the recovery of the said sum of of Rs. 20,000-00 which sum or any part thereof the defendant has failed and refused to pay though demanded.

No. 3
Amended
Plaint of the
Plaintiff
18-2-52
—continued

10

Wherefore the plaintiff prays :-

1. For judgment against the defendant in the sum of Rs. 20,000-00.
2. For costs of suit, and
3. For such other and further relief as to this court shall seem meet.

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Sgd. HARRY G. GEDDES,
Proctor for Plaintiff.

Settled by
Mr. Ivor Misso,
Advocate.

Answer of the Defendant.

IN THE DISTRICT COURT OF KEGALLE.

No. 7873.

IRANGANIE BOANGE of Boange
 Walawwa, Kadugannawa.

Plaintiff.

vs

C. V. UDALAGAMA of Kegalle,
 presently of Magistrate's Bungalow,
 Jaffna.

10

Defendant.

On this 17th day of March, 1952.

The answer of the defendant abovenamed appearing by A. I. de S. Abeywickreme, his proctor states as follows:—

1. Answering to paragraph 1 of the plaint the defendant denies that this court has local jurisdiction to hear and determine this action. The defendant resides outside the jurisdiction of this court. The alleged contract is based on the letter of 21st December, 1950, which letter was posted in Kandy to the plaintiff who resided at Kandy. The cause of action, if any, viz: The alleged breach of contract, arose outside the jurisdiction of this court by reason of the fact that at the relevant dates both the plaintiff and defendant were resident outside the jurisdiction of this court. 20
2. The defendant denies the averments in paragraph 2 of the plaint, and states the relations of the plaintiff made a proposal to the defendant that the defendant should marry the plaintiff to which proposal the defendant was agreeable subject to certain agreements being reached with regard to the dowry. 30
3. The defendant denies the averments in paragraph 3 of the plaint. The defendant, however, admits that he intimated that he would be willing to become engaged to, or to promise to marry the plaintiff, if and when the agreement with regard to dowry herein-before referred to was finalised.

4. The defendant specifically denies the averments in paragraph 4 of the plaint. The defendant specifically denies that he has either by the letter of 21st December 1950 or by any other writing made a promise of marriage to the plaintiff. The defendant states that the plaintiff cannot, in law, have and maintain this action.
5. The defendant denies the averments in paragraph 5 of the plaint.
- 10 6. Answering to paragraph 6 of the plaint the defendant, whilst admitting that he did get engaged to another lady whom subsequently he has married, denies all and singular the other averments contained therein. The defendant states that his engagement to the other lady took place after the time allowed by him for finalising the agreement regarding the dowry had lapsed, and that this action is a spiteful and malicious one brought at the instance of the plaintiff's father with a view to humiliating the defendant.
7. The defendant denies the averments in paragraphs 7 and 8 of the plaint.

No. 4
Answer of the
Defendant.
17-3-52.
—continued

20 Wherefore the defendant prays :—

- (a) That plaintiff's action be dismissed.
- (b) For costs, and
- (c) For such other and further relief as to this court shall seem meet.

Sgd. A. I. ABEYWICKREME,
Proctor for Defendant.

Settled by
E. G. Wickramanayake, Q. C.

No. 5
Amended
Plaint of the
Plaintiff.
8-6-53.

No. 5.

Amended Plaint of the Plaintiff.

IN THE DISTRICT COURT OF KEGALLE.

No. 7873.

IRANGANIE BOANGE of Boange
Walawwa, Kadugannawa.

*Plaintiff.**vs*

C. V. UDALAGAMA of Kegalle and
presently of Magistrate's Bungalow, Point
Pedro.

10

Defendant.

On this 3rd day of June, 1953.

The amended plaint of the plaintiff abovenamed appearing by
S. Ramachandran, her proctor, states as follows:—

1. The defendant resides, the contract sought to be enforced was made and the cause of action hereinafter set forth arose all at Kegalle within the jurisdiction of this court.
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. 20
3. Thereafter the defendant promised and agreed to marry the plaintiff, which promise the plaintiff accepted and the plaintiff and the defendant became engaged.
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.
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 plaintiff's 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, 30

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.

No. 5
Amended
Plaint of the
Plaintiff,
8-6-53.
—continued.

7. By reason of the defendant's wrongful conduct the plaintiff suffered great humiliation and pain of mind and has sustained great loss and damage. The plaintiff assesses the damage she has sustained in a sum of Rs. 20,000.00.

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8. A cause of action has accrued to the plaintiff in the premises to sue the defendant for the recovery of the said sum of Rs. 20,000.00 which sum or any part thereof the defendant has failed and refused to pay though demanded.

Wherefore the plaintiff prays:—

1. For judgment against the defendant in the sum of Rs. 20,000.00.
2. For costs of suit, and
3. For such other and further relief as to this Court shall seem meet.

20

Sgd. S. RAMACHANDRAN.

Proctor for Plaintiff.

Settled by
Mr. Ivor Misso,
Advocate.

No. 6.

No. 6
Proceedings
15-1-52

Proceedings

D. C. 7873.

15-1-52.

30

MR. ADVOCATE R. F. PERERA with MR. ADVOCATE W. WICKRAMESINGHE instructed, states that neither the plaintiff nor her proctor, Mr. Geddes, is present in Court today and moves the decree nisi be entered dismissing plaintiff's action.

The plaintiff's name is called out.

No. 6
 Proceedings
 15-1-52
 --continued

At this stage Mr. M. B. Boange is present and states that he is the father of the plaintiff. He also states that the plaintiff is not well, and therefore, she has not attended Court today. He also states that Mr. Geddes is in Colombo and is not here today. Mr. Boange states that his daughter, the plaintiff, is suffering from influenza and hat she is unable to attend Court today. He also states that since this was not a trial date the plaintiff's presence, it was thought, would not be necessary in Court.

It is about 10.30 a.m. now and I give an opportunity to plaintiff's father to produce a medical certificate in the course of the day, before 4.00 p.m. and lay the case by till 4.00 p.m.

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Intd. N. S.

D. J. 15-2-52.

It is now 3.00 p.m. and the case is called. The plaintiff's father, Mr. M.B. Boange is present and hands over to Court a medical certificate from Dr. C.B. Dharmasena of Kandy, to the effect that the plaintiff Miss Iranganie Boange is not fit to attend Court today.

At this stage Mr. Adv. Perera states that in view of the medical certiftcate filed in this case, he does not move that any order be made under Section 84 for the default of the plaintiff's non-appearance.

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ORDER

I accept the explanation of the plaintiff's non-appearance in Court today.

Answer on 29-2-52.

Sgd. N. SIVAGNANASUNDRAM.

D. J. 15-2-52.

C. D. 7873.

18-2-52.

MR. H. G. GEDDES for plaintiff.

MR. ADVOCATE R. F. PERERA instructed for defendant. Proctor for plaintiff states that he has brought to Court today photographed copies of three letters duly certified by him, which have been referred to in paragraph 4 of the plaint, and that the plaintiff's non-compliance with the notice is explained in the affidavit filed by the plaintiff dated 16-2-52 and his (Mr. Geddes') own affidavit dated 17-2-50.

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Mr. Advocate Perera states that since the plaintiff had failed to comply with the notice to produce the documents within ten days, as provided in section 105, he is not accepting the documents tendered by proctor for plaintiff today, and for a further reason that the documents tendered are not the documents referred to in the plaint but alleged copies of the same, and therefore not falling within the terms of section 104.

10 Mr. Geddes moves that in view of the position taken up by the defence, the matter may be fixed for inquiry. He moves that the amended plaint filed by him be accepted.

Mr. Perera consents on terms.

The amended plaint is accepted. Plaintiff to pay defendant Rs. 52.50 as costs.

Mr. Geddes now states that in view of the position that the amended plaint has been accepted, the earlier question arising under section 104 need not be fixed for inquiry.

Answer on 17-3-52.

Sgd. N. SIVAGNANASUNDRAM,

D. J. 18-2-52

20 D. C. 7873.

20-6-52.

MR. ADVOCATE IVOR MISSO INSTRUCTED for plaintiff.
MR. ADVOCATE E. G. WICKREMANAYAKE Q. C.
with Messrs R.F. PERERA and W. WICKREMA-
SINGHE instructed for defendant.

MR. ADVOCATE WICKREMANAYAKE in support:—

30 He states that this is an action for breach of promise of marriage, which has to be in writing. The alleged writing is not filed of record as required by section 50. He cites 42 N. L. R. 390. Writing not even filed with amended plaint. Plaintiff resided in Kadugannawa, outside the jurisdiction of this Court, while the defendant was at Point Pedro, outside the jurisdiction of this Court. He refers to defendant's affidavit about the letter having been posted in Kandy. He cites 41 N.L.R. 189.

(Mr. Advocate Wickremanayake at this stage states that he invites the plaintiff to hand over to Court letter dated 21-12-50. At this stage, Mr. Advocate Misso hands over to Court a letter dated 21-12-50 together with a light blue envelope addressed to his client, the plaintiff.

I mark the letter P1 and the envelope Pla and hand it over to Mr. Wickremanayake for perusal)

Document P1, from its contents, would show that it was posted in Kandy. So does the post-mark on envelope Pla. The contract, if any, was in Kandy. The cause of action will be where the plaintiff resides. Has the forum been chosen to harass the other party? That is the test to award security for costs.

10

Mr. Misso addresses Court:— He states that this application for costs is part of the systematic harassing by the defendant. This application is lacking in bona fides. He refers to Proctor Geddes' affidavit dated 17-2-52. The defendant refused to take the documents or photostat copies on 18-2-52, on some technical grounds, but thereafter straightway proceeded to file answer, thereby showing that they did not really need the documents to file answer. After answer has been filed, the case was ripe for trial. The application for costs, if bona fides, should have been made before answer was filed. This application, on correct interpretation of section 416, should have been made after plaint is filed. The application totally lacking in bona fides. Answering to section 50 C.P.C. plaintiff has made every effort to produce the document and even to offer it through her proctor to defendant's proctor. He refers to defendant's affidavit. The matters now relied on by defendant are not matters appearing in defendant's affidavit. Averments in paragraphs 2, 5 and 6 in defendant's affidavit are immaterial. The stations to which a public officer is posted from time to time will not be his residence. Plaintiff's choice of Kegalle as the forum was not influenced by a desire to humiliate defendant for, if that was her desire, an action would have been filed at Point Pedro or Jaffna where the defendant was posted. Plaintiff has come to the proper forum. 42 N.L.R. 390 explained. Letter P1 will only be evidence of a promise already existing. The plaintiff's position is that the promise was made in Kegalle within the jurisdiction of this Court. Whether this action is filed in Kandy or Kegalle, since the defendant is posted in Jaffna, it will not matter to him, because the recovery of costs as against plaintiff would be the same problem to

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him whether the action is filed in Kandy or Kegalle. He cites 18 N.L.R. 53, 54; 19 N.L.R. 219; 41 N.L.R. 189.

No. 6
Proceedings
—continued

Mr. Wickremanayake in reply:— Prima facie it would appear that the proper forum is not Kegalle. The proper forum would be Kandy which is also more convenient to the plaintiff but the plaintiff chooses a less convenient forum with a doubtful jurisdiction, with the intent and purpose of humiliating the defendant in his own Town. Authorities under Order 25 (3) cited in Chitterley and Mulla explained. Chitterley Civil Procedure Code page 2209, Volume 2.

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Sgd. N. SIVAGNANSUNDRAM,
D. J. 20-6-52.

Order on 27-6-52.

Intd. N. S.
D. J.

D. C. 7873.

27-6-52

ORDER.

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This is an inquiry into an application under section 416 of the Civil Procedure Code by the defendant for an order on the plaintiff to give security for the payment of all costs incurred and likely to be incurred by the defendant in this action. The arguments for and against the application are recorded in the proceedings of 20-6-52. From the cases cited the following principles would apply:—

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1. That the plaintiff did not select the forum to harass the defendant or to render the recovery of costs by him difficult—18 N. L. R. 53;
2. sufficient facts should appear, which would assist the court in coming to the conclusion that security for costs should be given by the plaintiff—19 N. L. R. 219.
3. that the poverty of the plaintiff is a misfortune, not a fault, and he will not be compelled to give security merely because he is a pauper. That is the principle on which Courts in England act.—41 N. L. R. 189.
4. the principle laid down in the case of Namubai Vs. Daji Govind (1911)—35 Bombay 421, referred to at page 981

of the Code of Civil procedure by D. F. Mulla, 11th Edition—"that the Court has a discretion in the matter and in the exercise of its discretion it will not as a general rule require security for costs from a woman-plaintiff if the result of such an order will be practically to defeat the suit where it has been instituted *bona fide*" This decision does not appear to have been considered in any of the local cases.

Applying these principles, I am satisfied (*a*) that the plaintiff has not selected this Court to file the action with a view to harassing the defendant or to rendering the recovery of costs by him difficult; (*b*) that this was the proper Court in which the plaintiff could have instituted this action, and (*c*) that, as set out in paragraph 2 of the plaint and from the letter (P1) dated 21-12-50 written from Kegalle, together with other correspondence, it would appear that the plaintiff has selected this forum according to law. The fact that the defendant is at present, by virtue of his employment, residing outside the jurisdiction of this Court would not mean that his residence for the purposes of section 9 of the Civil Procedure Code is not Kegalle.

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For these reasons I am of opinion that the defendant's application must be refused. I order no costs.

Sgd. N. Sivagnanasundram.

D. J.

27-6-52

Order delivered in open Court in the presence of Mr. Advocate R. K. Herman instructed for plaintiff and proctor for defendant.

Sgd. Sivagnanasundram.

D. J. 27-6-52.

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D. C. 7873.

5-3-53.

Mr. Adv. Thiyagalingam, *q. c.* with Mr. Adv. Ivor Misso, instructed by Mr. H. G. Geddes for plaintiff.

Mr. Adv. E. G. Wickremanayake, *q. c.*, with Mr. Adv. R. F. Perera, Mr. Adv. Fernandopullai, Mr. Adv. W. Wickremasinghe, instructed by Mr. A. I. Abeywickreme for defendant.

Mr. Thiyagalingam states that the Fiscal has reported that J. W. Udalagama is evading the service of summons on him and so is defendant's wife. He draws the attention of Court to the Fiscal's return to summons on J. W. Udalagama. The presence of these two witnesses is necessary to enable the case for the plaintiff to be presented in the best way possible. J. W. Udalagama is the father of the defendant.

No. 6
Proceedings
—continued

10 Mr. Wickremanayake states that he will ask for the full costs of the day if the case is to be postponed. The plaintiff should have taken steps to have the summons served.

ORDER.

Mr. Thiyagalingam states that he is unable to proceed with the trial today in the absence of these two witnesses, and in his opinion, these witnesses are essential for the correct presentation of the case to Court today. Plaintiff should not be hampered in the proper presentation of her case. I therefore allow Mr. Thiyagalingam's application for a postponement.

The plaintiff will pay the defendant the taxed costs of the day.

Trial is re-fixed for 14th and 15th July, 1953.

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Intd. E. A. V. de S.

D. J.

5-3-53.

D. C. 7873.

9-6-53.

Mr. S. Ramachandran for plaintiff.

Mr. Advocate R. F. Perera instructed for defendant.

30

Mr. Ramachandran submits that his application is to amend paragraph 6 of the amended plaint to read as follows:- "August, 1951" in place of the words—"March, 1951". As he is not mentioning a date earlier than March, that will not inconvenience the defendant. He agrees that defendant should be given an opportunity to file an amended answer if his proposed amendment is accepted.

Mr. Perera in reply states that this amendment is an important one. Defendant has now to consult counsel again and prepare his case as regards the date—August, 1951.

O R D E R.

I am prepared to allow Mr. Ramachandran's application to amend the amended plaint as proposed, but I shall do so on terms.

Mr. Perera submits that the plaintiff has not paid the costs ordered on the last date or costs ordered on earlier dates. Plaintiff will amend his plaint on or before 23-6-53 on his prepaying a sum of Rs. 210-00 by 10 a. m. on 23-6-53. If not so prepaid, his amendment will be rejected and the case will stand for trial on 14th and 15th July, 1953 as fixed. Otherwise the case will be taken off the trial roll on 23-6-53.

Sgd. E. A. V. de Silva

D. J.
9.6.53.

Order delivered in open Court.

Intd. E. A. V. de S.

D. J.

10

No. 7**Issues Framed.**

D. C. 7873.

14-7-53.

MR. ADVOCATE C. THIAGALINGAM Q. C. with
MR. ADVOCATE IVOR MISSO instructed for plaintiff.
MR. ADVOCATE E. G. WICKREMANAYAKE Q. C.
with Messrs ADVOCATE R. F. PERERA and
FERNANDOPULLE instructed for defendant.

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Mr. THIAGALINGAM opens his case.

Issues.

Mr. Thiagalingam raises:—

1. Did the defendant promise to marry the plaintiff?
2. If so, has such promise been also made in writing?
3. What damages is plaintiff entitled to?

(Mr. Thiagalingam refers to paragraph 6 of the amended
plaint of 18.2.52 and paragraph 6 of the answer)

30

Mr. Wickremanayake objects to issues Nos. 1 and 2.

He suggests:

4. Has the defendant made a promise of marriage in writing to the plaintiff.
5. If so, did the defendant in or about March, 1951, wrongfully and unlawfully repudiate the said promise?

No. 7
Issues
Framed

10 Mr. Thiagalingam objects to issue No. 4 and states that it is a repetition of issues 1 and 2 and should be rejected. He states that he is not concerned with the date of the repudiation of the promise to marry. He objects to the date referred to in issue 5, and does not accept Mr. Wickremanayake's reading of paragraph 6 of the plaint as regards the date of repudiation of the marriage. He says the date is immaterial.

I accept the issues:

Intd. E. A. V. De S.

D. J. 14-7-53.

No. 8

Plaintiff's Evidence.

No. 8
Plaintiff's
Evidence

Mr. Thiagalingam calls Mrs. Padmini Udalagama.

20 Mr. Wickremanayake objects to the calling of Mrs. Padmini Udalagama, the wife of the defendant, on the ground that her evidence would be irrelevant to prove a promise to marry in writing.

O R D E R.

This witness is on the list of witnesses of the plaintiff and plaintiff is entitled to call the witness and prove her case in the best manner possible. The objection is over-ruled.

Intd. E. A. V. De S.

D. J. 14-7-53,

MRS. PADMINI UDALAGAMA, affirmed, 23, wife of defendant, Kurunegala. I know the plaintiff. She is a relative of mine. My father is Collin Nugawela. Collin Nugawela and Mallika Nugawela are brother and sister. Plaintiff is Mallika's grand-daughter. We were both at school together-at Hillwood College. Plaintiff is one of 8 or 9 brothers and sisters. I got an elder sister named Swarna. She is not married. She is 24 years old. At Hillwood plaintiff and I were in the same class. She was not very clever. (Mr. Wickremanayake objects to this opinion of the witness).

I was cleverer than the plaintiff. She was the Head Prefect of of the School. She was the School Captain. She sat for the University Entrance Exam. I think she sat in 1949. I left School in 1948 from the H. S. C. Form. I did not know that plaintiff was going to enter Methodist College, Colombo. (Shown two letters P2 and P3) These bear my signature. P2 bears the date 12. 7. 50. Ira mentioned there is plaintiff. Teddy referred to in P2 is the defendant, my husband.

10

A. What do you think she was busy with Teddy about?

(Mr. Wickremanayake objects to this question on the ground that it is irrelevant. Mr. Thiagalingam says that the question is relevant on the question of damages and in order to prove a promise of marriage. He has called this witness because she is essential for the purpose of plaintiff's case. The question is allowed).

20

A. Plaintiff told me that she will be getting engaged to Defendant. I cannot remember when she told me that.

Q. Because she told you that she was going to get engaged, you thought for that reason she will be busy with Teddy?

(Mr. Wickremanayake objects to the question. The question is disallowed).

"Akka" referred to in the letter is my elder sister Swarna. Daya Mallika Ratwatte referred to is my friend. Tissamma mentioned in P2 is my younger sister. The statement in the letter "Tissamma told me that everyone is talking about your engagement to Udalagama", is correct.

30

Q. Is this correct - "Mother was anxious to know if he has many brothers"?

A. That statement is correct.

Q. "Some say that he is dark and not good looking enough"
To whom does "he" refer?

"He" referred to is the defendant. "You" in the letter refers to Plaintiff.

Q. So I think he is very lucky to get someone like you?

A. That is correct.

Q. At that date did you think that your husband had got her?

A. No I did not think so.

10 Q. "When you marry him, I may be able to spend a week or two with you" - Did you think at the 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.

Q. "I must help you with your trousseau" What did you mean by that?

A. I meant the trousseau for the wedding with the defendant. I got married to the defendant in January, 1952. There was a formal engagement.

20

Q. Did you write to him any love letters?
(Question is disallowed).

There was a formal engagement between me and the defendant in September, 1951. I came to know him first in July, 1951. He was brought to my house. Before that I had not seen him.

Q. Who brought him to your home?

A. He came with his parents—including his father. P3 is dated 20th March, 1951.

30 Q. "What Ira, cannot you ask your Teddy to help you a bit, now that he is Magistrate" - What do you mean by that?

No. 8
Plaintiff's
Evidence
Padmini
Udalagama
Examination
—continued

A. I had not seen Teddy when I wrote that letter. I knew from the papers that he had been appointed Mgistrate, Point Pedro.

Q. By saying "your Teddy" you meant Ira's Teddy?

A. Yes.

The help I expected Ira to get from Teddy was that she had a Carnival and I asked her to get Teddy to help her to collect some money for it. The "We" referred to is myself and my parents.

Q. Who told you about the 'heart to heart chats'?

A. Plaintiff.

Q. Plaintiff was at one time a Beauty Queen?

10

A. Yes.

Q. Were you also at the Carnival?

A. No

I wrote that if she was only at the Methodist this day she would have been in the University. Plaintiff told me about the Methodist College.

Q. Now do you remember that she was to go to Methodist College?

A. Yes.

Q. What is the reference to - "You would have been at the Varsity with so many after you"?

20

A. I meant so many boys.

For my wedding I sent an invitation card to Plaintiff also.

Padmini
Udalagama
Cross-exami-
nation.

XXd. So far as this information about Ira and Teddy was concerned, plaintiff had gone and told it in school and I got the news from school (Hillwood). I did not know anything about it personally at that time. Plaintiff was my firend.

Q. Acting in that belief, of what you heard, you wrote those letters?

A. Yes.

30

I belong to a respectable Kandyan Sinhalese family. Among Sinhalese I know how marriages are brought about. The parents consider about it and they ask the two people who are concerned whether they consent. The parents consider about the dowry or anything—that is the suitability of the parties. In my case the matters were first discussed by my parents.

No. 8
Plaintiff's
Evidence
Padmini
Udalagama
Cross-exami-
nation.
—continued

A. Did your parents ask you for your views on the matter?

(The question is objected to on the ground that defendant is not calling the parents of the witness. The question is allowed.)

10 A. Before I expressed my view, Teddy came to my house.

Q. Did you raise the question of the information you had earlier got about the alleged engagement to Ira?

A. Yes.

My parents told me certain things. I did not get that same informaton from anybody else.

Q. At the time you consented to marry Teddy, did you think that he was engaged to Ira?

A. No.

20 Q. Did you satisfy yourself on that matter before you got engaged?

A. Yes.

Q. What you knew about Ira and Teddy was what you had heard from various persons?

A. Yes.

Rexxd:— We belong to the Kandyan Sinhalese. Plaintiff also belongs that circle.

Padmini
Udalagama
Re-exami-
nation.

Intd. E.A.V. de S.

D. J. 14-7-53.

30 J. W. B. UDALAGAMA, affirmed 77, retired Interpreter Mudaliyar, Supreme Court, residing at Kegalle: Defendant is my son. Another son of mine is C. H. Udalagama, a Proctor of this Court married to Anula Ellepola. Anula is the Principal of Balika Vidyalaya at Kegalla. She is a Graduate. She is a daughter of Ex-Ratemahatmaya T. B. Ellepola. The R. M.'s wife is the sister of Mr. Boange, Plaintiff's father.

J. W. B.
Udalagama
Examination

Q. Early in 1950 did you talk to Anula about a marriage between your son and the plaintiff?

A. Anula spoke to me.

I approved provided the defendant approved. Defendant. approved.

Q. In 1951 did you have occasion to go up to Point Pedro?

A. No.

(Shown letter P4 dated 12.10.49, P5 letter dated 24.10.49, P6, letter dated 1.11.49 and P7 letter dated 10.11.49). These were all written by me. I wrote P4 to President Kempitiya. (P4 read). The Kumarihamy referred to is the President's wife. The engagement referred to is Miss Kempitiya's engagement. I was interested in Kempitiya's daughter's marriage. She was not engaged to anybody.

10

Q. You did not know whom she was going to get engaged to?

A. I knew. It was to my son the defendant?

Q. P4 relates to the engagement of the defendant?

A. It refers to the proposed engagement of the defendant?.

(P5) read. The "us" referred to in P5 is myself, my wife and my son (the defendant). P5 refers to the engagement between Miss Kempitiya and the defendant. I wrote P6 on 1.11.49 (P6 read out). (I ask Mr. Thiagalingam whether this evidence relating to the engagement of the defendant with Miss Kempitiya is relevant to this case. Mr. Thiagalingam states that it is relevant as it shows that defendant broke up the the engagement to plaintiff as he wanted a bigger dowry and also to show that the parents of the girl approved of the marriage just as in this case).

20

Xd.contd:— My son wanted a ring with a brilliant set in platinum, but I thought that he would like to flash it among his Lawyer friends.

30

The date of the engagement to Miss Kempitiya stood fixed for the 24th November, 1949.

Q. On the 10th November, you wrote P7? *A.* Yes. (P7 read out by witness).

Q. Is it correct to state that your son told you that he could not get a postponement of his cases? (Objection to. Objection upheld).

No. 8.
Plaintiff's
Evidence.
J. W. B.
Udalagama.
Examination
continued—

Q. Did you merely write this or did the defendant tell you so? (Question is objected to. Allowed).

A. I cannot remember.

Q. When you said, "My son states he cannot get postponements", did you write what was true? (Question disallowed).

A. My son did not marry Miss Kempitiya. I did not write again about this.

XXd. 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 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. Once the dowry matter is finalised, a visit is made and they visit us and a day is fixed. As a matter of fact, in arranged marriages, young couples are not in any way consulted because the parents know who their sons should marry. In 1946 my son was a practising Advocate and I thought it was time for him to get married. There was a proposal of marriage to Miss Kempitiya. It did not go to the stage of an engagement. So far as Kempitiyas are concerned, Mr. Kempitiya is worth at least about 2 lakhs, but the girl was not suitable for the defendant. Kempitiya has given property to his daughter worth 2 lakhs in order that she might marry well. The proposal did not come through because the girl was not suitable. There is another reason. Defendant did not like the girl. I tried to bring about the marriage but defendant. did not like the girl. In the case of plaintiff., Anula Udalagama spoketo me. She is my daughter-in-law and a relative of the plaintiff. Plaintiff is Anula's mother's brother's daughter.

J. W. B.
Udalagama.
Cross-
Examination

Q. Anula made a proposal to you of her first cousin to be married to defendant?

No. 8.
Plaintiff's
Evidence.
J. W. B.
Udalagama.
Cross-
Examination
continued—

A. Yes.

The first thing we discussed was about the dowry. The dowry was Rs. 5000.00 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.

Q. Thereafter were there negotiations of the question of dowry at any time between anyone?

A. It was discussed between Anula and myself.

I cannot remember whether I had discussed it with anyone else.

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

10

(Shown D1—letter dated 7.5.51 written by defendant to the witness, and D1a—the envelope).

(Mr. Thiagalingam objects to this letter unless the defendant who is the writer of the letter is called. Mr. Wickremanayake does not wish to bind himself to call the defendant. He states that he is not proving the truth of the contents of the letter but merely the receipt of the letter by the witness and that he acted on the contents of that letter. I allow it).

20

(Shown D1 and D1a). I received letter D1 on the 7th May. (Shown D2 dated 14.5.51 in the envelope D2a). (Same objection. Question allowed).

When I received D2 on the 14th May, I waited till about July and then I made other arrangements, namely for the marriage of defendant with Diyawadene Nilame Nugawela's daughter. The dowry for that marriage was not bigger than that proposed for the plaintiff. It was Rs. 5000.00 and 1/4 share of Mrs. Nugawela's properties. My son the defendant was never engaged to the plaintiff. Boange came to my house and I told him instead of fooling about to finalise the marriage and fix a date for the engagement.

30

Re-xd:— Q. Do you remember going with Teddy and your wife to Boange's in June, 1950?

A. I did not go.

Q. Did your wife and Teddy go?

A. Yes.

I cannot remember the date.

Q. Was it in regard to the arrangements for the proposed marriage between plaintiff and the defendant?

A. Yes. Anula also went. As regards the arrangement

10 I do not know, because I did not go.

Q. When did you give D1 back to your son?

A. I cannot remember.

Q. Can you remember giving it back to him at all?

A. I can remember that but I cannot remember when I gave it to him.

Q. Are you in the habit of preserving envelopes also?

A. I do not know it, but sometimes I do it.

Q. Did anybody tell you to preserve the envelope in which D1 was sent?

20 A. No.

I never expected litigation.

The date is on the letter D1.

My son stayed with me last night.

Q. Did your son tell you to preserve the envelope D1a?

(Question disallowed).

Q. Can you give any reason for preserving D1a?

(Objected to. The question is allowed)

A. I cannot.

30 Q. About the time of any one of these letters, did Boange and his wife come to your place?

No. 8
Plaintiff's
Evidence.
J. W. B.
Udalagama
Re-Exami-
nation.
continued—

A. Yes. I cannot remember whether I replied to the letter of the 14th May.

Q. What Boange said did you convey to your son?

A. I cannot remember.

Q. Did your son write to you at any time asking for a minimum dowry of Rs. 25,000.00? It is in the letter D2

A. Yes.

Q. What is the matter he wanted you to handle diplomatically and tactically?

A. I cannot remember.

10

Q. Is it the question of dowry?

A. May be.

Intd. E. A. V. de S.

D. J.

14-7-53.

(Adjourned for lunch)

Trial resumed.

M. A. S.
Marikkar
Examination

M. A. S. MARIKKAR, affd., Proctor, S. C. Kandy: I have been in practice for about 27 years. I recall certain instructions given by plaintiff's father with regard to a deed. I sent the draft deed to the defendant by registered post. I did not get a reply in acknowledgment of that draft deed. I sent it with a covering letter. I do not remember having kept a copy of that letter but I hold a receipt of posting of the draft deed.

20

M. A. S.
Marikkar.
Cross-
Examination

XXd:— D3 is the letter I sent. It is dated 18-8-51. The draft deed I sent was D4, along with D3.

Re-xd:— Nil.

Intd. E. A. V. de S.

D. J.

14-7-53.

30

Iranganie
Boange.
Examination

Miss IRANGANIE BOANGE, affd, daughter of M. B. Boange, Kadugannawa: I am the plaintiff. I am one of 10 children. I am the second in the family and the eldest girl. The eldest in the family is a boy, Lester, who is teaching. I was educated at Hillwood. I was School Captain there and Senior Prefect in the School. I passed

my S. S. C. when I was 17 years old, and in December, 1949 I sat for the University Entrance Examination from Hillwood. I left the school from the highest Form before my results were out. Anula Udalagama is my first Cousin. She herself was one Miss Ellepola and she married C. H. Udalagama. She was a graduate of the Ceylon University, and she is principal of the Balika Vidyalaya, Kegalle. In 1950 Anula suggested to me to come and teach in her school and I went and taught there. I was not successful in my examination for entrance to the University. I intended to go to the University. I made arrangements to go to another school to study further to offer myself for the University Entrance. I made arrangements to go to Methodist College, Colombo. My father and I went to Colombo to make arrangements. Anula also went. My father and I went and saw the Principal of Methodist College. I was to enter that school in May, 1950. Before I went to Kegalle, I knew the defendant. 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, defendant 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. My April vacation came along.

10

20

Q. Till the vacation of your school in April, 1950, was defendant paying attention to you?

A. Yes.

For the Easter holidays of 1950 I was at home at Kadugannawa. At the end of my holidays I went back to Kegalle to continue teaching till Methodist College reopened in May. During this period—that is during the second term—I went to the pictures in the company of the defendant. I was at the school Hostel, when Mrs. Anula Udalagama, her son and the defendant came in the defendant's car and they took me to the pictures. 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. I continued to teach at Balika Vidyalaya. After the pictures, defendant used to see me frequently.

40

No. 8
Plaintiff's
Evidence.
Iranganie
Boange.
Examination
Continued—

No. 8
Plaintiff's
Evidence.
Iranganie
Boange.
Examination
—continued

Q. Were you conducting yourselves as an engaged couple?

A. Yes.

Q. Were you and the defendant in the habit of talking separately by yourselves together?

A. Yes

Q. After his promise to marry you in what way did he regard you and treat you?

A. He treated me as engaged. He talked to me alone in the house of Mrs. Anula Udalagama.

Q. During that time did you know that your parents and his parents approved of the marriage, to your knowledge? 10

A. The parents had agreed.

Q. When he was talking to you alone were there any acts of endearment as between the two of you?

A. Yes.

He told me that he wished to marry me and that there will be others who will want to marry me, but that I must not let him down and that he also will never let me down. I promised accordingly. During this period he gave me presents. He gave me at first a bottle of scent. I have brought that bottle of scent to Court today. Then he gave me a brush, comb and mirror in a box. I have got that also in Court today. Then he gave me a hand-bag. I did not show the bottle of scent to anybody. I showed the mirror, brush and comb and the hand-bag. I got the hand-bag in Court today. Then he gave me some jacket-material. I have it in Court today. I told him that I will use them after we got married. Kandyan girls do not wear Cholis as a rule. The acts of familiarity between me and defendant started in May, 1950 and went on the whole of that year. 20

Q. During that period how did your friends in the school and all your friends regard you as far as the defendant was concerned? 30

A. As engaged. After that also I went to the pictures with the defendant.

Q. Did you go about with defendant?

A. Yes.

I went with him to Colombo together with Mrs. Anula Udalagama. In December, 1950 defendant went to Nuwara Eliya for his holidays. About that time he wrote to me a letter. That is a letter which my lawyers already showed to this Court on an earlier date

of trial. I produce that letter marked (P1). P1 bears the initial of the Judge under date 20-6-52. The envelope is marked (Pla) and also bears the initial of the Judge under date 20-6-52. Before P1 I had written two letters to the defendant.

No. 8
Plaintiff's
Evidence.
Iranganie
Boange.
Examination
—continued

10 (Mr. Thiagalingam calls for the two letters written by plaintiff to the defendant and referred to in P1. Mr. Wickremanayake states that the two letters are with him. He undertakes to produce these letters and he states that he is reserving them for the purpose of cross-examining the Plaintiff. I hold that Mr. Wickremanayake is entitled to retain these documents for the purpose of cross-examining this witness, and Mr. Thiagalingam can re-examine the witness on these letters).

I wrote the first letter on about the 15th or 16th of December, 1950. I wrote it from Kadugannawa, from my father's place during the school vacation of the Balika Vidyalaya. I have never before written any love letters to anybody. I wrote to defendant from Kadugannawa on the 15th or 16th because before I went for the holidays he made me promise that I will write to him.

Q. Were you reluctant to write to him?

20 A. Yes.

Q. Can you remember what you wrote in that letter?

A. Yes "My darling Teddy,

I do not wish to write this sort of letters without my parents' knowledge, but as I could trust you, I am keeping to my promise. I always thought that if I marry, I would marry a man with a good character, and that I have found in you. I do not love anyone so much as I love you. Whatever happens, I will marry you, Please let me know your holiday arrangements."

30 I have been thinking about this letter for a long time before I wrote it. I followed it up with another letter about the 18th December, 1950. That too was written at Kadugannawa. I wrote it to defendant at Kegalla. That letter contained: "My darling Teddy.

I hope you received my first letter....."

No. 8
Plaintiff's
Evidence.
Iranganie
Boange.
Examination
—continued

I cannot recall any more of the letter. Before I filed this action I went to Counsel's chambers. My father took me to my Proctor's chambers and from there I went to my Advocate's chambers—Mr. Misso's in Colombo.

Q. Was there any direction given to you that you might reconstruct these letters as well as you could.

A. Yes.

Q. You heard a suggestion made now at the Bar table that you were to be cross-examined on the basis that you had kept copies of the letters you wrote to the defendant?

10

A. Yes.

Q. Did you ever keep copies when you wrote to the defendant?

A. I did not.

At the Counsel's request I reconstructed these letters.

In reply to those two letters I received letter Pl. (Pl read out) In the first paragraph defendant refers to the Christmas Card, he was going to send me.

Q. "I feel just the same as what you have expressed....."? What does it mean?

A. In my letter I promised to marry him and I told him that I would not let him down, and he agreed.

20

Q. What do you understand by-"I need not repeat all what you have written to me"?

A. I understood it to be that he too wished to marry me.

Q. Did you think that he was repeating all what you had said in your letter? (The question is disallowed). I understood that I would have a happy life with him.

"You can confidently hope"-By this I hoped a happy life with him if we got married.

Q. What do you mean by- "Don't worry, I will not tell G. B. anything about what you had told me"?

30

A. I had told him something but I cannot remember.

After that defendant came back from Nuwara Eliya and we met each other at Kegalla. He gave me a picture of himself after the Nuwara Eliya holidays in 1950. I produce it marked (P8). During January, and February 1951, he continued his friendship with me till he got his appointment to point Pedro. He got his appointment at the end of February, 1951. The defendant's parents threw out a party then. Defendant's parents have 7 or 8 children. At that party Dr. Udagama and his wife were there. Defendant is one of 7 or 8 brothers and sisters. One brother is Doctor Udagama, another C. H., a proctor of this Court, another Walter, another Willet, another Bandara and another brother. At the party all these persons were present. I was the only person present as an outsider.

10

Q. In the general demeanour, in what way were you regarded at that party?

A. As the future bride of the defendant.

From Point Pedro defendant wrote to me two letters, one on 4.3.51 (P 9). and the other on 16.3.51 (P 10). The "Uncle" referred to is Mr. George Udagama.

After P9 and P10 I wrote to him one or two letters but I did not receive any replies.

20

I was teaching at Balika Vidyalaya in March, 1951. There was a discussion between me and the defendant as to how long I should teach. He wanted me to teach till we got married. In the letter P10 he writes to me about my teaching at Balika Vidyalaya. I did not hear from defendant for about 3 months after that. Then I heard certain rumours and I wrote to defendant under Registered Post. I did not keep a copy of that letter. (Mr. Thiagalingam calls for the letter written by plaintiff to defendant under registered cover. Mr. Wickremanayaka admits the receipt of that letter but wishes to retain it for the purpose of cross-examining the witness.)

30

In that letter which I wrote about the 4th of August, 1951, I stated as follows:—

"My darling Teddy,

There is a rumour to say that you are getting engaged to D/N's daughter. The D/N. had gone across and I hear he is going to see you in order to fix up the date of marriage. I can hardly believe this because you have told me to have faith in you, that you will never let me down. It was only after you promised to marry me that I got back my certificates from Methodist College.

No. 8
Plaintiff's
Evidence.
Iranganie
Boange.
Examination
—continued

Q. Had you reconstructed this letter too?

A. Yes

Q. Did you know at that time which girl of the D/N. the defendant was going to marry?

A. Yes.

I stated in my letter: "Swarna and Padmini should not do these things to me because we have been together in school for 15 years."

I did not get a reply to that letter. I wrote to defendant again -about 3 letters.

10

(Mr. Thiagalingam calls for those letters. Mr. Wickremanayake wishes them to be retained for cross-examination), When I wrote those letters I was still teaching at the Vidyalaya. Some time later I heard about the formal engagement between defendant and a third party. Then I left the School and went home because I could not face my friends and I was very unhappy. I am claiming damages for breach of promise in this case—Rs, 20,000.00. Defendant told me not to go to the University. If not for that request I would have gone to the University and become a graduate. A girl-graduate can be made a principal of a school.

20

Q. Is there a dearth of teachers—men and women?

A. Yes.

Q. How has defendant's conduct affected you personally?

A. I have sacrificed my whole life for him. If I was allowed to continue my studies, by now I might have been a graduate. My pain of mind has not gone down yet. At the moment I am teaching in a school at Gampaha just to try and forget this matter.

I belong to an exclusive Kandyan family. The circle in which we can get married is restricted. Defendant did not give me any reasons for declining to fulfil his promise of marriage.

30

Q. Did defendant write to you asking you to call off the engagement?

A. No.

XXd:— I know how marriages take place in my class of society.

Q. Is it by arrangement?

A. Nowadays they do not do all that.

In the days past there will never be a marriage without discussions about dowry and settlement of dowry.

Q. Until the bridegroom's people are satisfied with the dowry?

A. I do not know.

Q. You do not know anything about dowries?

A. No.

10 Q. Do you know about the marriage of your mother and her dowry?

A. No.

Q. In this very case, on the question of your dowry your father sold your mother's last property?

(Objected to on the ground that this question assumes that the witness has spoken to the dowry to be given to her. Mr. Wickrem-anayake now says that he does not wish to put that question).

This was purely a love match between me and Teddy.

Teddy was at that time an Advocate practising in Kegalle.

20 Q. You were aware of the fact that Nanda made a proposal of marriage to defendant?

A. No.

I know Nanda Udalagama well. I have not written to her nor has she written to me.

(Wickremanayake marks letter D5 written by Nanda Udalagama. He undertakes to call the writer).

I do not know whether this letter is Nanda's (Mr. Thiagalingam objects to D5 on the ground that no document can be produced when the witness denies knowledge of that document. He moves that D5 be rejected. The document is admitted subject to proof).

30 Q. I put it to you that in January, 1950 Nanda wrote to Teddy to the effect that she thought that she found a match for him and asked him to come over on Saturday?

No. 8.
Plaintiff's
Evidence.
Iranganie
Boange.
Cross-exami-
nation.
—continued

A. I was not aware of that.

Q. Nor are you aware of the fact that Teddy went to Nanda's with his brother?

A. I am not aware of it.

Q. You are not aware of the fact that the question of dowry was discussed?

A. No.

Q. I put it to you that you were well aware of the fact that defendant wanted a dowry of Rs. 10,000.00 and 10 acres in tea.

A. No.

10

Q. I put it to you further that when your father was unable to give that dowry, the whole negotiation dropped there at that stage? (Objected to. The question is allowed).

A. No.

Q. I put it to you that thereafter Mrs. C. H. Udalagama made a proposal to you?

A. Yes.

Q. Were you not aware of the fact that, that proposal came after certain negotiations were made through Nanda?

A. No.

20

Q. When Anula made the proposal, it was made direct to Teddy's father?

A. Yes.

Q. Do you know that the dowry forms a large part of the negotiations for marriage in the old days?

A. Yes.

Q. It still forms large part in most cases?

A. Yes, but in this case it did not form part of the discussions at all.

Q. While these discussions were going on, you came to live in Anula's house?

30

A. It was only after Teddy promised to marry me that I stayed with Anula. I went to Anula's somewhere in May. During the first term I used to go for the week-ends.

Q. Was it while these negotiations were going on?

A. It must have been so.

Q. While the negotiations were pending, did you go to defendant's father's house?

A. No, I never went.

Mr. C. H. Udagama was living on one side of the road. Teddy was living on the other side of the road.

Q. When you went to Anula's house, you knew that it would not be unexpected to find Teddy drop in to see his brother?

10 A. I do not know.

Q. You knew that negotiations were going on?

A. Yes.

Q. Did you think that Teddy was likely to come to Anula's?

A. I never thought of it at all.

I was Beauty Queen at a Carnival. I did not think of myself as beautiful before that. I presented myself at the Beauty Contest. I was picked out for the Beauty Contest. I was selected Beauty Queen in March, 1951.

20 Q. Did you think that your presence there would help to hasten the negotiations?

A. No.

Q. Is it a fact that Teddy had never spoken to you until some day in March, 1950?

A. Yes.

Q. The negotiations originated in January, 1950?

A. Yes.

30 Teddy spoke to me not only in the company of Anula. There were others also. He first spoke to me in Kandy at a Concert, in February, 1950. It was earlier than the Yatiyantota trip. Defendant must have first seen me at Anula's. There was a concert at Trinity College Hall, Kandy. I know G. B. Ellepola. He lives in Kandy. He is Anula's brother. I do not know whether he purchased the concert tickets.

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—continued

Q. I am putting it to you that he arranged to have your seat next to Teddy's?

A. I do not know.

Anula was in the party and also her husband, myself and Teddy. Nanda was also there. There were two other ladies and Teddy's seat was not next to mine at the concert.

I like to tell you, Mr. Wickremanayake, there was another girl seated near me, and a little while later Teddy changed places with that girl. That girl was not of our party. We did not go to the Concert in one party.

10

Q. The person that he asked to get up was a lady not known to you?

A. Yes.

I went with Mrs. Anula Udalagama. We went from Kandy by car to the Concert. Three of us went—Nanda, Anula and I. I cannot remember whether Herbert joined us. I cannot remember from where Teddy came. I do not know the two other ladies who were in the party. Teddy did not promise to marry me at the Concert. He did not make love to me on that day. He spoke to me. At that time the results of my examination were not out. So he asked me about my examination. He did not ask me to take to teaching at that time. He was not talking to me very much. After that the next incident was the trip to Yatiyantota.

20

Intd. E. A. V. de S.

D. J.

14th July, 1953.

Further hearing tomorrow, 15-7-53.

Intd. E. A. V. de S.

D. J.

15-7-53.

30

D. C. 7873.

Appearances as before.

Mr. Thiagalingam brings it to my notice that in the typed-script of the evidence of Iranganie Boange at page 17, the question put by him and the answer of the witness to the following effect has been omitted. The question was in reference to the letter P1—the passage “the sooner it is, the better I think.” Q. What do you understand

by it? A. I understood it to be that the sooner we get married the better it would be.

I have a recollection that this question was put and this answer was given, though it has been inadvertently omitted in the short-hand notes.

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Mr. Thiagalingam moves that this bit of evidence be incorporated in the evidence of that witness at page 17, immediately before the question —‘What do you mean by—“Don’t worry, I will not tell G. B. anything about what you had told me ?”.’

10 Mr. Wickremanayake says that he himself has no independent recollection of this, but he leaves the matter entirely in the hands of the Court as it is the Courts recollection that this question was put and the answer given.

Mr. Thiagalingam wants it noted that he is sure that he put the question and that the answer was given and that his Junior, Mr. Misso has the same recollection.

I allow this question and answer to be incorporated in the evidence as requested by Mr. Thiagalingam.

20 Mr. Thigalingam also referes to the passage - “You can confidently hope” — ‘By this I hoped a happy life with him if we got married.’ He states that the answer of the witness was - “By this I hoped a happy life with him when we get married”.

Mr. Wickremanayake says that, that was not the answer given, but the record of the answer as appearing in the Stenographer’s notes is correct and that the answer was “if we got married”.

I myself have no independant recollection as to what the exact answer was — whether the word “if” or “when” was used. I am therefore unable to accept the suggestion to make an alteration in that answer.

40 Mr. Wickremanayake wants it noted that there are several questions to which he objected and the objections were over-ruled, but there is no note in the record of the objections or that they were over-ruled. He states that in most of those instances, however, the evidence has been taken down in the form of question and answer.

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—continued

Mr. Thiagalingam states that he wishes to endorse that and that he has the same complaint to make, and that further, wherever objections have been noted the reasons given by him have not been noted.

I wish to record that there were so many objections and cross-objections and much confusion at the time, that I cannot blame the Stenographer if he failed to note those objections and reasons accurately. Nevertheless, as Mr. Wickremanayake has stated, the evidence has been correctly recorded though the objections and cross-objections to almost every question have not been recorded.

10

Intd. E. A. V. de S.

D. J.

15-7-53.

Miss Iranganie Boange, recalled, affirmed.

Q. You admitted in Court yesterday that in your case the dowry did not form any part of the discussions. This was according to you a love match, where at the pictures Teddy promised to marry you.?

A. Yes.

Q. You were at no time aware that dowry discussions, had been going on?

20

A. Yes.

Q. You yourself never discussed these matters with anybody?

A. No. I do not know.

Q. You wrote two Letters to Teddy before P1?

A. Yes.

Q. Am I right in saying that you suggested you were doing that without the knowledge of your parents?

A. Yes. I had not discussed with my parents whether I should write to him or not.

30

Q. Do you know even now that there was a dowry discussion with your parents?

A. Now I know.

Q. And that the amount was Rs. 5000.00 cash and that it was to be deposited to your credit?

A. Yes.

Q. Did you know at any time that the delay in depositing that amount was due to the expenses your father had incurred in putting up a house?

A. No.

Q. I am putting it to you that the reason your father gave for not depositing the money in time was that he waited till the house was completed?

10

A. I do not know that.

Q. You told the Court that this was a direct proposal by Teddy?

A. Yes.

Q. And not something made either by your or his relatives?

A. No.

Q. After this broke off you got a letter of demand sent to him?

A. Yes.

I saw Proctor Geddes and gave him instructions to send the letter of demand. I gave instructions to Mr. Geddes. I saw the letter of demand before he sent it. I was satisfied that the letter of demand, contained the instructions I had given him.

20

I cannot now actually remember whether I read it.

(Mr. Wickremanayake marks the letter of demand D6, dated 15-9.51).

Q. Who were the people you told him have been approached?

A. My parents.

Q. After the proposal was made he met and corresponded with you?

30

A. Yes.

Q. You have not told him specifically that he promised to marry you? (No answer).

No. 8.
Plaintiff's
Evidence.
Iranganie
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Examination
—continued

Q. There is no reference in this letter of a specific promise by defendant to marry you? (No answer).

(The letter of demand D6 is shown to witness by Counsel)

Q. In this letter there is no reference to a specific promise to marry? (Witness reads the letter. Having read the letter the witness asks that the question be repeated. Counsel repeats the same question).

Q. In this letter there is no reference to a specific promise to marry you?

(The witness reads out what is contained in the following passage in the letter:-

10

“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.”

(The witness takes time to consider her answer).

Q. How many times have you read the letter already?

A. Only once. I want to read it thoroughly.

“I am further instructed that at the time of your proposal of marriage to my client arrangements had been made to pursue her higher studies at the University with a view to graduation and that it was with very great difficulty that her parents were persuaded to allow her to give up her career with a view to getting married to you.

20

My client states that after considerable arrangements had been made by her parents in regard to the marriage including the preparation of the dowry deed and when the marriage itself was being expected by relations and friends to take place any time, you suddenly, inexplicably, and without a word of explanation, whatsoever, to my client, even up to date, became cold and indifferent to her and appeared to have unilaterally broken off your engagement to her.”

30

These are the passages.

Q. Your position is that between the two of you, Teddy promised at the pictures to marry you?

A. Yes.

Q. And he has broken that promise?

A. Yes.

Q. Teddy's case is that there was a proposal of marriage and that while that was being discussed the two of you went about together assuming that it will come right?

A. No.

Q. Your Proctor's letter states :

10 " 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, you regularly met her and corresponded with her."

Q. Where is the passage which sets out specifically that he promised to marry you?

20 (Mr. Thiagalingam objects to the question on the following grounds:- 1. The express question has been put to the girl and she has answered the question as best as she could. She was asked to show in that letter where defendant specifically promised to marry her and she read out the passages. That question need not be repeated a second time.

2. That is not a proper question, for the document can be read by the Court itself.

3. The question is incorrect, for it relates to the construction of a Proctor's document, not the document of this witness-and the letter itself is on the basis of the position that - here is the defendant who promised to marry this girl and after promising to marry the girl, stopped her career at the University. It is a question which should not be put to the witness.

30 4. The only object of this kind of question is to worry the witness.

Mr. Wickremanayake states that so far as badgering of a witness is concerned, the Court can stop it when it considers it

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—continued

necessary. So far as the construction is concerned, it is a Proctor's letter on instructions given by plaintiff.

Order - The question is allowed.

Intd. E. A. V. de S.

D. J.

15-7-53.

XXd:- contd:- Q. I have told you what the defendant's case is in this matter. Is it not the fact that that letter, in the paragraph "From that stage onwards, on the footing that you were engaged to her, you regularly met her and corresponded with her", indicates that the two of you went about after the proposal, and not that there was a specific promise to marry?

10

A. I say that the letter contains a specific promise to marry.

Q. Your Proctor refers, on your instructions, to the fact that such matters as the dowry Teddy expected had been gone into?

A. Yes.

Q. You gave him those instructions?

A. Yes.

Q. How did you come to give him those instructions?

A. My father went with me and he told Mr. Geddes.

20

Q. He gave instructions on your behalf?

A. No. I spoke to Mr. Geddes first. Then my father spoke to him.

Q. Your father went along with you to assist you?

A. No. Yes, my father went because I could not go alone.

Q. From the time that this alleged engagement was broken off, your father assisted you in these matters?

A. Yes.

Q. He acted on your behalf in giving instructions to Mr. Geddes?

30

A. Yes.

Q. In what capacity did your father act for you?

A. He went because I could not go alone. I did not know Mr. Geddes at all.

Q. Did you know the facts?

A. Yes.

Q. Did you want your father to speak to Mr. Geddes?

A. I did not want him to speak. He spoke on my behalf and I approved of his speaking on my behalf.

Q. From the time this alleged engagement was broken off, your father did everything he could on your behalf?

10 A. Yes. I approved of it.

Q. He gave instructions to Mr. Geddes?

A. He did not give instructions but he spoke to Mr. Geddes.

Q. Did he write letters to anybody on your behalf?

A. I do not know.

Q. Did you discuss with your father on this matter after the alleged breach of the promise?

A. Yes.

Q. Did you have any discussions with your father about the alleged breach of engagement?

20 A. Yes.

Q. Did you have any discussions about anything to be done to put matters to right?

A. Yes.

Q. Did he say what he was doing in that connection?

A. I cannot remember.

Q. You would have been interested to know everything being done in this matter, about trying to prevent a breach?

A. I cannot say.

30 Q. You told the Court this morning that the two letters you wrote to Teddy were without the knowledge of either parents?

No. 8
Plaintiff's
Evidence.
Iranganie
Boange.
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Examination
—continued

A. Yes.

(Shown D7 letter dated 18-12-50.)

Q. That is the first letter you wrote?

A. Yes.

The first sentence is "I asked Mummy if I may write to you." "Mummy" referred to is my mother.

Q. Did you this morning tell me that you did not discuss with either of your parents the question of writing letters to Teddy? (Objected to. The question is allowed).

A. I may have said it.

10

Q. If you said it, was it true or not true?

A. If I said it, it is not true.

Q. Is it not true that you did not discuss with your mother the writing of the letters?

A. Yes.

Q. You realised that it was not true after looking at D7?

A. Yes.

Q. Is the statement made in your letter correct, that your mother did not say no to whether you were to write

A. Yes.

20

Q. You asked her whether you might write to Teddy?

A. I may have.

Q. You asked her if you may write to Teddy because she was aware of some negotiations that were going on?

A. Yes.

Q. In view of the position at that time, she did not say no, but said she did not like corresponding, fearing that you might fall into trouble?

A. Yes.

Q. With your mother you have discussed the proposal of marriage between you and Teddy?

A. I may have told her.

I did not discuss with her the question of dowry.

Q. You told Court yesterday that Teddy wanted you to promise not to let him down by agreeing to marry another man?

A. Yes.

Q. Did he ask you not to let men take liberties with you?

A. No.

10 Q. Did you state "During the absence of my parents,

G. B. Ellepola did not treat me as a lady should not be treated"

A. G. B. Ellepola used to fool me. We are cousins and we have been brought up from our small days together.

Q. What is the reference to "Pranks" in the letter?

A. Fooling.

(Pl referred to). Q. "I will not tell G. B. a word of what you had told me"?

A. That is a reply to my reference to G. B. in my letter.

20 I cannot remember what the reference is to the manner people treated me when I was 8 or 9 years old.

Q. "I had room to think that he had encouraged you?"

A. I meant G. B.

(Shown letter of 19.12.50 (D8) by plaintiff to defendant).

That is the second letter I wrote before I received Pl.

Q. I put it to you a little while ago that the reason given by your father for delaytng the deposit of the Rs. 5000.00 was the building of a house. You said it was not so?

A. Yes.

(Shown D8). It is my letter. (2nd. paragraph on 2nd. page referred to). Q. "The house is still being built?"

No. 8
Plaintiff's
Evidence.
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Cross-
Examination
continued—

A. That was our house.

Q. Why did you refer to the fact that the house was still being built?"

(No answer). (The witness says—"Please let me think")

A. Because he asked me why I was delaying to marry him and I told him that the house has to be completed first.

Q. Is it correct that you told him that the house had to be built first before you could marry him?

A. He asked me why they, no—I—was delaying to marry him. Then I told him that it may be because the house is being built.

10

Q. What may be because the house is being built ?

A. The delay of the marriage.

Q. Not the delay of the deposit of the Rs. 5000-00 ?

A. No.

Q. Is it not a fact that the engagement was being delayed by the delay of the deposit of the money.

A. No.

Q. "She too agrees with me, but I have not got the courage to tell Daddy"?

A. That is to hurry the marriage and not the depositing of the money.

20

Q. There is a reference in that letter to G. B. ?

A. Yes.

Q. Those two letters are ones to which Pl is a reply ?

A. Yes.

Q. "So that the sooner it is the better I think. It has been hanging fire since June but I find nothing appears to have been done". "It" is the deposit of the money. ?

A. No.

Q. Nothing appears to have been done in relation to what ?

30

A. The hurrying of the marriage.

It is correct that there was no formal engagement between the two of us.

No. 8
Plaintiff's
Evidence.
Iranganie
Boange.
Cross-
Examination
—continued

Q. When you gave instructions to Mr. Geddes to send the letter of demand, as regards dowry, you did so not with regard to these letters but with reference to what your father told you subsequently.? (No answer).

10 Q. When Geddes refers to the question of dowry in that letter, did you instruct him with reference to these letters or from what you heard from your father.?

A. From what I heard from my father.

(Shown letter of 6-3-51—D9—from the plaintiff to defendant.)

Q. Did you before the beginning of March talk to your father as suggested by the defendant in the letter.?

A. I cannot remember.

I cannot remember whether I talked to him at all about this engagement.

Q. Can you remember your father getting a list of suitable dates for engagement from an Astrologer at Peradeniya.?

20 A. I knew about the list of dates.

Q. What did you know about the list of dates?

A. My father obtained the list of dates.

Q. Do you know from whom he got the list?

A. I do not know.

Q. Do you know anything about the obtaining of the auspicious dates.?

A. No.

Q. Do you know whether your father had your horoscope compared with Teddy's.?

30 A. Yes.

Q. When was that?

No. 8.
Plaintiff's
Evidence.
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Boange.
Cross
Examination
—continued

A. I do not know.

Q. Was it before he went to Point Pedro or after

A. Before.

Q. It was in late February, or early March, 1950?

A. I do not know.

Q. Did you know at the time they were compared, that they were being compared?

A. No.

Q. Do you know that the comparison of horoscopes forms one of the incidents of the marriage of Kandyan people?

10

A. No.

Q. Your father obtained a statement of whether the horoscopes agreed or not?

A. Now I know.

Q. Do you know that he sent it at that time to Anula?

A. I do not know.

I used to meet Anula frequently. I used to meet her daily in school.

Q. You did not know from Anula that Anula got this statement of comparisons of horoscopes?

20

A. I did not know.

Q. You did not know that that reading was challenged as not being satisfactory?

A. I did not know.

Q. Even now do you know whether the comparison was favourable or unfavourable?

A. No.

Q. Did you know what those dates were?

A. Yes. The list of dates was not shown to me.

Q. How did you know the dates if the list was not shown to you ?

A. I do not know. I did not see the list. Someone may have told me the dates from the list - not father, not mother, but anybody else.

No. 8
Plaintiff's
Evidence.
Iranganie
Boange.
Cross-
Examination
—continued

I did not discuss it with my father.

(Shown letter D9). Q. “The other day when I was going to Colombo with Daddy, I took up courage and pointed out to him how unfair he had been in keeping you waiting for such a long time”. I am putting it to you that the waiting was for the settlement of the dowry ?

A. No. It was for the marriage.

Q. From where did you get those dates in D9 ?

A. Sister Anula must have told me.

Q. Did she also tell you that your father took it up very well ?

A. I cannot remember.

Q. “He had come here when we were away to give you the dates for you to choose a suitable date” ?

A. I do not remember who told me that.

20 “Here” means Kegalle. “You” means Teddy.

Q. Do you know whether Teddy sometimes comes to his father's house ?

A. Yes.

Q. Teddy's appointment was published on the 22nd, February, 1951 to take up appointment from the 1st, March ?

A. Yes.

Q. Your father went down to Kegalle before the 1st, of March, to meet him with these dates ?

A. Yes.

30 Q. You knew about his appointment when you wrote this letter ?

A. Yes.

Q. Your father went to Kegalle to give the dates for Teddy to choose a suitable date ?

No. 8.
Plaintiff's
Evidence.
Iranganie
Boange.
Cross-exami-
nation.
—continued

A. Yes.

Q. You knew about the paper produced by the Astrologer ?

A. Yes. Teddy had given it to Punchi Iya, Teddy's brother—
husband of Anula and a Proctor of this Court.

Q. You were aware of the fact that Punchi Iya had told
Daddy to have it in May ?

A. I cannot remember.

Q. The date in May that was fixed was the 21st of May ?

A. I did not know it.

Q. That was the final date for the settlement of the dowry ?

10

A. I do not know that.

Q. I put it to you that Teddy indicated that the suitable date
was the 21st, May ?

A. I am not aware of it.

Q. I put it to you that he indicated that unless the dowry
matter was finalised by the 21st May, the whole negotiation was off?

A. No.

Q. Did your father go up to Point Pedro during this period ?

A. I do not know.

Q. Do you know that G. B. went ?

20

A. No.

Q. Your brother Abey went up?

A. I do not know.

Q. You do not know whether your father, Abey or G. B. went
up ?

A. No.

Q. Is it not a fact that you travel daily in G. B.'s car ?

A. No. G. B. has no car. It is his father's car.

I have not travelled in his father's car.

Q. Whose is that green car which is being used daily here ?

30

A. That is G. B.'s younger brother's car.

Q. Did any member of G. B.'s family have a black A/40
CL 7458 ?

A. I cannot remember.

Q. Have you ever been in the car belonging to G. B.'s father ?

A. I never remember.

Q. You say that the present Green car is G. B.'s younger
brother's car ?

A. Yes.

He is a Medical Student.

10 Q. Before they got that car, was there a car used by that
family ?

A. I do not know.

Q. You go to that house very frequently ?

A. No.

Q. Your father's sister stays there ?

A. Yes.

Q. You do not go there ?

A. I go once in a way.

Q. Do you go about with G. B. and members of his family ?

20 A. No.

Q. Can you explain why it is that that car is available for you
for use throughout this trial ?

A. Yes.

Q. When did this friendship develop, that you did not know
about the A/40 Car ?

A. I do not understand what this reference to friendship is.

Q. Is this car provided for the use of you or your father for
this case ?

A. Yes.

No. 8.
Plaintiff's
Evidence.
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Examination
—continued

Q. What reason is there for G. B.'s younger brother to provide that car ?

(Objected to. 1. The question is irrelevant. 2. That question can be answered only by G. B.'s younger brother. Order - The question is allowed).

A. Because he is my father's nephew.

Q. He has been with you in this Court ?

A. No, he is not here.

Q. Is there a brother of G. B.'s who is there ?

A. I do not know.

10

G. B.'s brother is seated behind Mr. Thiagalingam, but I did not see him. He is not the Medical Student.

Q. Was he with you yesterday and was he with you today?

A. Yes.

He is G. B.'s brother who is not the Medical Student.

I do not know whether he is a Law Student.

Q. He was a Law Student ?

A. Yes.

Q. You do not know whether he is a Law Student now ?

A. I do not know.

20

(Adjourned for lunch).

Intd. E. A. V. de S.

D. J.

15-7-53

Trial resumed.

MISS IRANGANIE BOANGE, recalled, affirmed.

Further XXd:—

Q. You told me this morning that you were not aware of the fact that your father went to Point Pedro ?

A. Yes. I am now aware of it.

30

Q. Are you aware of the fact that he went on the 20th, April ?

A. No.

Q. They stayed over the week - end ?

A. I do not know.

Q. Do you know even now that on that occasion defendant definitely and clearly told your father that if he failed to keep to his promise with regard to the dowry by 21st of May, then all the negotiations were off ?

No. 8
Plaintiff's
Evidence.
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Cross-
Examination
—continued

(Objected to. for the reason that it is heresay. The question is allowed).

A. No.

10 Q. Are you aware even now that thereafter in the first week of May your father and mother went to see the the defendant's father in Kegalle ?

A. Yes.

Q. Are you aware of the fact that the defendant's father on that occasion told your father that unless the dowry was finalised by 21st. of May all negotiations were off ?

A. No.

Q. Why did your father and mother go to see defendant's father and mother ?

20 A. To discuss the marriage.

Q. Do you know that defendant's father told your father and mother that unless the dowry is settled by 21st. May, there was no need of further discussion ?

A. No.

Q. Do you know what the defendant told your father on that occasion ?

A. Yes. I knew it only when the defendant's father spoke in Court yesterday. I did not know otherwise.

Before that I did not know.

30 Q. Up to that time you have been writing letters to Teddy?

A. Yes.

No. 8.
Plaintiff's
Evidence.
Iranganie
Boange.
Cross-
Examination
—continued

Q. Between the 21st. May and the end of July you wrote no letters ?

A. No.

Q. On the 30th July your father saw Nugawela's car outside Udalagama's household ?

A. No. I do not know.

Q. You do not know that on the 30th July he went and had a talk with C. H. from 9 p.m. till about 2 a.m. in the morning.

A. I do not know.

Q. Your father did not come and tell you that the fat is in the fire ?

10

(Objected to as being heresay. The question is allowed).

A. No.

Q. You have produced through Mr. Marikkar a letter sent by him to Mr. Udalagama on your father's instructions ?

A. Yes.

Q. And a copy of a deed ?

A. Yes.

Q. The letter was sent on 18-8-51 ?

A. Yes.

20

Q. Your father also sent on 22-8-51 a letter to Mr. Udalagama stating that he had instructed Mr. Marikkar to send him a draft deed for his perfection ?

(Objected to on the grounds: 1. It relates to the contents of a letter not produced. 2. Unless the defendant's Counsel undertakes to call Boange. The question is disallowed on the grounds that it is a question relating to the contents of a document not produced).

(Shown document). Q. Do you identify your father's signature on that document ?

(Mr. Thiagalingam objects to this question for the following reasons: 1. The witness is not an expert. 2. Even if she is an expert, the letter is not evidence in this case unless Mr. Boange, the writer is called.

30

Mr. Wickremanayake in reply states that the letter is admissible without his calling the writer as the writer of the letter being the father of the plaintiff has acted as the agent of the plaintiff in this matter and on that ground it is admissible. He cites Section 18 of the Evidence Ordinance. He also states that from the plaintiff's evidence the fact of the agency can be inferred.

No. 8
Plaintiff's
Evidence.
Iranganie
Boange.
Cross-
Examination
—continued

10 Mr. Thiagalingam states that this is an action for breach of promise of marriage. Plaintiff's evidence has been that the promise to marry her was given by defendant and is contained in a writing. The Plaintiff has stated that she went with the father to Mr. Geddes and that she gave instructions, and the father also on her behalf told Mr. Geddes certain things in her hearing. That does not mean that he is the agent of the plaintiff. It is a question of fact. Actions of a father when he is called upon to make statements in the interests of his daughter may in a loose sense be regarded as acting for the daughter, but in the legal sense not so. He must have a Power of Attorney or the transaction itself must be of such a nature as to infer an agency. Otherwise every father who says something in the interests of the daughter would become the daughter's agent. He 20 cites section 17 of the Evidence Ordinance. The plaintiff can mark documents under the hand of the defendant although the defendant does not get into the box, because they are regarded as admissions, but defendant's lawyers cannot mark his own letters in any way because he must get into the box. He cites section 18 of the Evidence Ordinance. The action is for a personal promise to marry her.

Mr. Wickremanayake in reply.

30 Order. The letter sought to be produced is a letter written by plaintiff's father to the defendant and it is sought to be put to the plaintiff on the question as to whether the dowry was discussed between the parties. In the circumstances of the case and on the evidence that has already transpired, I think it is right to hold that the plaintiff's father should be regarded in the circumstances of the case as being her agent for this purpose. The question is allowed.

Intd. E. A. V. de S.

D. J.

15-7-53.

No. 8.
Plaintiff's
Evidence.
Iranganie
Boange.
Cross-exami-
nation.
—continued

(Shown document). Q. Do you identify your father's signature on that document ?

A. Yes.

(That letter is marked D10. It is dated 22-8-51).

(D10 read out by witness).

(Shown letter D11 of 2-8-51). (Same objection. Same order).

Q. Do you identify your father's signature in D11 ?

A. Yes.

Q. D12 — the envelope — also contains your father's handwriting ?

10

A. Yes.

(Shown D3) Q. The date of D3, Mr. Marikkar's letter with the draft deed, is 18th August ?

A. Yes.

Q. The date of D10 is the 22nd. August ?

A. Yes.

(Shown D13). (Same objection. Same order).

The signature in D13 looks like my father's signature.

Q. You are familiar with your father's signature ?

A. I am not sure whether this is his actual signature.

20

Q. Have you any difficulty in identifying your father's signature ?

A. No.

Q. Do you find it difficult to identify your father's signature in D13?

A. I can identify my father's signature. D13 may be signed by my father.

Q. Have you any doubt about it ?

A. Yes.

Q. Will you tell us why ?

(Objected to as the witness is not an expert. D13 is ruled out till it is proved.)

A. It looks like his signature.

(Mr. Thiagalingam calls for the document D13. Mr. Wickremanayake says that as it is not admitted Mr. Thiagalingam is not entitled to see the document).

(Shown another document).

Q. Is that your father's signature ?

10 (Objected to because defendant's Counsel hands to the witness a sheet of paper and shows only the signature. The question is allowed).

A. I do not know.

(I initial at the request of Mr. Wickremanayake two letters, the signatures of which are not identified by the witness).

Q. You admitted to me that after the 21st. of May, till the end of July, you wrote no letters to Teddy ?

A. Yes.

20 (Shown letter D11). (The witness looks at the letter and gives the date 2-8-51).

(Shown D13). This is my own letter. It is dated 3-8-51.

(D13 read).

Q. "The D/N has gone across" — where ?

A. To Teddy's father's place. I heard it from some friend of mine.

Q. When you heard it from your friend did you discuss it with your father?

A. No.

30 Q. The delay referred to the delay in the settlement of the promised dowry?

A. No.

No. 8.
Plaintiff's
Evidence.
Iranganié
Boange.
Cross-
Examination
—continued

Q. You passed your Senior, when?

A. 1947.

Q. You sat in December, 1949 for the Varsity Entrance?

A. Yes.

Q. You failed in every subject except Sinhalese?

A. Yes

Q. It was you that gave up the studying?

A. Yes.

Q. Not that you were induced to give it up by your parents or
by anybody else other than Teddy?

10

A. Yes.

Q. From whom did you get bullied?

A. From my brothers.

Q. Stopping of writing was in May or earlier?

A. Yes.

Q. Did you not make any reference to it until the 3rd of
August?

A. I cannot understand that question.

Q. He stopped writing to you at the latest somewhere in May.
You felt miserable from the time he stopped writing to you. Did
you not write to him and tell him about it until you wrote this letter.?

20

A. No. I did not

Q. Are you a Buddhist or a Christian?

A. A Buddhist.

(Shown D14 of 14.8.51)

Q. That is your letter?

A. Yes.

(D14 read by defendant's Counsel)

(Shown letter D15 of 15.8.51). This is my letter.

Q. What had the finishing of the house to do with the wedding?

30

A. We were going to have the wedding in the house.

Q. By this time you had heard about the engagement of Teddy to the D/N' s daughter ?

A. Yes.

Q. You had written to him about it ?

A. Yes.

Q. You got no reply ?

A. No. I did not get any reply.

10 Q. Are you aware of the fact that your father threatened to have Teddy reported to the Attorney - General ?

(Objected to. The question is allowed)

A. No.

Q. You spoke of three letters having been written after you heard this rumour ? These are the three letters ?

A. Yes.

Q. You told the Court in evidence - in - chief that you wrote three letters after you became aware of this rumour ?

A. Yes.

Q. These are the three letters D13 to D15 ?

20 A. Yes. There is another letter that I wrote.

Q. What is the date of that letter ?

A. Towards the end of August.

Q. You told the Court yesterday that you took this job at Balika Vidyalaya at Anula's instance ?

A. Anula asked me whether I liked to accept it and I said yes.

Q. Not that you wanted a job there ?

A. No.

Q. Nor that your mother had written to Anula asking her to get a job for you ?

30 (Objected to on the same grounds as those relating to the letters of Boange. The question is allowed).

No. 8.
Plaintiff's
Evidence.
Iranganie
Boange.
Cross-
Examination
—continued

A. I am not aware.

Q. Did you ask Anula to find you a job ?

A. No.

Q. It came to you as a surprise when Anula said that you can have a job there ?

A. Yes.

Q. Much against the grain you accepted the job ?

A. No. It is not so. I was not reluctant to obtain a job.

Q. Before the offer came you had no intention of taking a job as a teacher ?

10

A. No.

Q. Taking that job meant that you would not be able to study for the University Entrance again ?

A. No. Not with that idea.

Q. Is it not a fact that once you started teaching you would have had to give up the idea of going to the University ?

A. No. I was going to teach and study for the University Entrance.

Q. Did you not by taking to teaching lose an opportunity of entering the University ?

20

A. Yes. By taking up this job as a teacher, it prevented me from studying to enter the University.

Q. Did you try to do both at any time—that is to teach and study ?

A. Yes.

Q. You produced yesterday some presents ?

A. Yes.

Q. The first was a bottle of scent to be kept and used for the wedding day ?

A. After the marriage.

30

Q. He told you to keep it and use it after the marriage ?

A. No. He asked me to use it but I decided to keep it.

Q. I put it to you that he never gave you that bottle of scent at all ?

A. He gave it.

Q. Was there any prospect of marriage at the time he gave you that bottle of scent ?

A. I do not understand that question.

Q. When did he give that bottle of scent ?

A. In June, 1950.

10 Q. In June, 1950 was there any immediate prospect of a marriage ?

A. Yes.

Q. When was it likely to take place ?

A. I could not say.

Q. There was at that time no definite prospect of it taking place at a short time ?

A. Yes.

Q. Was it your idea to keep it for the wedding day ?

20 A. Yes I did not want to use the scent because I felt that defendant will appreciate it more if I used it after getting married. It would not lose its perfume if it was preserved.

Q. The next present he gave you was the brush and comb set ? That too you preserved and kept ?

A. Yes.

Q. You brought it in the original wrappings to Court ?

A. Yes.

Q. The hand - bag is not in the original wrappings ?

A. No.

Q. You changed the wrappings of that ?

A. I may have done it.

30 Q. Why did you keep two of them in the originals wrapping and change the wrappings of the third one ?

A. The paper must have got torn and I might have replaced it.

No. 8
Plaintiff's
Evidence
Iranganie
Boange
Cross-
Examination
—continued

Q. The fourth present was a jacket material ?

A. Yes.

Q. You kept that also for wearing after the marriage ?

A. Yes.

I do not know whether Kandyan ladies wear Cholis.

Q. I put it to you, the fact of the matter is that your father was not in a position to provide a dowry ?

(Objected to. No answer).

Q. Are you aware of the fact that your father was not in a position to provide a dowry ?

10

A. No.

Q. Are you aware of the fact that your father had numerous debts ?

A. No.

Q. And that he was sued in a number of cases and that there are writs out against him in a number of cases ?

A. No.

Q. From where did he get the material for building the house?

A. I do not know.

Q. You live in the house ?

20

A. Yes.

Q. You see the materials come there ?

A. Yes, but I have not been there always.

Q. Do you know that your father was wasting his substance on contesting Basnayakeship ?

A. No.

Q. He contested two or three elections ?

A. No, he contested one election for Basnayakeship.

I cannot remember the name of the Dewale.

Rexxd:— My father lives on a Tea estate in extent about 30 acres.

Q. Is there any debt on that as far as you know ?

A. No.

Defendant is 35 years old.

I was elected Beauty Queen in March, 1951. There were many judges at a Carnival at Kegalle and they picked out some girls on the days they had the Carnival. The carnival went on for a week. They did not tell the girls that they were picking them out. On the last day their names were announced. Till then I did not know that I had been elected Beauty Queen. About 10 names were announced and I was elected Beauty Queen out of them.

10

Nobody spoke to me about dowry, not even Teddy.

I did not know Mr. Geddes till my father introduced him to me, at Hultsdorp. From there I was taken to Counsel's house.

Q. When was the letter of demand sent ?

A. I do not know.

Q. Do you know when it was written ?

A. No.

20

Q. On that occasion you went and saw your Proctor and counsel. Thereafter did you go and see your proctor or counsel before the letter of demand was sent ?

A. No.

Q. Was there a reply to the letter of demand ?

A. No.

Q. At any time thereafter did you read the letter shown to you by Mr. Wickremanayake - D6 - before you saw it in Court ?

A. No.

30

Q. In D7 you wrote - " I asked Mummy if I may write to you and though she did not say no she does not like my corresponding, fearing that I might fall into trouble " ?

A. Yes.

No. 8
Plaintiff's
Evidence
Iranganie
Boange
Re-Exami-
nation.
continued--

Q. Although she did not say no to your request whether you should write to Teddy, from her general way of talking to you, what did you think she wanted you to do?

A. I thought she wanted me not to write.

Q. Prior to D7 had the defendant told you to write to him?

A. Yes.

Q. In what connection did he tell you to write to him?

A. Because my father was delaying the marriage defendant said, "It may be your father, mother or anyone else, you must not change your mind, and therefore let us exchange letters promising to marry each other."

10

I kept that promise.

Q. In D7 you say - "You can be sure that in rain or sunshine I will stand by you till the end of my life".

What do you mean by that?

A. That if it be my father, mother or even Lord God Almighty, I will always marry him and to the end I will be the same and not give him up.

Q. You say in D7 "Therefore do not fear"? What were you referring to?

20

A. Fear of my changing my mind.

Q. Who told you that you might change your mind?

A. Teddy.

Q. Changing your mind about what?

A. Changing my mind and marrying someone else.

Q. You refer in D8 to a house being built. What has the house to do with your marriage?

A. The wedding was to take place in the house after it was completed.

Q. In D8 you say, "I am taking a great risk in asking you to write to me, but I hope everything will be o. k.?"

30

A. Yes.

Q. Did anybody know that you were corresponding with the defendant ?

A. No.

Q. Are D7 and D8 the letters referred to in P1 ?

A. Yes.

Q. In his letter to you - P1 - there is the sentence, "Girlie, I do not think I need repeat all what you have written to me, because I feel just the same way as you have expressed ?"

A. Yes.

10 Q. What is it that he was referring to there in that sentence ?

A. Whatever happened, that he also will marry me.

That is what I understood when I received the letter.

Q. Is that the gist of what you yourself wrote in D7 and D8 ?

A. Yes.

Q. Did I question you yesterday about what is meant by "the sooner it is, the better I think ?"

A. Yes. I gave an answer to that question.

Q. Did I put you also a question—"I can assure you that all the dreams and expectations would not be in vain ?" A. Yes.

20 Q. Did you give me this answer yesterday—"By the words "you can confidently hope" I meant that I hoped a happy life with him *if* we got married' ?

A. No. I said a happy life with him *after* we get married.

Q. You told me also in examination - in - chief that you meant to continue teaching in school only till you got married ?

A. Yes.

Q. In D9 of 6th March, 1951 you wrote — " I do not intend coming here next term ? "

A. I meant I did not intend coming back to teach.

30 P10 was written on 16-3-51. That was after my letter D9.

No. 8
Plaintiff's
Evidence
Iranganie
Boange
Re-Exami-
nation.
—continued

Q. In P10 did he write to you to continue in school and not to leave school ?

A. Yes.

Q. Why did you come back in May if you meant to leave by the end of April ?

A. Because defendant wrote to me and asked me to come and teach.

Q. Did he write to you a single letter at any time saying that your father had not given him the promised dowry and that he would not marry you ?

10

A. No.

Q. Did he at any time write to you and say, " You must marry me on this particular date, otherwise I won't marry you ? "

A. No.

Q. Did he at any time tell you that — " There was trouble about the dowry and I do not want to marry you ? "

A. No.

P10 was a reply to D9.

Q. In P10 he does not say anything about the various matters referred to in D9 except that he tells you to come back to school ?

20

A. Yes.

Q. Did you get any reply to any one of the letters D13, D14 and D15 ?

A. No.

Q. Did you ever tell your father to write letters to the defendant?

A. No.

Q. Did you know that he had written letters to the defendant?

A. No,

Q. Defendant promised to marry you himself ?

A. Yes.

80

Q. Did you tell your father that the defendant promised to marry you ?

A. Yes.

Q. When did you tell that ?

A. After Teddy promised to marry me I told my father.

That was about June, 1950.

Q Did you talk to your father about not going to the University ?

A. Yes. I told him that I wished to marry Teddy and that he had promised to marry me and that as I like him I did not think it necessary to go to the University.

Q. Did you convey to him what Teddy told you about the University ?

A. Yes. He told me that he did not like girls and boys learning together and so he did not want me to go to the University.

10

Intd. E. A. V. de S.

D. J.

15-7-53.

Further hearing on 15th, 16th and 30th October, 1953. No other dates will suit learned Counsel for plaintiff and defendant.

Intd. E. A. V. de S.

D. J.

D. C. 7873.

15-10-53.

Appearances as before.

20

Mrs. C. H. UDALAGAMA, Affirmed, Principal, Balika Vidyalaya, Kegalla. I am Anula, the sister-in-law of the defendant and wife of Proctor C. H. Udalagama who is practising in this Court. I am also a first cousin of the plaintiff, being children of a brother and a sister. I am a Graduate and I am the Principal of Balika Vidyalaya Kegalla. I have three children; the eldest Daya is about 15 or 16 years of age. I live with my husband on the Colombo-Kandy road. My father - in - law and the defendant lived on the opposite side of the road. Plaintiff had her schooling in Hillwood, Kandy.

Anula,
Udalagama
Examination

30

Q. Did anybody raise the question of the marriage of the plaintiff ?

A. Yes.

Q. Who ?

A. My father in - law.

No. 8
Plaintiff's
Evidence
Iranganie
Boange
Re-Exami-
nation.
—continued

No. 8.
Plaintiff's
Evidence.
Anula.
Udalagama
Examination
—continued

Q. Before that did anybody raise it ?

A. Teddy, the defendant asked me to see about this proposal of marriage to Iranganie.

Teddy raised the matter with me first. He said that there was a talk that a proposal had been sent through Nanda on behalf of plaintiff, and Teddy asked me to see whether I could not get a reply to this proposal from Mr. Boange, plaintiff's father. Teddy told me to see whether I could get a reply from uncle, but I refused to interfere in the matter till I heard from Teddy's father about it. I thought that Teddy's father should have made the suggestion to me if I was to move in the matter.

10

Q. What did Teddy tell you ?

A. He said that a proposal had been sent through Nanda and asked me whether I could not see about getting a reply from plaintiff's father.

Q. Did Teddy tell you at whose instance Nanda had made this proposal ?

A. No.

Q. Did you tell His Honour a little earlier that you understood from Teddy that a proposal had been made through Nanda on behalf of the girl's parents ?

20

A. Nanda had made the proposal on behalf of Teddy to plaintiff's father.

Q. Nanda had made a proposal on behalf of Teddy to plaintiff's father ?

A. Yes, and Teddy was waiting for a definite reply.

Q. Why did Teddy ask you to intervene ?

A. I do not know.

I told Teddy that I could not move in the matter because the request should come from Teddy's father if I was to move in the matter. I wanted to be sure that my father - in - law agreed to this proposal before I moved in the matter, and I would not move in the matter till he told me to do so.

30

Teddy spoke to me of this about the beginning of 1950, before plaintiff came to teach in the School.

Q. Did anybody else raise the matter of plaintiff's marriage after you had turned down Teddy's suggestion ?

A. Later my father-in-law raised the proposal.

Q. When your father-in-law raised the matter with you was Iranganie teaching in your school ?

A. I do not think that Iranganie was teaching in my school then.

At the end of January, 1950 Iranganie came to teach in my school. She did not apply for a job.

10 Q. When she came to teach in your school, as far as you know what was her intention about her further study ?

(Objected to. The question is allowed).

A. My aunt wanted her to do schooling and further studies. (This answer is ruled out as it is hear say).

Q. Did Iranganie tell you what her intentions were in regard to further studies when she came to teach in your school ?

A. She said she wanted to study for the University Entrance Examination.

20 Q. Had she sat for the University Entrance when she came to teach in your school ?

A. Yes.

Q. Were the results of that test known at that time when she came to teach in your school ?

A. No.

She was not selected for admission into the University.

Q. Can you recall the trip to Kandy to attend a Concert ?

A. Yes. I cannot remember the month.

My husband (Herbert), and Iranganie and I went on that trip.

30 I got a brother named G. B. Ellepola, a proctor at Kandy. Nanda is my sister, married to another Udalagama, a cousin of my husband. At the Concert I bought the tickets for the Concert. At the Concert I met the defendant and some others.

No. 8
Plaintiff's
Evidence.
Anula
Udalagama
Examination
—continued

Q. When Iranganie's results were known that she was not gaining admission to the University, were any steps taken with regard to her further education?

A. Yes. Uncle, the plaintiff's father, went to Methodist College to arrange for her admission there. I went with them - Iranganie and her father. I myself did not go to Methodist College, but I know that plaintiff and her father went there. Iranganie told me about her seeking admission to Methodist College.

Q. Was she able to obtain admission?

A. Yes.

10

This may have been at the end of February, or beginning of March.

Q. With reference to this incident, was the trip to Kandy before or after?

A. I think it was before.

Q. After your return from Methodist College, the girl continued to teach at your school?

A. Yes.

About this time she stayed at the school Hostel but she used to come home, to my place sometimes. She used to spend the week-ends with me sometimes.

20

Q. Was defendant seeing her in your home?

A. Yes. He met her in my house.

Q. In the meantime, in regard to the defendant's father's conversation with you, had you taken any steps?

A. Yes, after Teddy's father came and reminded me about three times about it, I moved in the matter. That was about the beginning of the year—In January or so.

To Court:-

Q. Would that be before the girl came to teach in your school or after.

30

A. I cannot remember.

Q. Can you remember going to the pictures at Kegalle with the plaintiff on any occasion?

A. Yes.

Q. Did anybody else go on that occasion?

A. Yes. On that occasion Teddy went with us.

It must have been after the April holidays. Our school reopens usually early in May after the April holidays. Our Easter vacation begins just before the Sinhalese New Year and goes on till early May.

10 (Shown P11). (Mr. Wickremanayake objects to the production of this document unless he is informed as to what the document is. Mr. Thiagalingam states that this is a letter written by the witness but does not state to whom it has been addressed. Order— I shall consider the objection when the document is produced).

I wrote this letter to plaintiff's mother. This letter is addressed to plaintiff's mother. (Mr. Wickremanayake objects on the ground that the recipient of the letter is not called and the document is not listed. This is a letter dated 27-4-50. Mr. Thiagalingam says that this document has been listed, but the date has been incorrectly
20 stated as 27-5-50. instead of 27-4-50. Mr. Adv. Misso gives the assurance that the list of plaintiff's documents was prepared with his assistance and that this letter P11 has been incorrectly listed as dated 27-5. instead of 27-4. through a clerical error. I admit P11).

Xd. contd:- I wrote it to plaintiff's mother. The uncle I refer to in P11 is Mr. Boange, plaintiff's father.

Q. Does the father there refer to your father-in-law?

A. No, it refers to my father.

Plaintiff's father had left the horoscopes of Teddy and the plaintiff at my father's and he sent them on to me.

30 Q. How did plaintiff's father get both horoscopes?

A. I sent them.

Q. Did you get Teddy's horoscope?

A. I got Teddy's horoscope.

No. 8.
Plaintiff's
Evidence.
Anula
Udalagama
Examination
—continued

Q. In regard to the horoscopes, did you send any horoscopes to anybody first?

A. I sent Teddy's horoscope first.

Q. To whom?

A. I sent it to my father to be handed over to plaintiff's father.

Q. Who told you to send Teddy's horoscope?

A. Teddy's father.

Q. When you had sent through your father Teddy's horoscope to plaintiff's father, what did he do after looking at that horoscope?

A. He left them with my father — that is, he left both horoscopes — Iranganie's and Teddy's — with my father. 10

In P11 I say, I wrote and told him (Mr. Boange) that father (my father) had sent the horoscopes to me saying that uncle (Mr. Boange) (plaintiff's father) had consented to Teddy's proposal and that "they" (my father and my mother) were happy about it.

The engagement was to be fixed for some date convenient to plaintiff's father.

Q. Who is the uncle referred to in the postcript?

A. Mr. Boange.

In the postcript "She is foolish" means Nanda is foolish 20

Q. You said this letter was written after the vacation?

A. This letter was written during the vacation.

Q. At this time where was Iranganie — when this letter was written?

A. She must have been at her home at Kadugannawa. After that she came back to School to teach.

Q. Did Iranganie tell you anything after the visit to the pictures, about her future?

A. No, not just after.

Q. At any time thereafter?

A. Yes. 30

She said that she did not want to go to the University because she and Teddy had agreed to get married. She told me that when I asked her whether she was going to Methodist College.

No. 8.
Plaintiff's
Evidence.
Anula
Udalagma
Examination
—continued

Q. Then you had knowledge that plaintiff and defendant had agreed to marry each other?

A. Yes.

Plaintiff told me this somewhere in May.

Q. After that was Iranganie in your home talking to your brother-in-law, the defendant?

10

A. Yes.

Q. Was Teddy in the habit of coming to your home, were you annoyed, and did you tell Teddy anything about it?

A. I thought Teddy should not come often to my house. I thought there should be a formal engagement before Teddy continued to meet plaintiff so frequently in my house.

Q. What did Teddy reply?

A. He said, "You need not mistrust me"

I understood by that that he would not let down the girl. Plaintiff used to come to my house.

20

Q. Was the plaintiff often coming to your house in May and June:?

A. Yes.

I was engaged about 3 or 4 years before my marriage.

Q. On the 11th June, 1950, did you write this letter P12 to plaintiff's father?

A. The letter is addressed to Mr. Boange, the father of the plaintiff.

(Same objection as to P11 with regard to proper custody. Same Order).

30

(Witness reads out P12). The mother-in-law referred to in P12 is Teddy's mother. Reference to Carl's wedding has nothing to do with this case. My mother-in-law and Teddy wanted to call

No. 8
Plaintiff's
Evidence.
Anula
Udalagama
Examination
continued—

on Plaintiff's mother to fix a date for the formal engagement. In the meantime plaintiff was teaching in my school. She taught in my school for the whole of that year.

Q. And the whole of that year, after May, how did you regard Teddy and the plaintiff—in what light did you receive them?

A. What exactly does he mean, Sir,

Q. Did you think they were an engaged couple?

(Mr. Wickremanayake objects to this question as it is a leading question. The question is allowed.)

A. They were not formally engaged.

10

I did not give any thought to the matter as to whether they were to be considered as engaged or not.

Q. As far as you understood, how did the relatives regard them after May and June, 1950?

(Objected to. The question is disallowed).

Q. After May and June did plaintiff and defendant go about together alone?

A. Not to my knowledge.

Q. Did they go with you together after that?

A. They went with me sometimes. They have gone to Colombo only once with me.

20

After May, to my knowledge plaintiff and defendant did not go to the pictures together alone. They went with me on the occasion I have already mentioned, and on no other occasion.

Q. During the whole of 1950, were they in the habit of meeting each other in your home?

A. Sometimes, in the evening.

After I told Teddy not to come so frequently to my house and after his reply to me, they still continued to meet each other in my house.

30

Q. In 1951, the girl still continued to teach in your school ?

A. Yes.

Q. Did you know if Teddy had given any presents to this girl?

A. I know of only one present that Teddy had given to plaintiff. When I admired a hand-bag that plaintiff had, she told me that Teddy had given it to her.

Q. About May or June, 1951 you went up to Colombo to do some Post-Graduate work ?

A. Yes, on the 1st of July, 1951.

10 Q. Prior to your going there had you known about any dates being fixed for the marriage or engagement of these parties ?

A. I knew that several dates had been suggested by Iranganie's father for the engagement.

Q. Do you know when the defendant got his appointment as Magistrate at Point Pedro ?

A. I think it must have been in February, 1951.

I knew that he was going to Point Pedro shortly there-after. There was a party for Teddy thrown by father-in-law and mother-in-law. It was a dinner party. Only the members of the family
20 were invited. The only outsider was Iranganie the plaintiff.

Q. How was Iranganie received at that party?

A. She was supposed to be the person that Teddy was going to marry, that is to say, people present considered her as the person whom Teddy was going to marry.

I cannot remember when the suggestion of the dates was made—whether before or after Teddy's appointment. The list of dates was posted to Teddy at Point Pedro.

Q. Did anybody go to Point Pedro to see him with regard to the dates ?

30 A. The date had been fixed as 21st of May—as the date for the engagement - and I told plaintiff's father to talk about it with Teddy and fix it up finally.

No. 8.
Plaintiff's
Evidence.
Anula
Udalgama
Examination
—continued

I know that plaintiff's father went to Point Pedro and saw
Teddy. I do not know what happened at Point Pedro.

Q. Till you went for your Post- Graduate work, under what
impression were you about this?

A. That the engagement would take place.

Q. While at Colombo did plaintiff come and see you?

A. Plaintiff saw me on one occasion.

Q. What did you learn from her then?

A. That the matter had been dropped.

Q. Did she give any reason?

10

A. She wanted to find out from me whether it was true.
I said I did not think so.

Q. Is there a dearth of teachers?

A. Yes.

Q. Why did plaintiff leave your school?

A. She said she did not want to come to Kegalle after this
matter had been dropped.

Anula
Udalgama
Cross
Examination

XXd :-

Q. Is that material which you are wearing known as Choli?

A. Yes, but the jacket is not made in the Choli style. Choli
material is jacket material. Kandyan ladies may use Choli
material for their jackets but they do not wear the Choli style of
jacket leaving about 4 inches of their waist bare.

20

I was married after an engagement of several years.

I did not know that there was any dowry discussed in my
case.

Q. Do you know that as a rule dowries are discussed?

A. It depends on the people.

I was given something after my children were born.

Q. You got nothing before the marriage?

30

A. No.

Q. Do you know whether there was a discussion of dowry
between plaintiff's father and your husband's father?

A. No.

Q. Do you know that dowries are discussed when marriages are arranged ?

A. It depends on the parties concerned.

Q. In cases where dowries are discussed, they are discussed before other things are finalised ?

A. I cannot say. Some people are particular about the dowry before the wedding, some people promise dowries and do not give them.

10 Q. In this particular case dowry was discussed through you ?

A. Yes.

Q. A dowry of Rs. 5000.00 in cash and 5 acres in tea was requested ?

A. Yes.

Q. A dowry of Rs.5000.00 cash and 5 acres tea was agreed to ?

A. Yes.

Q. It was only after that dowry was settled that the engagement was to take place ?

20 A. First of all father-in-law agreed to the dowry being given after the engagement and the wedding took place, but later on father-in-law said that the dowry should be given on the day of the engagement.

The negotiation was between the defendant's father on one side and plaintiff's father on the other side, through me, regarding the dowry.

Q. In this particular case your father-in-law was the one who was insistent on the dowry being provided before the engagement could take place ?

(Objected to. The question is allowed).

30 A. Father-in-law wanted the dowry deed to be written out and completed and the money deposited before the engagement took place.

No. 8
Plaintiff's
Evidence.
Anula
Udalagama
Cross
Examination
continued—

Q. Your father-in-law was the person who was concerned with the arrangement of the dowry?

A. Yes.

Q. Is it not a fact that it was dependent on whether or not that dowry was settled that the engagement should take place?

A. He said he wanted the dowry given before the engagement could take place.

Q. That was a fact that was known to everybody who was interested in this marriage?

A. I knew it. I told plaintiff's father that the dowry should be finalised before the engagement took place. Teddy was also aware of the fact.

10

Plaintiff did not know anything. It is not usual to talk to the girl about dowry matters.

Q. You spoke about a list of dates having been sent?

A. A list of auspicious dates for engagement was sent.

The list was sent either by me or by my husband to Teddy.

I cannot be sure. I must have sent it under registered cover. (Shown D16). (Mr. Thiagalingam objects to the reception of D16—the very objection that was raised in regard to P11 and P12. The objection is over-ruled.) D16 dated 19.3.51 is written by me. I have signed it - "Sister."

20

The Carnival referred to is the Carnival at which plaintiff was elected Beauty Queen. The enclosed referred to was the list of dates.

(Shown D16a). D16a is the list of dates that was enclosed—in 2 slips. I wrote D16 in English. The dates were given to me by my uncle. I do not know who the astrologer is who recommended the dates. There is a rubber-stamp on one of the slips of D16a. I have said in that letter that plaintiff's father would settle the dowry before the date of the engagement.

30

Q. He made that promise to conform to what your father-in-law wanted?

A. Yes.

Q. Teddy himself left this question of dowry to be discussed by the elders, so far as you were aware?

10 A. Teddy was not following up the question of dowry.
The parents were speaking on behalf of themselves.
Usually the parents arrange the question of dowry on behalf of the children.

No. 8.
Plaintiff's
Evidence.
Anula
Udalagama
Cross
Examination
—continued

Q. Did you know that Teddy himself was not willing to be engaged until the dowry had been settled?

A. He knew that his father wanted the dowry settled.

Teddy knew that his father insisted on the dowry and the engagement could not take place unless the dowry was given. That was also Teddy's attitude.

20 To Court:- Q. As far as you are aware, had Teddy fallen in line with his father's wishes with regard to the dowry and the engagement?

A. I do not know.

I mentioned about the dowry to Teddy because he was anxious to have the engagement soon and because once the dowry was settled, the engagement could be had soon after that. I told Teddy that the dowry was to be settled because Teddy would know that soon after that he could have the engagement.

Q. This is because you knew that however eager he was to have the engagement, he could not have it till the dowry was fixed?

A. That is because my father-in-law would not allow it.

30 Q. Was Teddy prepared to go counter to the wishes of his father with regard to this matter?

A. I do not think Teddy was prepared to go contrary to the wishes of the father with regard to matters of dowry.

Q. I put it to you that you mentioned the question of dowry in the letter because Teddy was not prepared to go counter to the wishes of the father?

A. It was because I knew that Teddy would understand that he could have the engagement as soon as the dowry was given.

40 I said in my letter that "the deed will be ready and the money banked so that you can see it for yourself." I said so in my letter because father-in-law wanted to see this for himself.

Q. Will you tell me, why did you say, "so that you might see for yourself." Who is the person who might see it for himself?

No. 8
Plaintiff's
Evidence.
Anula
Udalagama
Cross
Examination
—continued

A. According to the context it would look like Teddy. It should be Teddy. Teddy and the father-in-law had to see it.

D16 is addressed to Teddy.

Q. "You may see this for yourself" — are you referring to Teddy himself or to Teddy and his father?

A. "Yourself" refers to Teddy himself.

I was also aware that my father-in-law also had to be aware of it.

10

Q. "Uncle himself is anxious to settle up everything before the engagement." Is that a correct statement?

A. Yes.

I told him that he must settle everything before the engagement and that my father-in-law was adamant about it. Teddy spoke to me first about the proposal. I told Teddy that his father must speak to me about the proposal first if I was to move in the matter. Thereafter his father spoke to me and then I moved in the matter. Thereafter all discussions I had were with Teddy's father. Unless Teddy or Ira asked me anything about dowry, I would not have discussed it with them. I wish to correct this answer and state that Ira never asked me about the dowry.

20

(Adjourned for lunch)

Trial resumed.

Mrs. ANULA UDALAGAMA, recalled, affirmed

Further XXd

Q. You spoke about a Concert at Kandy?

A. Yes.

Q. You told the Court that you went to that Concert with the plaintiff and your husband?

30

A. Yes.

Q. Is it your position that you and your husband and plaintiff left Kegalle together?

A. Yes, in the same car.

We went to Kandy to my father's place at Malabar Street where my brother G. B. also lives.

Q. To the Concert you and your husband and the plaintiff went?

A. Yes.

Q. Only the three of you went together?

A. Yes, as far as I remember.

Q. Have you any doubts in your mind about that?

A. As far as I remember only three of us went but, I know that defendant did not go with us.

I do not know whether anybody else was given a lift. I cannot remember whether there was anybody else in the party. It is not correct to say that plaintiff and I and somebody else went together. It is not correct that I and Nanda and plaintiff went together. My husband drives the car. We did not go in G. B.'s car. G. B. has no car. That is my father's car. It is an Austin A/40 black car. I cannot remember the number.

(Passage from plaintiff's evidence at page 23 put to witness).

If plaintiff says that "Nanda, Anula and I went to the Concert", it is not correct. I went with my husband.

Q. I put it to you that you and Nanda and the plaintiff went together in the A/40?

A. No.

Q. And that Herbert and Teddy came together and joined you at the Concert?

A. No.

Q. Are you aware whether G. B. purchased any tickets?

A. I bought the tickets for Ira, my husband and myself.

I telephoned Trinity College and booked the seats and paid for the tickets at the door.

Q. Do you know whether your husband was aware of any of these discussions about the dowry?

A. I suppose so.

Q. Has he discussed it with you at any time?

A. No.

(Shown D16). It is dated 19-3-51.

Q. Is it a fact that you brought this question of settling the dowry with your uncle as a result of something that your husband told you?

No. 8
Plaintiff's
Evidence.
Anula
Udalagama
Cross
Examination
—continued

A. No.

Q. Did your husband have a conversation previous to that about the question of this dowry?

A. No.

Q. You deny that you had a conversation with your husband on the question of finalising the dowry shortly before this letter was written?

A. No. I deny it.

Q. Do you know your husband's handwriting?

A. Yes.

10

(Shown D17). (Mr. Wickremanayake undertakes to call the writer of the letter).

D17 is in my husband's handwriting, dated 14-3-51.

Q. Is that a true statement by your husband or a false one — (first sentence referred to). (Mr. Thiagalingam states that the witness should be allowed to read the entire letter.

I rule that the witness need not read the entire letter before she answers the question because she is being allowed to read the particular passage on which the question is based).

Q. "I have as I promised informed Anula that promises must be kept." Shortly prior to the 14th of March had Herbert asked you to convey to them that the promises must be kept before anything can take place?

20

A. Yes.

The statement there is correct, but I do not know whether it is shortly prior to that letter.

Q. Did you write shortly before the 14th March to your uncle, Boange, saying that the promises must be kept?

A. I cannot remember whether I wrote shortly before the 14th of March, but I wrote that all along to him.

30

Q. That he must keep his promise before the matter could go any further?

A. Yes.

Q. Is it correct, that when you wrote to Boange you discussed with your husband the replies you received?

A. Sometimes.

Q. If you wrote at the request of your husband, you would tell him the reply you got ?

A. Yes, if he asked me for the reply.

Q. When did your uncle give you the information which was conveyed by D16 ?

A. Before that. I cannot remember when.

Q. You were anxious to hurry this ?

A. Yes.

10 Q. As soon as your uncle agreed, you would have conveyed that to Teddy ?

A. Yes.

My uncle has been contesting Basnayake Nilameships from time to time. I do not know the number of Basnayake Nilameships he contested. He came forward for Basnayake Nilameships. I remember two occasions. I do not know the names of the Dewales.

Q. Can you tell me who succeeded against him ?

A. I cannot remember.

20 Q. Was one of them for the Basnayake Nilameship where he was defeated by Mr. Dodanwela ?

A. No.

I know he was defeated but I do not know by whom, but he was always defeated. These elections naturally must have cost him money.

Q. Did Herbert tell you that there was no purpose delaying the settling of the dowry, if this engagement was to come off ?

A. Yes.

Q. After you wrote D16, you yourself went to Point Pedro ?

A. Yes.

30 Q. With whom did you go ?

A. I went with my mother-in-law, husband and my children.

No. 8
Plaintiff's
Evidence.
Anula
Udalagama
Cross-
Examination
continued—

Q. When you went there you discussed with Teddy further the letter you sent—D16?

A. Yes. I told him that uncle promised to finalise the dowry.

I went during the Easter holidays. If the Easter holidays were in March, then it must have been in March.

Q. You told him then that uncle had promised definitely to have these things ready before the end of April?

A. No, I said before April.

Q. You were sent the dates before you went up?

A. Yes.

10

Q. The last date given there is the 21st of May?

A. Yes.

Q. Before the 21st of May the dowry matter was to be completed?

A. Yes.

Q. That was one of the dates that you sent at the instance of your uncle?

A. Yes.

The last date on the list was the 21st of May. 21st May was fixed upon for the engagement.

20

Q. D16 shows that your uncle would finalise all arrangements by the 21st of May?

A. Yes.

Q. Do you know that the draft deed D4 was only sent on the 18th August, 1951?

A. I do not know. I was in Colombo.

Q. Do you know that D3 and D4 were produced by Mr. Marikkar, called by the plaintiff?

A. I do not know.

(Shown D3 and D4)

Q. From that letter D3, does it appear to you that the draft deed was sent only on the 18th of August?

A. Yes.

Q. By which time you were aware that negotiations between defendant's father and the father of his present wife had gone very far ?

A. I do not know. I was in Colombo.

Q. When did plaintiff speak to you in Colombo ?

A. In August. I cannot say whether it was in early August.

10 In August I was in Colombo at the Ceylon University. We did not have a vacation in August. I cannot say in which part of August plaintiff came to Colombo. I cannot remember. It is easy to remember the month but not the date. Plaintiff came with her father.

Q. You produced certain letters which you wrote to Boange ?

A. Yes.

Q. You got replies to some of them ?

A. No. He used to come and give me the answers verbally. He lives 15 or 18 miles away.

(Shown D10)

20 Q. That also indicates that the draft deed was sent in August?

A. Yes.

The signature in D10 reads "M. B. Boange." It may be Boange's signature. I am not so familiar with his signature as to be able to indentify it. I am 43 years old. My uncle has never written to me. I may have seen his handwriting long ago but I cannot remember.

(Shown D11).

Q. Can you make out his handwriting ?

A. D11 looks like his handwriting.

30 Q. Had the building of a house anything to do with the postponement of the finalising of the dowry ?

A. I do not know, because he always said they will have the engagement as soon as the house is ready. That is his house.

No. 8
Plaintiff's
Evidence.
Anula
Udalagama
Cross-
Examination
continued—

He was making renovations to his house.

Q- He always said that he would have the engagement after the house was completed ?

A. Yes.

Q. And the finalising of the dowry was put off till the house was completed ?

A. He always promised to give the dowry before the engagement.

Q. When was the house completed ?

A. I do not know when the house was completed.

10

When I went with Teddy's mother the front portion of the house was not pulled down. That was in May, 1950. In September or October, 1950 the front portion of the house had been pulled down for renovations. I just dropped in on that occasion on my way from Kandy.

Q. You do not know at all when the house was completed ?

A. No.

(Shown D11). Witness reads "My house is about to be completed and as I promised you that I would fulfil the promise I made to you, I shall be sending the Pass Book and the deed of Gift for your perusal."

20

(Shown signature on document). It looks like Boange's signature.

Q. You know that Boange went to Point Pedro ?

A. Yes. I told him to go.

Q. For what purpose did you send him ?

A. So that he should complete all arrangements with the person concerned, namely the defendant.

I cannot remember when he went but he told me he was going because I asked him to go. That was sometime after defendant went to Point Pedro.

30

Q. Was that because he was still not in a position to provide the money ? Was that because of the fact that at that time he was not in a position to provide the money ?

A. He wanted the engagement postponed from the 21st of May to a later date. I told him "You go and arrange that with the party concerned."

Q. You had said by the 21st of May he would be able to finalise the dowry?

A. Yes.

Then he told me that his house was not ready. It was not because he could not finalise the dowry. He at no time said that he could not give the dowry.

10 Q. The dowry was to be by a deed in favour of his daughter and money to be deposited in the Bank to the account of his daughter?

A. Yes.

Rs. 5000-00 was to be deposited in the bank in the name of the plaintiff and a deed was to be drawn in favour of plaintiff for 5 acres of tea.

Boange said, "I can always give the dowry, but I must have the engagement in the house after the house is completed."

20 Q. Are you aware of the fact that Mrs. Dunuwila filed action against Boange on a mortgage bond?

A. I may have heard about it but I do not know whether it is true

Q. Was it after you heard those things that your father-in-law told you about wanting the dowry before the engagement and not after?

A. I cannot remember.

Q. Do you know that Boange had a number of cases against him?

A. I am not aware.

Q. Do you know A. B. Ellepola?

30 A. Yes.

He had come to see me and he was at the dinner party given for the defendant. He came to my house for dinner and I took him to defendant's for dinner.

Plaintiff was living in my house on the day of the dinner. I did not take her to the father-in-law's place because I was not cooking

No. 8.
Plaintiff's
Evidence.
Anula
Udalagama
Cross-
Examination
—continued

at home on that day, but my father-in-law sent me a note and in that note he said — “Bring Iranganie also.”

I took A. B. Ellepola and my brother Cyril also for dinner because I was not cooking at home. I cannot remember whether Mr. Advocate Molamure was there. I would never have taken the plaintiff to the party unless she had been invited.

Q. Did you know that Nanda had negotiated or tried to negotiate a marriage between plaintiff and defendant ?

A. Yes.

Q. Do you know why that had failed ?

10

A. Because uncle wanted somebody older to negotiate.

Nanda is my younger sister. She is married and is about 8 years younger than me. I cannot remember when my sister got married. It must be about 10½ years ago.

Anula
Udalagama
Re-Exami-
nation.

ReXXd:—

Q. Did Iranganie ever talk to you one word about dowry ?

A. No.

Q. As far as you know, was any question of dowry raised by anybody with Iranganie ?

A. No.

20

Q. Did Boange ever tell you that he intended to contest any particular Basnayake Nillemeship ?

(Objected to. Question is withdrawn).

Q. In D17 your husband writes that he intended going during the holidays to Point Pedro ?

A. Yes.

Q. Did your father-in-law also go with you and your husband ?

A. No.

Q. In D17 your husband has written, “Father and I intend coming ?”

30

A. Yes.

Q. Did your father-in-law go and see Teddy at Point Pedro

at any time as far as you know ?

A. Not to my knowledge.

Q. Do you know how many times Boange went to Point Pedro?

A. Once, as far as I know.

Q. After this letter D16, you went and saw Teddy at Point Pedro ?

A. Yes.

Q. Thereafter, you said, you spoke to Boange after your return ?

10 A. I did not say so.

Q. You spoke to Teddy at Point Pedro? You talked of the suggested dates for engagement ?

A. I wrote to him.

Q. Did you at Point Pedro talk again about those suggested dates ?

A. I did not, because he had already informed us that 21st would suit.

20 Before I went to Point Pedro he had given me that information. I conveyed that information to Boange and Boange told me subsequently that he wanted the date put off as the house was not complete- That was after I returned from Point Pedro. Then I told him that the best thing he could do is to go and meet Teddy and decide on something with him.

Q. In August when Iranganie came and saw you—till that time did you ever think that the engagement had been broken off ?

A. No.

Q. In D16 you say—"Uncle himself is anxious to settle up everything before the engagement." Why did you write that ?

A. Because uncle said so.

30 Q. Did he tell you that he was not in funds and unable to provide the dowry ? (Question objected to as heresay. Question disallowed).

Intd. E. A. V. de S.

D. J.

15-10-53

Plaintiff's case closed reading in evidence P1 to P12.

No. 9

No. 9.
Defendant's
Evidence.
Nanda
Udalagama
Examination

Defendant's Evidence.

Defence Mr. Wickremanayake calls:

Mrs. NANDA UDALAGAMA affirmed, Yatiyantota: I was before marriage Nanda Ellepola and a sister of the last witness, Mrs. C. H. Udalagama. I know the plainfiff.

Q. Did you make any suggestion of marriage for her at any time?

A. Yes. To C. V., my sister's husband's brother. Anula got married long before me. 10

(Shown D5). This is a letter I sent to Teddy. L. B. is my husband. Teddy came to our place when he got D5.

Q. When he came there who was there?

A. My mother, father, brothers and lots of my uncles and aunts, because my mother was ill at the time in her house.

Teddy met Girlie, the plaintiff. Her father had come and left her there at No. 24, Malabar Street, Kandy.

Q. Had her father been to see you before that?

A. He had come and gone before because my mother is his sister. 20

I told the plaintiff's mother that there was an eligible man for Ira, meaning the defendant, and so she sent the plaintiff with her father to my parent's house. That was about January or February, 1950.

Q. Did Teddy see the plaintiff?

A. Yes.

Q. Did he speak to her?

A. Yes.

She served him with cadju nuts and she said "Have one"

I asked Teddy what he had to say and he told me that he would think about it and let me know. 30

Q. Did the defendant tell you what he had decided?

(Objected to if the defendant is not being called. Mr. Wickremanayake withdraws the question).

Q. You had a conversation with defendant?

A. Yes

Q. After that what did you do ?

A. After that defendant left and I remained at home.

Q. Did you hear from Teddy at the end ?

A. Yes.

Q. In consequence of what he told you, did you do anything ?

A. I wrote to the girl's father giving his conditions. (Question is objected to. The question is allowed).

I wrote to her father giving the conditions. I did not receive a reply from her father.

10 Q. I think you said that you sent the first letter by registered post ? (Objected to. Question allowed).

A. I sent the second letter under registered cover.

I did not receive a reply to that. After that I told Teddy that I had not got a reply. Then Teddy told me something.

Q. What did you do as a result of what Teddy told you ?

A. I wrote another letter, not registered. I thought it useless wasting stamps.

I did not get a reply to that letter. Then I told Teddy to give it up and that I cannot manage this.

20 Q. You remember the Concert at Kandy ?

A. Yes.

Q. Did you go with plaintiff and your sister to any Concert ? (Objected to. Question disallowed).

Q. Who went to that Concert ?

A. Girlie, Teddy, my brother G. B. myself and my husband went, as far as I remember.

XXd:— Q. Did you meet your husband before marriage ?

A. Yes. He was at Kingswood and I was at High School. They were sister Schools.

30 Q. You must have liked the man before you married.

A. I did not think of marrying him when I was at school.

The proposal came.

Q. Did your parents raise the matter of the marriage with you?

A. The parents carried on the negotiations.

Q. Did they also raise the matter with you ?

A. Yes. They would have asked me whether I liked him.

Q. Did not your husband talk to you before your marriage ?

A. Must I answer this question !

(Mr. Thiagalingam's reason for the question is that he desires to elicit the mode in which marriages among the people of this circle are arranged, and that while negotiations between parents are carried on, the parties come to an agreement among themselves unmindful of what the parents are discussing about the dowry.

10

Order. This is a matter for comment or argument by Counsel. I do not think it is proper to question the witness on a matter so personal to her and cause embarrassment. The question is disallowed).

Q. You wrote to Teddy that there was a nice girl ?

A. Yes.

Q. Why did you write that letter ?

A. I had been at my mother's for 2 or 3 months and the conversation there was whether Teddy would not be good for Girlie (Ira).

20

So I wrote to Teddy.

Q. How long had you known Teddy's father ?

A. From the time my sister got married to his son. Teddy's father did not come to our house very often.

Teddy came to our house on receipt of my letter D5. When Teddy came plaintiff was at our house. Plaintiff came to our house

the previous evening because I had told her mother to bring her.
The father brought her.

No. 9.
Defendant's
Evidence
Nanda
Udalagama
Cross-
Examination
—continued

Q. Do you know, to your personal knowledge, why the father brought her?

A. Yes.

Q. Did plaintiff's father tell you anything about it?

A. He told me the girl had been brought because my mother was ill. The father told me that he had brought the girl because he could not speak to my mother as she was ill.

10 Q. Did plaintiff's father tell you why he brought the girl?

A. He told me that the girl's mother had asked the girl to be brought.

Q. Did you talk to Iranganie on that occasion — did you tell her why she was brought?

A. No.

Q. You got her into your house and got her to serve sweets?

A. Not my house, but my parents' house.

Q. Did you ask her to serve the sweets?

A. No.

20 Q. She took the sweets of her own accord and served it to the people?

A. Yes.

Q. Did you hear her talk to Teddy?

A. No. I only heard her offering sweets to him.

Q. You expected Teddy to have a good look at her?

A. Yes.

I do not know whether Teddy had a good look at her.

No. 9.
Defendant's
Evidence
Nanda
Udalagama
Cross-
Examination
—continued

Q. After that Teddy went away ?

A. Yes.

Q. And so did plaintiff go away ?

A. Yes.

Q. Did you thereafter speak to plaintiff about this matter ?

A. No.

Q. Do you know of anything that happened between plaintiff and defendant ?

A. No.

Q. Did you hear that they were engaged ?

10

A. No.

Q. Teddy never told you ?

A. No.

Q. You thought that the marriage had not been fixed at all ?

A. Yes.

Q. Up to date ?

A. Yes.

Q. You did not know about any dowry ?

A. I knew.

Q. You knew that the dowry had been arranged without a marriage being arranged ?

20

A. I knew that there would be a marriage if the dowry came.

Q. When did you come to understand that ?

A. I do not know the time.

Q. Did you know that Anula was interesting herself in this matter ?

A. Yes.

Q. You went to the Kandy Trinity College Concert ?

A. Yes.

Q. Anula says that you were not in her party at the Concert.
 Is it a mistake ?

A. I do not know with whom I went but I say I was at the
 Concert and in the same party.

Q. Two groups went separately into the Concert ?

A. No. We had our seats in a row and we took our seats.

10 We went in several cars at one and the same time.

Q. Anula tells us that she had rung up Trinity College and
 booked three seats. Would that be right ?

A. I think it was my brother who arranged for the seats.

Q. Would Anula's statement be right or wrong ?

A. What I think is that my brother bought the tickets for all.
 I cannot say whether what Anula has stated is correct or not. I do
 not know what Anula did.

Q. If Anula had bought 3 tickets for 3 people, would your
 brother have taken 3 tickets over again for them ?

20 A. I think my brother was the Master of Ceremonies at the
 Concert

Q. If Anula had paid for the 3 tickets would your brother
 have paid for the 3 tickets again ?

A. I do not know that Anula paid for 3 seats.

At the Concert Iranganie was seated next to Teddy. My
 brother gave us the places for sitting. We filed past and sat down
 in our seats and it happened that plaintiff's and defendant's seats
 were together.

No. 9.
Defendant
Evidance
Nanda
Udalagama
Cross-
Examination
—continued—

Q. Are you telling His Honour, that when Iranganie sat first, Teddy was seated next to her?

A. Yes.

Q. Or is it that there was somebody else in between and Teddy exchanged places with that person?

A. I do not think there was any exchanging of seats.

Q. Are you prepared to contradict plaintiff when she says that next to her somebody sat and thereafter defendant exchanged seats with him?

A. Plaintiff must be speaking the truth.

10

Q. Plaintiff was a very clever girl in school?

A. I do not know, but she came down in the University Entrance. She was not clever according to those results.

Q. Are you willing to express your own opinion as to whether she is clever or not?

A. She is moderately clever.

She was the School Captain, which means Senior Prefect.

Q. Plaintiff sat for the University Entrance, did she?

A. Yes.

Q. Why was that?

20

A. That was the next step after the previous year's class.

Q. Why did she go into the University Entrance Form?

A. I do not know.

Q. Did plaintiff sit for the University Entrance Exam?

A. Yes.

Q. Why did she sit?

A. I do not know.

Q. You do not know if her intention in sitting for the University Entrance was to enter the University or not?

A. No.

30

Q. How old were you when you got married:

(Objected to. The question is allowed).

A. I cannot remember.

Q. Give us a rough idea as best as you remember ?

A. About 22 or 23.

Q. Among you people is there a thing called Caste ?

(Question is disallowed)

Q. Amongst you people is the question of eligibility of parties to marriage dependent on Caste ?

10

A. Some families stick to caste, others do not.

Even in our family various individuals think differently.

Q. What do you think yourself about eligibility of parties for marriage ?

(The question is disallowed).

Q. You belong to the Radala Group among Kandyans, don't you ?

A. I do not know so much about caste.

Q. You do not know about the Radala Group ?

A. No.

20

Q. Have you heard of the Goigama Caste ?

A. Yes.

Q. Do you belong to the Goigama caste ?

A. I do not know.

I only know that I am a Kandyan.

To Court:— Q. You belong to a respectable group among the Kandyans ?

A. Yes.

Q. That respectable group to which you belong is limited.

I do not know.

30

Q. Do you know the caste to which the Nugawelas belong ?

A. No.

No. 9:
Defendant's
Evidence
Nanda
Udalagama.
Cross-
Examination
—continued

Q. Your husband is an Udalagama ?

A. Yes.

Q. You do not know to what group he belongs ?

A. No, but I know he is a Kandyan.

I do not know whether there are different classes amongst Kandyans.

I studied up to the Senior Cambridge. I know there are castes among Kandyans but I do not know anything in detail about castes. There are various castes. I do not know whether I belong to the highest class. I do not think that I belong to the lowest caste. 10

To Court:— Q. Kandyans in various castes — when the question of marriage comes, they prefer to marry in their own groups ?

A. The elders manage all that and they see to the suitability of the parties.

Q. That is what happened in your case ?

A. I thought I was choosing all right.

Q. That circle in which you were choosing is a small one ?

A. I knew that I was choosing among the Kandyan circle. The Kandyan circle is a large one.

Q. The circle to which you belong — is it a large circle or a small circle ? 20

A. I do not know, but the entire Kandyan circle is a large circle.

My marriage was arranged by my parents with my knowledge.

Q. Speaking for yourself, will you wish to get outside your circle of Kandyans ?

(The question is disallowed).

REXXd:— I attended the High School.

Q. Were you also Senior Prefect.

A. I was also Senior Prefect. 30

Intd. E. A. V. de S.

D. J.

15-10-53.

Nanda
Udalagama
Re-
Examination

Further hearing on 16-10-53.

Intd. E. A. V. De S.

No. 9.
Defendant's
Evidence
Nanda
Udalagama
Re-
Examination
—*continued*

D. C. 7873.

D. J.

16-10-53

Appearances as before.

Mr. C. H. Udalagama, affirmed, Proctor, S. C. & Notary Public Kegalla: I am a Proctor of the Supreme Court, practising in Kegalla for the last 26 years. I am a brother of the defendant in this case. My wife is related to plaintiff.

C. H.
Udalagama
Examination

10

Q. Early in 1950 did Nanda Udalagama ask you to convey a message to the defendant?

A. Yes. A letter was given to me by her.

Q. What did you do with that letter?

A. I gave it to the defendant.

Q. After the receipt of that letter what did the defendant do?

A. He went on a Saturday to Malabar Street. I went along with him. That was to my father-in-law's house.

Q. Can you tell us who was there?

20

A. To the best of my recollection the plaintiff was there, Nanda Udalagama was there and several others.

I cannot remember the date but I know it is a Saturday.

Q. How long after the letter was given did you and your brother go there?

A. We went on the day after I got the letter.

I cannot remember the exact date but I remember that it was on a Friday that a letter was given to me, in the month of January, 1950, and we went there on Saturday.

30

Q. After your visit, on the way back did you have a conversation?

A. On the way back I asked defendant what the trouble was and why he was asked to come there. Then he told me that Nanda had put a certain proposal of marriage to him.

No. 9.
Defendant's
Evidence
C. H.
Udalagama
Examination
—continued

(Mr. Wickremanayake undertakes to call the defendant).

Q. What more did he say ?

A. He asked me what kind of a person the plaintiff's father was.

Q. Why ?

A. Because I knew him very well.

Q. Was there anything else talked about on that day ?

A. He asked me how much I think plaintiff's father would be able to give as dowry. I told him that as far as I knew he was a person with some substance and that he will be able to give him something.

10

Q. Did he tell you what dowry he proposed to ask ?

A. He told me he wanted Rs. 25,000-00.

I told him I did not think that he would be able to give that, and if he wanted a reasonable sum that he would be able to give a reasonable sum.

Q. Did you have a further discussion about a reasonable sum ?

A. I said he ought to be able to give about Rs. 10,000-00.

Q. Do you know whether that proposal through Nanda came to anything ?

20

A. It took some time. As far as I was aware, for 2 or 3 months I heard nothing about it.

Q. Thereafter what happened ?

A. Thereafter I know certain negotiations were going on through my wife.

Q. In the course of those negotiations was a definite dowry at any time mentioned? (Objected to. The question is allowed).

A. Yes. Rs.5000.00 in cash and 5 acres of tea.

Q. Was that intimated to anybody—to plaintiff?

30

A. This was conveyed to the plaintiff's father.

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

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. Did you yourself at any time speak to Boange about the proposed dowry?

A. Several times.

Q. Do you know whether plaintiff was aware of these negotiations about dowry? (Objected to. The question is allowed).

A. Obviously she was. She used to be very frequently at my house and the plaintiff's father was there when this matter was discussed.

20 To Court:- Q. Does that mean that she must know it?

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

Q. Did you take part in any of these discussions?

A. Not a prominent part.

Q. Have you spoken to Boange in the presence of anybody else?

A. In the presence of my wife, in the presence of plaintiff and on one occasion in the presence of Boange's wife.

30 Q. What was the need for you to speak to Boange on so many occasions?

A. Defendant used to tell me to have the dowry settled and have this thing finalised.

No. 9.
Defendant's
Evidence
C. H.
Udalagama
Examination
—continued

Q. On that occasion you spoke to Boange in the presence of his daughter, on what lines did you speak to him?

A. I spoke to him and wanted this money deposited and the deed written before the engagement could take place, as early as possible, as this matter was being delayed so long.

Q. You remember an occasion when you attended the Concert in Kandy?

A. Yes.

Q. Can you tell us how many people went to that concert?

A. In my party myself, my wife and the plaintiff. At the Concert hall the defendant was there and G. B. Ellepola was there and I think Nanda was there.

10

(Shown D17)

Q. This is a letter written by your brother?

A. Yes. (Witness reads the first part of it)

When I said that I was worried over the matrimonial affairs I meant the delay in finalising this matter.

When I said, "As I promised," I meant promised my brother the defendant to inform Anula.

Q. Why had you to inform Anula?

20

A. Because she was the niece of the plaintiff's father and she was really corresponding with the plaintiff's father. I wanted her to convey that the promises must be kept—that is about the promise of dowry.

"Nothing further could take place", refers to the engagement. "The man" referred to is Boange. "B/N. ship" means the Basnayake Nilameship. He had contested to my knowledge the Basnayake Nilameship three times and he never succeeded.

Q. "No purpose in delaying", what?

A. If the engagement is to come off.

30

The date of the letter is 14th March, 1951.

(Shown D16).

This is in my wife's handwriting. It is dated 19-3-51.

This is a letter to the defendant from my wife.

Q. That also speaks about certain dates of engagement being sent?

A. Yes

Q. Was the date of engagement finally fixed on by your brother?

A. Yes, as 21st May. That was the last date on the list of auspicious dates.

Q. Under what conditions would that engagement have taken place on the 21st of May?

10 A. Rs. 5000.00 had to be deposited and the deed had to be written.

Q. After the 21st of May were there any further negotiations on the part of your brother?

A. Not as far as I am aware.

Q. Some time after the 21st of May do you know whether the defendant's present father-in-law came to your father's house?

A. Yes. I know.

Q. How do you know?

20 A. On that occasion there was a lunch given by my father to defendant's present father-in-law and some relatives who came. I attended that lunch myself. That was for the purpose of the marriage proposal for the Diyawadane Nilame's daughter with my brother.

Q. Your house is on the other side of the road from your father's?

A. Yes.

Q. Had Boange come to your house prior to that date?

A. Yes.

Q. On the date on which Mr. Nugawela came there, did you have a visit yourself that evening from Boange?

30 A. Yes. He came at about 9 p. m. that same day. I think it was about the 30th of July.

Q. Did he talk to you?

A. Yes.

No. 9
Defendant's
Evidence
C. H.
Udalagama
Examination
—continued

Q. For how long was he there ?

A. Till 2 a. m. in the morning.

Q. Was your wife there on that day ?

A. No, she was in Colombo.

Q. What was the subject of the conversation ?

(Mr. Thiagalingam objects to the question. The question is allowed).

A. The subject of conversation was why the D/N's car was in front of my father's house. There were other subjects too.

I told him that the D/N had come there and there was a proposal between his daughter and my brother. 10

Q. Did the question of the earlier proposal of marriage with the plaintiff also come up ?

(Objected to. The question is allowed).

A. Yes. I told him that he had delayed this matter and now the thing has fallen off and things cannot be done.

Q. What were the things that could not be done ?

A. To bring up his proposal again.

Q. Why was the proposal of the marriage with plaintiff dropped ? 20

A. Because Boange did not keep the promise of furnishing the dowry at the proper time, that is before the 21st of May.

In my letter D17 I say, "I am myself worried over your matrimonial affairs."

Q. Have you discussed these matters with your brother at any time ?

A. Yes.

Q. Was this suggested marriage with the plaintiff, so far as you were aware, a love marriage or an arranged one ?

A. An arranged one. 30

Q. Do you know about your father's views about marriage ? Are they vague or are they definite as regards dowry ?

A. They are definite.

Q. Would the defendant listen to your father in these matters?

A. Defendant would listen to my father's views on the question of marriage.

Q. Are you aware of any steps taken by Boange thereafter after the 30th July ?

A. Yes.

(Shown D10 and D11)

Q. Have you seen these letters before ?

10 A. Yes my father showed them to me.

One is written by Boange. I am familiar with his signature. I have acted for him in my capacity as Proctor and Notary.

Q. Those letters are both after the 30th July ?

A. Yes.

(Shown letter dated 27-8-51.)

This letter is signed by M. B. Boange. I recognize the signature as that of plaintiff's father. It is dated 27-8-51 (Mr. Wickremayake marks it D18. Mr. Thiagalingam objects to D18 unless Boange is called. Order — I have already ruled on this question.

20 On the same grounds the objection is overruled.)

(Shown letter D19 of 27-8-51)

The signature in D19 is Boange's, father of the plaintiff. (Same objection. Same order).

(D19 read). (It contains an annexure D19a, which is a copy of D18).

(Shown D17)

Q. There you say, " I have informed Anula to convey ?"

A. Yes.

30 Q. Have you discussed these questions with your wife at any time ?

A. Yes.

No. 9.
Defendant's
Evidence.
C. H.
Udalagama
Examination
—continued

Q. You remember the day shortly before Teddy took up his appointment at Point Pedro — was there a dinner party ?

A. Yes.

Q. Was it restricted to the members of the family or not ?

A. It was restricted to the members of the family. Plaintiff was there and Mr. A. B. Ellepola was there. Cyril Ellepola was also there.

Q. Was there anybody else ?

A. I cannot remember whether anybody else was there, who is not a member of the family, but if you mention any name I might be able to say whether he was there or not.

10

Ellepolas had paid a visit to my place. Both of us myself and my wife — were going for dinner, and I invited them also to come along to my father's place for dinner. Plaintiff went from my place for dinner. She was staying at my place off and on.

Q. It has been suggested by plaintiff that she went there as the affianced bride of your brother. Is that correct ?

A. No.

Q. It has been suggested by her that she was treated as the affianced bride of your brother ?

20

A. No.

She was treated as a person proposed in marriage to my brother.

C. H.
Udalagama
Cross-
Examination.

XXd— Q. In answer to a question by Mr. Wickremānayake just now, was she treated as the affianced bride of your brother at the dinner given by your father on the eve of your brother's appointment as Magistrate, your answer was — no she was treated as one who had been proposed in marriage to your brother ?

A. Yes. That is correct.

Q. Will you tell His Honour what is the difference you have in mind between the treatment one is accorded as the affianced bride and the treatment accorded to a girl who has been merely proposed in marriage to your brother ?

30

A. That is a difficult question.

Q. Does the answer suggest that the treatment is the same in both cases ?

A. No.

Q. What is the difference ?

A. The difference is that once a person is engaged, she is almost admitted to the family, while in the other case she is not his fiance still.

Q. Your wife gave evidence yesterday ?

A. Yes.

Q. You went for lunch with her ?

A. Yes.

10 Q. While she was in the middle of being cross examined, she went for lunch and you went for lunch and both of you lunched together ?

A. Yes.

Q. Both you and your wife stayed in the same home last night?

A. Yes.

Q. There is no displeasure between the two of you ?

A. No. I do not think there ever will be.

Q. Your wife told us yesterday that your father expressly invited Ira for that dinner. Is that correct ?

20 A. She must be making a mistake if she has said that.

To Court:—

Q. Is it unlikely that she would be invited because there was a proposal of marriage between the two and there was no rift at that time ?

A. It is quite possible that she was invited.

Q. Why did you take it on yourself to tell that your wife's evidence is not correct ?

A. It is quite possible that she was invited, but I was not aware that she was invited.

30 Q. Your brother has been discussing this matter with you after this case commenced ?

A. From the time the letter of demand was sent.

No. 9
 Defendant's
 Evidence
 O. H.
 Udalgama
 Cross-
 Examination
 —continued

Q. You and your brother had a conference with your brother's lawyers, and the evidence you were going to give was well known to defendant's lawyers ?

A. Yes.

I did not give a written statement of my evidence to my lawyers.

Q. You told us that there were discussions between your father and Mr. Boange about dowry ?

A. No. I never said that.

Q. Was there any talk of dowry by anybody in your hearing ?

10

A. Yes.

Q. As best as you recall, what was the first occasion when a talk about dowry arose ?

A. It was at the time we went to Malabar Street, early in January, 1950. My brother and I discussed it.

Q. Was your wife present on that occasion ?

A. No.

Q. Was the plaintiff present on that occasion ?

A. No.

Q. What was the second occasion when any talk about dowry was had in your hearing by anybody ?

20

A. I cannot say.

Q. Even approximately you cannot say how long after the discussion you had at the end of January it was that the matter was next mooted ?

A. It was somewhere in March.

Q. It would be correct to say that the first occasion was between you and your brother in January, 1950 and after that in March, 1950 ?

A. Yes.

30

Q. Was your wife present on that occasion ?

A. I cannot remember. I never kept a record of all these events, but I know she must have been present, because generally I discussed the points with her.

Q. So the occasion in March, when this dowry matter was raised in your hearing you cannot tell His Honour who and who were present ?

A. I cannot bind myself to say.

Q. Can you bind yourself to say who and who were present on any occasion when the question of dowry was mooted in your presence ?

A. I cannot tell you thus — 1st, 2nd, 3rd and 4th, but I can tell you that discussions took place.

10 My wife was always present at those discussions. No, I am sorry, not on every occasion.

Q. Did you take part in the discussions ?

A. Yes.

Q. In your wife's hearing ?

A. Yes.

Q. Whom did you address at these discussions ?

A. I addressed Boange.

Q. In your wife's hearing ?

A. Yes.

20 Q. Your wife has told us that it is not usual to discuss questions of dowry with a girl who is to be married?

Do you accept that or not ?

A. I am not prepared to express an opinion on the views of my wife on any point.

30 Q. Never mind the expression of your views, as a statement of fact your wife has told us that questions of dowry are not discussed with the girl who is proposed to be married. Do you accept that as a correct statement of fact as far as your knowledge goes ? (Objected to on the ground that this does not involve a question of fact but a question of opinion only. The question is allowed).

A. I am unable to accept that point of view.

Q. Did you get any dowry prior to marriage ?

No. 9.
Defendant's
Evidence.
C. H.
Udalagama
Cross
Examination
—continued

A. I refuse to answer that question. (Mr. Wickremanayake objects to the question. The question is allowed).

A. No.

Q. What dowry you got came long after your baby was born?

A. Yes.

Q. You were engaged to your wife 2 or 3 years before you got married?

A. These are personal questions, Sir!

A. Yes.

Q. Your father had very definite views about the dowry?

10

A. Yes.

Q. What did you mean to convey to Court by that Answer?

A. He was very keen that the question of dowry should be settled before marriage. That was his general policy as far as all his sons were concerned.

In my case my father-in-law had promised to give the dowry.

Q. You did not bother about your father's insistence before your marriage?

A. I told my father to relax his rule with regard to dowry in my case and he was willing to oblige.

20

Q. Did Teddy tell your father to relax the rule as far as you know?

A. I do not know; not in my presence.

Q. To your knowledge? (Objected to. The question is allowed.).

A. No.

Q. The word "engagement" has been used throughout this case by you?

A. Yes.

Q. As meaning something formal?

30

A. Yes.

Q. What are the formalities of an "engagement" in a formal sense?

A. The relatives of the two parties fix upon an auspicious

date for the engagement, and on that date the relatives meet and usually the bridegroom goes to the bride's house and there according to our custom the bridegroom puts a chain round the neck of the bride and the bride gives a ring to the bridegroom. This is a formal engagement.

No. 9
Defendant's
Evidence.
C. H.
Udalagama
Cross
Examination
—continued

This is done in the presence of the relatives. Usually there is a lunch or refreshments are served and there is a party.

Q. Then the boy and girl would be allowed a fair amount of latitude to see each other and talk to each other ?

10

A. Yes.

Q. But not before the engagement ?

A. They do talk before the formal engagement takes place.

Q. Before the formal engagement the boy and girl would not be able to make love to each other ?

A. I do not know what the views of the boy and girl would be and their parents.

To Court:—

Q. Do you understand what is meant by making love ?

20

A. I do not understand. If Mr. Thiagalingam tells me what he has in mind when he uses that expression, I might be able to answer.

Q. You answered my question in the first instance, before His Honour put to you the question, "Do you understand what is meant by making love" ?

A. Yes.

Q. Did you understand the meaning of what is making love when you answered my question then ?

A. No.

30

Q. You told his His Honour you would not understand what is meant by boy and girl making love to each other ?

A. Each person has a different idea of making love.

Q. Do you have your own idea of what is making love supposing you set about it before you got married ?

(Objected to. The question is disallowed).

No. 9.
Defendant's
Evidence
C. H.
Udalagama
Cross
Examination
—continued

Q. After an engagement the boy and girl are allowed a greater latitude to meet each other and talk to each other by themselves, away from relatives and friends ?

A. Yes.

Q. But that kind of latitude would not be given to a boy and girl before the formal engagement ?

A. Yes.

Q. As far as plaintiff and defendant were concerned, did you know that they were talking to each other at any time ?

A. Yes.

10

Q. In your home ?

A. Yes.

Q. And by themselves alone ?

A. I do not know, but they used to talk. I do not know that they were talking to each other alone by themselves.

Q. Such a matter would not, according to you, have been approved of by you prior to the formal engagement ?

A. I would not have had any objection.

Q. There was no engagement in the case of defendant and the plaintiff ?

20

A. No.

Q. In that situation, where there was no formal engagement between plaintiff and defendant, if between the two of them they had exchanged acts of endearment, would it have had your approval ?

A. I cannot answer that question because I do not want to express an opinion on it.

To Court:— Were you in a position of being in Loco Parentis to the parties to approve or disapprove of their conduct before the engagement ?

A. No.

30

Q. If you were in Loco Parentis would you have approved of plaintiff and defendant exchanging acts of endearment before any formal engagement ?

A. I would not like them to kiss each other before they were formally engaged.

Q. Exchanging presents ?

A. I do not see any objection to that.

Q. Before or after the formal engagement ?

A. Yes.

Q. Can you recall going to President Kempitiya's ?

A. No.

10 Q. Can you recall going to President Kempitiya's house in connection with some proposal of marriage for your brother ?

A. I did not go.

Q. Can you recall a proposal of marriage between your brother the defendant and Kempitiya's daughter ?

A. There was a talk of a proposal between Kempitiya's daughter and my brother the defendant.

Q. Did the President and his family come to your home or our father's home in connection with that matter ?

A. I am not personally aware. I was not invited to the luncheon or any party my father gave to Kempitiyas.

20 Q. Did your father give a party to Kempitiya ?

A. I am not aware.

(Shown P5). It is my father's letter. (Witness reads P5).

Q. Can you recall this occasion ?

A. I cannot recall the occasion referred to in P5.

Q. Nor do you know anything of a date being proposed for exchanging of rings in regard to the defendant's proposal with Kempitiya's daughter ?

A. No.

30 Q. Does P5 indicate a reference to a formal engagement in the sense you mentioned ?

A. Yes.

Q. You know nothing of the occasion referred to in P5 ?

No. 9.
Defendant's
Evidence.
C. H.
Udalagama
Cross-
Examination
—continued

A. No. No such engagement took place.

Q. Do you know whether there was a date fixed for that ?

A. I was not informed.

Q. In 1949 you stayed right in front of your father's house ?

A. Yes.

Q. Your brother Teddy, the defendant, was living in the same house as your father ?

A. Yes.

(Shown P4). It is written by my father. (P4 read).

10

Q. Can you recall the incident referred to in P4 ?

A. No.

Q. Does P4 also as it reads now have reference to a proposal of marriage between Teddy and Kempitiya's daughter ?

A. Yes.

Q. Your brother was an Advocate in 1949 ?

A. Yes. He was in practice in this Court in November 1949.

Q. You are 7 brothers in the family ?

A. Yes.

Dr. Udalagama is my eldest brother. I am the 2nd. The third is Walter, 4th is J. W. B.— we call him Bandara. There is another, Willet. He is also in Court. He is a Village Headman. Then there is C. V., the defendant and Percy called Pandu at home.

20

Q. All your brothers would assemble under the bamboo trees ?

A. No. Not all my brothers.

There are bamboo trees near the turn-off to my house.

Defendant and the Village Headman and myself used to assemble there. The others have gone out on their jobs.

I am 47 years and defendant is about 35 years old. The Village Headman is about 40.

30

Q. Defendant obtained an appointment in the Judicial Service in March, 1951 ?

A. Yes.

Q. Prior to that date the three brothers, that is you, the V. H. and the defendant would meet under the bamboo trees occasionally for a chat ?

A. Yes.

Q. What were the refreshments you had under the bamboo groves ?

10 A. Nothing.

Q. Did the meeting cost money by way of refreshments or playing of cards ?

A. No. We do not play Cards there nor do we drink there.

Q. Is that bamboo tree under which you would meet still there?

A. Not bamboo tree but bamboo bush. It is still there.

Q. Is it chopped or allowed to grow wild ?

A. It is not chopped.

Q. You would meet under the bamboo grove off and on for the last 8 or 10 years ?

20 A. Yes.

Q. Exchange confidences, talk things over and so on ?

A. Yes.

(Shown D17). It is my letter.

Q. In D17 on page 2, you say, "Our usual meeting place under the bamboo trees have dropped ?"

A. Yes.

Q. "As the V. H. is not to be found these days ?"

A. Yes. That is my brother, the V. H.

Q. Did the meetings under the bamboo trees entail expenditure of money ?

30 A. No.

Q. In 1949 you would meet under the Bamboo grove as usual?

A. Yes.

No. 9.
Defendant's
Evidence.
C. H.
Udalagama
Cross
Examination
—continued

(Shown P6). It is my father's letter to Kempitiya.

Q. In P6 your father refers to a ring?

A. The letter states that.

Q. Judging by the previous letters of your father, the ring must be the ring intended for Kempitiya's daughter?

A. The letter shows that.

Q. You have already seen P4 and P5?

A. Yes.

Q. The ring in P6 must have reference to the ring for Kempitiya's daughter?

10

A. The letter states that the ring was meant for Kempitiya's daughter.

After reading the letters P4, P5 and P6 I believe that the ring referred to in P6 is the ring meant for Kempitiya's daughter.

Q. According to P6, the size of that ring had been given to Teddy to enable him to buy it at Marikkar Bawas?

A. Yes. It says so.

Q. The son referred to in P6 is a reference to Teddy?

A. Yes.

The postscript in the letter refers to Teddy.

20

Q. You told His Honour that throughout 1949 Teddy never spoke to you a word about some proposal of a marriage between him and Kempitiya's daughter?

A. He did.

Q. You knew that a date had been fixed for the engagement?

A. No.

Q. Did you know that your brother Teddy wanted a ring with brilliants?

A. No.

Q. In those conferences you had under the bamboo groves the question of a brilliant ring never arose?

30

A. No.

Q. Did you know that a date had been in fact fixed for Kempitiya's daughter's engagement to your brother?

A. No.

(Shown P7). It is written by my father.

Q. There he refers to a date as having been fixed for Kempitiya's daughter's engagement to your brother?

A. So it reads.

Q. You did not know a word about that date?

A. I did not know.

(Adjourned for lunch).

No. 9.
Defendant's
Evidence.
C. H.
Udalagama
Cross-
Examination
—continued

Trial Resumed.

10 C. H. Udalagama, recalled, affirmed.

Further XXd:— Q. P7 refers to the date of engagement with Kempitiya's daughter being called off by your father?

A. Being postponed.

Q. Your father makes a request that the date of engagement be postponed?

A. He says function. It must be referring to engagement.

Q. You know that no formal engagement took place between defendant and Kempitiya's daughter?

A. Formally or otherwise there was no engagement.

20 Q. You told his Honour that not a word do you know about a date of formal engagement and that date of engagement being abandoned?

A. I said no.

Q. The first time you hear about a date of engagement and its abandonment is today?

A. Yes, from the letter.

Q. You told His Honour that the question of dowry was raised by you in your own home?

A. Yes.

30 Q. In whose presence did you raise the question of dowry in your own home?

A. The question was discussed by me with plaintiff's father.

No. 9.
Defendant's
Evidence.
O. H.
Udalagama
Cross-
Examination
—continued

Q. Did you raise the matter or was it discussed in your hearing ?

A. It was discussed by all of us.

Q. Did you raise the matter specifically in the first instance yourself ?

A. I cannot remember.

Q. Who was present on that occasion in your home ?

A. Plaintiff's father, myself and my wife.

This was one of the occasions when the matter was discussed.

Q. On the first occasion when the matter was discussed at your home, Boange agreed to give a dowry of Rs. 5000-00 cash and 5 acres tea ?

10

A. Yes.

Q. Agreed with whom ?

A. With all three of us who were present at the time-my wife and myself.

Q. When was the next occasion that this matter of dowry was discussed in your house ?

A. It was discussed on several occasions. One occasion I remember definitely when Mr. & Mrs. Boange and myself and my wife were present.

20

Q. Only three occasions you remember definitely are once when you discussed the matter with your brother in the car at the end of January, the other in March when you discussed the matter with Boange in the presence of your wife, and the last occasion when you discussed the matter in the hearing of your wife with Boange and his wife ?

A. I remember these three occasions definitely, but the matter was discussed on several other occasions.

Q. You told His Honour already that on the first occasion that you discussed the matter with Boange, he definitely agreed to give a dowry of 5 acres of tea and Rs. 5000-00 ?

30

A. Yes.

Q. On the third occasion you asked Boange to implement that undertaking ?

A. Yes.

Q. That would be in June or July ?

A. Yes.

I am sorry, Sir, I think it is somewhere between April and May that he undertook to implement his promise to give the dowry.

Q. In March, 1950 was the plaintiff living in your house ?

A. No.

Q. In April or May was she living in your house ?

A. No, but she used to come there often.

10 Q. You told His Honour that the plaintiff was in your home on some occasion when the dowry question was discussed.

A. Yes.

Q. In which part of your home she was, you cannot say ?

A. She was in the verandah where the discussion took place.

Q. And in her hearing ?

A. Naturally.

Q. She took part in the discussion ?

A. I would not say it, but she was there.

20 Q. Was that the first occasion when you asked Boange for the dowry when plaintiff was present ?

A. No.

Q. You say plaintiff was present on some later occasion ?

A. Yes.

Q. Was it on one occasion or more than one occasion ?

A. As far as I remember, one occasion.

Q. When would that be ?

A. About May, 1950-

Q. Then too Boange said that he would implement the under-taking ?

30 A. No.

No. 9.
Defendant's
Evidence
C. H.
Udalagama
Cross-
Examination
—continued

Q. Did you say to His Honour just now in answer to the question I asked, that was the occasion when Boange agreed to implement his undertaking?

A. I did not mean to say no.

Q. When plaintiff was present on that single occasion, you can recall now, that Boange said he can implement his promise?

A. Yes.

Q. Was defendant there?

A. No.

Q. Was plaintiff there as a result of arrangement or by accident?

10

A. I cannot say. It must be by accident.

Q. Do you know that your wife gave evidence in Court that questions of dowry are never discussed in the hearing of the girl?

A. I do not know that my wife said so.

Q. Could it be your mistake when you say that plaintiff was present on any occasion when you discussed the dowry with Boange?

A. I am not making a mistake.

Q. Your wife is making a mistake?

A. Obviously.

20

Q. You left the matters of arrangement of the dowry to your wife?

A. No.

Q. You dealt with the matter yourself?

A. Not by myself alone.

Q. After April or May, 1950, you cannot recall definitely any later occasion when you raised the question of dowry with anybody in your home?

A. I cannot remember.

Q. The whole of 1950 went on with plaintiff and defendant meeting each other in your home ?

A. Occasionally.

Q. The wife in a home would have the greater voice in saying who should come to her home, at least to disapprove of people coming to the house ?

A. Yes.

Q. Do you know that she had disapproved of Teddy seeing plaintiff in your home ?

10 A. No.

Q. In 1950 no formal engagement had taken place between plaintiff and defendant ?

A. Yes.

In 1950 they were seeing each other off and on.

Q. If your wife thought that their meeting together in your home before a formal engagement was undesirable, she would have objected to it ?

A. I do not think so.

20 Q. You think that it would have been perfectly in order for your wife to encourage plaintiff and defendant to meet in her own home before the formal act of engagement ?

A. She would not have encouraged them, but she would not have any objection.

Q. She could never have asked in any situation Teddy not to come to her house ?

A. I do not know what the situation is.

Q. In no situation could your wife have told Teddy not to come and meet the plaintiff in your own home ?

A. There too I do not understand the word "situation".

No. 9.
Defendant's
Evidence
O. H.
Udalagama
Cross-
Examination
—continued

No. 9
 Defendant's
 Evidence.
 C. H.
 Udalgama
 Cross
 Examination
 continued—

Q. If your wife thought that Teddy was making love to plaintiff in your own home before the formal engagement, would she have approved of it or not?

A. I cannot answer that question. I do not know her views about the matter.

We married 17 years ago. I have two girls — one 13 and the other 11 years old.

Q. We have had two versions about this Kandy Concert— your wife says that you, she and Ira the plaintiff went in one car to that function — is that correct?

10

A. I would not contradict that.

Q. This morning you told your Counsel that you three formed the party?

A. That must be correct.

Q. You told us that you met Teddy at the Concert Hall?

A. Teddy was not in my party.

Q. Anula had phoned and booked the three seats for you and Ira and herself?

A. It may be.

Q. You did not design any meeting between Ira and Teddy at the Concert?

20

A. No.

Q. You know that Ira sat next to a girl at the Concert in the first instance?

A. I cannot remember.

Q. Can you recall if Teddy sat next to Ira at the Concert at any time?

A. I cannot say definitely where the plaintiff and Teddy sat in relation to each other.

Q. Nanda's initiation of a proposal of marriage between plaintiff and defendant proved abortive?

30

A. I would not say abortive, but nothing came of it.

Q. Your wife is the only sister to Nanda ?

A. Yes.

Q. Nanda's overtures in any matter are not well received in the family circle ?

A. I cannot say that.

Q. Your wife has referred to her as foolish — would that be a fair description of the general regard in which she is held in the family circle ?

10 A. I do not know about their family circle.

Q. Is she a very impulsive person who does what occurs to her without thinking ?

A. I do not know much about her.

Q. Anula is a mature and sober woman ?

A. Yes.

Q. Has a large number of girls under her ?

A. Yes.

Q. Girls of marriageable age ?

A. I do not know about that.

20 Q. Do you tell His Honour that you do not know that in Balika Vidyalaya, Kegalla there are girls of about 17 to 18 years of age.

A. There are.

Q. 19, 20 ?

A. There may be.

Q. She is the Principal of that School ?

A. Yes.

Q. She founded that School ?

No. 9.
Defendant's
Evidence.
C. H.
Udalagama
Cross-
Examination
—continued

A. Yes.

Q. Today there are about 600 children there ?

A. Yes.

Q. Most girls who attend that school are Buddhists ?

A. Yes.

Q. From conservative homes ?

A. Yes.

Q. Would it be right to say that really parents sent the children to that School because of its Head ?

A. Yes.

10

Q. You knew that your wife was giving evidence ?

A. Yes.

Q. You knew you will be called by defendant ?

A. Yes.

Q. Did Anula know that she would be called by plaintiff ?

A. She was served with summons.

Q. Did you ever tell your brother the defendant that Ira, the plaintiff was present on any occasion when you talked about the dowry in your own home ?

A. Yes.

20

Q. When was the first time you told him that ?

A. After this case started.

Q. Did you tell that to defendant's lawyers also ?

A. I must have told them, I remember telling them.

Q. Did you tell your lawyers that Anula was there at that time ?

A. Yes. Not my lawyers but my brother's lawyers.

Q. And that Anula must have known fully well that you raised the matter of the dowry in the hearing of the plaintiff.

A. Yes.

Q. Are you surprised to hear from me that Anula was not put a single question on those lines ?

A. I do not know whether such a question was put to her or not.

Q. In 1950 the Christmas vacation came along and Ira went to her parents' as usual for her holidays ?

A. Yes.

Q. Till then everything seemed all right, good going ?

A. I do not know about the good going.

10 Q. Everything seemed all right as far as this marriage was concerned ?

A. Yes.

Q. When did defendant apply for a post in the Judicial Service ?

A. I do not know.

Q. In January, 1951 and February, 1951 everything seemed right as far as the engagement was concerned ?

A. Yes. About the end of February 1951 defendant obtained appointment — was it on probation or acting.

A. I do not know.

20 Q. Did your brother tell you what his appointment was — was it temporary or on probation ?

A. My brother told me that he was appointed Magistrate, Point Pedro.

As far as I was concerned I was against his accepting an appointment.

Q. He went away on the 1st of March ?

A. Yes.

Q. And everything seemed all right — the marriage between plaintiff and defendant seemed to be going good ?

30 A. I remember him telling me to ask these people to hurry it up.

Q. "These people" means who ?

No. 9
 Defendant's
 Evidence.
 C. H.
 Udalgama
 Cross
 Examination
continued—

A. Plaintiff and plaintiff's father.

Q. Defendant told you to talk to the plaintiff?

A. Defendant did not tell me that. He told me — "Tell these people to hurry it up."—He meant the plaintiff's people.

Q. Did you understand the defendant to include in the plaintiff's people the plaintiff also?

A. Yes.

Q. Did you talk to plaintiff?

A. Yes.

It must have been just after defendant went off. I told plaintiff to tell her father to go and hurry this up. 10

Q. Did you tell the defendant that you had told the plaintiff?

A. No.

Q. Did you tell it to defendant's lawyers?

A. No.

I met plaintiff in my house. My wife must have been present. Plaintiff was never alone in my house unless my wife was present.

Q. You cannot remember now the actual presence of the plaintiff on that occasion?

A. No. 20

Q. Did you think your wife must have been present?

A. My wife must have been present in the house.

Q. You must have told the plaintiff?

A. I told her to tell her father to hurry this up.

Q. Did you tell her what the "this" meant?

A. No.

Q. It was obvious to her that "this" meant the engagement?

A. Yes.

Q. What did plaintiff say?

A. She said "all right". 30

A. Everything seemed all right till Teddy went to Point Pedro?

A. Yes.

Q. Teddy, while he was here in Kegalla, told you to speak to the plaintiff about this matter?

A. I never said that Teddy told me when he was about to leave for Point Pedro. I spoke to plaintiff on my own.

Q. Did you write to the defendant that you had spoken to plaintiff?

A. Yes.

10 Q. Did you write and tell Teddy that plaintiff said everything is all right?

A. No.

Q. Did Boange come to your home in March or April, 1951?

A. He must have come. He comes very frequently.

Q. In March or April, 1951 did you tell him to hurry up with the matter?

A. I told my wife to write to him.

Q. In March or April, 1951 did you tell Boange in your home to hurry up with this matter?

20 A. I must have told him.

Q. Or would it be that you had nothing to do with the dowry as far as Boange was concerned and your wife alone would deal with that matter?

A. I told my wife also to write to Boange about the dowry.

Q. Did your brother tell you to get Anula to raise the matter of the dowry with Boange at any time?

A. I remember telling my wife that defendant wanted this money.

30 Q. Did your brother tell you to ask Anula to take up this question of the dowry with Boange?

A. Yes.

Q. And your brother knew all the time that you were raising the matter with Boange?

No. 9
 Defendant's
 Evidence
 C. H.
 Udalagama
 Cross-
 Examination
 —continued

A. No. Both of us were raising the matter.

Q. Did your brother know that you personally were raising the matter with Boange all the time ?

A. Yes.

Q. What need was there for him to ask you to request Anula to take up the matter with Boange ?

A. That is because she was Boange's niece and Boange would listen to her.

Q. Had you promised defendant that you would ask Anula to raise the matter with Boange ?

10

A. I did not promise, but I said I would.

Q. Was your brother worrying you to raise the matter of the dowry at least through Anula ?

A. Yes.

Q. Did you tell him you will tell Anula to do so ?

A. Yes.

Q. Did you convey that promise by writing or by word of mouth ?

A. By writing. No, I told him when he was going that I would tell Anula about it.

20

Q. Did defendant write to you by letter and ask you whether you have carried out your promise by telling Anula to raise the question of dowry ?

A. No, not till I wrote D17.

Q. In March and April, 1951 you raised the matter with Boange personally ?

A. No. March or April.

Q. As a matter of fact, did you raise the matter in March and April with Boange ?

A. I must have.

30

Q. Every time Boange had told you he would implement it ?

A. Yes.

Q. Shortly after your brother went to Point Pedro, you must have raised the matter with Boange about the dowry?

A. Not till I wrote D17.

Q. After defendant left for Point Pedro, till you wrote D17 Boange never came to your house?

A. He must have come. He comes very often.

Q. You had promised your brother to speak to Boange about implementing the promise of the dowry?

A. Yes.

10 Q. Boange must have come before the 14th of March?

A. I do not think he came before the 14th of March. I cannot remember.

Q. If he came in March, before the 14th, and you had met him, you would have told him to implement the dowry?

A. On every occasion he comes to my house, I do not talk to him about the dowry question. If he came before the 14th of March, I would have spoken to him about it

Boange never said he was not going to give that dowry. Always he said all right, but he was postponing.

20 Q. He pretended the house was not completed?

A. I do not know about the pretending. He said that his house was being built.

Q. He conveyed to you the impression that the engagement was being put off till the house was completed?

A. Yes.

Q. Do you want to tell the Court that Boange is a very bad man?

A. No.

Q. He was a fond father, as you knew the man?

30 A. I do not know.

Q. You and your wife have visited the Boanges in their home?

A. Once or twice.

No. 9
Defendant's
Evidence
C. H.
Udalagama
Cross-
Examination
—continued

Q. You knew that in 1950, about the middle or end the front rooms of Boange's Walauwa had been demolished ?

A. He told me that.

That was somewhere in August, 1950.

Q. Had you seen it too ?

A. On one occasion I saw it. I just dropped in when I passed that way.

Q. The house of Boanges was not complete till about August, 1951 ?

A. I do not know whether it is still completed.

10

Q. In August, 1950 you knew that the house was being re-done and up to date you do not know if the work has been completed ?

A. Yes.

Q. Shortly after you wrote D17, Boange must have seen you again in the end of March or April, and he must have repeated his story that he was going to implement the dowry ?

A. If I asked him he must have said so.

Q. You had no reason to doubt the nature of Boange's reply ?

A. Yes. I knew it would be the same automatic reply.

Q. The name of Boange does not appear in D17 ?

20

A. No.

Q. You have referred to him as "the man?"

A. Yes. I have used the word "man", but I meant no disrespect to Boange.

(Shown D2). It is my brother's letter.

Q. In your brother's letter he says — "This sort of hanky panky business only confirms one's opinion of the man, that he is a damn rogue?"

A. Yes. The reference is to Boange.

(Shown D17). Q. When you wrote that letter to your brother, had you formed the opinion that Boange was a damn rogue ?

30

A. Not damn rogue.

Q. That he was a rogue ?

A. No.

Q. As far as you were concerned, when you wrote D17, you were still hoping that Boange would implement the promise ?

A. Yes.

Q. Was your brother keen about having a Basnayake Nilame as his father in-in-law ?

A. Not as far as I know.

10 Q. Padmini, the present wife of defendant, is Collin Nugawela's daughter ?

A. Yes.

Q. Did he contest the Diyawadana Nilameship with Ratwatte some time ago ?

A. I do not know.

Q. What does Diyawadana Nilame mean ?

A. He is the Trustee of the Tooth Relic and of the appurtenances of the Maligawa. He is Trustee of the Dalada Maligawa and its temporalities. The Basnayake Nilames are the Trustees of the Dewales.

20 Q. The Diyawadana Nilameship of the Dalada Maligawa was contested for by Collin Nugawela as against Ratwatte at one time and Collin was beaten ?

A. No, Collin was not beaten.

Q. Was he beaten in any election ?

A. No.

He contested the Basnayake Nilameship of the Maha Dewale Kegalla and became the Basnayake Nilame. As far as I know he did not lose any election.

Q. Do you know Mr. T. B. Ratwatte who is dead now ?

30 A. Yes

Q. He was the predecessor in office to Collin Nugawela ?

A. Yes.

No. 9.
 Defendant's
 Evidence.
 C. H.
 Udalagama
 Cross
 Examination
 —continued

Q. Had Collin Nugawela contested T. B. Ratwatte, and was Collin defeated ?

A. I do not know.

Q. You know of no earlier contest by Collin Nugawela where he was beaten ?

A. Not to my knowledge.

(Shown D16). Q. The contents of D16 were known to you before your wife sent that letter to Teddy ?

A. She told me that she sent a letter but I did not know the contents of it.

10

Q. Your wife told you about the 14th of March that she was writing to Boange ?

A. Yes.

Q. Shortly thereafter she got a reply from Boange ?

A. I am not quite sure.

Q. Look at D16 and D17. Will you tell me whether shortly after D17 and prior to D16 your wife had not received a reply from Boange ?

A. Obviously he must have written or he must have told her.

Q. Boange would more often come and tell your wife what he has got to say than write to her ?

20

A. Yes.

Q. When you had told your wife to write to Boange, Boange would have been written to normally ?

A. Yes.

Q. Normally your wife would have told you what Boange's reply was ?

A. If I asked her.

Q. Even if you had not asked her would she have told you ?

A. Not necessarily.

30

Q. D16 makes it perfectly clear to you that Boange himself was anxious to implement his undertaking about the dowry ?

A. Yes.

Q. Originally your father raised the question of dowry before marriage ?

A. I do not know.

Q. Because those matters were raised between your father and Anula ?

A. May be.

Q. Your wife told us that your father first wanted the dowry before the marriage ?

10 A. I do not know.

Q. Did your father tell you anything about the dowry for Teddy ?

A. In general conversation we have discussed these matters. He told me that the dowry should be given before the engagement.

Q. Can you recall your father telling you that the dowry must be given before the marriage ?

A. I cannot remember.

20 Q. Your wife has given the evidence that your father first desired the dowry for Teddy before the marriage and not before the engagement, and later he wanted the dowry before the engagement. Would that be correct ?

A. If she has stated so, that would be correct. I do not know what discussions took place between them.

Q. After D17 did you write any letter to your brother about this matter till 30th July ?

A. I do not remember.

Q. In March, April, May, June and July Teddy was at Point Pedro ?

A. Yes.

30 Q. He never came to Kegalle for the holidays ?

A. He must have come once or twice to Kegalle.

No. 9
Defendant's
Evidence
C. H.
Udalagama
Cross-
Examination
—continued

Q. On the question of marriage, did you discuss the matter with him after D17 till the 30th of July?

A. Yes. I went to Point Pedro and talked to Teddy. That was about the end of March or early April.

Q. During your stay at your brother's at Point Pedro, Boange was not present?

A. No.

Q. Did you agree upon any date with your brother as the date of engagement?

A. I think he told my wife that it was the 21st of May. There was no agreement between both of us. 10

Q. Was there an agreement between Teddy and your wife about that date?

A. I know he decided on the 21st of May and I took it.

Q. Did you convey that date to Boange?

A. I think my wife must have conveyed it. I did not convey it myself.

Q. What arrangements your wife had come to with Boange, do you know?

A. Yes. 20

Q. What do you know?

A. Boange said that he will write the deed for the 5 acres of tea and deposit the money before the 21st May.

Q. Did Boange tell you that?

A. He did not tell me, but my wife told me.

Q. Your wife has told us that Boange wanted a postponement of that date?

A. Why did you not ask my wife that question.

Q. Could it be, you are making a mistake in regard to your story of what your wife told you after you returned from Point Pedro? 30

A. No.

Q. Do you know why Boange did not implement the dowry by the 21st of May?

A. I know.

Q. Did Boange give you the reason?

A. No.

Q. Did Anula give you the reason?

A. No.

Q. Did Nanda give you the reason?

A: No.

10 Q. Did Padmini give you the reason?

A. No.

Q. None of these people told you the reason why Boange did not implement the undertaking?

A. That is right.

Q. Did you tell your wife in May or June, 1951, that Boange would not implement his undertaking?

A. My wife was not at home. She was in Colombo.

Q. Did you ever tell your wife that Boange would not implement his undertaking?

20 A. No. After the 21st of May there was no need to tell her and therefore I did not tell her.

Q. Did you intend to convey to Court that your wife would say anything untrue?

A. I did not want to convey to Court that impression.

Q. Is your wife a truthful woman? (Objected to.

The question is allowed).

A. Yes.

Q. In July your brother was in Point Pedro?

No. 9.
 Defendant's
 Evidence
 C. H.
 Udalagama
 Cross-
 Examination
 —continued

A. Yes.

Q. Your wife had gone for her training to Colombo?

A. Yes.

Q. Before the 30th of July you knew nothing about any proposal or engagement between Teddy and Collin Nugawela's daughter?

A. No.

Q. In July, 1951, your Doctor brother was in Teldeniya?

A. He must have been there. I cannot remember.

Q. Where is he now?

A. At Elpitiya.

10

I cannot remember how long.

Q. Roughly?

A. I cannot remember.

Q. Was he at any time at Teldeniya?

A. Yes.

Q. When your father threw a party for Collin Nugawela was your brother the Doctor at Teldeniya?

A. He must have been there.

Q. In June or July, 1951, your brother the Doctor took Teddy by car to Collin Nugawela's?

20

A. I do not know.

Q. You do not know what negotiations had taken place regarding the marriage of Teddy with Collin Nugawela's daughter prior to the 30th July?

A. No.

On the 30th of July, I was invited by my father to the luncheon party for the Nugawelas.

I knew then that the matter had been fixed.

Q. You did not have the faintest idea prior to the 30th July,

1951 that a marriage between Teddy and Collin Nugawela's daughter had been discussed ?

No. 9.
Defendant's
Evidence
C. H.
Udalagama
Cross-
Examination
—continued

A. My father did not tell me that but I heard it from outside.

I did not mention anything to my wife because she was in Colombo at that time.

Q. Would it be correct to say that you heard rumours about some arrangement for Teddy with Collin Nugawela's daughter.

A. Yes.

Q. Did you believe it ?

10 A. On the 30th of July I believed it.

Q. Before the 30th of July you never raised the matter with your father or with your brother the defendant ?

A. No.

Q. The first you knew was the invitation to lunch on the 30th by your father ?

A. Yes.

Teddy was not present at the luncheon party on 30th July.

Q. Didn't you think that Teddy had done a shabby thing ?

A. No.

20 Q. Didn't you think that Teddy had done a shabby thing in not telling you before the 30th of July, a word about the arrangement of a marriage between him and Collin Nugawela's daughter ?

A. No.

Q. Had you known before 30th July, that Teddy was thinking of getting married elsewhere ?

A. No.

Q. You never heard from any source that Teddy was thinking of getting married elsewhere ?

A. No.

No. 9.
Defendant's
Evidence.
C. H.
Udalagama
Cross-
Examination
—continued

Q. Did you know from any source that Teddy was thinking of marrying elsewhere?

A. I do not know what Teddy was thinking.

Q. Teddy never told you that he was thinking on those lines?

A. No.

Q. Your father did not tell you that Teddy was thinking on those lines.

A. No.

Q. None of the witnesses who gave evidence in this case told you so?

A. No.

10

Q. You told us that the final date was the 21st of May?

A. Yes.

Q. Do you say that your brother too regarded that as the last date?

A. He said it was the final date.

(Shown D1). The postscript to D1 has nothing to do with anybody in this case.

Intd. E. A. V. de S.

D. J.

16-10-53

20

Further hearing on 30-10-53.

Intd. E. A. V. de S.

D. J.

D. C. 7873.

30-10-53

Mr. Advocate R. F. Perera instructed by Mr. A. I. Abeywickreme for defendant submits that Mr. E. G. Wickremanayake, Q. C., leading Counsel for the defence is ill and unable to be present in Court, and moves for a postponement.

30

Mr. S. Ramachandran for plaintiff consents.

Trial is refixed for 30-11-53 and 1-12-53, being dates agreed upon by Counsel for both parties.

Intd. E. A. V. de S.

No. 9
Defendant's
Evidence
C. H.
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Cross-
Examination
—continued

D. J.

D. C. 7873.

30-11-53.

Appearances as before except that Mr. Advocate W. Wickremasinghe also appears instructed for defendant.

10 Mr. Thiagalingam draws my attention to the fact that preceding the question — “Did you intend to convey to Court that your wife would say anything untrue?” at page 119 there appears to be a question and answer omitted. He adds that he is sure that prior to that question being put the witness said in answer to a question put by him, the terms of which he does not now recollect — “My wife can say anything she likes”.

As Mr. Thiagalingam himself does not recollect what the question was, I do not think it is necessary to amend the record now at this stage.

Intd. E. A. V. de S.

D. J.

20

30-11-53.

C. H. Udalagama, recalled, affirmed.

Further XXd:—

Q. After the last date on which you gave evidence did you have any conference with defendant's lawyers?

A. I did.

Q. At which the defendant too was present?

A. Yes.

30 Q. Have you read the typed script of the last day's proceedings?

A. Yes I have.

Q. Including the evidence you gave?

A. Yes.

No. 9
 Defendant's
 Evidence
 C. H.
 Udalagama
 Cross
 Examination
 —continued

Q. You did that on your own initiative or on instructions from anybody?

A. On my own.

Q. How did you get a copy of the script?

A. From the defendant's lawyers.

Q. Can you recall appearing for the defendant in an action filed against him by your father?

A. No.

Q. Was there an accident to a car driven by defendant at any time, as far as you know?

10

A. Yes.

Q. Did the Insurance Co. with whom defendant was insured replace that car for him?

A. Yes.

Q. At the time of the accident was your father in the car driven by defendant?

A. Yes.

Q. Did your father make a claim against defendant for negligent driving?

(Mr. Wickremanayake objects to these questions on the ground that they are not relevant to any matters in issue and that they do not even relate to the credit of the witness. Mr. Wickremanayake cites 40 C. L. W. page 12.

20

Mr. Thiagalingam states that these questions are intended to show the relationship between the witness and the defendant and his father and they also relate to his credit as a witness; as he has stated that he did not appear for the defendant, and his object is to show that he did.

Order — The question is allowed).

A. I am not aware.

30

Q. Up to date?

A. Yes.

Q. Do you know the defence of your brother to this present action ?

A. Yes.

Q. What is his defence ?

(Objected to. Allowed).

A. As far as I know the defence is that there was a proposal of marriage conditional on giving the dowry and that the dowry was not given and therefore the matter dropped.

Q. Were you sued by Messrs. Don Carolis & Sons ?

10

A. Yes.

Q. Did you plead Prescription in that case ?

A. Yes.

Q. And your plea was upheld ?

A. No. I later consented to pay them though I raised the plea in my answer, and I paid the amount.

Re-Examination Q. When was that case filed ?

(Objected to. Allowed).

A. That was about 20 years ago.

Q. How did you come to plead prescription ?

20

A. This was for roofing tiles supplied. They were inferior and not up to sample, and they agreed not to recover that money, but later they sued me. The action was brought about two or three years after the transaction.

Q. Have you acted as Proctor for your brother ?

A. I have not acted as Proctor for my brother in any matter at all.

Q. In Cross-Examination you were asked of some conversation with the plaintiff and plaintiff's father — What were you referring to when you said you told plaintiff to hurry this up ?

30

A. I asked her to tell her father to hurry up and deposit the money in her name and get the deed written in her favour.

I told her so because the matter was being delayed for about 15 months.

No. 9.
Defendant's
Evidence.
C. H.
Udalagama
Cross
Examination
—continued

C. H.
Udalagama
Re-
Examination

No. 9
Defendant's
Evidence
C. H.
Udalagama
Re-
Examination
continued—

Q. What did plaintiff say to that ?

A. She said — All right, she will tell her father.

Q. I refer to the question in Cross-Examination " Did you ever tell your wife that Boange would not implement his undertaking " and your answer— why was it there was no need to tell her ?

A. It was agreed on by all parties that the matter had been dropped.

(Mr. Thiagalingam objects to the answer being recorded. The objection is overruled).

Q. Who were the " parties " you refer to ?

10

A. Plaintiff's parents and defendant's parents.

Q. What do you mean by " agreed ? "

A. The parties had taken for granted that the matter had dropped.

Q. After the 21st of May were there any discussions or any talks or letters with regard to this proposal of marriage, prior to the 30th July ?

A. No.

Q. You were asked by Counsel for plaintiff — " Do you know why Boange did not implement the dowry by the 21st of May ? " Your answer is " I know. "

20

A. Yes.

Q. Will you tell us when you first became aware of the reason why he did not implement the dowry ?

A. About June, 1951 I became aware of the reason why Boange did not implement his promise to give the dowry.

Q. Will you tell us how you found it out ?

A. I found it out — it will be hearsay if I give the answer. I was informed about it.

Q. As a result of what you were informed, had your brother obtained any documents ?

30

(Objected to — The question is allowed).

A. My brother obtained certain documents.

I produce a certified copy of the plaint filed by Leela Ellawela of Peradeniya against Boange.

No. 9.
Defendant's
Evidence
C. H.
Udalagama
Re-
Examination
—continued

(Mr. Thiagalingam objects to this witness producing a certified copy of any action to which he himself was not a party. The objection is over - ruled).

I produce the plaint (D20a), Answer (D20b) and journal entries (D20c) in case No. 1597 of the District Court of Kandy.

10 I produce marked (D21a) the plaint filed by Messrs. Brown & Co. in the District Court of Colombo — No. 24406 — against M. B. Boange. (Same objection. Same order).

I produce as D21b the decree dated 20-3-51, D22a the plaint by the Chettinad Corporation against M. B. Boange for Rs. 434-17. (Same objection. Same order).

20 I produce as D22b the answer filed by Boange, D22c the decree for a sum of Rs. 450-00 by instalments of Rs. 40-00 commencing from 2-8-52. I produce marked D23a the plaint filed by Porolis Fernando & Sons in case M. R. 4179 of the District Court of Kandy for Rs. 541-35 against M. B. Boange. I produce the answer D23b and the Journal entry of consent judgment in favour of plaintiff (D23c) and the decree D23d. (Same objection to all these documents. Same Order).

30 I produce as D24a the journal entries in case 4361 M. R. Kandy filed on 9-6-51; D24b the plaint for a sum of Rs. 599-37 and D24c the answer of the defendant M. B. Boange claiming in reconvention Rs. 100-00. I produce the Consent decree (D24d) in favour of plaintiff in that case. I produce as D25a the plaint in case M. S. 3725 Kandy dated 17-9-52. (Same objection. Same Order). I produce the affidavit D25 b. This action is still pending. I produce D26a the journal entries, D26b the plaint in case No. 6646 of the District Court of Kurunegala, D26c the answer and D26d the replication. The journal entries D26a show that the case was settled and of consent judgment entered in favour of plaintiff. (Same objection. Same order).

Q. You have told the Court that your father was insistent on the Dowry ?

No. 9.
Defendant's
Evidence.
C. H.
Udalagama
Re-
Examination
—continued

A. Yes.

Q. Among Kandyans is there any particular reason for greater insistence on the dowry?

A. Yes.

Q. Kandyans marry in two ways — deega and binna?

A. Yes.

Q. With regard to binna what happens to the husband?

A. The husband has got to live in the house of the wife.

In the case of a deega marriage the wife forfeits all her rights to the paternal estate.

10

Q. So far as you were concerned, you said this was an arranged marriage?

A. Yes.

Q. Were the arrangements finalised?

A. No.

(Mr. Thiagalingam moves to cross-examination the witness on these documents D20 to D26. He wants to put a few question to the witness. Order — I cannot allow these questions to be put. These documents were produced on questions arising out of cross-examination of this witness, and by way of explaining answers given by him to questions in cross-examination. Mr. Thiagalingam could no doubt cross - examine the defendant on these documents when he gets into the box).

20

Intd. E. A. V. de S.

D. J.

30-11-53.

C. V.
Udalagama
Examination

C. V. UDALAGAMA, affirmed, Magistrate, Kurunegala: I am the defendant in this case. I am 35 years old.

Q. You became an Advocate when?

A. In 1944.

Q. And you started practice in this Town?

A. Yes.

Q. When you established yourself in practice here was the question of your marriage considered?

30

A. Yes.

Q. In matters of marriage among people of your community and standing who attends to the arrangements?

A. The parents would attend to it subject to my approval.

Q. So far as the plaintiff in this case was concerned, when was the question of any marriage with her broached?

A. In January, 1950 by Nanda Udalagama.

Q. What was the first intimation you received from her with regard to the proposal?

10

A. I received a letter sent to me through my brother Herbert.

Q. On receipt of that letter what did you do?

A. I went up to her mother's place at Malabar Street. My brother accompanied me.

Q. On that occasion was plaintiff there at the time?

A. Yes.

Q. Did you see her on that occasion?

A. Yes.

Q. Did she speak to you?

A. No. Nanda spoke to me.

20

Q. Did you have any refreshments at that house?

A. Yes. Plaintiff offered me refreshments and there were one or two others also.

Q. Nanda spoke to you?

A. Yes. She suggested a proposal of marriage between plaintiff and myself.

I gave her an answer. I told her that I will consider about it and let her know.

Q. Did you discuss that proposal thereafter with any body?

A. Yes, with my brother Herbert.

30

Q. And you conveyed your views to anybody?

A. Yes, to Nanda.

No. 9.
 Defendant's
 Evidence
 C. v.
 Udalagama
 Examination
 —continued

Q. Did anything materialise as a result of that arrangement ?

A. No.

The matter was received about February or March by Anula, sister of Nanda and wife of my brother Herbert. She spoke to me about it.

Q. What did she tell you ?

A. She wanted to know from me what happened to the proposal Nanda had suggested. I told her that Nanda had not received a reply. Then she said that Nanda was considered foolish among their Circle and told me that Uncle was agreeable to the suggestion and that he was prepared to give the dowry.

10

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

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 ?

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

20

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.

Q. You told the Court already that the parents settle these matters subject to your consent ?

A. Yes.

Q. In this case, if the other matters were satisfactory, what was your idea ?

30

A. I was ready to go through with it.

Q. Was this in any sense a love match or an arranged one ?

A. It was an arranged one.

Q. At any stage was the dowry provided in that form ?

A. No.

Q. Was there any stage at which the final date for settling the dowry was given ?

A. Yes, 21st May, 1951.

10 I got my appointment about the 20th of February and I had to take up duties at Point Pedro on 1st March. This matter had been hanging fire since January, 1950. I told my brother to speak to plaintiff's people and have the dowry matter settled and the proposal finalised. After I went to Point Pedro my sister-in-law sent me a letter suggesting certain dates. (D16 and D16a.)

(Shown D16). This is the letter I received from Anula. D16a is the list of the dates. (D16 read).

Q. She refers there to the money being banked and the deed being written before the engagement ?

A. Yes.

Q. Were you desirous of seeing that your self ?

A. Yes, I wanted to see for myself that the dowry was finalised.

20 Q. When you received this letter, you received D16a also ?

A. Yes.

Thereafter I informed her that I had chosen 21st of May as the final date. D16 is dated 19-3-51.

Q. 21st of May is the last date on that list ?

A. Yes.

Q. Did your sister-in-law come up to Point Pedro ?

A. Yes. That was during the Easter of 1951. That was after this letter.

Q. How did your sister-in-law happen to write to you ?

30 A. Before I went I had indicated to her that this matter was being dragged on and to have the dowry given so that we may get married and settle down.

Q. Did you write to anybody ?

A. I wrote to my brother also.

(Shown D17). This letter was written by my brother to me.

Q. "I am myself worried"—Who was worried ?

A. We were all worried because the dowry was not being given and the matter was delayed.

Q. What matter was being delayed ?

A. The promised dowry was delayed and the engagement was put off.

Q. If "what" is to come off referred to in the letter ?

10

A. If the engagement is to come off.

Q. After March were there any signs of anything being done ?

A. No.

Q. Did Boange come and see you in Point Pedro ?

A. Yes. He came about the 20th April after Anula had come.

Q. What was the purpose of his visit ?

A. He came to speak about the arrangements and I told him that the money must be banked and the deed written before 21st of May and that otherwise this matter will be dropped, and he promised to have it done before the end of the month.

20

Q. Did anything happen at the end of the month ?

A. No.

Q. You had given your word to wait till the 21st of May ?

A. Yes.

Q. When nothing was done by the 30th of April, did you do anything ?

A. I wrote two letters to my father. D1 is one.

Q. Who is the "chap" referred to in D1 ?

A. Boange.

Punchi Aiyah referred to in D1 is C. H. Udalagama.

30

Q. The other letter you wrote to your father was D2 of the 14th of May ?

A. Yes.

The sister-in-law referred to in D2 is Anula.

(Paragraph 4 of the letter D2 is read to the witness).

Q. By the 30th April nothing happened ?

A. No.

Q. By the 21st of May was anything done ?

A. No. Thereafter the proposal dropped.

Q. Subsequently was there any other proposal of marriage ?

A. Yes.

10 Q. Do you know when your present father-in-law went to meet your father in connection with the proposal of your present marriage?

A. Yes. That was on the 30th July.

Q. Between 21st of May and 30th of July was there anything said or done in connection with Boange's proposal by anybody on the part of the Boanges or on your part ?

A. No.

Q. On the 30th July Nugawela had gone to lunch at your father's house ?

A. Yes.

20 Q. Thereafter did Boange get active again in connection with this proposal ?

A. Yes.

I produce as D11 the letter written to me by Boange on 2nd August.

Q. In the talks that you had with Boange was there any question of the house being completed discussed at any time ?

A. No.

He had undertaken to send me the deed and the Pass book before the 30th of April.

30 Q. Did you reply to that letter ?

A. No.

Q. Why ?

No.9.
Defendant's
Evidence
O. V.
Udalagama
Examination
—continued

A. Because the matter had been dropped.

Thereafter I received D10 on the 22nd August.

Q. Did you send him a reply to D10 ?

A. No.

A draft deed D4 was sent to me. It is a deed of transfer for a consideration of Rs. 15,000-00 in favour of Iranganie Boange.

Q. D3 is the letter of Mr. Marikkar, Proctor ?

A. Yes.

Q. You took no notice of that either ?

A. No.

10

Q. The next letter you received from Boange was on the 27th of August—D19 ?

A. Yes.

Q. D19 refers to a telegrame ?

A. Yes.

D19a is the copy of the letter he sent to me, which was addressed to my father.

I produce marked D27 the telegram referred to in D19.

Q. When were you engaged to Miss Nugawela ?

A. On 7th September, 1951.

20

Q. You ignored that letter D19 also ?

A. Yes.

Q. You married Miss Nugawela on the 31st January, 1952 ?

A. Yes.

Q. Plaintiff had written to you on the 18th D7 and 19th December D8 ?

A. Yes.

Q. She had also written to you a letter on 6th March, 1951, D9 ?

A. Yes.

Q. After the letter of the 6th March, 1951, she next wrote to you D13 dated 3-8 ?

30

A. Yes. I think there was a letter in May from the plaintiff.

Q. On 3-8 you received D13 ?

A. Yes.

(D13 read). Q. That is the day after her father wrote to you ?

A. Yes.

Q. Have you received any letter from her after the 31st of May and before 3rd August ?

A. No, not after the 21st of May.

21st of May was the last date for the dowry to be given and the
10 engagement to be had.

Q. Did you tell her not to give up teaching ?

A. No.

Q. Did you send any reply to that letter D13 ?

A. No.

Q. Then you got another letter on the 14th of August D14 ?

(D14 read).

A. Yes.

Q. D15 is dated 15th of August ?

A. Yes. (D15 read).

20

(Adjourned for lunch)

Trial resumed.

C. V. UDALAGAMA, recalled, affirmed.

Further Xd:— Q. You have yourself written certain letters
to plaintiff ?

A. Yes.

Q. You told the Court that you saw her at Malabar Street
House for the first time ?

A. Yes.

30

Q. When did you first speak to her ?

A. At a Concert in Kandy, Trinity College Hall.

Q. Thereafter have you on several occasions met and spoken
to plaintiff ?

No. 9
 Defendant's
 Evidence
 C. V.
 Udalagama
 Examination
 —continued

Q. Yes.

Q. Most of those conversations were where?

Q. At my brother's place.

My brother's house is opposite to my father's house.

Q. Was there any reason for your car to be garaged in any particular place?

A. Yes, in my brother's garage.

Q. Why?

A. Because my father's car was burgled and some parts were removed. Thereafter I started keeping my car in my brother's garage. The garages of my father were on the roadside.

10

Q. You had to go to your brother's house every time you wanted to take your car?

A. Yes.

Q. At what stage was it that plaintiff first came to spend time in your brother's house?

A. During March, 1950 she used to come off and on and after May she spent a lot of her time there.

Q. P1 is your letter dated 21st December, 1950?

A. Yes.

20

(P1 shown to witness).

(Shown P9). P9 is also written by me. It is dated 4-3-51.

(Shown P10). P10 is also a letter written by me. It is dated 16-3-51

Q. On the last page you make some reference to teaching?

A. Yes. (Witness reads) "I do not think you should give up your teaching at Vidyalaya. After all it will be quite dull for you at home doing nothing."

Q. What made you write that?

A. In her letter written in March she had said she intended to give up teaching. So I thought—so I wrote this passage.

30

Q. When was this proposal first made to you by Anula?

A. That may be about the end of February or beginning of March, 1950.

Q. When was any finality reached with regard to the amount of the dowry ?

A. In March.

Q. In relation to the reaching of a finality with regard to what the dowry was going to be, when did you have conversation with the plaintiff ?

A. After the question of dowry was settled.

Q. Have you been to the pictures in the company of the plaintiff ?

10 A. Yes. Once.

Q. How many people went that day ?

A. I went and Anula went, the plaintiff and Anula's son went. We went in my car.

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 the plaintiff either orally or in writing ?

A. No.

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

A. No.

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

A. No.

Q. Did you give her a bottle of scent, brush and comb and a mirror or a hand-bag ?

A. No.

Q. Did you give her any jacket material or any presents at all of any type ?

30 A. No.

Q. Did you give her any present which she was to keep and use after she got married ?

A. No.

No. 9.
Defendant's
Evidence.
C. V.
Udalagama
Examination
—continued

(Shown P8). Q. It is a photograph ?

A. Yes.

I did not give her this photograph P8 but when I was at Nuwara Eliya I took some snaps and she wanted copies of those snaps and I gave all of them to her. This is an enlargement of the snap I gave. The camera is 2½ inches by 3½". Snaps were taken with my nephew's camera.

Q. Who is the person photographed ?

A. Myself.

The person who took the photograph is my nephew Shelton Ranaraja.

10

Q. What did you give her ?

A. I gave her the negatives of the snaps I had taken there. Shelton had the originals. P8 is an enlargement from one of the negatives.

Q. You remember the party that was given for you before you went to Point Pedro ?

A. Yes.

Q. Plaintiff was present there ?

A. Yes.

20

Q. Was she the only outsider to be present there ?

A. No. There was A. B. Ellepola, Cyril Ellepola and Advocate Molamure.

(P1 read). Q. You say this in P1.—“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 ”— what is the unnecessary delay ?

A. The finalising of the dowry.

“To either ” means to me or plaintiff.

Q. You have written there with regard to finalising of the dowry ?

30

A. Yes.

Q. Apart from writing to her about finalising of the dowry, have you brought it up with her in the course of your conversation ?

A. Several times.

I have told her several times to tell her father and get the dowry finalised as early as possible, as without the dowry the thing won't come through.

No. 9.
Defendant's
Evidence
C. V.
Udalagama
Examination
—continued

Q. "Thing" being engagement?

A. Yes.

Q. You then received a letter of demand from Mr. Geddes (D6)?

A. Yes.

10

(D6 read).

Q. You sent no reply to that?

A. No.

Q. You have written in some of those letters that Mr. Boange might be unable to pay the dowry?

A. Yes.

Q. Have you obtained any documents which will show that his financial position was not very sound?

A. Yes.

20

Q. Documents D20 to D26 — certified copies of a number of cases—have been produced?

A. Yes.

Q. You do not dissociate yourself from the production of those certified copies?

A. No.

XXd:— Q. Did you propose marriage to this girl?

A. No.

C. V.
Udalagama
Cross
Examination

Q. You never asked her to marry you?

A. No.

Q. Did you write love letters to her?

30

A. I wrote letters to her.

Q. Love letters?

A. Well, yes.

Q. Did you find out whether she was willing to marry you before you wrote her love letters?

No. 9
Defendant's
Evidence
C. V.
Udalagama
Cross
Examination
—continued

A. I did not specifically ask her.

Q. That is not my question— did you find out by any method or means that the plaintiff was willing to marry you before you wrote love letters to her ?

A. No.

To Court:— Q. Do you mean to say that you did not find out from the plaintiff whether she was willing to marry you or not ?

A. It was an arranged marriage. I met her, spoke to her and I took it for granted that she was willing to marry me from the way she spoke to me.

10

Q. From the way you spoke to her ?

A. Yes.

From the way she spoke to me and I spoke to her we took it for granted that both of us were willing to marry each other.

Q. What is the way in which she spoke to you that you took it for granted that she was willing to marry you ?

A. In general conversations I have had with her I understood that she was willing to marry me.

Q. Give as best as you remember the words of the conversation from which you drew the inference that she was willing to marry you ?

20

A. I am unable to give it.

Q. Do you remember ?

A. No.

Q. Can you give the words you used from which she drew the inference that you will marry her ?

A. I am unable to do so.

Q. You do not remember ?

A. Yes.

Q. Would it be right to say that you understood that she would marry you before you wrote those love letters ?

30

A. Yes.

Q. Would it be right to say that she understood that you would marry her before you wrote to her ?

A. Yes.

Q. You cannot tell his Honour how you made her understand that you were going to marry her ?

A. I cannot remember.

Q. The simplest way to make her understand that you would marry her is to say, " Darling, I will marry you " ?

A. No. I did not say so.

Q. Do you remember the last question I put to you ?

A. Yes.

10 Q. That is not the simplest way by which you can make her understand that you will marry her ?

A. No.

Q. Can you think of a simpler way in which you can make a girl understand that you are going to marry her ?

A. I am unable to answer that question.

To Court:— Q. In spite of all your overtures she may not be willing to marry you ?

20 A. From the way she spoke to me I always understood that she was willing to marry me. There was my sister-in-law who always told me that there was no objection to this at all.

Q. There was no objection to what at all ?

A. This marriage between plaintiff and me.

Q. So you thought that you would get married ?

A. Yes.

Q. Didn't you think before you wrote your love letters that you will formally ask her to marry you ?

A. No.

Q. Did you think she was just some chattel who could be taken to wife by you ?

30 (Objected to. The question is allowed).

A. No.

Q. You did not think she was a chattel ?

A. No.

No. 9.
 Defendant's
 Evidence.
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 Udalgama
 Cross-
 Examination
 —continued

Q. You knew you had to get her consent to marry ?

A. No.

Q. Did you when the proposal of marriage was being discussed, assume that the marriage with plaintiff will come right ?

A. If the dowry was given I was hoping that it would come right.

Q. When a proposal of marriage at that stage was being discussed, did you assume that the marriage between you and the plaintiff would come right ?

A. I like to know at what stage.

10

Q. Did you ever assume that the marriage between you and the plaintiff would come through ?

A. Yes, if the dowry was given.

Q. When did you make that assumption first ?

A. From the time Nanda put this proposal to me.

Q. And from that time did you ask plaintiff for a dowry ?

A. I did not ask her for the dowry. I asked plaintiff's father for a dowry.

Q. When was the first occasion ?

A. When I went to his place with my mother in early May, 1950.

20

Q. Till then you had not asked plaintiff's father for a dowry ?

A. Not personally.

Q. Do I understand you to say that you had raised the question of dowry yourself before May ?

A. Personally with him—No.

Q. Had you raised the question of dowry with anybody before May ?

A. Yes, through Anula.

Q. When did you tell Anula first ?

30

A. The very first time she spoke to me.

Q. You said then—"I want dowry?"

A. No. I told her that Nanda had made a proposal and I had given my terms and that if they were willing to agree to my terms I was willing to marry.

Q. When Nanda asked you to marry this girl your first demand was dowry?

A. No.

Q. What was your first demand?

A. I told her I will have to think about it and let her know.

Q. You thought about it?

A. Yes.

Q. The first matter you thought of about was the dowry?

A. No.

10 Q. What was the first thing you gave your mind to?

A. I gave my mind to the suitability of the plaintiff and next the dowry.

Q. And then you told Nanda that you wanted so much dowry?

A. Not exactly that. I told her that I had no objection to the proposal provided 10 acres of tea and Rs. 10,000-00 was given.

Q. That was in January, 1950?

A. Yes.

Q. Plaintiff had come to teach at Balika Vidyalaya about January, 1950?

20 A. Early February, 1950.

Q. You heard Anula giving evidence in Court?

A. Yes.

Q. Did your father speak to Anula ever about this marriage?

A. Anula spoke to my father about this marriage.

Q. Did Nanda tell you that she had written to plaintiff's parents?

A. She told me she had written to her father.

Q. And had drawn blank?

A. She told me she did not get a reply.

No. 9.
Defendant's
Evidence
O. V.
Udalagama
Cross
Examination
—continued

Q. In the meantime you told Nanda that the girl was suitable if the dowry was forthcoming?

A. I told her that I had no objection to the proposal if the dowry was given.

Q. You had seen the girl at Malabar Street at Kandy at Anula's invitation?

A. No, not at Anula's invitation.

Q. You had seen the girl at Malabar Street in Kandy?

A. Yes.

Q. At Nanda's invitation?

10

A. Yes.

Q. You liked the girl?

A. I had no objection to the proposal.

Q. Did you like the girl?

A. At that time I had no objection to getting married to her. I liked her looks.

Q. You were not keen about marrying her then?

A. I was not keen.

Q. You gave Nanda your terms?

A. Yes.

20

Q. Did you ask her whether she had a reply from the girl's parents?

A. Yes.

Q. You are a Kandyan?

A. I am an Upcountry Sinhalese.

Q. What is the difference?

A. In my opinion Kandyan refers to those people residing in the Central Province. Upcountry refers to all the people who resided in the provinces that were under the King of Kandy.

Q. Your Counsel has talked to Kandyan customs?

30

A. Yes.

Q. Did you instruct him about Kandyan customs?

A. Yes.

Q. Are you a Kandyan subject to those customs ?

A. I am an Upcountry Sinhalese subject to the customs referred to by Mr. Wickremanayake.

Q. Why don't you like the word Kandyan ?

A. It refers to people of Kandy.

The Kandyan Marriage Ordinance refers to all the people living within the Kandyan Provinces.

Q. Does it refer to you ?

10 A. I have not given my thought to it, but as far as legal opinion goes, I suppose it is so.

Q. Do you suggest that you give legal opinions without giving thought to them ?

A. No.

To Court:- Q. Are you one of those persons who are commonly known as Kandyans?

A. Yes.

Q. Plaintiff is also a Kandyan in that sense?

A. Yes.

20 Q. Amongst Kandyans the marriage proposal is always raised in the first instance by the bridegroom's people?

A. Not necessarily.

Q. Was it a matter of custom amongst the Kandyans that marriage proposals are first raised by the bridegroom's people ?

A. Not as far as I am aware.

Q. As far as you are aware who initiates proposals of marriage according to Kandyan customs ?

A. Sometimes it comes from either party.

According to modern Kandyan custom the proposals initiate from either side.

30 Q. When did you first talk to Anula about this marriage. ?

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Defendant's
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Cross
Examination
—continued

A. I did not talk to her. She spoke to me first about it.

Q. When did you talk to her on the first occasion?

(The question is amended by Court).

To Court:- Q. When did she speak to you first about it?

A. About the end of February or the beginning of March, 1950.

Q. Before that date you had gone to some entertainment at Trinity College, Kandy?

A. Yes.

Q. You knew that the plaintiff was going to that entertainment herself?

10

A. Till I came to the Trinity College Hall I did not know that.

Q. You talked to her at that Theatre?

A. Yes.

Q. For the first time?

A. Yes.

Q. Had you been introduced to her before?

A. I saw her first at Malabar Street. Before that she had come to my father's place with Anula but she was not introduced to me formally.

20

Q. You had not spoken to her at Nanda's place?

A. No.

Q. You met her at the Trinity College Hall in Kandy and you spoke to her?

A. Yes.

Q. Were you interested in her at that time?

A. I was aware that she was proposed to be married to me at that time.

To Court:- Q. Were you interested in her?

A. Yes.

30

Q. Interested in marrying her?

A. Yes.

Q. When would this be — about the middle of February?

A. Yes.

Q. You had seen the girl at Nanda's in early January?

A. Yes.

Q. And by the end of January you knew that Nanda got no response from the plaintiff's father?

A. Not end of January. It must have been about the middle of February or towards the end of February.

Q. Had you seen Nanda a number of times before the middle of February?

10 A. Yes. I met her after about the middle of January and in February.

I met her 2 or 3 times.

Q. Every time she told you she had no reply from plaintiff's parents?

A. Yes.

Q. When you talked to plaintiff in the middle of February at the hall at Trinity College, did you think that the marriage was finding favour in the eyes of the plaintiff's parents?

A. I did not give my thought to that.

20 Q. You rather liked the girl and you were interested in marrying her?

A. Yes.

Q. At that time she had sat for the University Entrance?

A. I did not know that.

Q. Did you know what exam she had passed at that time, that is prior to the meeting at the hall at Trinity College, Kandy?

A. I do not think I found out that.

Q. You did not know anything about her school career at that time?

A. I knew.

30 Q. What did you know?

A. That she was at Hillwood and had left the school as Captain of the School.

Q. Can you recall what conversation you had at that hall in Trinity College?

No. 9.
 Defendant's
 Evidence
 Q. v.
 Udalagama
 Cross
 Examination
 —continued

A. I cannot remember.

Q. The girl says you talked to her about her University examination?

A. I cannot recall.

Q. You may have talked to her about her University Entrance Examination but you cannot remember?

A. I cannot recall.

Q. Would it be right to say that you may have talked to her about the University Examination but that you cannot remember it one way or the other?

01

A. I will not contradict plaintiff if she says that I spoke to her about the University Examination.

Q. You say that the question of dowry was fixed up in May?

A. Yes. I spoke to plaintiff's father about the dowry in May.

Q. Till then did you regard the question of dowry as fixed up?

A. Yes.

Q. When did you regard the question of dowry as having been settled?

A. In March.

Q. As a result of a conversation with whom?

20

A. With Anula.

To Court:- Q. What was the dowry then agreed on?

A. 5 acres in tea and Rs. 5000-00

Q. To be provided before the marriage?

A. Before the engagement.

Q. About what date in March would this be?

A. About the middle of March or about the 20th of March.

Q. You had seen the plaintiff at the Trinity College Hall in the middle of February?

A. Yes.

30

Q. Did you see her at Anula's place during February, after the 15th of February?

A. Yes.

Q. Were you talking to her in February?

A. No.

Q. In March ?

A. No.

Q. On no occasion ?

A. No.

Q. In April did you talk to her ?

A. No.

10 Q. Till you discussed the question of dowry with the father in
 May did you talk to her ?

A. Yes. Early May.

Q. Where ?

A. At Anula's place.

Q. That was the only occasion you had spoken to her after the
 middle of February when you met her at the Concert and till the
 time you went to speak to Boange about the dowry ?

A. I spoke to her on several occasions in early May before I
 spoke to plaintiff's father about the dowry.

20 Q. When did you take her to the pictures ?
 (Objected to. The question is withdrawn).

Q. Did you drive the plaintiff on any occasion to the pictures?

A. Yes.

Q. When ?

A. Early May.

Q. Before you saw Boange about the dowry ?

A. Yes.

Q. Did you ever personally fix up your dowry with Boange ?

A. No.

30 Q. At no time ?

A. Yes.

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 Defendant's
 Evidence
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 Udagama
 Cross
 Examination
 —Continued

Q. Up to date ?

A. Yes.

Q. Personally you never had any agreement with plaintiff's father to provide you any dowry ?

A. Personally there was no agreement between the two of us.

Q. Was there an agreement between you and plaintiff to provide you with a dowry ?

A. Agreement!. No.

Q. Had you talked to the plaintiff in May at Anula's home before you drove her to the pictures one day ?

A. Yes.

Q. Did you think before you drove her to the pictures in May, that she would get married to you ?

A. Yes, if the dowry was given.

Q. Did you think that the plaintiff would be willing to get married to you before you drove her to the pictures ?

A. Yes.

Q. Why did you draw that inference that the plaintiff was willing to get married to you ?

A. Anula told me that the matter was arranged and that plaintiff's father was willing to give the dowry, and thereafter plaintiff used to meet me at Anula's and speak to me. I was allowed to speak to plaintiff and I gathered that she was willing to marry me.

Q. By whom were you allowed to speak to plaintiff ?

A. By Anula.

Q. Before you drove her to the pictures you gathered from plaintiff that she was willing to marry you ?

A. Yes.

From the plaintiff's conduct towards me I gathered that she was willing to marry me.

Q. Did you make it clear to plaintiff then that you would marry her only if you got the dowry ?

A. No.

10

20

30

Q. Did you make her understand before you drove her to the pictures that you were willing to marry her ?

A. From my conduct I thought that she also understood that I was willing to marry her.

Q. Did you want to make her understand before you took her to the pictures that you were wanting to marry her ?

A. No.

Q. You did not want to make her understand that you were willing to marry her but your conduct might have made her draw that inference ?

10 A. Yes.

Q. Do you suggest to his Honour that without wanting to make her understand that you were going to marry her, your conduct towards her was such that she would have drawn the inference that you were wanting to marry her ?

A. May I explain, Sir. Anula told me that plaintiff's father had agreed to give this dowry. Thereafter she allowed me to meet the plaintiff and speak to her. I met plaintiff and from that I understood that plaintiff was also willing to marry me.

20 I did not do any special act to make her feel that I was always willing to marry her if the dowry came right.

Q. Had you ever talked to the plaintiff about any question of dowry before you took her to the pictures ?

(Question objected to. The question is withdrawn)

Q. You remember the occasion you sat next to her at the pictures ?

A. Yes.

Q. Before you sat next to her at the pictures, had you ever told her one word about dowry ?

A. No.

30 Q. Had you ever told her one word about your demanding dowry ?

A. No.

Q. Did you think it was a dangerous thing to go and tell girls that you would marry them if only you got a dowry ?

A. The question did not strike me.

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 Defendant's
 Evidence
 C. V.
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 Examination
 —Continued

I was 33 years at the time, in 1950. I had been at the Bar for 6 years in fair practice. I did not appear in any breach of promise case.

Q. You heard Anula give evidence here ?

A. Yes.

Q. You heard her tell his Honour that questions of dowry are never discussed with the girls ?

A. Yes.

Q. Is that right or not ?

A. I am unable to express an opinion on that.

10

Q. Prior to your sitting next to her at the pictures, did you intend to make her understand that you were willing to marry her ?

A. No.

Q. But none the less, you would tell his Honour that prior to your sitting with her at the pictures, by your conduct she must have understood that you were willing to marry her ?

A. Yes.

Q. Anula had allowed you permission before the occasion that you all went to the pictures to talk to plaintiff in her home ?

A. Yes.

20

Q. There is a thing called the formal engagement amongst the Kandyans ?

A. Yes.

Q. The Kandyan group to which you and plaintiff belong ?

A. I do not know about group, but among all Kandyans there is an engagement.

Q. Are you of the same status as the plaintiff ?

A. Yes.

Q. You mean you belong to the Radala Caste ?

A. I do not know about the Radala Caste.

Q. Before the formal engagement as known amongst Kandyans a boy and girl would not be allowed to talk together alone?

A. They will be allowed.

Q. Did Anula at any time show anxiety in regard to your talking to the plaintiff before you were formally engaged to her?

A. No.

Q. You heard her evidence in this Court?

10

A. Yes.

Q. Did you tell her that you will not let down the girl?

A. No.

Q. Did you hear Anula giving that evidence in Court?

A. Yes.

Q. Four of you went to the pictures in May?

A. Yes.

Q. Anula invited you to go with them all?

A. No.

Q. How did you come to accompany them?

20

A. I was going to the pictures and when I went to get my car to Anula's place, I met Anula and I suggested to her to go to the pictures.

Q. To whom did you suggest going to the pictures?

A. To Anula.

Q. Did you invite plaintiff?

A. No.

Plaintiff got into the car from Anula's house.

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 Defendant's
 Evidence
 C. V.
 Udalagama
 Cross
 Examination
 —continued

Q. You did not know that the plaintiff was coming at all?

A. At the time I spoke to Anula I did not see plaintiff in the house.

Q. Will you answer my questions, Mr. Udalagama, without evading me?

A. Yes.

Q. Did you not know earlier that the plaintiff was going with you to the pictures?

A. No.

Q. The fact that plaintiff got into the car was a surprise to you?

10

A. It was not a surprise but she got into the car. I did not expect that she was also coming.

Q. You sat next to her at the pictures?

A. Yes.

Q. Was that a matter of accident or design?

A. We all went in and sat next to each other. I did not contrive to sit next to her. It was not accidental.

Q. Was it by design on the part of somebody else?

A. I cannot say.

20

Q. At the pictures you talked to her?

A. Yes.

Q. You heard the plaintiff in the witness — box?

A. Yes.

Q. She says you asked her to marry her?

A. I heard her say that.

Q. Did you tell his Honour that at no time, neither at the pictures nor anywhere in the world, did you ask her to marry you?

A. No.

Q. Did you ever tell her, "I love You?"

A. I must have told her but I cannot remember.

Q. Did you ever kiss her?

A. No.

Q. When did you think you must have told her, "I love you", was it before or after you sat at the pictures?

A. After.

Q. And that you would marry her?

10

A. No.

Q. You told her that you loved her — you cannot remember having said that — but you remember having not told her that you will marry her?

A. At no time did I tell her that I will marry her.

Q. Can you remember having told her on any occasion that you love her?

A. I cannot remember any specific occasion.

Q. Did you say as a man of the world that you must have told her that you love her?

20

A. Yes.

Q. Do you remember it?

A. I did not tell her that I loved her.

Q. Did you ask her whether she loved you?

A. I did not ask her that specific question.

Q. Did she say she loved you?

A. Yes.

Q. When you said "I love you", did you also intend her to understand that you will marry her?

No. 9
Defendant's
Evidence
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Examination
—continued

A. No.

Q. Do you say you told this plaintiff that you loved her and you did not intend her to understand that you will marry her?

A. May I explain, Sir. I did not think of that at that moment because it was agreed between both parties that once the matter of dowry was finalised we would be getting married. I thought that marriage would follow as a matter of course.

Q. Did you tell his Honour that it was agreed between both parties that you would get the dowry?

A. Yes.

Q. The two parties meaning you and the plaintiff?

10

A. My people and her people.

Q. There was no agreement between you and the plaintiff?

A. There was no specific agreement as between her and me. I know she was aware of it and I was aware of it.

Q. Did you tell her that you would marry her only in the event of dowry being given?

A. I did not tell her in those words.

Q. In October or November, 1950, you told her to get her father to give this dowry and have this matter finalised, otherwise the proposal will be dropped?

20

A. Yes.

Q. In October 1950, you told her unless the dowry came, the matter would be dropped?

A. Yes.

Q. In October, 1950 you had already formed the view that the matter was being delayed?

A. Yes.

Q. You told her — “ Look here, I will not marry you unless the dowry is forthcoming ? ”

A. Not in that form.

I told her to speak to her father and provide the dowry so that we can have the engagement as early as possible.

Q. Is there a difference between these two positions—

(1) that you told her that you will not marry her unless the dowry was forthcoming and (2) you told her to get her father to expedite the dowry so that you may get married — Is there a difference between these two positions ?

A. In the language.

Q. Otherwise they amount to the same thing ?

A. Yes.

Q. In September and October, 1950 you made her understand that the marriage would not go through if the dowry was not forthcoming ?

A. Yes

Q. You wrote to her to that effect ?

A. Yes. I have conveyed that by letter P1 not in such words but in other words.

Q. Till October, 1950 you had no complaint against the dowry being delayed ?

A. I had.

Q. When did your complaint about the delay of the dowry start ?

A. Boange promised to give it in June, 1950 and have the engagement in July, but both June and July came and nothing was done.

Q. In the meantime you were telling the girl that you loved her ?

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 Evidence
 C. V.
 Udalgama
 Cross
 Examination
 —continued—

A. Yes I told her I liked her.

Q. As time elapsed did your love for her become less and less ardent?

A. No.

Q. In the meantime you were seeing her frequently at Anula's place?

A. Not frequently.

Q. You told her you loved her?

A. Yes.

Q. In whose company did you tell that?

10

A. There was nobody present immediately when I told her, but Anula was present in the house.

Q. Although you told her you loved her, you want his Honour to believe that you never kissed her?

A. No. I did not want to kiss her before the formal engagement.

Q. In October and November you made her understand that you would not marry her if the dowry was not forthcoming?

A. Yes.

Q. Did you tell her to write to you?

20

A. No. She said she would write to me.

Q. Did you ask her to write to you?

A. As far as I can remember I did not ask her specifically to write to me. She told me she will write to me.

Q. You specifically remember that, but you cannot specifically remember that you asked her to write to you?

A. Yes.

Q. Did you know in May, 1950 that the plaintiff intended to go to the University?

A. No.

Q. Did you know in 1950 at any time that the plaintiff had gone to Colombo to seek admission to Methodist College?

A. No.

Q. Nobody mentioned a word about it?

A. No.

Q. You did not know that the plaintiff intended to enter the University?

A. No.

10 Q. Anula never told you?

A. No.

Q. You heard the plaintiff's evidence that you dissuaded her from entering the University?

A. Yes.

Q. That is untrue?

A. Yes.

Q. Were you at the University?

A. Yes.

Q. There were boys and girls there?

20 A. Yes.

Q. You liked the company there?

A. Yes. I liked the life there.

Q. By life mean the hostel life and the association between boys and girls?

A. No, not between boys and girls but among us friends.

Q. Did you join in fun with boys and girls?

A. No.

No. 9
 Defendant's
 Evidence
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 Cross
 Examination
 —continued

Q. Did you like it or not like it?

A. I did not give it thought.

Q. Did you tell the girl that the university life was not the best thing for a girl?

A. No.

Q. Do you think University life is the best thing for a girl?

A. Yes.

Q. In 1950 plaintiff was teaching at Balika Vidyalaya?

A. Yes.

Q. All that time you had been an advocate in this Court about 10
 6 years in practice?

A. Yes.

Q. The early days at the Bar can be very very lean?

A. I think I was fortunate.

Q. In fact you made a sacrifice in taking a judicial appointment?

A. Financially, yes.

Q. In any way was it an advantage to take a judicial appointment or was it a sacrifice?

A. There were the advantages and the disadvantages.

Q. In the interests of public service you were willing to take up the appointment though it was a financial sacrifice? 20

(Objected, to. The question is allowed.)

(The question is repeated.)

A. I took up this appointment because of my father.

Q. You took up this appointment against your better judgment?

A. My father advised me and he was keen about it and so I took it up. Because of my father and my own judgment I took it up.

Q. Your own judgment was that financially it would be a bad proposition?

A. Yes.

Q. What were the advantages?

A. As a Government servant you are entitled to a pension, long leave, holidays.

Q. Those things—holidays, pension and long leave and security of service—you thought you could not achieve all this with all the money you made at the Bar?

10 A. No.

Q. In 1950 you were not a very great catch in the marriage market?

A. I do not know. I thought I was an eligible young man.

Q. Did you think your eligibility would be enhanced if you were a judge?

A. No.

Q. Did you think that being a judge you will be a better catch in the marriage market?

A. No.

20 Q. You are honest about that answer?

A. Yes.

Q. That you could not get a better dowry?

A. No. A good Advocate would have better proposals.

Q. Would this bidding go higher if you were a judge?

A. I am unable to say.

Q. In 1950 you were still an Advocate at Kegalle with no intention of a Judicial career?

A. I was practising here at Kegalla.

Q. In 1950 had you any thoughts of joining the Judicial Service?

30 A. Yes.

Q. When did you apply first?

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 Defendant's
 Evidence
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 Examination
 --continued--

A. As far as I remember in about February or March, 1950.

Q. Nothing had been heard of the matter the whole of 1950?

A. They had acknowledged receipt of my application.

Q. You had just completed 6 years when you applied?

A. Yes.

Q. Had you applied to the Central Bank also for a job?

A. Yes.

Q. Your father told you to do so?

A. No, I did it on my own.

I asked for a Staff appointment in the Central Bank.

10

Q. What is the Staff appointment you asked for?

A. They advertised it in the papers and I sent in an application.

I cannot say exactly for what post.

Q. For what job did you apply at the Central Bank?

A. I cannot remember the job. The salary was Rs. 1500-00.

I think I applied in 1949.

Q. Or was it in 1950 after the acknowledgment to your application to the Judicial Service came?

A. No.

Q. That also was acknowledged?

20

A. I was called for an interview also.

Q. Do you know who was selected for that job?

A. No. I did not care to find out.

Q. You were having a very lucrative practice at the Bar at that time?

A. Yes, judging from the standards here.

Q. You know you must have 6 years practice to qualify for entering into the Judicial Service?

A. Yes.

Q. Directly your 6 years were over you applied for a post in the Judicial Service?

30

A. Yes.

Q. Till December, 1950 about how often have you talked to the girl?

A. Once a fortnight or once a week.

Q. You had wonderful times together ?

A. We used to talk to each other and I liked it.

Q. Liked what — the conversations ?

A. Yes.

Q. On what matters were you conversing with her ?

A. Various things.

Q. Did you talk to her about your application to the Central Bank ?

10 A. I may have told her.

Q. Did that give you utter delight ?

A. Yes.

Q. Did you talk to her about your application to the Judicial Service ?

A. Yes.

Q. Did that give you delight ?

A. I do not know that. Talking to her on any subject gave me much pleasure.

Q. Were the evenings you spent with her very delightful ?

A. They were pleasant.

20

Q. Were they also delightful ?

A. The word I use is "pleasant". If the meaning you are attaching to it is "pleasant"—yes.

Q. Were the evenings delightful ?

A. If by that it means pleasant — yes.

Q. What is the meaning of the word delightful ?

A. Pleasant.

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—continued

Q. On all those occasions — once a week or once a fortnight — did you always talk to her in the company of other people?

A. Sometimes in the company of others.

Q. When you talked to her in the company of other people, were your evenings with her delightful?

A. Not so delightful as when I talked to her alone.

Q. When you talked to her alone what was the factor that made you feel delightful?

A. Being away from others.

Q. Being away from prying eyes?

10

A. Yes.

Q. When you went on your holidays for December, 1950 were the evenings very dull and boring without the plaintiff?

A. At Nuwara Eliya it was very pleasant.

Q. Were the evenings dull and boring at Kegalla without the plaintiff?

A. Yes, some evenings.

Q. Did you write so to the plaintiff?

A. I have said, "I need not repeat what you have stated." By that I meant that I also was feeling dull. She said that she was feeling dull without me.

20

Q. She wrote to you that her evenings were dull without you?

A. Yes. I said I need not repeat what she had said because I felt dull as she did.

Q. By writing that you need not repeat what she said, you were merely stating that on your part you reciprocated all that she said?

A. Not all that she said in her letter, but when she said that she was feeling dull without me, I said that I was also feeling dull without her.

30

Q. You did not say yourself that the evenings were very dull and boring without the plaintiff?

A. Unless I see the letter it will be difficult to say.

Q. You cannot remember what you wrote?

A. I cannot remember all what I wrote.

Q. You remember writing to her repeating all that she said?

A. As far as I remember I have said, "I need not repeat all what you have said." When she wrote to me that she was feeling dull, I meant that I was also feeling the same.

10 Q. The repetition that you are referring to was confined to your statement with regard to dull evenings?

A. I am unable to answer that question unless I see the letter.

Q. Did you get the plaintiff to promise to write to you?

A. I did not get her to promise to write to me.

Q. There was no question of your asking her to write to you and your saying yes, but she offered to write to you?

A. Yes.

Q. When she told she will write to you, did you tell her, "You must write to me?"

20 A. I did not say "you must"

Q. Did you expect her to write to you?

A. Yes.

Q. When she told you she would write to you, you thought it was more than a mere statement — it was a promise to write to you?

A. Not promise. She said she will write and I said all right.

Q. As a matter of fact it was she who wrote first?

A. Yes.

Q. You must have told her a number of times that she was a very beautiful girl?

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 Examination
 —continued

A. No. It was not necessary for me to say that.

Q. Were you keen about marrying her even if everybody stood in the way?

A. I was not prepared to marry her unless with consent of my parents.

Q. Once your parents agreed to the marriage, did you want the plaintiff to marry you even if plaintiff's parents were against it?

A. It is a hypothetical question.

(Counsel) Answer it!

A. If the plaintiff's parents were against it, I would not have married her.

10

Q. After one year's courtship, in December, 1950, at 33 years of age, you were of the view that if at any time her parents or your parents did not consent, you were not willing to marry her?

A. Yes, I would not have married her.

Q. You made that position clear to plaintiff?

A. Yes. I told her to get the dowry, otherwise it won't come through.

Q. You told it to your lawyers?

A. Yes.

Q. Were you seated behind Counsel when plaintiff was giving evidence?

20

A. Yes.

Q. Not one question was put to the plaintiff indicating that you had told her in October or November, 1950 that the marriage would not go through if the dowry was not forthcoming?

A. Mr. Wickremanayake's cross — examination was based on the fact that if the dowry was not forthcoming the proposal would fall through.

Q. Do you know a single question put to the plaintiff asking her whether in October or November, 1950 you had not told her that you would not marry her if the dowry was not forthcoming?

A. I will have to go through the record to find it out.

Q. Can you remember it?

A. Without looking at the record I cannot say.

Intd. E. A. V. de S.

30-11-53

Further hearing tomorrow, 1-12-53.

Intd. E. A. V. de S.

10

D. J.

D. C. 7873

1-12-53

Appearances as before.

C. V. UDALAGAMA, recalled, affirmed.

Further XXd:— Q. You told his Honour yesterday that when you conversed with the plaintiff away from prying eyes and prying ears, the thing was more pleasant?

A. Yes, but I did not use the word "more", I said, pleasant.

20

Q. And more delightful, meaning thereby more pleasant?

A. Yes.

Q. What was it that made it more pleasant talking to her away from prying eyes and prying ears?

A. The mere conversation with her.

Q. Were there any acts of endearment?

A. No.

Q. Girls are shy when they get kissed for the first time?

A. I do not know.

Q. Do you know now?

30

A. No.

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continued—

Q. You do not know ?

A. No.

Q. Did you catch the plaintiff's hand ?

A. No.

Q. Did you try to hold her hand ?

A. No.

Q. Did you embrace her ?

A. No.

Q. Did you try to embrace her ?

A. No.

10

Q. Did you sit with her in the same seat ?

A. No.

Q. Did you sit next to her ?

A. Yes.

Q. Did you touch each other ?

A. No.

Q. There were no acts of endearment ?

A. No.

Q. And that is the more pleasant conversation you had ?

A. Yes.

20

(Shown P11 dated 27-4-50)

Q. Can you identify the signatuse on that letter ?

A. Yes.

Q. That is a letter by Anula ?

A. Yes.

Q. To whom ?

A. She has so many aunts. I will have to read through the letter. (Witness reads through the letter).

It refers to plaintiff's mother.

Q. In that letter Anula complains of not having heard from the plaintiff's father ?

A. Yes.

Q. In that letter Anula refers to Teddy's proposal ?

A. Yes.

Q. Did you make any proposal ?

A. No.

Q. Can you give his Honour any reason why Anula refers to your proposal ?

10 A. I think what she is trying to say there is about the suggested proposal of Teddy.

Q. Not the proposal made by Teddy ?

A. Not necessarily.

Q. Would it be right for me to say that in that letter Teddy's proposal means a proposal made to her by Teddy ?

A. No.

Q. She goes on to say—"Father-in-law also wanted me to write and tell Uncle ?"

A. Yes.

20 Q. "Father-in-law" referred to there is who ?

A. I think it refers to my father.

Q. Had your father proposed marriage for you through Anula ?

A. As far as I know he did not.

Q. As far as you know your father did not request Anula to write to anybody in the world ?

A. Yes.

Q. Asked whom ?

A. Asked Anula.

Q. When ?

30 A. After Anula spoke to him,

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—continued

Q. Were you there when Anula spoke to him?

A. No.

Q. Did you ever tell your father that you wanted to marry this girl?

A. No.

Q. Did your father tell you to marry this girl?

A. No.

Q. Did your father know that you were willing to marry this girl?

A. Yes.

10

Q. How?

A. I told him that there was a proposal like this put to me and that I had no objection to it.

Q. Did your father ask you whether you were willing to marry this girl?

A. He did not ask me.

Q. What did you go and tell him?

A. I told him there was a proposal made by Anula and that I had no objection to it

Q. Did you indicate to your father thereby that when the proposal was made that you accepted it and that you wanted to marry the girl?

20

(Objected to as it contains 3 question. The question is disallowed.)

Q. Why did you tell your father that you were willing to marry the girl?

A. Because Anula spoke to me and I had to tell him.

Q. Did you indicate to him that you were desirous of marrying the girl?

A. No.

30

Q. That you were willing to marry the girl but not desirous of marrying the girl?

A. Yes.

Q. That you were willing to marry the girl ?

A. I told him that there was a proposal like this and I had no objection.

Q. Did it amount to telling your father that you wanted to marry the girl ?

A. I did not tell him that I want to marry the girl.

Q. By telling your father that you were willing to marry the girl did you desire to convey to your father that you wanted to or that you liked to marry her ?

10 A. Yes, that I liked to marry her.

Q. When did you tell him that ?

A. After Anula spoke to me, somewhere in March, 1950.

Q. Before you sat next to her at the pictures ?

A. Yes.

Q. Some time earlier had you seen Kempitiya's daughter ?

A. Yes.

Q. You had gone to Kempitiya's house ?

A. Yes.

Q. You had gone there with whom ?

20 A. With my father. I think my mother also came, I am not sure, and my brother Dr. Udagama.

Q. Why had you gone there ?

A. We paid the customary first visit. There was a proposal of marriage and we wanted to pay them a visit and for me to see the girl.

Q. Did you see her ?

A. Yes.

Q. Did you like to marry her ?

A. I was not quite decided after seeing her that day.

30 Q. Did you like to marry her at any time ?

A. No.

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 —continued

Q. Did you say so to your father ?

A. At the later stages I told him.

Q. What do you mean by later stages ?

A. After our visit there were further negotiations carried on and my father had fixed up a date for the engagement. After I came to know of certain further facts I told him definitely I cannot marry her.

Q. You told his Honour that at the later stages you told your father you did not like the girl ?

A. After the date of engagement was fixed.

10

Q. Before the date of engagement was fixed did you tell your father you liked to marry the girl ?

A. Yes. When my father asked me to consent to the proposal I said I will consent to it.

Q. You were then 32 years of age ?

A. No, about 31.

Q. For about 3 or 4 months Kempitiya's people were in the belief that you would marry the girl ?

A. I do not know that.

Q. You do not know that ?

20

A. Yes.

Q. Kempitiyas fixed a date for the engagement ?

A. There was a date fixed by agreement between my father and him.

Q. The dowry was not fixed ?

A. No.

Q. You were wanting more dowry ?

A. No.

Q. Were you wanting any dowry ?

A. My father was fixing the dowry.

30

Q. Were you wanting any dowry ?

A. Yes.

Q. What dowry ?

A. Whatever that was to be given.

Q. You were wanting any specific amount ?

A. No.

Q. Were you willing to take what ever was given ?

A. I knew what was coming.

Q. Were you willing to take what was given ?

A. Yes, because I knew what was coming.

10 Q. What was coming ?

A. She was the only daughter by that wife of his and he was giving all the property—her mother's property and the property that he had acquired after marrying her was to be given to this girl as dowry. That would have amounted to about 3 lakhs.

Q. These negotiations commenced about the middle of 1949 ?

A. Yes.

Q. After you called at Kempitiya's, Kempitiyas also called at your home ?

A. Yes.

20 Q. Did you know that your father wrote to the Kempitiyas ?

A. I heard about it.

(Mr. Wickremanayake objects to this witness being cross-examined with regard to the engagement to Kempitiya's daughter. Mr. Thiagalingam says that it is relevant for his case. The questions are allowed)

Q. You heard what ?

A. That my father had written to Kempitiya about the proposal of marriage between me and Kempitiya's daughter and about when he would visit us and when we would visit them.

Q. Anything else ?

30 A. A date had been fixed for the engagement.

Q. And that your father had written to that effect ?

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—continued

A. I heard. That must have been about two weeks prior to his writing the letter fixing the date for the engagement.

Q. You knew that your father was going to write two weeks prior to fixing the date for the engagement?

A. Yes.

Q. The 24th of November, 1949 had been fixed for the exchanging of rings?

A. I am not sure of the date.

Q. No dowry deed had been written before that date?

A. No.

Q. Was the exchange of rings to be had with or without dowry deeds being written?

10

A. Without dowry deeds being written.

When I spoke of exchanging rings, I meant the engagement.

Q. And without any notarial agreement with regard to dowry?

A. Yes.

(The witness says—"May I explain." Mr. Thiagalingam says he does not desire explanations but only answers to the questions).

Q. During these 5 or 6 months were you talking to Kempitiya's girl?

A. No.

20

Q. Never talked to her?

A. No.

Q. You were willing to marry that girl?

A. Yes. May I explain..

Q. Would it be right to say that Kempitiya's daughter's proposal came from your father in the first instance as between you and the father?

A. As far as I remember, yes.

Q. In regard to the proposal of marriage between you and the plaintiff Iranganie, as between you and your father, you raised the question first?

30

A. Yes.

Q. Did you then know, when you raised the question first that your father thought plaintiff would be willing to marry you ?

A. Yes.

Q. You tell his Honour that as far as your father was concerned this talk of marriage between you and plaintiff was first conveyed to him by you ?

A. I conveyed it to him. When I told him Anula had already spoken to my father about it.

10 Q. When you spoke to your father on the first occasion, did you tell him what dowry you wanted ?

A. I told him what dowry I had asked for.

Q. Were you only intimating to your father the dowry you had asked for ?

A. Yes.

Q. Or were you telling your father that you wanted so much dowry ?

A. I intimated to him what dowry I wanted.

Q. Your father raised no question of dowry before you mentioned it to him ?

20 A. I told him that sister-in-law had put this proposal and I told her that if this dowry was given I had no objection to it.

Before my father asked me on the question of dowry, I told him what dowry I had asked for.

Q. Did you want to convey to your father that unless the dowry was forthcoming you would not marry the girl ?

A. The amount I mentioned is not the final amount I was willing to accept.

Q. Did you make it clear to your father—"No dowry, no marriage?"

30 A. Yes.

Q. On your own initiative ?

A. Yes.

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—continued

Q. And that would be about when—about which month—
which period?

A. About March, 1950.

Q. Before that you had never talked to your father nor had
your father talked to you about marriage proposals between you and
Ira, the plaintiff?

A. No.

Q. You had told Nanda in January that you were willing to
marry the girl?

A. Yes.

10

Q. Without reference to your father?

A. Yes.

Q. Without reference to questions of dowry being put to your
father?

A. Yes.

Q. I put it to you, your story as between you and Anula—
that it was Anula who raised the question of marriage between you
and Ira is entirely false?

A. No.

Q. You had raised the matter of your proposal to marry
plaintiff with your father directly Nanda spoke to you?

20

A. No.

Q. Why not?

A. Because I knew my father's views of this matter of
marriage. The first question he would have asked me was what the
dowry was. The question of dowry was not settled between Nanda
and me. Therefore I awaited an answer from Nanda as to what
dowry I would get before I conveyed it to my father.

Q. What you told his Honour earlier, that you had told your
father that you wanted so much dowry was the final proposal and
not the basis for negotiations?

30

A. Yes.

Q. I put it to you that Nanda's intervention in this matter was not favoured by plaintiff's parents?

A. No.

Q. I put it to you that thereafter you worried Anula to try and fix this marriage?

A. No.

Q. Because you were so fond of the girl?

A. No.

Q. I put it to you that at Anula's request you got your father to go and speak to Anula?

10

A. No.

Q. At Anula's insistence that she would not move in the matter merely at your request, but that she wanted your father's confirmation, it was at that request that you got your father to speak to Anula?

A. No.

Q. Long before you talked to your father on the first occasion, were you talking to Ira in the belief that you may marry her, in the expectation of marrying her?

A. I could not understand that question.

20

(Shown P6). (The witness states, "I would like to see the original.")

Q. The original document of P6 was produced when you were in Court?

A. Yes.

Q. Had you seen it then?

A. No.

Q. You had not seen it up to now?

A. No.

30

Q. You wanted to see the original because you thought there might be some mistakes in the copy?

A. To answer the question I wanted to see the original.

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—continued

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 —Continued

(original of P6 handed to witness).

Q. That letter is dated 1-11-49 ?

A. Yes.

Q. That is your father's letter signed by him ?

A. Yes.

Q. Had your father given you the size of the ring for Kempitiya's daughter ?

A. Yes.

Q. You had taken that size ?

A. Yes.

10

Q. Did you also want a ring for yourself from the girl's side ?

A. I did not tell my father about it.

Q. You did not tell him that you wanted a ring ?

A. No.

Q. You were seeing your Lawyer friends daily here in November, 1949 ?

A. Yes.

Q. You told her that you were having a large practice here ?

A. Yes.

Q. What was the Income Tax you paid on the income you made at the Bar ?

20

(Objected to. Mr. Thiagalingam withdraws this question for the present).

Q. What was the income you made at the Bar for the period April, 1949 to March, 1950 ?

A. It must have been about 8 to 10,000-00 rupees for that year.

Q. For the period April, 1949 to March, 1950 about 8 or 10,000-00 rupees ?

A. I cannot remember. It may be or may not be.

Q. Roughly what was the income you made at the Bar from April, 1949 to March, 1950?

A. About 8 to 10,000-00. That would be correct.

Q. What Income Tax did you pay for the accounting year April, 1949 to March, 1950?

(Mr. Wickremanayake objects to this question as it is unnecessarily insulting to the witness. Mr. Thiagalingam states that his question is not intended to insult the witness. He says, "If I was given instructions on this point only for the purpose of insulting the witness, I would not put this question. Apart from dealing with the credit of this witness, this question related to the reason why this marriage had broken off")

(Order—The question is not offensive in form and is allowed).

A. I cannot remember.

Q. Will you tell his Honour, what is the maximum tax you paid in any year?

A. I cannot remember.

Q. Maximum tax?

A. Last year it had come to, I think, Rs. 500-00 odd.

Q. Have you ever paid a bigger tax than that?

A. I cannot remember.

Q. You cannot remember whether you ever paid a bigger tax while you were in the profession?

A. I cannot remember.

Q. I put it to you that you never paid a bigger tax while you were in the profession?

A. I am unable to answer that.

Q. Do you still tell the Court that you have made a financial sacrifice in joining the Judiciary?

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—continued

A. Yes.

Q. Did you tell your father that you wanted a brilliant ring given by the Kempitiya's girl?

A. No.

Q. Is your father a truthful person?

A. Yes.

Q. Look at P6. What does your father say there?

(Witness reads P6).

A. "My son wants a ring with a brilliant set in platinum as he wants it to be seen by his Lawyer friends daily." 10

Q. Is that a truthful statement by your father?

A. This is not a correct statement.

Q. Did you ever talk to your father about a ring for you?

A. I did not tell him what ring I wanted.

Q. Answer my question!

A. No.

Q. That reference to a ring for you could have been based on nothing that transpired between you and your father?

A. Yes. 20

Q. Will you admit now that it is not only incorrect but entirely untrue?

A. It is not a correct statement.

Q. Will you admit that it is not only incorrect but entirely false?

A. Yes. It might be a white lie.

Q. By the time the size of the ring of the girl had been sent up to you, no dowry deed had been drawn?

A. Yes.

Q. I put it to you that the matter dropped because the dowry deed was not drawn up? 30

A. No.

Q. Did you tell your father to have the date of engagement of Kempitiya's daughter postponed?

A. No.

Q. Did you tell your father to get the postponement of that date of engagement because you could not get a postponement in your cases in this Court?

A. No.

Q. You were having a very large practice in this Court at that time?

10 A. Yes. I won't say it was large.

Q. You found it difficult to get dates in your cases?

A. On personal grounds I would have got dates.

Q. Directly the Kempitiya girl's proposal was over, you were looking for some other marriage?

A. I was not looking.

Q. You were not keen about marrying at the end of 1949?

A. I was keen.

Q. You had seen Ira in early 1950?

A. Yes.

20 Q. The whole of 1950, during your chats with the plaintiff, did she ever tell you that she expected to marry you?

A. No.

Q. Did she tell you what her expectations of the future were?

A. Yes.

Q. What were her expectations for the future?

A. To have a happy life if we got married.

Q. You want to indicate by that, that the girl was not sure whether you would get married or not?

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—continued

A. The question of dowry was pending and if it was not property settled the marriage would not go through

Q. By using the words, "If we got married", do you want to indicate that the plaintiff was sure that both of you would not get married?

A. Yes.

Q. She would dream with you?

A. No.

Q. In lovers' talks did she tell you what her dreams for the future were?

A. No.

Q. You were building castles in the air?

A. We were thinking of having a happy home if we get married.

Q. All the time you tell his Honour that both of you knew full well that the marriage was not entirely in your hands?

A. Yes.

Q. You were writing love letters to her?

A. Yes.

Q. But never made love to her in person?

A. Yes.

Q. Did you make love to her in person?

A. No.

If he means kissing her or anything like that—no, but by speaking to her—Yes.

Q. You did not embrace her or touch her?

A. No.

Q. Did she tell you that she dreamed of anything?

10

20

A. No. We talked of expectations for the future.

Q. You want to tell his Honour that when the girl also talked of her expectations for the future you understood the girl to mean that she would only get married to you if her father provided the dowry?

No. 9
Defendant's
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Examination
—continued

A. Yes.

Q. Otherwise she would not?

A. I do not know about that.

10 Q. If you said, "I do not want dowry," was the girl to refuse to marry you?

A. It is a difficult question to answer.

Q. The whole of 1950 did you always tell her, "Look here, I will only marry you if the dowry is forthcoming?"

A. No.

Q. Did the girl tell you, "I will marry you only if this dowry is given to you?"

A. No.

Q. Did the girl tell you, "I know I cannot marry you if my father does not give this dowry?"

20 A. No.

Q. Was the question of dowry raised between you two?

A. Yes.

Q. You told the girl that her father had promised that dowry?

A. Yes.

Q. Did you tell her also, "Look here, if your father does not give that dowry I am not marrying you?"

A. Yes, but not in those words.

Q. In what words?

30 A. I told her to get her father to hurry up with giving the dowry. If the dowry was not given this proposal would not go through.

Q. You told her that if the dowry was not given to you it will not be possible for you to marry her?

A. No. I did not tell her whether the dowry comes or not I will marry her.

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Examination
— continued

Q. Were you frightened that the plaintiff's father might call off this marriage?

A. No.

Q. Were you frightened that the girl may decline to marry you?

A. No.

Q. Did you ever tell the girl that you were frightened that she may not marry you?

A. No.

Q. In your sweet words to her, didn't you tell her that she was a very beautiful girl, without touching her?

10

A. I cannot remember saying that.

Q. What was this love that you made to the girl without touching her?

A. I used to speak to her about various matters.

Q. Tell me the various matters that went to make up the love that you made to her without touching her?

A. I used to speak to her about the happy home we would have if we got married and what we would do if we got married, after we married.

Q. What were you going to do?

20

A. We would have gone for our holidays together and had other pleasures together.

Q. All this time, subject to a proviso that the dowry was forthcoming?

A. It was understood between both of us.

Q. What did you mean to convey?

A. If this dowry was not provided this proposal would not come through.

Q. You tell his Honour that if the proposal did not go through you would not have been unhappy about it?

30

A. I would have been unhappy.

Q. Unhappy because you could not marry her?

A. Yes.

Q. You were 32 years of age ?

A. Yes.

Q. You were a Lawyer in large practice ?

A. I had a considerable practice.

Q. You liked to marry the girl ?

A. Yes.

Q. You would have been unhappy if you could not marry her?

A. Yes.

10 Q. Didn't you tell her "whatever the old man, my father, says, I will marry you?"

A. No.

Q. You made love to her all the time giving her to understand that you would not marry her if the dowry was not given ?

A. Yes.

Q. Not because you wanted the dowry, but because your father wanted the dowry ?

A. My father and I both wanted the dowry.

Q. Even if your father told you to give up dowry, you would have told her, "I won't marry you without the dowry.

20 A. I would have waited for the dowry.

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 interests also.

Q. When she begged of you to marry her and not to throw her overboard also you were wanting to protect her interests ?

No. 9.
Defendant's
Evidence
C. V.
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Cross—
Examination
continued —

(Objected to as it is not clear as to what point of time it refers to. Order—I hold that the question is not clear.

Mr. Thiagalingam's question is withdrawn)

Q. Did the plaintiff ever tell you that her whole life depended on your marrying her ?

A. I received a letter to that effect.

Q. Were you fond of her at that time ?

A. At that time the matter had broken off, and I did not give my thought to assess my affection for the plaintiff at that time.

Q. Even now you cannot tell his Honour whether you were fond of her at that time ?

10

A. No.

Q. Did you give thought to her letter when she wrote to you begging you to marry her ?

A. No.

Q. You were a Magistrate then ?

A. Yes.

Q. You gave no thought to it ?

A. No. I did not take any notice of those letters received after the engagement was broken off, because it was too late.

20

Q. You kept those letters ?

A. Yes.

Q. Did you read them ?

A. Yes.

Q. As you read them did you think that here was a girl with pain of mind writing to you ?

A. Yes.

Q. And you did not pay heed to that ?

A. No.

Q. Where is the letter she wrote to you in May ?

A. I got it with my lawyers.

(Mr. Wickremanayake says that he has not been noticed to produce that particular letter, but he is willing to produce it and he does so. It is marked D28 dated 2-5-51).

Q. You were appointed Judge in March, 1951 ?

A. 1st March, 1951.

10 Q. There had been a party at your father's to celebrate your appointment to the Judiciary ?

A. Yes.

Q. Did you think that it was a good thing that had happened to you ?

A. I did not give my thought to it at that time.

Q. Did you think it was a good thing that happened to you ?

A. At that time I did not give my thought to it.

Q. Do you think so now ?

A. Yes.

20 Q. Everybody thought that it was a good thing that happened to you ?

A. No.

Q. Your father thought it fit to celebrate the occasion ?

A. Yes.

Q. You had known the Diyawadane Nilame girls ?

A. No.

Q. Do you know Nugawela's girls ?

A. Yes, I know them now.

Q. Did not they exist in March, 1951 ?

No. 9.
 Defendant's
 Evidence.
 C. V.
 Udalgama
 Cross—
 Examination
 —continued

A. Yes. I heard.

Q. There is a brother of yours who is a doctor ?

A. Yes.

Q. Is he in Court today ?

A. Yes.

Q. He has been in Court here every day of this trial ?

A. Yes.

Q. The doctor — brother of yours has got a marriageable daughter ?

A. Yes.

10

Q. Was she ever proposed in marriage to anybody ?

(Objected to. The question is disallowed).

Q. Your father gave a party ?

A. Yes.

Q. Do you know one way or the other that your father expressly did or did not invite Anula to bring Ira along ?

A. I do not know that my father had or had not asked Anula to bring plaintiff along.

Q. Anula had said that plaintiff was the only outsider who was invited ?

20

A. That is not correct.

Q. Do you suggest to Court that any other outsiders had been invited by your father ?

A. As far as I remember my father expressly did not invite anyone. He had this function and all these people knew about it and they came.

Q. As far as you know, your father had invited none ?

A. Yes.

Q. Did your father tell your brothers to come ?

A. He must have told them.

Q. You do not know ?

A. I did not ask him.

Q. Therefore you do not know ?

A. Yes.

Q. There were one or two outsiders who were present ?

A. Yes.

10 Q. You instructed Counsel that 2 or 3 outsiders were present at that dinner ?

A. Yes.

Q. That fact that 2 or 3 outsiders were present at that dinner was put to Anula ?

A. Yes.

Q. Anula said that they were there not by invitation but because they happened to drop in at her house and she took them with her to the dinner ?

A. Yes.

20 Q. Do you remember Anula telling the Court that apart from the family circle the only person invited by your father was Ira ?

A. I believe she said so.

Q. Had your father at that time taken for granted that you were going to marry plaintiff ?

A. He was hoping that the proposal would come through.

Q. He was hoping that you would get married to her ?

A. Yes.

Q. And at that party I believe all the relatives got together and teased her that she was the bride of the Magistrate ?

No. 9.
Defendant's
Evidence
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Cross-
Examination
—continued

A. No.

Q. They did not tell her that, "You are a big lady and that you will be the wife of the Magistrate?"

A. No.

Q. Everybody understood why she was there?

A. Everyone was aware that there was this proposal.

Q. And everyone understood or believed at that function that you were going to marry this girl?

A. Yes.

Q. Indeed it had been talked about so widely all over Kegalle and it got to Kandy also?

10

A. No.

Q. You have seen the letter that your present wife wrote to plaintiff?

A. I have not seen it.

Q. Did you see your wife in the witness—box?

A. Yes.

Q. Did you see some letters handed to her?

A. Yes.

Q. Did you hear them read in Court?

20

A. Yes.

Q. Your present wife seems to have known about it as early as July, 1950 in Kandy?

A. Yes.

Q. Would it be correct to say that the whole of Kandy knew about your proposed marriage to plaintiff?

A. I do not know.

Q. It is a very serious thing amongst your circle for a girl when a promise to marry is broken?

A. I am unable to answer that question.

Q. You are a Magistrate now, for how long?

30

A. About 2 years and 9 months.

Q. You have been a practising lawyer for 6 years and you are unable to answer the question whether it is a serious thing for a girl in your circle, when a promise to marry is broken ?

A. I am unable to answer that question.

Q. In any circumstances, is it a serious thing for a girl when a promise to marry her is broken ?

A. No.

Q. What do you mean by no ?

10 A. There might be circumstances in each case.

Q. In some cases it is a very serious thing to break a promise of marriage to a girl ?

A. Yes.

Q. Particularly when it comes to girls in your group ?

A. I do not know what the group referred to is.

Q. Particularly to girls in your group ?

A. It depends on the circumstances.

(Adjourned for lunch).

Intd. E. A. V. de S.

D. J.

20

1-12-53.

Trial resumed.

C. V. UDALAGAMA, recalled, affirmed.

Further XXd:— (Shown the original letter P2)

Q. That is a letter written by your present wife ?

A. Yes. It is in 2 leaves and 3 pages of writing.

Q. It is dated July, 1950 ?

A. Yes.

30

Q. At that date was it fairly well known that you were going to get married to plaintiff ?

No. 9
 Defendant's
 Evidence
 O. V.
 Udalagama
 Cross—
 Examination
 —Continued

A. As far as I am concerned it was only known to our family.

Q. Members of the Bar here did not know about it ?

A. No.

Q. Outside your family circle nobody knew about it ?

A. Yes.

Q. According to the letter your present wife knew about it in July, 1950 ?

A. Yes.

Q. In that letter your present wife is fooling the plaintiff in regard to you ?

10

A. I do not understand, "fooling."

Q. In that letter your present wife is teasing the plaintiff about you ?

A. Yes.

Q. Did the plaintiff show you that letter ?

A. No.

Q. Did she tell you about her school friends writing to her ?

A. As far as I remember, no.

Q. Did she tell you that they were fooling her by saying that she was getting married to not so good-looking a man ?

20

A. No.

Q. She never told you that even her school friends were teasing her about you ?

A. Not as far as I remember.

Q. During the pleasant conversations you had with her did she tell you that she would marry you at all events ?

A. Not as far as I remember.

Q. In that letter there is a reference to Ira being a very sweet girl ?

A. Yes.

Q. And the writer goes on to say that according to her (your present wife) you are very lucky to get a girl like the plaintiff ?

30

A. Yes.

Q. Was that your view also ?

A. I did not give my thought to it.

Q. Did you say so to her ?

A. No.

Q. Did you tell her, " Do not let me down ever ? "

A. No.

Q. Did you tell her, " You must always stand by me ? "

A. No.

10 Q. Your appointment was known about the middle of February, 1951 ?

A. I think it was about the 22nd of February, I was called for an interview about the 12th February.

Q. About that time you knew that you will be selected ?

A. No.

Q. Did you tell his Honour yesterday that some job which you applied for at the Central Bank carried a salary of Rs. 1500-00 ?

A. Yes, as far as I remember.

Q. Could you be making a mistake ?

20 A. I cannot say.

Q. Do you know Eramudugolla ?

A. Yes. He is my cousin.

Q. Was he one of the applicants ?

A. I do not know. I heard he was interviewed.

Q. I put it to you that the salary is Rs. 500-00 ?

A. I do not know.

Eramudugalla is my father's sister's son.

Q. You do not know what salary he gets ?

A. I do not know which post he got.

30 Q. Was he interviewed in regard to the same post you applied for ?

No. 9
 Defendant's
 Evidence
 C. V.
 Udalagama
 Cross—
 Examination
 —Continued

A. I cannot say.

Q. Have you ever paid Income Tax before you got appointed to the Judicial Service ?

A. Yes.

Q. How many years ?

A. I cannot remember the number of years. It was more than one year.

Q. What amounts have you paid ?

A. I cannot say.

Q. Was it Rs. 100-00 ?

10

A. I cannot say.

Q. Was it Rs. 50-00 ?

A. I cannot say.

Q. Was it Rs. 10-00 ?

A. I cannot say.

Q. Whether it is over or under Rs. 10-00 you cannot say ?

A. I cannot say.

Q. I wish to repeat that question to you ?

A. I do not want to commit myself without looking at the returns.

20

Q. What you tell his Honour by that reply is that it may be under Rs. 10-00 ?

A. As far as I remember it must be more.

Q. Would it be more than Rs. 50-00 ?

A. I cannot say.

Q. Does your answer not imply that it may be even under Rs. 50-00 ? but you are unable to say ?

A. I am unable to say.

Q. Did it go into 3 figures ?

A. Even that I cannot answer.

30

Q. What you mean to say is that it may have gone to 3 figures ?

A. I cannot say.

Q. Could it be under 3 figures ?

A. I am unable to answer that question.

Q. Till the time you left for Point Pedro you had been courting the girl for over a year ?

A. Yes.

Q. Did you get any presents from this girl at any time ?

A. No.

Q. At no time up to date ?

10 A. No.

When I was at Point Pedro she sent me two books of the Penguin series,

Q. Was the first answer correct ?

A. It is correct. I did not look upon these two books that were sent to me as presents, but if it is looked upon as a present — I did get a present.

Q. Did you get any sweets ?

A. Yes.

Q. Did you give her chocolates ?

20 A. No.

Q. You gave no chocolates, no sweets, no books — nothing at all in the world ?

A. No.

Sweets were sent to me along with the two books.

(Shown Book P13). Q. Have you seen this book ever before ?

A. I cannot remember.

Q. Have you read that book ?

A. No.

Q. You tell his Honour you cannot recall this book ?

30 A. I cannot.

No. 9
Defendant's
Evidence
O. V.
Udalagama
Cross—
Examination
—Continued

Q. Did you ever own a book like this ?

A. I cannot remember.

Q. Did you give a book like this to anyone ?

A. I cannot remember. I may or may not have given such a book to anyone including the plaintiff.

Q. Do you tell his Honour that you never gave this book to anybody ?

A. I cannot remember that I gave a book like that to anyone.

Q. Does the anyone there include the plaintiff ?

A. Yes.

10

Q. What you say is you cannot say one way or the other having given this book P13 to anyone including the plaintiff ?

A. Yes.

Q. It contains a nice picture on the cover ?

A. Yes.

Q. Do you remember that picture ?

A. Yes.

Q. Whose handwriting is that ?

A. It is mine. It is my signature.

Q. So you remember the book now ?

20

A. I cannot remember.

(Shown hand-bag).

Q. You remember this hand-bag was produced in Court by plaintiff when she gave evidence ?

A. A hand-bag was referred to in the evidence.

Q. This is the very same hand-bag that was shown in Court ?

A. I do not know whether it was taken out and shown in Court.

Q. Was this hand-bag in my hand when the plaintiff gave evidence ?

A. I cannot remember that.

30

Q. Would there be anything wrong in giving her a present ?

A. I do not think.

Q. As a lawyer, you knew that promises to marry to be enforceable had to be in writing ?

A. Yes. I had learned it at the Law College.

Q. You knew it was a dangerous thing to put down in writing your promise to marry the girl ?

A. I knew if there is a promise in writing it is actionable.

10 Q. You knew you can make all the promises in the world by word of mouth and get away Scot free in a breach of promise of marriage action ?

A. I knew that an oral promise to marry was not actionable.

Q. You knew that all the presents in the world made no difference in the absence of a writing ?

A. Yes.

Q. You tell his Honour that plaintiff was just telling a falsehood that you gave her this hand-bag ?

A. Yes.

Q. You recall my showing to Court a Choli piece ?

A. Yes.

20 Q. You saw that piece in my hand when the plaintiff was in the witness—box ?

A. Yes.

Q. It was shown to Court too ?

A. Yes.

Q. You deny that you gave her a Choli piece ?

A. Yes.

Q. You deny you gave her scent ?

A. Yes.

30 Q. And the girl when in the witness—box referred to all these—she was telling what was totally false ?

No. 9
Defendant's
Evidence
C. V.
Udalagama
Cross—
Examination
—continued

A. Yes.

Q. I put it to you that you are telling an untruth in the witness—box?

A. No.

There was no giving of any presents.

To Court:— Q. Didn't you feel like giving her something?

A. No.

Q. You told us you were making love to the girl, and it never occurred to you to give a present to her?

A. Yes.

Q. You told us that you were making about Rs. 10,000-00 at that time?

A. Yes.

Q. Didn't you tell her that you were getting that amount?

A. No.

Q. Did you tell her that the profession was a difficult thing for a junior?

A. No.

Q. Seruwawila is a Buddhist Shrine?

A. I have heard of that place.

Q. Have you been there?

A. Yes.

Q. You were there in June, 1950?

A. No.

Q. When did you go there?

A. When I was a small boy I went with my mother and others.

Q. In 1950 you did not go?

A. No.

Q. When you were here in 1950 had the girl given you any sweets?

A. No.

10

20

30

Q. She sent you sweets by Post all the way to Point Pedro ?

A. Yes.

Q. You did not give her so much as a slab of chocolates at any time ?

A. No.

Q. You knew that her father was making extensive additions to his house in 1950 ?

A. No. I did not know that he was making extensive additions to his house, but there were some repairs or renovations.

10 Q. Did your brother Herbert tell you that Boange, the father, was putting off the engagement because of renovations being made to Boange's house ?

A. No.

Q. Did he ever tell you that Boange the father's answer for delaying the engagement was that renovations were being effected to the house ?

A. No.

Q. You had requested your brother a number of times to speak to Boange, the father ?

20 A. Yes.

Q. Even in 1950 ?

A. I am not quite sure but I may have.

Q. And your brother must have given you a reply ?

A. Yes.

Q. And the reply was that plaintiff's father says the renovations to the house must be complete before the engagement was had ?

A. No.

Q. Your brother never gave that as an excuse on the part of plaintiff's father for delaying the engagement ?

30 A. No.

Q. Have you read the script of your brother's evidence ?

A. Yes.

No. 9
 Defendant's
 Evidence
 C. V.
 Udalagama
 Cross
 Examination
 —continued

Q. When ?

A. After the last trial date.

I read it on my own.

Q. Do you know that your brother has told His Honour that every time Boange said that the engagement could be had only after the renovations were complete ?

(Mr. Wickremanayake objects to the question as Mr. Thiagalingam does not refer to the passage in the evidence where C. H. Udalagama has said so. Mr. Wickremanayake says it is not in the evidence. Mr. Thiagalingam refers to page 114. Order—At page 114 the evidence given is not precisely in support of this question. The question is therefore disallowed).

10

Q. Do you know that your brother has told this Court that the postponement of the engagement was because Boange said that Boange's house was being built ?

A. Without looking at the record I cannot answer that question.

Q. You saw the script of your brother's evidence ?

A. Yes.

Q. If Boange had told your brother that the reason for postponing the engagement was because the renovations were not complete, would that be correct ?

20

A. No.

Q. Did the plaintiff ever tell you that the engagement was being postponed because the house was not complete ?

A. No.

Q. Did she ever write to you that the engagement was being postponed because the house was not complete ?

A. No.

Q. Did she ever refer to the completion of renovations to her father's house in connection with the date of the engagement ?

A. Yes.

30

Q. When ?

A. I think after I went to Point Pedro she wrote the letter to me.

Q. Saying that the completion of renovations of the house had something to do with the date of the engagement ?

A. Without looking at that letter I am unable to say whether she said exactly that.

Q. Apart from the letter, throughout 1950 in the courtship you had with her you must have raised with her the question of the delaying of the engagement ?

A. Yes.

10 Q. Did she everytime say her father says that the house must be complete ?

A. No.

Q. You got to know about your appointment about 22nd February ?

A. Yes.

Q. At that time where was your brother, the Doctor ?

A. At Teldeniya.

Q. About 12 miles from Nugawela ?

A. No.

Q. 50 Miles ?

20 A. No.

Q. Do you know the distance ?

A. Yes.

Q. How much ?

A. About 16 miles.

Q. Your brother the Doctor has got a marriageable daughter ?

A. Yes.

Q. How old ?

(Objected to. The question is allowed).

A. About 20 or 21.

30 Q. Is she married ?

A. To be married.

No 9
 Defendant's
 Evidence
 C. V.
 Udalgama
 Cross
 Examination
 —continued

Q. Your brother the Doctor came to that party at your father's place in February ?

A. Yes.

Q. At the time of that party, would it be correct to say that everybody thought that this marriage between you and the plaintiff would come off ?

A. Yes.

Q. At that time the renovations to Boange's house were not complete ?

A. I am not aware of that.

10

Q. Directly you went to Point Pedro did your brother the doctor come and see you there ?

A. No.

Q. Before you went to Point Pedro was any suggestion made that you might marry your present wife ?

A. No.

Q. By anybody in the world ?

A. No.

Q. You were in Point Pedro on the 20th March, 1951 ?

A. Yes.

20

Q. Were you missing Iranganie the plaintiff in March, 1951 while at Point Pedro ?

A. She was not there.

Q. Were you thinking of marrying anybody else in March, 1951 ?

A. No.

Q. Were you thinking of slowly dropping plaintiff as early as March, 1951 ?

A. No.

Q. Do you concede this — as a Magistrate you were a more eligible husband than as a lawyer in the unofficial Bar ?

30

A. In my opinion my prospects of marriage were not changed.

Q. Do you know yourself as a man of the world, that an eligible bachelor Judge is a better draw in the marriage market than a lawyer in the unofficial Bar ?

A. Between an Advocate of six years' standing at the Bar with a good practice and a Magistrate there is hardly anything to choose.

Q. As far as you were concerned you were an Advocate of 7 years' standing with a good practice ?

10

A. Yes.

Q. With a good practice ?

A. I used to get a fair practice.

Q. As far as you were concerned there was hardly any difference between the two ?

A. Yes.

(Shown P3). Q. P3 is written by your present wife on the 20th March ?

A. Yes.

Q. There she says, " I am sure you must be missing your long heart to heart chats ? "

20

A. Yes.

Q. There she says " I wonder if he misses you " ?

A. Yes.

Q. " I am sure you must be missing your long heart to heart chats. I wonder if he misses you " — " He " is a reference to you ?

A. Yes.

Q. She goes on to say, " But Ira, don't you think it is better for you to continue your studies and ask him to wait. If only you had continued at Methodist College, this day you would have been at the University with so many after you ? "

30

A. Yes.

No. 9
 Defendant's
 Evidence
 Q. V.
 Udalgama
 Cross
 Examination
 —continued

Q. At that date did Padmini have reason to think that your marriage to plaintiff may not come off?

(Objected to on the ground that this witness is unable to speak to the state of mind of Padmini. Mr. Thiagalingam withdraws the question).

Q. Had you done or said anything by the early part of March to give anybody the impression that you might give up the plaintiff?

A. No.

Q. Plaintiff had written to you a number of letters after you went to Point Pedro?

10

A. Yes.

Q. You have written to her after you left for Point Pedro, that is after the 1st March, 1951, only two letters?

A. Yes.

Q. No more?

A. Yes.

Q. When you went to Point Pedro you had not kept copies of any of the letters you had written to her before you went to Point Pedro?

A. No.

20

Q. What you tell his Honour is that you had never promised in writing to marry her before you went to Point Pedro?

A. Yes.

Q. Although you had written her love letters before you went to Point Pedro?

A. I had written her only one letter.

Q. Although you wrote only one letter, that did not contain a promise in writing?

A. Yes.

Q. But you did not know the exact terms of the love letter you wrote?

30

A. I had an idea of what I had written in the letter.

Q. You do not know the exact terms you used ?

A. No.

Q. As a lawyer you knew that lots of cases were said to depend on the terms of the specific letter ?

A. Yes.

Q. This action was filed in November, 1951 ?

A. Yes.

10 Q. When you were served with summons the first thing you did was to instruct your lawyer to get the documents ?

A. The first thing I did was to consult my lawyer, Mr. Wickremanayake.

Q. Did you instruct your proctor to have a look at the document on which the plaintiff relied ?

A. I cannot remember.

(Shown the plaint of 19-11-51).

Q. Was the letter on which the plaintiff relied necessary for you to file answer to that plaint ?

A. My lawyer wanted to see that letter.

20 Q. Did you tell your lawyer there was no need to see any letter, and that you never promised to marry the girl in writing ?

A. Yes.

Q. Did you retain Counsel in support of an application to reject the plaint because the writing containing a promise to marry was not filed with the plaint ?

A. I do not remember.

Q. By the 20th June, 1952 you had retained Senior Counsel to appear for you in Court ?

A. If you refer to that application for security of costs, yes.

No. 9
 Defendant's
 Evidence
 C. V.
 Udalagama
 Cross
 Examination
 —continued

That was for an inquiry into an application for security for costs made by me.

Q. Did you ask for production of the writing containing the promise to marry ?

A. I remember my Proctor asking for it.

Q. Was the photograph of the document produced ?

A. Yes.

Q. Did you ask that because the original was not produced the action should be dismissed ?

A. I heard that my Counsel refused to accept the photostat copy of the letter as it was produced after the time allowed.

10

Q. Do you know that an application was made to have the plaint rejected for that reason ?

A. I cannot remember.

Q. You filed answer only after perusal of your letter ?

A. As far as I remember before the letter was produced the answer was filed.

Q. What you want to tell his Honour is that you did not wait to file the answer till you saw the letter ?

A. Yes, I think so.

20

Q. Your position is that you did not need the letter to file the answer ?

A. Yes.

Q. I put to you, you wanted to make clear in your own mind that that letter contained no promise in writing before you filed answer ?

A. I was very clear that there was no promise in writing.

Q. Where would it have suited you better if this action had been filed ?

A. At Point Pedro.

30

Q. And that is why you instructed your lawyers to ask for security for costs ?

A. No.

Q. In March, 1951 you wrote the letter P9 ?

A. Yes.

Q. There you start the letter with the words, " My darling Girlie ? "

A. Yes.

Q. You end it—" With love, Teddy ? "

10

A. Yes.

Q. Apart from those two terms of endearment the letter itself is not a love letter ?

A. It was a love letter.

Q. Which particular sentence in that letter do you have in mind ?

A. Everything I have stated there is imbued with love.

Q. So Punchi Aiyah coming to Point Pedro was full of love to the girl ?

20

A. Yes.

Q. Similar love letters you have written earlier ?

A. Yes. The earlier letter is only the one I wrote in December.

Q. Was it lukewarm compared to the earlier letter ?

A. I was not lukewarm.

Q. You were still in love with Ira and you were still missing her company ?

A. Yes.

Q. And still determined to marry her ?

A. I was always hoping to marry her.

No. 9.
Defendant's
Evidence.
C. V.
Udalagama
Cross —
Examination
—continued

Q. When did Anula come to Point Pedro ?

A. For the Easter of 1951.

I think it fell on the 22nd or 23rd March.

Q. In reply to your letter P9 of 4th of March, the girl promptly replied by her letter D9 ?

A. Yes.

Q. She addressed you as, " My darling Teddy ? "

A. Yes.

Q. Her letter D9 is warmer in affection than yours ?

A. It is the same.

10

Q. Is it equally tepid ?

A. No.

Q. She says, " Darling, the day you left for Point Pedro I felt your absence greatly, even the following day I felt utterly miserable." Could she be referring to the love-making you had together ?

A. Probably.

Q. Then she goes on to say that she came back from the weekend to Kegalle with great delight because she thought she might receive a reply from you ?

A. She says, " The only thing that induced me to come back this morning was the thought that I may receive a letter from you ".

20

Q. She says—" I cannot tell you, my love, how much I miss the glorious meetings we had together ? "

A. That was our meeting and speaking together.

Q. Nothing to do with love-making in the sense of acts of endearment between the two of you ?

A. If it is kissing — no.

Q. What do acts of endearment mean ?

A. Acts of endearment mean speaking to each other, spending time in each other's company.

30

Q. She told you in D9 that she did not intend going back to School next term ?

A. Yes.

Q. You were hoping to get married to her early ?

A. Yes.

Q. She was hoping to get married to you early ?

A. Yes.

Q. You saw now the letter P3 of Padmini, of the 20th of March.

A. Yes.

10 Q. Padmini in P3 refers to the fact that Ira might well have been at the University if not for her intention to marry you ?

A. She has stated, "If you had only continued at Methodist, this day you would be in the University with so many after you ?"

Q. Would it be right to say that plaintiff too was hoping to get married to you in March, 1951 ?

A. Yes.

Q. Therefore she said, "I am not coming back to teach next term,, ?"

A. She has not stated that.

20 Q. Was it because she thought she was going to get married to you quickly ?

A. I do not know.

Q. Did you write to her and ask her why she was not coming to teach next term ?

A. No.

Q. Did you tell her to come and teach next term ?

A. No.

Q. As far as you were concerned what did you think when she wrote to you that she was not getting back next term to teach in

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 Cross—
 Examination
 —continued

School ?

A. Because I had left for Point Pedro, I thought that she did not want to come back to teach as I had left for Point Pedro, and that the evenings would be unhappy without me there.

Q. Did you think that another possible reason was that she was longing to get married to you as soon as possible ?

A. No.

Q. Did you form the view that Ira thought she was going to marry you early and that is why she did not wish to come back to teach early in April or May ?

10

A. No.

Q. Even after reading the whole of that letter you never thought so ?

A. No.

Q. With that letter she sent you some sweets and books ?

A. Without reading the letter I cannot say.

Q. Read the letter and tell me ?

A. Not with this letter, but a separate parcel was sent along with this letter by post.

Q. What happened to those sweets and books ?

20

A. I ate the sweets.

Q. And told her to go and teach in school the next term ?

A. I told her I do not think she should give up teaching.

Q. Where are the books ?

A. At Kurunegala.

Q. In that letter D9 she gave you the very first intimation of the dates proposed for your engagement ?

A. She gave me some dates, yes.

Q. The dates she refers to in that letter D9 are in March and April ?

A. Yes.

Q. Who is PUNCHI AIAH referred to in that letter ?

A. C. H., my brother.

Q. According to D9 the girl Ira says there are dates in March and April, but your brother, Proctor C. H. Udalagama had told her father to have it in May ?

A. Yes.

10 Q. Then she goes on to say, "Do not write to anybody about the selected date without reference to me" ?

A. Yes.

Q. Do you remember her telling you in that letter, "Darling before you make up your mind on the date, write to me" ?

A. Yes.

Q. Did you do that ?

A. No.

Q. She made it perfectly clear to you that she wanted to get married to you on the 11th of April for many reasons ?

20 A. She had said, "I also believe these superstitious things. Therefore I like to have it in April."

Q. The first intimation you had of the proposed dates of engagement was given to you by Ira in D9 ?

A. Yes.

Q. And she told you, "Please do not fix up your date of engagement without reference to me" ?

A. Yes.

Q. You told his Honour already that you did not write to her?

A. Yes.

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 Defendant's
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 Udalagama
 Cross
 Examination
 —Continued

Q. In this letter does she write, "As for me I prefer 11th April for many reasons?"

A. Yes.

Q. Does she go on to say, "If we have it in May, he may delay over the wedding?"

A. Yes.

Q. And she says that she had been told that March and May are both unlucky months?

A. Yes.

Q. Therefore she says, "I like to have it in April only if it is convenient for you?"

10

A. Yes.

Plaintiff comes from a large family of brothers and sisters. She is the eldest girl in the family.

Q. She is also the eldest child today?

A. Yes.

Q. Her elder brother died about 3 or 4 days ago?

A. Yes.

Q. Then she goes on to say "When you write to Daddy, please do not inform anything about the wedding because I will see that we get married soon?"

20

A. Yes.

Q. She tells you to write to her the selected date in the first instance?

A. Yes.

Q. She ends up by saying, "Be careful about yourself?"

A. Yes.

Q. This letter you received on or about 7-3-51?

A. Yes.

Q. Did you ever reply to that letter?

30

A. Yes.

Q. You told us that you wrote only two letters after you went to Point Pedro?

A. Yes.

Q. One letter you have seen already, that is P9?

A. Yes.

Q. The other letter is P10 of 16-3-51?

A. Yes.

Q. You are sure that the only two letters you wrote to plaintiff after you went to Point Pedro were P9 and P10?

10

A. Yes.

Q. I put it to you again, up to date you have not replied to D9?

A. I replied.

Q. Which is the reply?

A. P10 is the reply to D9.

Q. In P10 you refer to your last letter?

A. Yes.

Q. In P10 you refer to your last letter?

A. Yes.

Q. In P10 you say you received the books?

A. Yes.

20

Q. Then you thanked her for the books?

A. Yes.

Q. No thanks for the sweets?

A. I have not specifically mentioned the sweets.

Q. Is there one line in that letter P10 where you make reference to D9?

(The witness reads the letter).

Q. Read the sentence in P10 wherein you make any reference to D9?

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Gross—
Examination
—continued

A. "I expected a letter about the matter you mentioned in your letter, but I have not received one yet."

Q. That is all in the whole of that letter which has reference to D9?

A. Yes.

Q. You were still very anxious to get married to this girl?

A. Yes.

Q. You told her, "I do not think you should give up teaching at Vidyalaya. After all it would be quite dull for you at home doing nothing?"

10

A. Yes.

Q. Did you regard D9 as the letter of a girl who was anxious to get married to you?

A. Yes.

Q. When you refer to, "I expected a letter about the matter," what were you referring to?

A. I was referring to the dates mentioned in her letter. I was waiting for the dates from sister — meaning Anula — to write to plaintiff.

Q. Were you waiting for the dates your sister was to send up to you to enable you to write to plaintiff?

20

A. Yes.

Q. Were you hoping to reply more fully to D9 after you received official confirmation of the proposed dates for the engagement either from your sister Anula or anyone else?

A. I did not give my thought to that at that time.

Q. Anula wrote to you giving dates by 19th March, D16?

A. Yes.

Q. Including the dates in April which plaintiff had mentioned in D9?

A. May I see that.

30

Q. Didn't you think then, when you got Anula's list of dates, that the plaintiff had wanted you to select the date in April which she had mentioned?

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Defendant's
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Cross
Examination
—continued

A. I was waiting to discuss the matter with Anula.

I did not address my mind to the question whether the dates sent by Anula tallied with the dates mentioned by plaintiff in D9.

Q. Did it matter to you at that time to please Ira with regard to her dates?

A. Yes.

10 Q. You got Anula's list of dates?

A. Yes.

Q. In D16 Anula wrote to you on the 19th of March to let her know the dates suitable, to enable Boange, the father to get ready?

A. Yes.

Q. Did you write to her?

A. I did not write.

Q. Did you not think it a matter of urgency to write to her?

A. No.

Q. At the date you received D16 Ira's letter D9 was with you?

20 A. Yes.

Q. It contained some dates in April including the dates 9th and 11th April?

A. Yes.

Q. You did not think it necessary to write to Anula at once selecting the dates in April?

A. No, because Anula was coming to Point Pedro.

Q. The girl you were fond of had written to you to fix two dates in April?

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—continued

A. Yes.

Q. You were waiting for official confirmation of dates ?

A. I was waiting for a letter.

Q. Anula had selected these two dates ?

A. A number of dates were sent to me.

Q. Did you not think then that the simplest thing to do was to select either of the dates which Ira had asked you to take ?

A. No. May I give you the reason.

I wanted to find out from Anula how long Boange would take to finalise the dowry.

10

Q. The only reason why you were delaying to attend to the matter till Anula came to Point Pedro was to find out when Boange was going to implement his dowry promise ?

A. Yes.

Q. In that letter didn't Anula write to you that Boange would do everything before the selected date ?

A. Yes. He has said that before.

Q. What do you expect Anula to say ?

A. I wanted to know from her when he was able to finalise matters.

20

Q. Anula had said so in the letter ?

A. Yes.

Anula said that Boange was himself keen to finalise the dowry, but still my doubts remained.

Q. After the letter P10 of the 16th March where you told Ira to teach at Vidyalaya, you have not written a single letter up to date ?

A. No.

Q. Is there any letter where you have written to her to say the engagement will not come through unless the dowry is given ?

A. My first letter is to that effect.

Q. Any other letter ?

A. No.

Q. After March, 1951 have you ever written to her any letter saying, " Marriage, date of engagement, nothing is possible till the dowry is given ? "

A. No.

Q. The girl wrote to you to select dates in April ?

A. Yes.

10 Q. Even when she wrote to you about dates in April, did you not think it time to write and say, " It is no use worrying about dates. Let me have the dowry first ? "

A. No.

Q. You got Anula's letter giving you the selected dates ?

A. Yes.

Q. Did you write even then to Ira and say, "Dowry first. Then engagement ? "

A. No.

Q. The school vacation commenced on 23rd March ?

20 A. I do not know.

Q. The school vacation might have commenced about the end of March ?

A. I cannot say.

Q. Anula was there at Point Pedro during her school vacation?

A. I am unable to say that. She was there during the Easter vacation.

Q. Do you want to convey that Anula was at Point Pedro and that it was not during the school vacation ?

A. I do not know whether it was the vacation of her school.

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 Examination
 —continued

Q. Do you know when the Balika Vidyalaya vacation generally commences ?

A. I do not know.

Q. Wesak comes along in May ?

A. Yes.

(Shown D28)

Q. That letter is written from Kegalle ?

A. Yes.

Q. Was that letter written by plaintiff after her Easter vacation was over (Witness reads the letter D28).

10

A. That was written when the second term commenced.

Q. She tells you she was unable to write to you during the vacation ? Do you know why ?

A. I do not know.

Q. You did not think it difficult to write to you from her own home ?

A. No.

Q. You did not think that she was not very happy about receiving letters from you at her home address at Kadugannawa ?

A. No.

20

Q. Had she told you that she was frightened about your writing letters to her address at Kadugannawa ?

A. No.

Q. She did not want correspondence with you when she was at Kadugannawa ?

A. Not exactly like that.

Q. Exactly like what ?

A. She thought letters written by me might fall into the hands of her parents or brothers, and she did not like it.

Q. Is it correct that her parents did not approve of the correspondence between you and her ?

A. I am not aware of that.

Q. She wrote to you again in May ?

A. Yes.

Q. According to you, at the end of April the matter was final?

A. No.

Q. What was the D. Day according to you ?

A. 21st of May.

10 Q. Did you write to plaintiff that the D. Day was the 21st of May ?

A. I did not write to her but I sent word to her through Anula and through her father.

Q. When did you send word to her through Anula that that was the D. Day ?

A. When she came to see me.

Q. Did you tell Anula to tell the plaintiff, "Dowry before the 21st of May. Otherwise engagement is off?"

20 A. Not in those words. I told her that I have selected the 21st of May for the engagement and that unless the dowry is provided before that date the engagement would be off and that I would look elsewhere to get married. I told her to tell that to the plaintiff.

I told my lawyers what I had told Anula to convey to plaintiff

Q. You say you told the father, Boange also that 21st May is D. Day, otherwise it is off ?

A. Yes.

30 Q. I put it to you that you are just saying lots of things which are not correct merely because you are able to say them by word of mouth ?

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 Evidence
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 Examination
 —continued

A. No.

Q. Why did you not write one letter to the plaintiff and tell her?

A. I was waiting for the dowry.

Both Anula and Boange told me that he would bank the money and write the deed before the end of April, 1951, but that was not done.

Q. You got the letter D28 about 3rd or 4th of May?

A. Yes.

Q. By the 4th of May you knew that Boange had not implemented his undertaking to give you the dowry?

10

A. Yes, as promised.

Q. And you knew that the engagement would not come off?

A. No.

Q. On the 4th of May you knew the father did not give the dowry by the 30th of April?

A. Yes.

Q. You knew the terms of the letter written by plaintiff to you D9?

A. Yes.

Q. And still you were hoping to give them grace till the 21st of May?

20

A. That was the final date

Q. Did you write after the 2nd of May to the plaintiff and say, "Your father promised to give the dowry by the end of April, that was not done, the last date is the 21st of May?"

A. No.

I wrote to my father. I did not write to Anula.

To Court:—Q. Why did you not write to plaintiff of this fact.

A. Because I felt that on the question of dowry this engagement might fall through and that Boange was unable to provide the dowry.

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—continued

Q. Was it not your duty to inform the girl about this?

A. I had sent word to her through Anula and Boange.

Q. You do not know whether it was conveyed to plaintiff or not?

A. No.

Q. You heard Anula in the witness - box?

10 A. Yes.

Q. She told his Honour that questions of dowry are never discussed with girls?

A. Yes.

Q. In regard to this dowry matter, Anula told us that as far as she was concerned she never talked to Ira about it. Is that untrue?

A. I do not know

Q. According to you now, you do not know if Anula conveyed that to the plaintiff, or if Boange conveyed that to the plaintiff?

A. I do not know.

20 Q. Did you not think it your duty as a man of ordinary refinement to write to the girl and tell her even on the 3rd. or 4th. of May, "Look here, though you said that you will see that the dowry is provided, still I am doubtfull that your father will keep his word?"

A. I did not do so.

Intd. E. A. V. de S.

D. J.

1.12.53.

Further hearing on 15th and 19th January 1954.
No earlier dates are suitable to Counsel.

Intd. E. A. V. de S.

30

D. J.

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 —continued

D. C. 7873.

15. 1. 54

Appearances as before.

C. V. UDALAGAMA, recalled, affirmed.

Further Cross—Examind:-

Q. Tell me, did you at any time personally fix up the dowry with Boange, the father?

A. When I went with my mother to his place I told him to give the dowry.

Q. When you went with your mother to Boange Walauwa ?

A. Yes. I never agreed with him on a specific amount.

10

Q. Except on that occasion you never spoke to him any time about dowry ?

A. I spoke to him.

Q. When ?

A. After I went to Boange's place.

Q. You went to Boange's place in May, 1950 ?

A. Yes.

Q. You say once or twice after May you spoke to Boange ?

A. I met him at my brother's and told him, "Why don't you give this dowry and hurry this up."

20

Q. When was that ?

A. That was after our trip to his place. It may have been about September or October, 1950.

Q. Never thereafter?

A. No.

Q. Never raised the matter thereafter?

A. No.

Q. Did you ever tell Boange or his wife that unless the dowry was given by a particular date the marriage was off?

A. I told Boange.

Q. When.

A. When he came to see me at. Point Pedro.

Q. Not Boange's wife?

A. No.

(Shown D5) Q. D5 on the face on it bears no date?

A. No.

Q. Did you tell his Honour that the date of it would be about
 January, 1950?

10 A. Yes.

(Shown P11) Q. That is by Anula to Boange's wife?

A. Yes.

Q. Written on the 27th April, 1950?

A. Yes.

Q. In that letter Anula says that she wrote to Uncle some
 days ago?

A. Yes.

Q. The uncle there is Boange, plaintiff's father?

A. Yes.

20 Q. Evidently, although Anula had written to plaintiff's father
 plaintiff's father had not replied?

A. Yes.

Q. In that letter Anula says that uncle had consented to
 Teddy's proposal?

A. Yes.

Q. The uncle there is Boange?

A. Yes.

Q. Was it correct that proposal was yours?

A. The proposal was put by Anula to me.

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 —continued

Q. Was it correct that uncle had consented to Teddy's proposal ?

A. If the meaning she wished to convey is that I made a proposal it is not correct, but if she means that the proposal concerns Teddy, It is correct.

Q. How do you understand that letter ?

A. I understand that it is a proposal between plaintiff and myself.

Q. Did you understand Teddy's proposal in that letter to mean a proposal initiated by you ?

10

A. No. I did not understand the letter to mean that.

Q. There she says in that letter - "Father-in-law also wanted me to write and tell Uncle to fix the engagement for some date convenient to him."—The father-in-law there is your father ?

A. Yes.

Q. Your father had compared the horoscopes of you and the plaintiff together ?

A. Yes.

Q. Was satisfied about it ?

20

A. At first he was not satisfied about it. Thereafter Anula got a further reading of the two horoscopes and he was satisfied that the comparison was all right.

Q. In P11 Anula says, " The horoscopes compared favourably and as father-in-law did the reading and he is not so very good at it he said he would like the reading uncle had." According to that letter the father-in-law on his reading the horoscopes was quite content ?

(Objected to. The question is allowed)

Q. According to that your father did the comparison himself ?

A. Yes.

Q. According to Anula, your father had done the reading, he was content, but because he was not very good at it he wanted Boange's reading sent to him ?

A. I do not think Anula says that.

Anula says that, "As father-in law did the reading and he is not very good at it, he said he would like the reading Unclé had."

Q. What do you mean by that—there was some doubt about your father's ability to read the two horoscopes ?

A. I do not know.

10 Q. Did you tell your lawyers that your father was not content with the reading ?

A. I remember telling it.

Q. By May-June the marriage was agreed upon ?

A. Yes.

(Shown P12 of 11.6.50). Q. After P12. Q. it was that you and your mother went to Boange Walauwa ?

A. As far as I remember we went in May, 1950.

20 Q. According to P12, Anula writes to the plaintiff's father asking whether Teddy (you) and your mother could go there on Thursday, 15th of June ?

A. Yes.

Q. Did you go there on that date ?

A. As far as I remember I went in May.

Q. Having seen that letter would you wish to correct your memory ?

A. No. As far as I remember we went in May.

Q. Having seen that letter do you wish to correct yourself ?

A. No.

Q. You still say that that letter written on the 11th of June contained wrong particulars ?

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Examination
—continued

A. Yes.

Q. If your recollection is correct, the letter of Anula (P12) of 11. 6. 50 is inexplicable ?

A. Yes.

Q. Could it be you are making a mistake ?

A. As far as I remember we went in May. I do not think I am making a mistake.

Q. By June-July the formal exchange of visits had been over?

A. We had visited them. They did not visit us.

Q. Your present wife and the plaintiff are closely related ?

10

A. Yes. My present wife's father's sister's daughter is the plaintiff. My wife is an Aunt to the plaintiff.

Q. Plaintiff's mother is Agnes ?

A. Yes.

Q. She is a daughter of Mallika Nugawela ?

A. Yes.

Q. Mallika Nugawela and your father-in-law are brother and sister ?

A. Yes.

Q. The fact that you had called on the Boange Walauwa with your mother was well known to the family circle ?

20

A. We knew it.

(Shown P2). Q. According to P2 your present wife also must have known about it in July, 1950 ?

A. Yes.

Q. By July your present wife thought that you had been engaged to be married to Plaintiff

A. Not necessarily.

Q. You told us already that for about 8 or 9 months you had been courting this girl up to December, 1950 ?

A. Yes.

Q. In December the girl was going for her School holidays home?

A. Yes.

Q. That would be at Kadugannawa?

A. Yes.

Q. You remained at Kegalle?

A. Yes.

Q. D7 was written to you on the 18th December, 1950 by plaintiff?

A. Yes.

Q. You got the next letter D8 written to you on the very next date?

10

A. I did not get it written.

Q. D7 is written on the 18th December, 1950?

A. Yes.

Q. The next letter D8 was written on the 19th December, 1950?

A. Yes.

Q. You had received both letters on consecutive dates?

A. Yes.

Q. Would it be correct for me to say that you must have got D7 on the 19th?

A. Yes, provided it was not a Sunday.

20

Q. D8 you must have got on the 20th December?

A. Yes, provided it was not a Sunday.

Q. If one of those dates was a Sunday, D8 you would have got on the 21st?

A. Yes.

Q. Your letter in reply—P1—is dated 21st December?

A. I will have to see that.

(The letter is shown to witness).

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 Examination
 —Continued

A. Yes.

Q. In fact, on the 21st of December you replied to both D7 and D8 together ?

A. Yes.

Q. You treated D7 and D8 as really part of the same correspondence ?

A. Both letters I had in my hand and I wrote P1 after receiving both the letters.

Q. Look at D7. She says in D7 that she thought, "It is my duty to write to you, and keep to my promise in spite of any obstacles standing in my way." Is that a correct statement that she made ?

10

A. Yes.

Q. In the second paragraph she says that she was hoping to meet you on some date, but she had to come away with a heavy heart as the father had come early ?

A. Yes.

Q. She says—"The evenings are unbearable when I think of you, darling ?"

A. Yes.

20

Q. She says there in one but the last paragraph—"I have always aimed at having a pure character and you can be sure that in rain or sunshine I will stand by you till the end of my life"—Did you understand by that that she would marry you whether in rain or sunshine ?

A. No.

Q. Did you understand by that that she will always be with you throughout her life ?

A. Yes.

Q. Without marriage ?

A. After marriage.

Q. Does it imply that she will marry you ?

A. No. That question never arose.

Q. You tell me on reading the sentence in D7—"You can be sure that in rain or sunshine I will stand by you till the end of my life"—Did you understand that to mean that she would remain with you whatever happened, till the end of her life ?

A. She would remain with me till the end of her life.

Q. That she would marry you ?

10 A. That was a matter that was decided already. It never arose ?

Q. What is meant by that answer ?

A. In the whole paragraph she is saying about G.B. Ellepola. She is trying to give me some excuse about some incidents she had with G.B. The question of the marriage was never written here. She says she will not go after anyone else.

Q. Except you ?

A. Yes.

Q. Did you ask the plaintiff not to allow anybody to take liberties with her.

20 A. Yes

Q. Why ?

A. Because I heard about an incident between G.B. Ellepola and the plaintiff. So I asked plaintiff whether that was true. Then she told me that once G.B. tried to take liberties with her. So I told her not to allow people to do that sort of thing.

Q. Was that advice to a girl you were going to get married to or was that advice to a girl in whom you were not interested ?

A. I was interested.

Q. Was that to a girl you were going to marry ?

A. Yes.

30 Q. She wrote back and said that she has always aimed at having a pure character, she loves only one and that you can be sure in rain or sunshine she will stand by you till the end of her life—Did you understand by that that she would marry you ?

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—continued

A. No. I understood by that that she will be true.

Q. In other words, did you understand by that that she says she will be a faithful wife?

A. Yes.

Q. She ends that letter with much love and kisses?

A. Yes.

Q. She had never kissed you?

A. Yes.

Q. She was a very modest girl?

A. Yes.

10

Q. She never kissed you nor did you kiss her?

A. No.

Q. She writes to you the very next day—"I had a long jaw with Aunt about the girl whom G. B. and sister went to see at Kurunegala?"

A. Yes.

G. B. is a Proctor at Kandy and Anula's brother.

Q. She says in D8—"Though I am here my thoughts are with you my love. Day and night I think of nothing else but you my darling. The house is still being built. My one work is telling Mummy how unfair they are in delaying like this?" According to her the delay in the engagement was due to the delay in completing the house?

20

A. Yes.

Q. Then she says, "She too agrees with me, but I haven't got the courage to go and tell Daddy." That means to complete the house?

A. Not the house but about the dowry.

Q. There is not one word about dowry in D7 or D8?

A. The word "Dowry" is not mentioned.

30

Q. Read the line in D7 or D8 which you say can be referred to dowry?

A. "The house is still being built. My one work is telling Mummy how unfair they are in delaying like this. She too agrees with me, but I haven't got the courage to go and tell Daddy."

Q. Read any other sentence in D7 or D8 from which an inference can be drawn relating to dowry?

10 A. She says, "He doesn't understand our position, and is ready to get upset for the least thing. That is why I am telling you that I am placed in such a difficult position, where I have to please so many. Only I know what a lot of mental agony I have to undergo. In spite of everything I never show it because I don't wish others to say that I can't get on in life."

Q. Have you got any other sentence in D7 or D8 from which an inference can be drawn relating to dowry? Do you say that that passage you have read has a reference to dowry?

20 A. Yes. From the conversations I have had with her earlier. This passage has a reference to Dowry, read together with the conversations I have had with the plaintiff regarding dowry, that the house was being built and in consequence Boange was finding it difficult to give the dowry.

Q. Have you got any other sentence in D7 and D8 from which any inference can be drawn with regard to dowry?

A. In D7 there is the passage—"I am ever ready to do anything for you, but unfortunately it is my fate that I am forbidden to do all I can for you, whom I love more than any one in this world. I know you always think that I don't care for you, because I say can't for anything at all."

30 The word "Can't" refers to her refusal to speak to her father about the dowry.

Q. Any other sentence in those two letters?

A. No.

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—continued

Q. Do you tell his Honour that those two letters read independently of any previous correspondence you allege you had with plaintiff do they contain any single line which relates to dowry?

A. No.

Q. On the other hand in D7 and D8 the reference to delay is only with regard to the construction of the house?

A. Yes. If read independently of any conversation I had with the plaintiff regarding dowry.

Q. Then she goes on to say, "I am taking a great risk in asking you to write to me, but I hope everything will be O. K." That is because she did not want her people to know that she was corresponding with you?

10

A. No.

Q. Then she says, "I have sat up till late today because I wanted to write to you somehow, when no one is about the place?"

A. Yes.

Q. She was writing this without the knowledge of anybody?

A. Yes.

Q. She ends that letter—"With much love and kisses?"

A. Yes.

20

Q. She had never kissed you?

A. Yes.

Q. In those two letters, apart from the love—making part of it, the one thing she told you was that she will stand by you till the end of her life in rain or sunshine?

A. Yes.

Q. After that she goes on to say as far as the letters go, that the delay in the engagement was because of the delay in completing the house?

A. Yes.

30

Q. In your letter P1 you wrote—" Girlie, I do not think I need repeat all what you have written to me because I feel just the same as you have expressed ? "

A. Yes.

Q. In that sentence—" Girlie, I do not think I need repeat all what you have written to me because I feel just the same as you have expressed ", does that sentence mean that you were yourself asking the girl to take it for granted that you were repeating all that she has said in that letter ?

10 A. No.

Q. Does the sentence, " Girlie, I do not think I need repeat all what you have written to me ", mean that you were telling the girl to take for granted that you were repeating all what she had written to you ?

A. No.

Q. Although you follow up that sentence by saying, " Because I feel just the same as you have expressed ? "

A. I meant to convey to her that I reciprocated all the feelings she had expressed regarding me in her letters.

20 Q. The girl's feelings to you had been that she would marry you in rain or sunshine ?

A. No.

Q. The girl's feelings to you had been that she would stand by you till the end of her life in rain or sunshine ?

A. No.

When I said that I need not repeat all that the plaintiff had said in her letters. I meant that I need not repeat that I was feeling just as wretched as she was.

30 Q. In the letter D 7 she has stated her feelings towards you to be that in rain or sunshine she would stand by you till the end of her life ?

A. No. I did not look upon that passage as an expression of any feelings towards me.

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—continued

Q. You did not associate yourself with that ?

A. Yes.

Q. Is that not a state of her feeling ?

A. When I said I did not wish to repeat all that plaintiff had said I did not include in that what the plaintiff has said in her letter that she would stand by me to the end of her life in rain or sunshine.

I have replied to that passage elsewhere. This is my reply, "Do not worry, I will not tell G. B. a word of what you have told me nor will I tell anyone a word of it. But darling, you must be extremely careful of yourself and do not allow people to treat you in the same manner that you were treated when you were a small girl of 8 or 9 years."

10

To Court:— Q. That is your reply to her offering you the devotion of a life—time ?

A. Yes.

Q. Do you tell his Honour that you did not want to tell anybody that the plaintiff would stand by you till the end of her life in rain or sunshsne ?

A. No.

Q. The plaintiff in D7 was living in the hope that she would marry you ?

20

A. Yes.

Q. And she said she will be faithful to you in rain or sunshine till the end of her life ?

A. Yes.

Q. You say in P1 after the sentence, "Girlie, I do not think I need repeat all what you have written to me because I feel just the same as you have expressed," "I can assure you that all the expectations and dreams you have of your future will not be in vain." What were her expectations of her future ?

30

A. Of having a happy life if we married.

Q. You were assuring her that you would marry her ?

A. As far as I was concerned, if the other conditions were fulfilled, I was assuring her that I would marry her.

Q. There is not a line in P1 about any conditions you refer to in that last answer ?

A. There is.

Q. Read to me the lines in P1 which impose the conditions ?

10 A. "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 could put it to him."

Q. Any other sentences in that letter which relate to conditions that you have in mind ?

A. No.

Q. In her letter D8 the plaintiff had referred to delay in completing the house as the delay for the engagement ?

20 A. She has mentioned the fact that the house was still being built.

Q. And that was the cause of the delay in the engagement, according to D8? In D8 plaintiff puts down the cause of delay in the engagement to the delay in the completion of the house ?

A. Yes.

Q. In P1 you wrote, "You can confidently hope" ?

A. Yes.

Q. What was she to confidently hope ?

30 A. That this proposal would come through, if the conditions were carried out.

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—continued

Q. Which proposal ?

A. My proposal to plaintiff.

Q. And you were assuring her that you would marry her as far as you were concerned ?

A. Yes.

Q. "The sooner it is the better," what is ?

A. The dowry.

Q. Not the engagement ?

A. No.

Q. Was unnecessary delay in providing the dowry bad for you? 10

A. Yes, because the matter might drop on this question. It was bad for both.

Q. Was it bad for you ?

A. Yes.

Q. Because you had made up your mind to marry the girl ?

A. I was expecting to marry the plaintiff.

Q. You told her in P1, "I want to marry you and any delay in providing the dowry will be bad for both ?"

A. Yes.

Q. You told us that you had told Boange, certainly before December, 1950, to provide the dowry ? 20

A. Yes.

Q. Is that true or false ?

A. That is correct.

Q. You say in the letter P1, "I can tell your Daddy about it but I don't want to hurt your feelings."

That is because you had never told Boange one word about it ?

A. I told him.

Q. You were pretending to the plaintiff that you did not speak to the father about the dowry because you would hurt her feelings?

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—continued

(Mr. Wickremanayake objects and the witness is asked to stand out. Mr. Wickremanayake objects to this question on the ground that it presumes something which is not in the evidence so far, and that the word "it" in the letter refers to the delay in providing the dowry and not to the dowry itself. He says—

10 Mr. Thiagalingam is not entitled to assume that the witness has stated that he had never spoken to the father about the matter of dowry.

Order— I feel that there is not much merit in this objection and the question is allowed).

A. No.

Q. You wanted the girl to speak to the father about the dowry?

A. Yes.

Q. You had spoken to her father about the dowry earlier?

A. Yes.

Q. Had you told him that the dowry must be given?

A. Yes.

20 In May, 1950 when I went he said he would give it in June, 1950 and have the engagement in July. Later I met him at my brother's and I asked him why he did not give this dowry and he said that he was having heavy expenses and that he was finding it very difficult at the moment. I had questioned Boange about the delay in giving the dowry.

Q. Had that hurt the feelings of the plaintiff?

A. No.

Q. Your questioning the father about the delay in giving the dowry did not hurt the feelings of the plaintiff?

30 A. No.

No. 9.
 Defendant's
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 Cross—
 Examination
 —continued

Q. Why did you write in P1, "I can tell your Daddy about it but I do not want to hurt your feelings. It would be better if you could put it to him?"

A. I had spoken to him earlier about the dowry. I did not want to speak to him again because he and I may have had some hot words and displeasure would have been caused.

Q. Would it be that you were telling the girl to speak to the father about completing the house quickly?

A. No.

Q. The letter P1 read in conjunction with D7 and D8 alone, independently of any conversation you had with the plaintiff, relates only to delay in completing the house?

10

A. No.

Q. You go on to say in P1, "Darling, my thoughts are always of you every day and I am most anxiously waiting till the 7th of next month. So please on no account must you keep away from coming on the 7th."

Q. Was it to discuss with her any question of politics or ordinary matters of every day occurrence?

A. No.

20

Q. Had you been making love to her earlier?

A. Yes.

Q. Fondling her?

A. No.

Q. By making love what do you mean?

A. I spoke to her.

Q. You never touched her at all?

A. No.

Q. Then you go on to say in P1, "Well Girlie, Sweet heart, what do you want from Nuwara Eliya. Don't tell me you want the lake."

30

Q. You were prepared to offer her the lake ?

A. No.

Q. Was that conditional on dowry being given.

A. No.

Q. "I always think how wonderful it would have been if you could have accompanied me on this holiday—just you and me with all the cares and worries of this world forgotten for ten glorious days." What were the cares and worries you had at that time ?

A. That was with regard to my work.

10

Q. No other cares and worries ?

A. No.

Q. During the ten glorious days you were only going to converse with her ?

A. I was expressing a hope that if we had been married we would have gone for the holidays and had ten glorious days.

Q. So you made it clear to her that you wanted to marry her ?

A. I was always hoping to marry her.

I understood and she understood that we were going to marry each other provided these matters came right.

20

Q. Were you writing to make that understanding perfectly clear ?

A. No.

(Adjourned for lunch)

Trial resumed.

C. V. UDALAGAMA, recalled, affirmed.

Further Examined:—

Q. In P1 you address the letter to her as, "My darling, dearest Girlie" and ended it as, "Cheerio, my Sweetheart with love?"

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 —continued

A. Yes.

Q. All those terms of affection were conditional on your getting the dowry?

A. Yes. Not in the sense I said, "Provided this, provided that."

Q. You were at Nuwara Eliya during the December vacation?

A. Yes.

Q. Had you seen P8 before?

A. Not this.

Q. Never seen it till it was produced in Court?

10

A. No.

Q. You know the plaintiff in evidence said that you gave this to her?

A. Yes.

Q. Did you at that stage tell your lawyers, "No, I did not give it to her?"

A. Yes.

Q. You also told your lawyers that all you gave her were small negatives of this and other snaps taken in Nuwara Eliya?

A. Yes.

20

Q. With her own money she got the enlargement made?

A. I do not know whether it was with her own money, but she has got it.

Q. With whose money?

A. May be with her father's money.

Q. She was earning money herself at that time?

A. Yes.

Q. You had not spent a cent on her?

A. No.

Q. She had spent money in getting your photograph and sending you presents ?

A. She sent me those two books and she has taken this photograph and some sweets she sent me.

Q. You went to Point Pedro and when you were at Point Pedro, within a week of your going to Point Pedro, plaintiff wrote to you D9 on the 6th March, 1951 ?

A. Yes.

10 Q. That was a very long letter running into 5 pages of blue note—paper ?

A. Yes.

Q. In that letter she says that she was miserable after you left for Point Pedro ?

A. Yes.

Q. Then she goes on to say that she returned from home after the week—end because she was hoping to receive a letter from you ?

A. Yes.

Q. And in fact you had written to her ?

20 A. Yes.

Q. D9 is in the nature of a very sweet love letter ?

A. Yes.

Q. Then she says in that letter, "I was very glad about your new appointment, but I only wish it had come in April and not so suddenly." Do you know the reason for it ?

A. Yes.

Q. What is the reason ?

A. That she would have had my company here in Kegalle till the holidays started.

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 —continued

Q. Or was it the reason that she was hoping to marry you in April ?

A. No.

Q. "I don't intend coming here next term. Therefore I don't mind if the Carnival goes on for some time." She had made up her mind to leave teaching at Balika Vidyalaya at the end of the first term in 1951 ?

A. I do not know whether she had decided that, but she expressed an intention of not coming back.

Q. Do you know the reason for that ?

10

A. Because I had left for Point Pedro.

Q. Not that she was hoping to marry you in April ?

A. No.

Q. She goes on to say in that letter that she picked up courage and told her father how unfair it was for keeping you waiting for a long time ?

A. Yes.

Q. She says that certain dates are being sent to you for the engagement ?

A. Yes.

20

Q. But that your brother wanted the date postponed ?

A. Yes.

Q. Then she goes on to say, "Darling, you select a date in April, write to me and I will fix up the rest ?"

A. Not exactly that.

Q. Exactly what ?

A. She wants me to consider choosing the 11th as it would be advantageous to her so that she may have her brothers and sisters with her and that I would be able to get some days off for the New Year.

30

Q. And that she would fix up the wedding ?

A. She has asked me not to worry about it and that she will see that the wedding takes place.

Q. You had that letter in your hands about the 8th or 9th of March ?

A. Yes.

Q. By that time had your brother the Doctor come to see you at Point Pedro ?

A. No.

10

Q. He is still in Court today ?

A. Yes.

Q. He is in Government Service ?

A. Yes.

Q. Every time he has come to Court for this case ?

A. Yes.

Q. After you got D9 did you write to your brother that you were worried about your matrimonial affairs ?

A. I wrote a letter, but I am not sure whether it was after I received D9 or before.

20

Q. After you received the letter were you worried about the matrimonial affairs ?

A. Yes.

Q. Although she told you, " Darling select a date in April, I will fix up the rest ? "

A. I was still worried.

Q. Were you worried because you were keen about giving her up ?

A. No.

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 —continued

Q. I put it to you that as a Judge you were quite content to the view that you might contract a better marriage? You took the view that you can easily contract a better marriage?

A. No.

Q. You wrote to your brother soon after you received D9, saying that you were worried over your matrimonial affairs?

A. I must have written. I do not know whether it is before or after D9.

(Shown D17). Q. That letter bears the date 14th March, 1951 and is written by your brother?

10

A. Yes.

Q. That refers to a letter you had written to him?

A. Yes.

Q. After you got D17 into your hands, it was only after that that you wrote P10 to the plaintiff on the 16th March?

A. I want to see the letter P10. I cannot swear to it whether at the time I wrote P10 I had this in my hands or not. I cannot bind myself to say whether I had D17 with me at that time. It must have been about that time.

Q. Looking at the whole of the letter D9, do you agree that the girl intended to give up teaching in Balika Vidyalaya at the end of the first term because she was wanting to get married to you in April?

20

A. No.

Q. In D9 she says she intends to give up teaching?

A. Yes.

Q. She says, "Select a date in April, and I will get married to you?"

A. She says, "I will see that we get married soon."

Q. You wrote P10 on the 16th of March and all you told her in that letter in reply to D9 was, "I do not think you should give up your teaching at the Vidyalaya?"

30

A. "I do not think you should give up your teaching at the Vidyalaya. After all it would be quite dull for you at home doing nothing."

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—Continued

Q. That is all you wrote in reply to the entire contents of D9?

A. Think before P10 I had written another letter.

Q. You wrote nothing before P10, after you received D9?

A. I think there was another letter.

Q. As far as D9 is concerned was your reply to D9 P10?

A. I think I wrote an earlier letter after D9.

10 Q. Is P10 the reply to D9?

A. Yes.

Q. And your earlier answer that you think there was an earlier letter after D9 is wrong?

A. My previous answer is incorrect, that there was a letter after D9 and before P10.

Q. In P10, the only answer in the whole of P10 to the contents of D9 is the sentence—"I do not think you should give up teaching at the Vidyalaya?"

A. No.

20 Q. What else is the sentence in P10 which is an answer to D9?

A. I have replied, "I do not think I will be going anywhere for Easter", up to "I have not received one yet."

Q. Any other thing in P10 which is a reply to D9?

A. Nothing else.

Q. The dates were sent to you by Anula with the covering letter D16 of 19th March, 1951?

A. Yes.

Q. At that time were you thinking of giving up the girl?

A. No.

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 —continued

Q. At that time was anybody suggesting to you Nugawela's daughter ?

A. No.

(Shown P3). Q. That is Padmini's letter of the 20th March, 1951 ?

A. Yes.

Q. At the date of that letter or about that time you had with you the tentative dates for your engagement with the plaintiff ?

A. Yes.

Q. In that letter P3 Padmini writes to the plaintiff and says, " I wonder if he misses you ? "

10

A. Yes.

Q. Padmini had doubts whether you were missing Ira ?

A. According to her, yes.

Q. At that time were overtures made to you ?

A. No.

To Court:— Q. Why this change of attitude by Padmini to Ira on the 20th March, 1951 ?

A. I do not know.

Q. Who talked to you first about Nugawela's girl ?

20

A. I think my father wrote to me. I have not got that letter with me.

Q. When did he write ?

A. As far I remember somewhere about the 20th of July, 1951.

Q. And you at once said yes ?

A. I wrote and said I had no objection.

Q. Did you even at that stage write to plaintiff and tell her, " Look, darling, the dowry is not coming. I am changing my mind ? "

A. No.

Q. In P9 there is a reference to your uncle, in para 2 ?

A. Yes.

Q. That Uncle is your Uncle, George Udalagama ?

A. Yes. He is my father's brother.

Q. After your letter P10 of the 16th March, where you told the girl to continue teaching at Balika Vidyalaya, you wrote to her no letters in April or May ?

A. No.

10 Q. Her school vacation was at the end of March or beginning of April ?

A. Yes.

Q. Then she came back to school to teach again ?

A. Yes.

Q. Acting on your letter P10 ?

A. I do not know that.

Q. She had intended to give up teaching earlier ?

A. Yes.

Q. But you had told her to continue teaching at the Vidyalaya ?

20 A. Yes, as it would be dull for her at home.

Q. She wrote to you D28 on the 2nd May, 1951 ?

A. Yes.

Q. "I had no way of writing to you during the holidays, that is the main reason why I decided to come back ?" Is that correct or not ?

A. I cannot say whether it is correct or not, but she said so.

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 Defendant's
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 —Continued

Q. You must have had that letter in your hands about the 3rd or 4th of May?

A. Yes.

Q. That was the time that Boange came to see you?

A. I think he came to see me before I got that letter.

A telegram was sent to me. He came to see me about the 20th of April. I received a telegram sent from Madawachchi by G.B. Ellepola saying that he and Boange were coming for dinner.

Q. I put it to you that about the time you received the letter D28, G.B. Ellepola and two boys were in Jaffna?

10

A. They came before I received D28

Q. At the time you received this letter?

A. No.

Q. Was Boange in Jaffna about that period?

A. On the 20th April, as far as I remember he came directly to my place. He was not in Jaffna when I received D28.

Q. You had D28 in your hands about the 3rd or 4th of May?

A. Yes.

Q. With the letter in your hands you wrote to your father D1 on the 7th of May?

20

A. Yes.

Q. There you refer to your marriage question as a nuisance?

A. I do not think so.

Q. You refer to your marriage as a business in that letter?

A. Yes.

Q. As regards your marriage business you wrote, "It looks as if this chap is unable to give the dowry promised?"

A. Yes.

Q. Had Boange ever told you he would not give the dowry ?

A. He promised to give it before the end of April.

Q. Had Boange ever told you that he will never give you the dowry ?

A. No.

Q. At any time ?

10 A. No. But always he said, "I will give".

Q. In spite of it, in D1 you said, "As regards my marriage business, it looks as if this chap is unable to give the dowry promised?"

A. Yes.

Q. "This chap" is Boange ?

A. Yes.

Q. You thought it was a decent way for you to refer to Mr. Boange ?

A. I do not see any harm in it.

20 Q. At that time had you made up your mind to throw this girl overboard ?

A. No.

Q. You say, "Hence without kicking up a row, slowly drop it ?"

A. Yes.

Q. Had you made up your mind then to give up the girl ?

A. No.

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—Continued

Q. Did you by that letter tell your father to slowly drop this matter of your marriage to Boange's girl ?

A. After the dowry was not coming I requested my father to slowly drop the matter of my marriage with the plaintiff.

Q. You did not write one word to your brother, the Proctor, about dropping this matter expressly in May ?

A. No, I do not remember.

Q. You kept Anula in the dark about this letter you wrote to your father ?

A. I did not tell her.

10

Q. I put it to you, in D1 you were only trying to cover your tracks ?

A. No.

To Court :— Q. You had made up your mind to slowly drop the matter ?

A. No.

Q. They cannot keep their what quiet ?

A. Tongue.

Q. Would it be right to say that you wanted Anula not to be informed of this letter ?

20

A. No.

Q. You say, "Do not disclose the contents of this letter to anybody ?"

A. No.

Q. Who is your Punchi Iyah ?

A. Anula's husband.

Q. The D. Day was the 21st of May ?

A. Yes.

Q. Why do you write this sentence, on the 7th of May, "Hence without kicking up a row, slowly drop it?"

A. Boange when he came to see me in April promised to give the dowry, and April came and went and the dowry was not furnished. Then I thought he will not provide the dowry and the matter will have to be dropped.

Q Even though you had given them time till the 21st of May you were content to write to your father on the 7th of May and ask him to drop the matter?

10 A. Yes.

Q. Boange told you he will give the dowry by the 30th April?

A. Yes.

Q. You had given him time till the 21st of May?

A. Yes.

Q. Then why drop it on the 7th of May?

A. I suspected that he was not going to give this dowry.

Q. All the time plaintiff's letter to you, D9 remained unanswered, except for the answer contained in P10?

20 A. Yes.

Q. All the time plaintiff's letter D9 remained unanswered except for the answer contained in P10?

A. Yes. I sent word through Anula and Boange that if the dowry was not given by the 21st of May, the matter will be dropped.

Q. Was that a loving way in which you were informing the plaintiff?

A. I did not consider it loving.

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Q. I put it to you that it is untrue ?

A. No.

Q. You told Boange to tell the plaintiff, his daughter, that the marriage will be dropped ?

A. If the dowry was not furnished and the engagement had before the 21st of May, I told Boange to tell the plaintiff that this matter would be dropped.

Q. And you told Anula also to tell the plaintiff that if the dowry was not given by the 21st of May that the thing was off ?

A. Yes.

10

Q. Did you put one question to Anula on these lines ?

A. Mr. Wickremanayake has done it.

Q. By the 7th of May you had made up your mind to give up the plaintiff ?

A. No.

Q. Even at that time the Nugawela girl was not in the offing ?

A. No.

To Court:— Q. Why were you so reluctant to write to the plaintiff that unless the dowry was provided by the 21st of May, the matter would be dropped ?

20

A. I was in a depressed state that this matter was not coming through and it was a very unpleasant thing for plaintiff, for me to inform her about it.

Q. Did the girl promise to give you dowry ?

A. No.

She and I understood that if the dowry did not come this matter will not go through.

Q. Did the girl ever promise to give you dowry ?

A. There was no specific dowry.

Q. Did the girl say, "I will give this dowry ?

A. No.

Both of us understood that the father will provide the dowry.

Q. You knew that she was unhappy in May ?

A. I thought she was unhappy.

Q. Were you not man enough to tell her, "Never mind the dowry, I will marry you ?

10 A. No.

Q. You were keen about dowry ?

A. Yes.

Q. Not the girl ?

A. I was fond of the girl also.

Q. Fonder of what ?

A. The dowry was the basis on which this whole thing was built up.

Q. The dowry business was the main spring of your love ?

A. That was a matter that was first of all decided upon.

20 Q. You knew that the girl would be very unhappy about the whole thing in May, 1951 ?

A. Yes.

Q. You did not write to her because you did not want to make her unhappy ?

A. Yes.

Nò. 9.
 Defendant's
 Evidence
 O. V.
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 Cross
 Examination
 —Continued

Q. Were you fonder of the girl or the dowry in may, 1951 ?

A. At that time the question of dowry was falling through and I did not assess my affections towards the plaintiff.

Q. By the 14th of may you wanted a minimum dowry of Rs. 25,000-00 to marry any other girl ?

A. Yes.

Q. That was a bigger dowry than what plaintiff's father had promised to give you ?

A. Yes.

Q. Even at that date, on the 14th of may, nothing had been fixed up with the Nugawela girl ? 10

A. No.

Q. Nothing had been fixed up till the 20th of July ?

A. Yes.

Q. Did you write one word to the girl during that time ?

A. No.

Q. On the 20th of July you were written to about the Nugawela girl ?

A. Yes.

Q. On the 30th of July lunch at your father's ? 20

A. Yes.

Q. Had you corresponded with Nugawela's girl by the 30th of July ?

A. No.

Q. Had you made love to her ?

A. No.

Q. Were you fond of this girl even on the 30th of July?

A. At that time I had dropped the matter. At that time I did not assess my affections at all.

Q. Had you banished her from your mind?

A. Even then I had a fondness for her?

Q. D13 is a letter of 5 pages?

A. Yes.

Q. She wrote to you on the 3rd of August?

A. Yes.

10 Q. That is four days after the lunch at your father's?

A. Yes.

Q. Had you seen the Nugawela girl by then?

A. No. Yes I had seen.

Q. When?

A. I think it was on the 26th of July. I came by train to Kurunegala. My sister sent a car and I came in that car.

Q. On the 26th of July you went to see the girl?

A. Yes.

Q. You came by train from Point Pedro?

20 A. Yes.

Q. You went by car straight to Katugastota?

A. Yes.

Q. You did not meet your brother, the Proctor and tell him one word about the proposal?

A. No.

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Defendant's
Evidence
C. V.
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Cross
Examination
—continued

Q. Nobody had told him that ?

A. I do not know.

Q Did you keep that secret from both your brother and Anula ?

A. No.

Q. On the 20th of July your father wrote to you about Nugawela's girl ?

A. Yes.

Q. On the 26th of July you came to see the Nugawela girl ?

A. Yes.

10

Q. You went back the next day ?

A. Yes.

Q. Where did you stay that night ?

A. Train.

Q. Your father was staying at that time in Kegalle ?

A. Yes.

Q. Your Mulgedera is here ?

A. Yes.

Q. From Katugastota you did not come to Kegalle ?

A. No.

20

Q. You went back to Point Pedro ?

A. Yes.

Q. Next you came on the 30th for lunch ?

A. No.

Q. Did you fall in love with Nugawela's girl ?

A. At that time I had not fallen in love with her.

Q. On the 30th of July you were still fond of the plaintiff and you had not fallen in love with the Nugawela girl ?

A. Yes.

Q. On the 3rd August plaintiff wrote to you D13 ?

A. Yes. (Counsel reads D13).

Q. The D/N referred to in D13 is Nugawela ?

A. Yes.

10 Q. In the letter D13 where the girl writes, "Late last night I got to know that he was coming to meet you soon to fix up the date of marriage"—Is that correct ?

A. No.

Q. In the letter there is a statement that there was a rumour that you were going to marry Nugawela's daughter ?

A. I was not aware of such a rumour.

Q. Swarna, the eldest daughter of Nugawela, is not yet married ?

A. No.

Q. The second one is your present wife ?

A. Yes.

20 Q. Was the D/N a trickster ?

A. No.

Q. Did he not know that you were spoken in marriage to the plaintiff ?

A. I do not know whether he knew about it.

Q. Did you tell him ?

A. I did not tell him on the 26th.

No. 9
 Defendant's
 Evidence
 C.V.
 Udalagama
 Cross—
 Examination
 —Continued

Q. The plaintiff's parents were not too happy about her marriage with you?

A. They were very happy.

Q. Was the plaintiff's father ever unhappy about giving his daughter to a briefless Advocate?

A. No.

Q. In this letter she says, "I know that whatever others may say I had you to stand by me." Was that a correct statement?

A. I do not know what she meant by it.

Q. Do you know what she meant by it?

80

A. I do not know the meaning of it. I do not know whether she meant it to be correct or not. I do not know what she meant by the statement.

Q. "But now I feel completely lost." Do you know what she means by that?

A. That she could not get married to me.

The reference to sister in D13 in the sentence, "Now that sister is also away", is a reference to Anula.

Q. This term I didn't want to come but as you told me not to give up teaching till I get married and I couldn't write to you that I came back with the greatest difficulty." When she says that, is it not correct?

20

A. No.

Q. The reason she gives for her coming back is incorrect?

A. Yes.

Q. You told her she would be feeling dull at home because you were not there?

A. Yes.

"Your snap" referred to in D13 is a negative I gave her.

Q. Did you when you read this letter think that, here was a girl heart-broken ?

A. Yes.

Q. Did you think that she had substantially written to you what was true ?

A. No.

Q. In that letter read the sentences which you say are untrue?

10 (Witness reads the letter and states "This sentence on the 1st page is untrue.") "Then a few days ago I heard that D/N had gone across and that you all were engaged. Late last night I got to know that he was coming to meet you soon to fix up the date of marriage."

That is all on the first page.

On the second page; "When she suffered from epileptic fits in school I used to always stay near her bedside till she became conscious." That is untrue.

"When others refused to wash the boils she used to get, I felt so sorry and I did it with my own hands." That is untrue.

20 "Although even in school twice they broke my friendship with three of my faithful friends." That is untrue.

"I always knew all about D/N's crafty tricks." That is untrue.

"He has ruined so many people in this same manner." That is untrue.

Page 3 ; "I never knew that they were so jealous of me. They don't mind even ruining a person's whole life in order to gain their own ends." That is untrue. There is nothing else in page 3.

Page 4 ; "As you told me not to give up teaching till I get married".....That is untrue.

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—Continued

The words, "Till I get married" are untrue.

There is nothing else on page 4.

Page 5; There is nothing on page 5 that is untrue.

Q. The incorrect statements on the first page of D13 relate to rumours she heard ?

A. Yes.

I questioned Swarna and Padmini about the statements and they denied. That is why I say it is untrue.

From what I know of Nugawela, her statement is untrue.

Q. At the time you received this letter on the 3rd of August, 10
did you know that anything was untrue ?

A. No.

Q. You knew they were the out-pourings of a girl in agony ?

A. Yes.

Q. You had not made up your mind even at that stage to marry the Nugawela girl ?

A. I had decided to marry the Nugawela girl at that stage.

Q. No dowry had been given to you by deed ?

A. No.

Q. You were not under any legal liability to marry the 20
Nugawela girl ?

A. No.

Q. You were not in love with her on that date ?

A. No.

Q. You were still fond of the plaintiff at that time ?

A. Yes.

Q. You did not think you were morally liable to marry this girl even if you did not get the dowry?

A. No.

Even to D13 I did not reply and say that I asked her father and Anula to tell her that the marriage will not take place unless the dowry was given.

Q. Here was plaintiff in agony and in misery — did you not think of saying, “Darling, forget it?”

A. At that time the matter had dropped.

10 (The witness continues to give a lengthy answer referring to some other letters he received from Boange and other matters which are no answer to the question, and I refuse to record it. This note is made at the request of Mr Wickremanayake).

Q. My questions to you relate to plaintiff? You tell his Honour that you were keen about not hurting the girl. Here was a girl in agony. Even then you did not think it proper to write to her and say, “Your dowry has not been given and although I love you, I do not want to marry you?”

A. No.

20 Q. You had no copies of the letters you wrote to the plaintiff?

A. No.

Q. She wrote to you after that three or four letters?

A. Yes.

Q. Have all letters that the girl wrote been produced?

A. Yes.

Q. After D13 you got D14 of the 14th of August and D15 of the 15th of August?

A. Yes.

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Defendant's
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—continued

Q. Do you think that any of those letters D14 or D15 contained anything untrue?

(Shown) D14. The witness reads D14).

A. In D14 there is nothing untrue.

(Witness reads D15). In D15 there are no statements which I can say are untrue.

Q. Before the end of August all the dowry promised had been implemented?

A. No.

Q. Marikkar had written to you?

10

A. Yes.

I did not reply that.

Q. By the end of August your engagement to the Nugawela girl had not taken place?

A. No.

Q. You were not in love with her till after marriage?

A. After the engagement I fell in love with her. Before the date of the engagement I had seen her twice—once in August, and early in July.

Q. What is the maximum tax you paid when you were an Advocate?

20

A. Rs. 480-87 for the Income Tax year ending 31st March, 1951.

(Mr. Thiagalingam calls for the Income Tax Notice for the Assessment Year 1950/51. Mr. Wickremanayake hands it over marked D29.)

Q. Give me the Assessment Notice for the year ending 1950?

A. I have not got that. D29 is the only Assessment Notice I have. The earlier ones I had left behind and they are missing.

Q. You were summoned to produce the returns for the years ending 1949, 1950 and 1951 ?

A. Yes.

Q. You have produced only the Notice of Assessment for the year ending March, 1951 ?

A. Yes.

Q. After you became Magistrate ?

A. Yes.

10 Q. Do you tell his Honour that you paid 3 figures in Income tax before the period covered by D29 ?

A. I am unable to say that without looking at the return.

Q. Did you have an average income of seven to eight thousand rupees a year for about 2 or 3 years before you became a Judge ?

A. I cannot say.

Q. You cannot give the faintest idea whether you paid anything even amounting to Rs.100.00 before that ?

A. I cannot remember.

20 Q. Didn't you think it your duty after you were noticed to produce the returns, to ascertain the amount you paid in Income Tax, particularly in regard to the answers you gave on the last date ?

A. No.

Q. Did your brother appear for you in any case ?

A. Yes.

Q. You had smashed your car ?

A. Yes.

Q. Some relative of yours was in the car ?

A. Yes.

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 Defendant's
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 Cross—
 Examination
 —Continued

Q. Who was in the car ?

A. Carl Ratwatte, Percy Udalagama, George Udalagama
 my father and myself.

I was paid compensation for the car.

Q. Some of the occupants in the car claimed compensation
 for personal injury ?

A. Yes.

Q. The Insurance Company declined to pay ?

A. I do not know that.

Q. Were you sued ?

10

A. Yes.

Q. Did your brother file answer ?

A. Yes.

Q. Who sued you ?

A. My Uncle.

Q. The claim was later on paid ?

A. Yes, outside Court.

C. V.
 Udalagama
 Re-
 Examination

Re—Examind Q. When summons was served on you what
 did you do ?

A. I informed the Insurance Company. I sent the summons
 and a copy of the plaint to the Insurance Company. The Insurance
 Company sent Mr. Geddes down to retain my brother. My brother
 appeared for me.

20

Q. It was put to you that Mr. Boange was against this
 marriage because you were a briefless Advocate ?

A. Yes.

Q. When was this proposal first made to you ?

A. In January, 1950.

Q. You have already produced marked D29 an Income Tax Assessment on certain income ?

A. Yes.

Q. That shows Rs. 907-00 profit from employment as Magistrate ?

A. Yes.

I was Magistrate before 31-3-51 for one month. Previous to that I was practising for 11 months as an Advocate.

Q. It shows your income as profits from trade—professional ?

A. Yes. Rs. 7925-00

10

Q. When calculating your income for tax purposes, did you deduct expenses incurred by you in earning that income ?

A. Yes, such as travelling and payment of my clerk. I sent the return in April, 1951.

Q. You were in Point Pedro at the time you received this ?

A. Yes.

Q. Since you became a Magistrate have you been preserving certain documents ?

A. I have got a file.

20

Q. Your Income Tax Assessments earlier than that — was there any need to preserve them

A. No. I left them at Kegalla. I looked for them but I could not find them.

Q. At the time of this proposal there was an income of Rs. 8000-00 a year at least ?

A. Yes.

My home Town is Kegalle. My relatives and friends are at Kegalle. When I started practising at Kegalle there were three Advocates in Kegalle—Mr. R. F. Perera was the most senior. Then myself and next Mr. Wickremasinghe.

30

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Defendant's
Evidence
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Udalagama
Re—
Examination
—continued

Q. Were your prospects at that stage of getting a great income bright ?

A. Yes.

Q. How many of your relatives are here as Proctors ?

A. Two of my brothers were practising here. One became a V. T. President.

Q. It was put to you that Boange came to see you somewhere in May ?

A. Yes.

Q. It was put to you that he came by the 2nd. of May ?

10

A. Yes.

Q. You told the Court that it was on that visit of Boange that he promised to finalise the dowry before the end of April? "

A. Yes.

Q. Could he have made such a suggestion to you in May ?

A. No.

Q. You told the Court that G. B. sent you a telegram from Madawachchi ?

A. Yes.

I produce marked (D31) the telegram.

20

(Shown D31). This is the telegram G. B. sent me. It is dated 20th April. Boange, G. B., plaintiffs brother Abeya and another cousin of G. B. came for dinner on the 20th April.

Q. How long did Boange stay there ?

A. He came on Friday evening and left on Sunday morning.

Q. Did he come to Point Pedro at any other time ?

A. No.

Q. You told the Court that you and your mother had gone to see Boanges and you gave the date of the visit in May ?

A. Yes. Anula also went with me.

Q. P12 is dated 11th June ?

A. Yes.

Q. At the time you went was there any portion of the house pulled down or being renovated ?

A. There was no renovation to the house.

10 (Mr. Thiagalingam objects to the question as this does not arise in cross-examination. I hold that this does arise because questions were put in cross—examination on this matter).

I draw the Court's attention to the evidence of Anula at Page 73. "When I went with Teddy's mother, the front portions of the house was not pulled down. That was in May, 1950. In September or October, 1950 the front portion of the house had been pulled down for renovations."

Q. In P1 you say, "This matter has been hanging fire since June ?"

A. Yes.

20 Q. It was put to you over and over again that what was hanging fire and referred to as hanging fire in the plaintiff's two letters to you and your letter P1 was the completion of the house ?

A. Yes.

Q. In P1 you were cross-examined minutely about the "it" ?

A. Yes.

Q. In June had that house come down at all ?

A. No.

Q. What is "it" that was referred to ?

A. Giving of the dowry.

30 Q. In what form ?

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 Defendant's
 Evidence
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 Re-
 Examination
 —continued

A. Depositing the money and writing of the deed.

Q. It has been hanging fire means ?

A. The depositing of the money and writing of the deed.

Q. The two letters D7 and D8 and P1 were in December ?

A. Yes.

Q. You were questioned with regard to P1 as being a reply to D7 and D8 together ?

A. Yes.

Q. At the time that D7, D8 and P1 were written, with regard to this question of dowry what was the position ?

10

A. At that time the amount of the dowry had been agreed upon and that it would be finalised before the engagement was had.

Q. Were you aware of that agreement ?

A. Yes.

Q. Was the young lady aware of it ?

A. Yes.

Q. As a result of that in what belief or expectation did you write to each other ?

A. That once the dowry was given the proposal would come through.

20

Q. Did you at that time anticipate that Boange would default ?

A. No.

Q. She wrote to you in the belief that the dowry has been fixed upon ?

A. Yes.

Q. Does D7 contain many matters ?

A. Yes.

Q. When you replied by P1, you had both D7 and D8 ?

A. Yes.

Q. Did you reply to various parts of these letters in P1?

A. Yes.

Q. In D7, "G. B. came here a few minutes after we came home. He was very good and did not try any of his pranks on me," what is the reference there to, "he was very good and did not try any of his pranks on me?"

10 A. Earlier plaintiff had told me that G. B. used to try to molest her, in the sense that he used to catch her and feel her and things like that. I had told her not to allow him to do such things.

Q. "I will stand by you till the end of my life" — is it disconnected from her remarks about G. B.?

A. No.

Q. What does she mean by that?

A. That she will not allow others to have anything to do with her. Owing to the earlier incident I had told her not to allow others to do anything.

Q. Had any of you any doubt in your mind at that time that this marriage would fall through?

20 A. No.

Q. "I need not repeat all that you have said,... Girlie, dear, I have been missing you very badly these days." Has she in D7 or D8 referred to missing you?

A. Yes, in D7.

Q. You re-echo certain of her sentences?

A. Yes.

Q. What were the kind thoughts referred to?

A. It refers to my driving carefully.

Q. To what particular passages in the letter do you refer when you say, "Girlie, I do not think I need repeat all what you have written to me?"

30

No. 9
Defendant's
Evidence
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Re-
Examination
—continued

A. I referred to certain passages.

Q. To what particular passages did you refer when you used those words, "I do not think I need repeat all what you have said?"

A. To the next passage in D7 — "The other day I was anxiously waiting to meet you before leaving, but I had to come away with a heavy heart, as Daddy came early. I am still feeling wretched without you. The evenings are unbearable when I think of you, darling. I wish I could fly back to you. I don't know how I will stay here all alone till the 7th."

Q. Any other passage ?

A. There are no other passages in D7 which I am referring to.

10

Q. In D8 ?

A. "Though I am here my thoughts are with you my love. Day and night, I think of nothing else but you my darling."

Q. Take the paragraph, "G. B. came here a few minutes after we came home", and ending "I will always be faithful to you, my darling." Where is your reply to that paragraph ?

A. "Don't worry I will not tell G. B. a word of what you have told me, nor will I tell anyone a word of it. But Darling you must be extremely careful of yourself and don't allow people to treat you in the same manner that you were treated when you were a small girl of eight or nine years. Show them a little reservation on your part and I am sure they will understand."

20

Intd. E. A. V. de S.

D. J.

15. 1. 54.

Further hearing on 19. 1. 54. and thereafter on 22. 1. 54 fixed provisionally.

Intd. E. A. V. de S.

D. J.

D. C. 7873

19. 1. 54

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Examination
—continued

Appearances as before.

C. V. Udalagama, recalled, affirmed.

Further Rexxd:—

Q. You were questioned in xxn. about acts of endearment?

A. Yes.

Q. Did you think it proper to kiss the girl before the engagement?

A. No.

10 Q. Apart from kissing the girl, where was it you were able to meet and talk with this girl?

A. In the verandah of Mr. C. H. Udalagama's house. That was the only place.

Q. At times were there others in the verandah?

A. Yes.

Q. At other times, though there was nobody in the verandah there were others about the house?

A. Yes. This is an open verandah.

20 Q. You were cross examined about some remarks Anula made to you. This question was put to you - (Vide page 150 of the evidence) - "Q. Did Anula at any time show anxiety in regard to your talking to the plaintiff before you were formally engaged to her?" and you answered - "No"?

A. Yes, that is so.

Q. The other question was - "Did you tell her that you will not let down the girl?" and you answered - "No"?

A. Yes.

Q. What did she tell you?

A. She told me to remember that I was not engaged yet.

Q. What did you tell her then?

30

A. I said, "Don't worry, I am fully aware of it."

Q. Did you think it proper to indulge in any acts of endearment before you got engaged?

A. No.

Q. In what circumstances did Anula make that remark?

A. One day when I was talking to plaintiff alone in the verandah, Anula came and told me to remember that I was not engaged.

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—continued

(Page 60 of evidence referred to).

Q. There is a question — “ Was Teddy in the habit of coming to your home, were you annoyed, and did you tell Teddy anything about it ? ” Anula's answer is—“ I thought Teddy should not come often to my house. I thought there should be a formal engagement before Teddy continued to meet plaintiff so frequently in my house.”

And the question — “ What did Teddy reply ? ” and Anula's answer—“ He said, “ You need not mistrust me ”. I understood by that that he would not let down the girl.”

A. Yes.

10

Q. In plaintiff's letters to you is there one reference anywhere to any acts of endearment between the two of you ?

A. No.

Q. Was there anything other than conversations between the two of you ?

A. No.

Q. Your letter itself does not make any reference to any acts of endearment ?

A. No.

Q. Her letters D7 and D8 end up with love and kisses ?

20

A. Yes.

Q. In P1 you do not end with kisses ?

A. No.

Q. You were questioned about presents ?

A. Yes.

Q. You said you had given her no presents ?

A. Yes.

Q. You were cross—examined as to whether giving of presents would render you liable in a breach of promise action ?

A. Yes.

30

Q. Was there any reason for you to deny giving presents?

A. No.

Q. Why didn't you give her presents?

A. Because there was no formal engagement.

There is no reference in her letters to presents I have given her.

Q. There is a reference to a photograph?

A. Yes.

Q. P13 was produced with your own signature — C. V. Udalagama—on it?

10 A. Yes.

Q. If you gave it as a present you would have written something more than that on P13?

A. Yes.

Q. These are cheap editions of some novels?

A. Yes. Rs. 1-25

Q. Was it possible for anybody going away from your house by train or car to want to remove a book to read on their way?

A. Yes.

I have no recollection of that book.

20 Q. Plaintiff spoke to a number of presents given by you?

A. Yes.

Q. At that time did she refer to this Book?

A. No.

(Pages 138 and 139 of the evidence referred to).

Q. You were questioned very closely about the fact that you did not find out by questioning the plaintiff whether she was willing to marry you, before you wrote to her?

A. Yes.

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Defendant's
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Re—
Examination
—continued

Q. After the promise was made to give a certain dowry in a particular way you spoke to plaintiff ?

A. Yes.

Q. From the way in which she spoke, did you have any reason to doubt her willingness to get married to you ?

A. No.

There was no need to put the question direct to her.

Q. Who wrote first ?

A. Plaintiff wrote to me first.

Q. So far as Kempitiya's proposal was concerned, what was the dowry in that case ?

10

A. Two to three lakhs.

Q. Who was most keen about bringing off that marriage ?

A. My father.

He was keen because of the dowry.

Q. In spite of the largeness of the dowry did it drop off ?

A. Yes, because I did not like the girl. There were several factors owing to which I was not willing to marry her,

Q. What were the reasons ?

A. The girl was 15 years old. She was not educated.

20

She was the only child of the parents. She was hardly able to speak in English.

Q. If you were wanting dowry, you would have got a better dowry than the one Kempitiya's would have provided ?

A. Among Kandyans I do not think, but outside I could have got.

Q. It was asked how C. H. did not know about Kempitiya's proposal ?

A. Yes.

Q. Why didn't he know ?

A. At the time my father was negotiating the marriage, G. B. also was trying to get married to that same girl. So my father did not want that matter mentioned. G. B. is a brother of Anula.

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—continued

Q. Many questions were asked about Dr. Udalagama. Who is the eldest member of your family ?

A. The Doctor.

Q. Among people of your upbringing, it is the elder brother who takes a deep interest in the welfare of the others of the family?

10 A. Yes.

Q. Some suggestton was made that he had a marriageable daughter and for that reason he wanted to break up the engagement ?

A. Yes.

There is no truth in that.

Q. Among Sinhalese people what is considered to be the best marriage ?

A. The marriage of Avasa cousins. That is father's sister's daughter or mother's brother's daughter.

Q. To whom is your brother's daughter engaged ?

20 A. To my sister's son.

Q. What is his name ?

A. Proctor Ranaraja of Kandy.

Q. In one of the letters there is a reference to Shelly ?

A. Yes. He is Proctor Ranaraja who is engaged to my brother's daughter.

Q. How long is that engagement going on ?

A. For two years.

Q. Apart from being a Proctor, what was Ranaraja's record at School ?

No. 9.
Defendant's
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Udalagama
Re—
Examination
continued—

A. He attended St. Thomas' College. He won his colours in Cricket, Boxing, Football and Athletics.

Q. With regard to the Bank appointment, it was suggested to you that you were telling lies?

A. Yes.

Q. The Central Bank came into existence recently?

A. Yes.

They advertised for a number of jobs in different grades

Q. You applied for what grade?

A. For the grade that was giving a salary of Rs. 1,500.00 I went for an interview and I was asked what salary I would take, I said I would accept, Rs.1200.00.

10

Q. Did you take trouble to find out who got appointed to the various grades?

A. No.

Q. After you became Magistrate were you written to again by the Central Bank?

A. Yes, but I did not take any notice.

Q. You were questioned with regard to the selection of a date in April?

20

A. Yes.

Q. You remember that letter by plaintiff?

A. Yes.

Q. Was it a date for the marriage?

A. No.

Q. Could the marriage have taken place without the engagement?

A. No.

Q. Could the engagement have taken place without the dowry being settled?

30

A. No.

Q. You were questioned about D13, the letter written to you by plaintiff ?

A. Yes.

Q. What was the last date given for the proposal to be finalised ?

A. 21st. May.

Q. After 21st of May did you receive any letters from plaintiff before D13 ?

10 A. No.

Q. After the 21st of May did you receive any letters from anybody in connection with this proposed marriage ?

A. No, until the 2nd. August.

Q. On the 2nd. August Boange wrote to you saying that he was ready to finalise the dowry ?

A. Yes.

Q. Prior to that date, are you aware that Boange had seen Nugawela's car at your father's house ?

A. Yes.

20 Q. He had a long conversation with C. H. ?

A. Yes.

Q. You say that letter was untruthful ?

A. Yes.

Q. Why ?

A. Because the matter had been dropped and suddenly plaintiff started writing about all sorts of things about my present wife and their people.

(D15 referred to).

No. 9
Defendant's
Evidence
C. V.
Udalagama
Re—
Examination
—continued

Q. It was put to you that the delay referred to was the delay in completing the house ?

A. Yes.

Q. Was it correct ?

A. No.

Q. A portion of the house according to Anula was pulled down in September ?

A. Yes.

Intd. E. A. V. de S.

D. J.

19. 1. 54

10

Defendant's case closed reading in evidence D1 to D31. Further hearing on 8,9 and 10th of February, 1954. No other dates are suitable to Counsel.

Intd. E. A. V. de S.

D. J.

19. 1. 54

No. 10.

Addresses to Court.

No. 10
Addresses to
Court DC. 7873.

20

Mr. Wickremanayake addresses Court :—

He refers to the pleadings and position taken up by plaintiff in the case, and states that there are two cases involved. He refers to the amended plaint of 18. 2. 52 Paragraph 2—proposal of marriage to plaintiff's parents.

Para. 4; the said promise of defendant to marry plaintiff.

Paragraph 6. He stresses on the date March, 1951.

He cites - 42 N. L. R. 390 Agreement to marry must be in writing and writing alone.

38 N. L. R. 261.

17 N. L. R. 425.

30 N. L. R. 274 and 310.

9 N. L. R. 62.

No. 10
Addresses to
Court
continued

Hayley on Kandyan Law at page 185 - Section 5. Defendant said that he was not prepared to marry without the consent of his parents as it was customary among Kandyans not to marry without the consent of the parents.

Anula's evidence referred to. Pages 55, 56, 59, 60, 61 Defendant's evidence at page 150.

Pages 13 and 14 of evidence.

10 Mr. Wickremanayake says that acts of endearment referred to by plaintiff are contained in page 14 - "He told me that he wished to marry, me, etc."

Anula did not treat them as an engaged couple.

Pages 63, 64 of evidence.

(Adjourned for lunch)

Trial resumed.

Mr. Wickremanayake continues:—

20 D16 referred to. Letters should be read in the light of the question of dowry, being settled. Page 71 of evidence, D1 referred to. Also D2. Pages 72, 74, 75 and 76 of evidence. Plaintiff's evidence at pages 12, 13 and 14. Plaintiff did not mention anything about presents in her letters written in December. The photograph is mentioned. Production of P13 is a piece of deliberately prepared dishonesty by plaintiff's father. Pages 17, 20, 21 and 25 of plaintiff's evidence. D6 referred to. No reference to a promise to marry in D6. Oral promise to marry is false in the light of D6.

Pages 26 and 30 of evidence. D7 referred to.

Intd. E. A. V. de S.

D. J.

19. 1. 54

No. 10
Addresses to
Court
—*continued*

Further hearing on 8, 9, and 10th February, 1954.

No other dates are suitable to Counsel.

Intd. E. A. V. de S.

D. J.

D. C. 7873.

8. 2. 54

Appearances as before except that Mr. Advocate L. Weerasekera also appears instructed for plaintiff.

Mr. Wickremanayake continues:—

Defendant's case is not that there was a promise to marry subject to the condition that it will be fulfilled if dowry was given, but at most there was a tacit agreement between the parties that they would marry provided the dowry was given. There was no express promise on either side.

10

Acts of familiarity spoken to by plaintiff — talking together alone, giving presents.

Plaintiff says, "I was satisfied that the letter of demand contained the instructions I had given him.

I saw the letter of demand before he sent it." Plaintiff and amended plaintiff set out the date of the breach as March, 1951. Para. 6 of plaintiff. Defendant's case put to plaintiff

20

"I had discussions with my father about the alleged breach of the engagement." Plaintiff was aware that her father went to Point Pedro to see defendant

Plaintiff admits that her father and mother went to see defendant's father in May. "Because my father was delaying the marriage defendant said, "It may be your father mother or anyone else, you must not change your mind, and therefore let us exchange letters promising to marry each other" I kept that promise.

(Adjourned for Lunch)

30

Trial resumed.

Mr. Wickremanayake continues:— D7 means “ I will not be unfaithful to you. ” Neither D7 nor D8 says anything from which a promise of marriage can be construed. “ I feel just the same as you have expressed ” in P1. Defendant says that means “ I love you and I feel dull without you. ” Mr. Wickremanayake concedes that this can also mean that he on his part says that he will stand by her till the end of his days if they got married, but there is no promise to marry.

No. 10
Addresses to
Court
—continued

10 “ The sooner it is the better ” means the the sooner the marriage takes place the better, but they had to get over two hurdles before that. This implies that the dowry should be given and the formal engagement should take place before the marriage.

“ It has been hanging fire since June ” clearly shows that it is a reference to the dowry which was promised in June. No engagement or marriage was to take place in 1950. No evidence of this. “ Nothing appears to have been done ” makes it clearer. Plaintiff’s father had already agreed to the marriage, so that the question of delay and dislike to speak to the father cannot mean speaking about the marriage.

20 D9 - “ How unfair he has been in keeping you waiting ” “ You ” refers to keeping defendant waiting with regard to the dowry and it cannot refer to anything else — to the marriage or to the consent to the marriage. Defendant could not have replied to D9 because his reply might have hurt the feelings of the plaintiff if he expressed his views of her father’s conduct in the matter.

Boange has not given evidence. Inference under section 114 should be drawn against him. D18 : Boange says, “ For practicable purposes there was a positive agreement on the part of Teddy to marry my daughter. ”

30 D19 refers not to letters promising to marry but to letters of endearment. “ Positive understanding you gave me that you would get married to her. ”

Question of damages. He cites 47 N. L. R. Pages 505 and 508.

Mr. Wickremanayake refers to the submissions made by Mr. Advocate Misso on 20.6.52: "Later P1 will only be evidence of a promise already existing. The plaintiff's position is that the promise was made in Kegalla within the jurisdiction of this Court." D6 does not refer to a promise to marry. Criticism of defendant's evidence made by plaintiff's Counsel was unfair and unjust.

Mr. Thiagalingam in reply:—

Letters in 3 groups.

1st. group: P4, P5, P6 and P7.

10

2nd Group: P2, D7, D8, P1

3rd group: P9, D9 (D17), P10, (D16), P3, D28, D1, D2, D11, D13, D14, D15, D3, D10, D18, D19, and D27.

The cases cited fall into two groups.

1st. group:— 1 A. C. R.

Jayasinghe vs. Perera — 9 N. L. R.

30 N. L. R. 274.

30 N. L. R. 310.

1 Ceylon Law Journal — back paging 46.

2nd. group:— 17 N. L. R. p. 425.

20

38 N. L. R. p. 261.

42 N. L. R. p. 390.

None of the cases have been overruled.

Chapter 95 Section 19, Sub-section 3 proviso. "Unless such promise of marriage shall have been in writing."

He cites the preamble - Chapter 95.

Chapter 95 does not apply to Kandyan marriages. In the case of Kandyans no promise in writing is necessary to maintain an action, but nevertheless, he is not pressing this point. Promise is an unilateral contract. Promise should be made to a particular party. Promisor and Promisee must be there. The writing is no more than the evidence of the existing promise which can be inferred from the letter. "It is true I promised to marry you but I cannot marry you."

No 10
Addresses to
Court
—continued

01 That is a repetition in writing of the older promise made, but at the same time a repudiation of it, and is not actionable. Thus repetition by itself is not enough, but there must be something more. At the time of writing both parties must be agreed to marry each other and the writing must show that.

The question is — Do you get from the letters an immediate acknowledgement of a promise to marry ?

He cites 1903 1 A. C. R. p1.

9 N. L. R. 62.

Intd. E. A. V. de S.

D. J.

8. 2. 54.

20 Mr. Thiahalingam states that he is in a difficulty about tomorrow and will not be appearing in this Court tomorrow.

Further hearing on 10. 2. 54. and 13. 2. 54.

Intd. E. A. V. de S.

D. J.

8. 2. 54.

D. C. 7873.

10. 2. 54

Appearances as before.

Mr. Thiagalinagam continues:

He cites 21 N. L. R. 442

42 N. L. R. 390.

P4 of March, 1939 — Defendant wrote in that letter, “ I am not a free person. There are many to govern me. Cannot do what I wish in any manner. Therefore darling should not misunderstand me,” but added, “You are my only love. ”

D1 — 19. 3 38. Plaintiff’s reply to P4, the plaintiff wrote giving instances to show that for love persons of high positions had sacrificed everything, and priests and Brahmine had married Chandala girls whom they loved.

10

P6 — “ I think it is important that we being Sinhalese Buddhists should, unlike persons of other Communities, not hurt the feelings of our parents who brought us up, and be obedient to them.”

Plaintiff’s letter D3 of 13. 4. 38 — plaintiff asks for an agreemant or writing stating that defendant will marry her.

Plaintiff’s letter D5 requests a written promise to marry. Defendant’s letter P3.

Kempitiya letters demonstrate (1) the incidents of an arranged marriage.

(2) Prior to marriage there is what is called an engagement. ‘ Engagement’ used as a term of art.

20

(3) They show that the defendant is not the obedient son that he pretends to be.

(4) Defendant is not a man of character.

(5) Defendant has not been speaking the truth.

Defendant agreed with his father to marry the Kempitiya girl Re Kempitiya’s matter see evidence at pages 165, 166, 167, 168, 171, 172, bottom,173 Kempitiya’s engagement fixed for 24. 11. 49 — page 167; “I was willing to marry Kempitiya’s daughter”— p.168. “Father initiated the proposal.”

30

Defendant had selected the girl and he fixed the dowry he wanted himself.

No. 10
Addresses to
Court
—continued

Defendant spoke to his father about this in March, 1950.
p.199 - Acts of endearment, as explained by defendant.

(Adjourned for lunch)

Trial resumed.

Mr. Thiagalingam continues:—

10 Plaintiff was not cross examined on acts of endearment. On grounds of delicacy plaintiff was not examined in detail on acts of endearment.

Defendant was keen on getting married from about the end of 1949 — p. 174.

Mr. Thiagalingam reads P4 of 12. 10. 49.

P5 of 24. 10. 49.

P6 of 1. 11. 49.

The promise to marry and promise of dowry are not inter-related but should be considered separately.

20 Promise to marry: Defendant's evidence at pages, 135- "After May plaintiff spent a lot of time in Anula's house..." Pages 138, 139, 142, 144, 145, 146. Defendant spoke to plaintiff on several occasions in May before he spoke to plaintiff's father about dowry. p. 147. Defendant took plaintiff to the pictures in May before he spoke to plaintiff's father re dowry. p. 237 — Defendant told Boange and Anula to tell plaintiff that if the dowry is not finalised by the 21st of May the marriage will be dropped; p. 149.

"I must have told plaintiff that I loved her, but I cannot remember" — p. 151.

P. 152: "I did tell her that I loved her."

P11 and P12 read.

No. 10
Addresses to
Court
—continued

The formal engagement could not take place until the dowry was given.

Reference to G. B. has an effect on damages.

D7 read. Pages 26 and 31 of plaintiff's evidence.

"I have always aimed at having a pure character etc." means that "I will marry you and remain faithful to you"

It shows present willingness to marry.

"My one work is telling Mummy how unfair they are in delaying like this", refers to delaying the engagement.

"The sooner it is the better", means the sooner the engagement or the marriage takes place, the better.

10

P1 is an admission of an earlier promise to marry.

Construction of letters — Defendant's version pages 135, 138, 139, 140, 141, top, 159, 162, 174, 175, 176, 177, 216 to 226; 252 and 253.

P. 223 — "Q. In P1 you wrote, "you can confidently hope?" etc." "The sooner it is the better — what is?"

A. The dowry.

P9, D9.

Defendant diddled Boange to the belief that the dowry can wait.

20

D11, D13. D13 sent under registered cover because plaintiff had no reply to the two previous letters and she knew about Nugawela's affair.

It may be that D14 and D15 were written by the girl with the knowledge of the father, but not D13.

Plaintiff's evidence was that of Udalagama's father, Padmini Anula and plaintiff herself. Udalagama's father's evidence and Padmini's evidence not to be relied on.

They were called only for the purpose of getting their letters produced. Anula's evidence to be accepted.

No. 10
Addresses to
Court
—continued

Damages: 5 A. C. R. p. 123.

Maine on Damages, pages 519 and 520.

Mr. Thiagalingam states that the question as to whether a writing is necessary to constitute a valid promise of marriage among Kandyans is not argued by him.

He cites Nathan Vol. 1 section 365, p. 205.

Vassals on Contract, Vol 11, p. 922 section 3195.

10

Intd. E. A. V. de S.

D. J.

10. 2. 54.

Documents on 11. 2. 54.

Judgment on 10. 3. 54.

Intd. E. A. V. De S.

D. J.

No. 11.

Judgment of the District Court.

D. C. 7873.

10th March, 1954.

No 11.
Judgment
of the
District Court
10 3.54

JUDGMENT.

20

The plaintiff in this case sues the defendant claiming a sum of Rs. 20,000.00 by way of damages for breach of promise of marriage. The plaintiff is the daughter of Mr. and Mrs. M. B. Boange of Boange Walauwa, Kadugannawa. She is the eldest daughter of a family of ten children and is at present employed as a teacher in a school at Gampaha.

The defendant who is a member of the Ceylon Judicial Service is at present functioning as Magistrate, Kurunegala and was appointed to the Judicial Service as Magistrate, Point Pedro on 1st March 1951.

30

A proposal of marriage between the parties was first mooted by Nanda Udalagama nee Ellepola, a first cousin of the plaintiff. Nanda is married to a Cousin of the defendant and is the younger sister of Anula who is married to Herbert Udalagama, a Proctor practising in this Court, and a brother of the defendant. The parties are Kandyans and appear to be of the same social status.

Early in January, 1950 Nanda wrote to the defendant (D5) saying:

“ Think I have found you a match. So don't fail to come here this Saturday.”

10

On receipt of this letter the defendant and his brother Herbert went on the Saturday to the house of Nanda's parents at Malabar Street, Kandy, where, on that day, several relatives including plaintiff had come to see Nanda's mother who was lying ill at the time. The mother of Anula and Nanda is the sister of Boange, the father of the plaintiff. At the Malabar Street house the defendant met the plaintiff but was not formally introduced to her. Nanda however told the defendant that the person she had referred to in her letter was the plaintiff and the defendant being struck by the plaintiff's good looks and comeliness told Nanda that he would like to marry the plaintiff. On the way back the defendant told Herbert of Nanda's proposal and discussed with Herbert what dowry he might reasonably expect. Herbert who knew Boange well as his wife's uncle and a person for whom he had acted in his capacity both as Proctor and as Notary, told the defendant that Boange might be able to give a dowry of about Rs.10,000.00. A few weeks later, in February, the defendant met the plaintiff at a Concert in Trinity College Hall and having contrived to get a seat next to her, entered into conversation with her.

20

In the meantime Nanda had written to plaintiff's father about the proposal, but having failed to get a reply from him though she had written three letters to him, ceased to take any further action in the

30

matter. Thereafter the defendant requested Anula to take up the matter and see whether she could get a reply from plaintiff's father. Anula very rightly refused to intervene unless defendant's father himself signified his approval and on defendant's father also requesting her to do so she used her good offices in the matter and the plaintiff's father consented to the proposal. I accept Anula's evidence on the point in preference to that of defendant and his father not only because it appears to me to be the more likely but also because Anula impressed me very favourably in the box as an impartial witness whose evidence could be accepted in the main. There appears to be no reason why Anula should have intervened on her own initiative where her sister Nanda had failed. Anula is the Principal of a leading Buddhist Girls' School in the Kegalle District, known as Balika Vidyalaya, and is held in high regard in the District. Learned Counsel for both parties placed reliance on her evidence almost in its entirety.

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

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 the Vidyalaya Hostel in Kegalla and later resided 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.

10

In April, 1950 Anula wrote to plaintiff's mother. "Father-in-law (i. e. defendant's father) also wanted me to write and tell Uncle (i. e. plaintiff's father) to fix the engagement for any date convenient to him.... When would you like the engagement to take place?" (P11) Though it appears that a date in June had probably been fixed for the engagement, no engagement did in fact take place in June, but the parties continued to meet each other. The defendant became somewhat discontented over this delay and appears to have requested the plaintiff to speak to her father about it or let him do so. She was presumably not agreeable to either suggestion and the defendant seems to have attributed this disinclination on her part to speak to her father on the subject, to lack of warmth in her affections towards him. In her letter D7 written in December she seeks to refute this imputation by saying:

20

"I know you always think I don't care for you because I say 'can't' for anything at all."

Also in D8 written on the following day she goes back to the same subject and says.

30

"The house is still being built. My one work is telling Mummy how unfair they are in delaying like this. She too agrees with me, but I haven't the courage to tell Daddy. He doesn't

understand our position, and is ready to get upset for the least thing."

The defendant in reply to this said in his letter P1 of 21. 12. 50 :

10 " The sooner it is the better I think. So that you should if you possibly can have a chat with daddy and tell him that this unnecessary delay is by 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 would be better if you could put it to him."

20 The plaintiff failed to summon up sufficient courage to speak to her father who was so easily upset, neither did she take the other alternative of allowing defendant to speak to her father, and matters were allowed to "hang fire." The defendant and those interested in him naturally began to wonder why matters were allowed to slide in this manner; whether Boange was actually unable to give the dowry owing to financial embarrassment or was merely attempting to evade his promise to give the dowry. Was Boange's readiness to get upset due to the fact that he was financially embarrassed and unable to meet his commitments? The defendant had clearly pointed out that " this unnecessary delay was by no means good to either," meaning no doubt that if by his gentlemanly delay Boange meant to avoid giving the dowry, there was the danger of the proposal falling through. If this was not Boange's intention what was the necessity to delay the engagement and why was he so allergic to any reference to the delay ?

30 The fact that Boange was financially not sound came to light. His tea estate of 30 acres on which he resided with his family of wife and ten children and which was the main source if not the only source of his income, was under mortgage. Mrs. Leela Dunuwilla to whom the property was mortgaged had filed action in the District Court of Kandy in November, 1950 to recover from Boange a sum of Rs. 7535.00 and interest — Vide D20. The defendant's father

began to insist that the dowry should be finalised by executing the deed and depositing the cash in the bank in favour of the plaintiff, and the relevant documents produced for inspection before the engagement could take place. The defendant himself fell in line with his father's wishes and adopted the same attitude.

Leaving aside the matter of finalising the dowry and bringing about the engagement which the parties were anxiously looking forward to, Boange commenced renovations to his house in or about the month of September, 1950. This undertaking though it involved him in added expenditure and plunged him into further indebtedness, afforded him a good excuse for the delay. Whenever Anula or Herbert questioned Boange about the delay in giving the dowry and having the engagement, he had his reply ready, "I can always give the dowry, but I must have the engagement in the house after the house is completed." This reply Boange seems to have repeated glibly and often with automatic fatuity.

10

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 necklace 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 other-wise.

20

Though, as already stated, Anula had made it quite clear to Boange what he had to perform on his part to bring about the engagement, he did nothing whatever about it till March, 1951. On 6th March, 1951 plaintiff wrote to defendant (D9):

30

"The other day when I was going to Colombo with daddy I picked up courage and pointed out to him how unfair he has

been in keeping you waiting for such a long time. He took it up very well and went home and got four dates, March 23rd, 26th and April 9th, 11th to fix up our engagement."

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10.3.54
—continued

Defendant sent no reply to this letter and Anula wrote on 19. 3. 51 letter D16 enclosing the list of auspicious dates D16A procured by Boange, and said:

10 "Uncle wants you to choose a date from the many given that is convenient to you for your engagement and to give notice of marriage. He will settle the dowry agreed on or 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, that you may see these for yourself."

20 Anula had Boange's authority for what she stated in this letter. When Anula and Herbert went over to Point Pedro in March during the Easter holidays, the defendant informed Anula that he had decided upon the 21st May for the engagement. That was the last auspicious date on the list D16A. Anula duly communicated to Boange that defendant had decided upon the 21st of May for the engagement, but Boange failed to bank the money or have the deed executed, though he appears to have professed anxiety on his part to settle the dowry before the engagement.

Herbert before he went with Anula to Point Pedro wrote to defendant on 14. 3. 51 (D17).

"I am myself worried about your matrimonial affair. I have as I promised informed Anula to convey that the promises must be kept before anything further could take place. I think she has written to him about it, but the man has not replied yet."

30 After Anula's visit to Point Pedro, Boange himself went over to Point Pedro on the 20th April, to meet the defendant with the object, it is said, of inducing the defendant to agree to put off the engagement. Having met the defendant and sensing his feelings in the matter, Boange who went to ask for a further delay in the engagement came away having promised the defendant to finalise the dowry before the end of April. This was perhaps a bit of bluff on

Boange's part, as Boange was at this time in financial difficulties. Not only was his tea estate under mortgage and Mrs. Leela Dunuwilla's action against Boange still pending, but as documents D21A, D23A, D24A and D26A, show Boange was also indebted in smaller sums to various parties.

In this state of things defendant wrote to his father on 7. 5. 51 (D1) :

“ As regards my marriage business, it looks as if this chap is unable to give the dowry promised. Otherwise there is absolutely no reason for this failure on his part to write the deeds and deposit the money before the end of last month. I think as he is unable to keep the promise he made, the matter will have to be dropped. Hence without kicking up a row slowly drop it... If you feel like it you can ask sister-in-law (i.e. Anula)whether this man can meet the promise he made although their promised date has expired. Anyway Punchia (i.e. Herbert) might know about it and I would like to know what their intentions are.”

10

Though what Boange was up to should now have been plain to the veriest dunce, no one apparently took upon himself to inform the defendant what Boange's intentions really were. But the Boanges called on the defendant's parents early in May and the defendant wrote again to his father on 14.5.51 (D2).

20

“ As regards Boange's affair the final date I told sister-in-law when she came here was May 21st. I have not heard from her or from anyone re this matter. I am very anxious to know what is happening. Why did Boange and wife come home ? What did they say and what was their proposition ?”

Whether the Boanges on that occasion made any feasible proposition has not been revealed in the evidence. But no money was banked or deeds written, or other arrangements made for the engagement, and the engagement fixed for the 21st May finally fell through and the plaintiff found herself in a sad and sorry plight through no fault of her own or of the defendant either, .

30

Boange had played a game of bluff and lost. He was not even left with sufficient fortitude to get into the box to explain his seemingly Machiavellian conduct, if explanation were indeed possible. He however had the foolhardiness to launch this action and let his hapless daughter face the humiliation and exposure it involved while he himself lurked in the background seeking to do that "serious damage" to defendant he had foreshadowed in his letter D19.

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—continued

10 After the 21st May the defendant considered himself released from his proposal to marry plaintiff and entertained another proposal. He got engaged to Padmini Nugawela, the daughter of Collin Nugawela, the Diyawadana Nilame, in September, 1951 and married her in January, 1952.

20 On 30th July Boange who had been quiescent since his visit to the Udalagamas in May, happened to see the Diyawadane Nilame's car standing in front of old Mr. Udalagama's house where a luncheon party was given that day by defendant's father, on finalising the proposal to Padmini. That night Boange went to Herbert's house — Anula was then away in Colombo taking a post-graduate course — and argued with Herbert till the early hours of the morning trying to prevail upon him to use his influence to break off the Nugawela proposal. Herbert was unable to help in the matter or give him any hopes, and Boange having failed in his attempt wrote letter D11 to defendant on 2. 8. 51 to the following effect.

“ My house is about complete, and as I promised you that I would fulfil the promise I made to you, I shall be sending the pass book and the deed of gift for your perusal. Now I am free to carry out the engagement and wedding any day convenient to you.”

30 At last Boange put pen to paper on this subject, and his letter though terse and businesslike speaks volumes in favour of the defendant's case. Here is an implied admission that the delay was

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on his part as his house was not complete, and though it's still not quite complete he is now in a position to have the engagement and wedding on any date convenient to defendant; that the engagement had to take place before the wedding; that he had promised the defendant he would give a certain dowry which was to be partly in cash and partly in land; that he was aware he had to deposit the money and execute the deed and send on the passbook and dowry deed for defendant's perusal before the date of the engagement; that Boange had not only promised the defendant that he would give a certain dowry but he had later fortified that promise by a further promise made to defendant that he would not resile from his promise to give that dowry. It also follows as a necessary inference that defendant's proposal or agreement to marry plaintiff was subject to the condition that Boange would implement his reinforced promise to provide the dowry. Though, Boange's promise was twofold and apparently valiant, it was made merely to be broken.

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Even at this critical juncture Boange demonstrated that his word was not worth a straw. He sent no pass book as promised but went through the farcical stratagem of preparing and sending defendant, more than two weeks later, a draft deed (D4) through Proctor Mari-
kkar. Boange might have spared himself the effort because he knew or should have known full well that it was then much too late to serve any useful purpose except perhaps to serve as the first step towards launching this wasteful and lamentable litigation.

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The day after Boange wrote D11, the plaintiff herself wrote to defendant under registered cover, her letter D13.

She says:

"There was a rumour that you were going to marry D/N Nugawela's daughter. But I ignored it for your words were quite sufficient for me. Then a few days ago I heard that the D/N had gone across and that you all were engaged....I know it is my fault for not having the courage to make my father understand that delaying is no good.. "

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Though she takes the blame it was really not within her power to make Boange understand what he was persistently refusing to understand not because he was unable to appreciate that delay was no good but perhaps because he fondly believed that delay would be beneficial to him and solve his problem for him in the way that time alone is reputed to solve many a difficult problem.

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Plaintiff wrote again to defendant on 15. 8. 51 saying:

10 “ Just now I had a letter from Daddy saying he had at last finished building the the house and is prepared to have our engagement and wedding quickly.... I wrote back saying I too wish to contact you on this matter and hereafter not to postpone things any further. This time he sounded definite.”

It is clear that Boange could never have earlier sounded definite even to his daughter, but his sounding impressive so belatedly availed his daughter nothing. Defendant could not now break his word to the Nugawelas. If he did so because Boange had merely begun to sound less evasive at last, defendant would surely have fallen between two stools.

20 Now that the engagement to plaintiff had been delayed to the point of breaking and had in fact broken off, Boange's house was at last completed, and the stage set for a denouement.

I am inclined to the view that Boange delayed the engagement in spite of protests because he believed that in the course of time the defendant would come to desire the plaintiff more than gold and would marry her, being content to let beauty be her wedding-dower. But Boange had unfortunately to reckon with defendant's father, a masterful and irascible old man who was a confirmed believer in marrying for money and who had earlier sponsored the Kempitiya proposal for defendant with a dowry of 2 to 3 lakhs.

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

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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. Nonetheless plaintiff's Counsel points out that though the defendant had fixed the 21st May for the engagement he wrote on 7th May (D1) to his father saying:

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“ Hence without kicking up a row slowly drop it... Don't tell anyone anything, even those at home, for they cannot keep their tongue quiet.”

No doubt there was yet ample time for the dowry to be finalised before the engagement. The defendant however does not in this letter indicate that he had already made up his mind to drop the engagement but states that the matter would have to be dropped as the dowry had not been finalised before 30th. April as promised and when it is dropped it should be dropped with as little noise as possible.

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Plaintiff's Counsel contends that the need for enjoining secrecy was because secret preparations for the engagement with Padmini Nugawela were already going on and those negotiations were all but complete in March. He points to Padmini's letter of 20th March (P3) addressed to plaintiff, in which she says:

“ I am sure you must be missing your heart to heart chats. I wonder if he misses you.... don't you think it's better for you to continue your studies and ask him to wait?

If you had only continued at Methodist this day you would have been at the Varsity with so many after you.... Then you would have had a wider choice.”

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Counsel asks how did Padmini know that defendant would not be missing her now and why should she suggest to plaintiff to give up

thoughts of marriage just now and go to the Varsity? When compared with her previous letter dated 12. 7. 50 to plaintiff (P2), there appears in Padmini now a distinct change of front. In P2 she said:

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10 “ You are my only best friend.... Tissamma told us that at school everyone is talking of your engagement to Udalagama. Mother was anxious to know whether he has many brothers. I suppose there are unmarried ones too. But some say that he is dark and not good looking enough for a sweet girl like you. So I think he is very lucky to get someone like you. So Ira when you marry him I may be able to spend a week or so with you I must help you with your trousseau.”

In this letter Padmini takes it that plaintiff's marriage to the 'not so good looking Teddy' will take place as a matter of course while in P3 she seems to think otherwise. Oddly enough it was the hand of Padmini that filled the cup of bitterness for Ira. And strange as it may seem, Teddy's letters P9 and P10 written from Point Pedro clearly show that he was not missing Ira at all. In P9 of 4. 3. 51 all he says about Ira is:

20 “ I hope you are keeping fine”, and ends up by saying, “ I really feel very sleepy.... I think I better stop.”

In P10 of 16. 3. 51 he tells plaintiff:

“ There is one thing I want to tell you and that is I don't think it will be proper for me to write to you when you go back home.... I don't think you should give up your teaching at the Vidyalaya After all it will be quite dull for you at home doing nothing,” and winds up by saying, “I am feeling dreadfully sleepy.”

30 This letter contains the hint that he will probably not be writing to plaintiff again. He did not in fact write to her after P10, neither did the plaintiff write to defendant after she received P10, till defendant's engagement to Padmini came to be known. Counsel's argument that in March negotiations must have been in progress for

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defendant's engagement to Padmini is not without plausibility, but the argument is based entirely on conjecture and cannot be accepted as sound. It may be that defendant was beginning to realise that his engagement to Ira was likely to fall through and Padmini had herself heard rumours that all was not going well with Ira's engagement to Teddy. Whether negotiations for the engagement with Padmini were then afoot or not, there is nevertheless overwhelming evidence that defendant's engagement to plaintiff really fell through on account of Boange's tergiversations over the promised dowry, and the criticism levelled by Plaintiff's Counsel against defendant for breaking off the engagement for filthy lucre and naught else is really not justified. But the part played by Padmini in the closing stages of this drama may not, I fear, be counted to her credit.

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It is plaintiff's case that she was completely unaware of any agreements regarding her dowry made between her father and defendant or defendant's father till the engagement actually fell through, and that up to that time as far as she was concerned it was purely a love match between herself and Teddy, into which idyll no sordid questions of dowry ever entered. Yet it is a fact clearly established that it was only after the specified dowry was promised by Boange that the defendant met and corresponded with the plaintiff "on the footing that they were engaged," or had been proposed to each other in marriage. It is hard to believe that plaintiff remained in total ignorance of the negotiations that Anula was conducting regarding the dowry and was not even alive to the fact that something in the nature of a tussle over the dowry did go on since June. It may be, as Anula says, that questions of dowry are not discussed with the girl and the girl probably has no great voice in the matter, but it cannot be suggested that the plaintiff, who must be credited with the normal amount of healthy curiosity and self-interest, failed to acquaint herself at an early stage of the proceedings what dowry she was to get. There is also the evidence

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of the defendant and of Herbert that they spoke to the plaintiff herself when the efforts of Herbert and Anula with Boange failed to evoke satisfactory results, and requested plaintiff herself to prevail on her father to give the promised dowry and have done with it. I have no reason to reject this evidence. Herbert has also said that on one occasion in his own house he discussed the matter of the dowry with Boange in the presence of the plaintiff. I think it is too disingenuous on the part of the plaintiff to suggest that she had no knowledge that her father had promised the defendant to give her a dowry of five acres of tea and Rs. 5000.00 in cash, and that the engagement was being put off from time to time till the dowry was finalised.

The plaintiff also asserted that the defendant made a promise of marriage to her on the occasion on which he took her to the pictures at Kegalle in the company of Anula and her son, and that thereafter defendant met her frequently at Anula's house and paid attentions to her and made her promise that she would not let him down and that he too likewise made a promise never to let her down. Plaintiff says that thereafter there were acts of endearment between them and that she gathered from the demeanour of their relatives that they considered the two of them as engaged to each other. The defendant denies the promise to marry as well as any acts of endearment at all. Still it is to be inferred from the letters they wrote to each other, few though they be, that theirs was not altogether a "sentimental passion of a vegetable fashion."

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 has 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. If the defendant did in fact make a promise of marriage to plaintiff at the

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pictures, it is strange that Anula who was seated just next to her did not hear it. It is even more strange that if there was such a proposal, the plaintiff did not announce it to Anula immediately or soon after it was made, or even divulge it to her own parents or to anyone else, till for the first time she made mention of it in the witness-box. If there had been such a proposal, one would normally expect to find a spate of love letters written by the one to the other soon thereafter, but neither of them penned a line to the other till December, 1950. In her pathetic letter D13 written when plaintiff heard that defendant was getting engaged to Padmini, she does not reproach the defendant with having broken his plighted word to her, though she laments the fact that her "Life's guiding star is being taken away," from her. If such a promise of marriage had in fact been made by defendant, reference to it I should think would naturally have found a prominent place in D13. What actually she does say tearfully is:

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" I know its my fault for not having the courage to make father understand that delaying is no good."

Then again Boange's letters D18 and D19 wherein he breathes vengeance against the defendant and throws down the gauntlet does not accuse the defendant of having broken a promise he had made to plaintiff herself, but the accusation made against him is that he had written letters of endearment to plaintiff and taken liberties with her, "on the positive understanding you gave me that you would get married to her."

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Last and by no means the least important document in this connection is the "letter of demand " D6 carefully prepared by Counsel on instructions given by plaintiff and her father. Even in this letter no reference whatever is made to a promise such as the promise spoken to by plaintiff. It may be that the defendant made frequent protestations to plaintiff of his affection for her but in the teeth of the evidence to the contrary contained in the documents referred to, I am quite unable to accept plaintiff's evidence that the defendant did at the pictures or elsewhere make her an express promise that he would marry her.

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The defendant however goes still further and states that throughout the many months during which he paid attentions to plaintiff he not only did not make any express promise of marriage to her but that he also did not indulge in any acts of endearment towards her and that he neither gave her any presents at all of any kind whatsoever. He even denies having given her the enlarged snap of himself (P8) taken at Nuwara Eliya in December. But in his letter P1 written just before he left for Nuwara Eliya he offers to bring her anything short of the lake or the Park from Nuwara Eliya ! Plaintiff says that defendant gave her the photograph (P8) and several other articles including a handbag. As regards the handbag the plaintiff's evidence is corroborated by Anula. I accept the evidence that the defendant did give plaintiff the photograph and the handbag and as regards the other articles spoken to by Plaintiff, I hold it is highly probable that he gave them too.

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Regarding acts of endearment, to defendant's unsophisticated mind the term, "acts of endearment" suggests nothing more precocious than sitting by each other sedately and conversing unobserved! That they had, in all probability, gone beyond this stage of merely breathing light words of love into each other's willing ears can be gathered from their letters D7, D8 and P1.

The defendant addresses the plaintiff as, "My darling dearest, Girlie" and "my sweetheart" and says, "Girlie dear, I have been missing you very badly these days." And Plaintiff tells, "Darling, Teddy," "The evenings are unbearable without you my darling." "I wish I could fly back to you." "To spend even a minute with you is a great joy to me," and sends him "much love and kisses," After these letters the parties continued to meet each other for another three months at Anula's house, away from prying eyes, and the defendant denies that he ever kissed the plaintiff or embraced her, or held her hand or even touched her! As regards this total denial one need only say with Shakespeare:

"Why should a man whose blood is warm within
Sit like his grand-sire cut in alabaster?"

Mr. Wickremanayake, leading Counsel for defendant, cited

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Kandyan Law and urged upon me that I should not discredit the defendant's evidence as regards acts of endearment for the reason that awareness of the ancient Kandyan Law which totally invalidated marriages contracted without parental consent would have had an instinctive inhibitory influence on the defendant's conduct. I regret I am unable to share Counsel's view that awareness of the Kandyan Law, however awe-inspiring it may be, could have rendered the defendant so completely inert. It is well known that even the laws of the "Humane Mikado" of the Kingdom of Titipu, condemning to death all persons who 'flirted' before they were conubially linked, were ineffectual to curb this venial form of recidivism-even though pronounced capital!

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Be that as it may, under our Law the giving of presents and kisses, even though coupled with oral promises of marriage however ardent, are insufficient to found an action for breach of promise of marriage. The proviso to sub-section 3 of section 19 of the Marriage Registration Ordinance (Chap. 95) enacts that no action shall lie for the recovery of damages for breach of promise of marriage unless such promise shall have been made in writing. Learned leading Counsel for the plaintiff suggested that as this provision of Law is contained in the General Marriages Ordinance enacted to consolidate and amend the Law relating to marriages other than the marriages of Kandyans and Muslims, this requirement did not apply to Kandyans such as the parties to this action admittedly are. This interesting question was however not argued before me but was reserved by Mr. Thiagalingam and I therefore do not feel called upon to give a finding on it. He however argued his case on the footing that a promise in writing as required by the Marriage Registration Ordinance would be necessary to enable him to maintain this action.

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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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10 In the case of *Belin vs Vethecan* (1 A.C.R.1.) it was held that a letter containing the words; "I won't tease darling till we get married. Shall we fix the happy day for the 8th April, the day after Easter," amounted to a promise to marry. In *Jayasinghe vs Perera* (9 N. L. R.,62) the defendant who had courted the plaintiff, asked her father's consent to the marriage, and the young people promised to marry each other.

20 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 am not to blame."

This letter read in conjunction with the letter to which it was an answer, as *Wendt, J.* held, "Contained 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 required."

30 In the case of *Mildred Fonseka vs Henry Silva* - (1 Ceylon Law Journal back page 46 - the defendant wrote saying that there was no matrimony for him without the plaintiff and signed himself, "Yours will be soon", Another letter of his to the plaintiff contained

the expression, "When I decided to seek your hand in marriage." It was held that the words in these documents read together necessarily implied a promise to marry in writing.

In the case of Philip vs. Wetthasinghe (38 N.L.R.,261) it was held that a writing which in effect meant, "I will not marry anyone except you," was not an express promise to marry the plaintiff, it being an undertaking not to marry anyone else.

It is also not sufficient that the document in the light of oral evidence could be said to bear a promise to marry — Keuneman, J. in the case of Karunawathie vs Wimalasuriya (42 N. L. R.,390) — held that an agreement in writing in order to support an action to recover damages for breach of promise to marry must be evidenced in writing and writing alone. It has therefore to be considered in the light of the above authorities, whether an express and unqualified promise in writing made by the defendant to the plaintiff could necessarily be inferred from the letters D7, D8 and P1 relied on by the plaintiff to establish her case.

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In D7 dated 18.12.50 addressed to defendant, the plaintiff says:

"Take my word. I am not a person who is easily tempted. I have always aimed at having a pure character and you can be sure that in rain or sunshine I will stand by you till the end of my life. It was my ambition to find a man too with a pure character and I have found it in you. Therefore don't fear. I will always be faithful to you, my Darling."

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By these words the plaintiff's purpose appears to be to allay the fears or doubts the defendant had entertained regarding her constancy. This topic seems to have arisen between the plaintiff and defendant in consequence of what the plaintiff herself had told the defendant on an earlier occasion about certain acts of familiarity shown by one "G. B.", a cousin of hers towards her. In her letter she assures the defendant that she is a woman of pure character, that she is not easily tempted and that the defendant should not

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therefore attach any importance to the acts of familiarity referred to. She also assures defendant of her steadfastness, and promises to be faithful to defendant always. What this passage from the letter implies is a promise to be ever faithful if and when they are married and does not amount to a promise to marry the defendant. The plaintiff does seem to assume in her letter that the defendant would marry her. This is not of much significance as the proposal of marriage which was arranged between the parties was still subsisting at the time the plaintiff wrote this letter.

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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:-

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 have expressed. I can assure 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.”

30 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

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“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 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.

What he seeks to convey in P1 is that plaintiff might hope for the best and that he himself strongly feels that her hopes would not be in vain. When he wrote this letter he no doubt had in his mind a desire to marry the plaintiff and he too perhaps entertained the hope that their expectations of a happy marriage would not be in vain. It is an important fact that almost in the same breath he draws pointed attention to the fact that the fulfilment of their hopes has been long delayed owing to the failure of plaintiff’s father to provide the dowry. He also points out that there has been delay since June and that he has discovered that nothing had been done by her father to bring about their engagement and proceeds to sound the warning that this delay bodes ill for them both. There is no dispute that plaintiff’s father had agreed to the proposal of marriage as far back as March, 1950 and had also agreed upon the dowry. It is remarkable therefore that the plaintiff did not think it fit to reply to P1 even to tell the defendant that he might speak to her father about the delay as she herself was helpless to move her father in the matter. The defendant’s parents and the defendant himself would not agree to the engagement before the dowry was provided. Though the words engagement and dowry are not used in the letters under consideration yet it is clear that reference to delay in these letters refers to delay in bringing about the engagement and by necessary implication to delay in providing the dowry. Defendant makes emphatic and almost heated reference to the unnecessary delay in

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letter P1 and does so in reply to the same subject broached by the plaintiff herself in her letter D8 in the following words:

“My one work is telling Mummy how unfair they are in delaying like this. She too agrees with me, but I haven’t got the courage to go and tell Daddy. He does not understand our position and is ready to get upset for the least thing.”

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10 Undoubtedly the plaintiff herself was no less fretful than the defendant over the delay, and though plaintiff had harped upon the undesirability of so much delay in finalising matters, her father had continued to remain obdurate and callous. I reject the suggestion that the delay referred to in the letters is merely to the delay in completing the house and the consequent delay in the engagement and the marriage.

20 The defendant’s own interpretation of certain of the passages from his letters referred to, I have found difficult to accept. His Counsel experienced the same difficulty. Plaintiff’s interpretations of certain passages in these letters were equally extravagant but in the opposite direction. The letters must be considered without resort to oral evidence except in so far as such evidence forms the background for them. The plain meaning and import of the letters themselves, I think, present no difficulty. As regards the sentence:

“Girlie, I do not think I need repeat all what you have written to me because I feel just the same way as you have expressed.”

30 Learned Counsel for the defendant preferred to accept the interpretation that defendant is saying there that he too would stand by her till the end of his days if they got married. But this, again does not give rise to the necessary inference that the defendant is thereby promising to marry plaintiff. Whatever he said is qualified by what he says later in the same context, referring to the delay in providing the dowry and bringing about the engagement. A detailed consideration of defendant’s or plaintiff’s interpretation of certain passages in the letters is I think unnecessary. The letters must speak for themselves.

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Plaintiff stated in her re-examination and not earlier that D7 and D8 were written by her on the one hand and P1 sent in reply by the defendant on the other hand by way of implementing a pact entered into between the two of them to exchange letters promising to marry each other whether father, mother or anyone else stood in their way. I am unable to believe that anything so mock-heroic as all that took place between them and I fail to see why it was at all necessary to enter into such a pact when the parents of both parties had consented to the marriage and were not likely to withdraw that consent. The letters themselves bear no trace of such a pact while on the contrary the intrinsic evidence contained in the letters amounts to a flat contradiction of plaintiff's evidence of such a pact. Plaintiff does not say, "In spite of all opposition, I will marry you," or anything even remotely resembling such an assertion. What she does say is — "I am in a difficult position, I have to please so many. Only I know what a lot of mental agony I have to undergo." (D8).

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The thought of defying the wishes of her parents has not yet entered her mind, even in spite of the great mental agony she was undergoing as a result of the delay caused by her father. She felt bound to please not only her parents but 'so many.' And in D8 the plaintiff goes on to tell the defendant:

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"I am taking a great risk in asking you to write to me, but I hope everything will be O. K."

If they did enter into the pact in Kegalle nothing would have been easier than to exchange letters then and there in Kegalla itself. Plaintiff wrote her letters D7 and D8 from her home in Kadugannawa while defendant wrote his reply P1 in Kegalla and posted it in Kandy on his way to Nuwara Eliya for the Christmas vacation. The passage quoted above seems to me to suggest in plaintiff's own mind even as late as December, 1950 a state of considerable doubt of the engagement going through without a hitch, and the fear that the state at which matters then stood was too unstable and premature to

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permit of her receiving a letter from defendant, without incurring the risk of something untoward happening.

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Learned Counsel for the plaintiff pressed the argument that the dowry arrangement, negotiated and arrived at between the parents of the two parties with the knowledge and acquiescence 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
10 new position for the plaintiff to take up and is different to the position taken up in the plaint itself, wherein the case for the plaintiff 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 parents were agreeable. The same position is taken up in the letter of demand D6 with the 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
20 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.

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
30 valid promise to marry made by the defendant to plaintiff.

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I answer the issues as follows:--

1. No.
2. No.
3. Does not arise.
4. No.
5. No.

On the question of damages learned Counsel for the plaintiff submitted that in the event of my finding in favour of the plaintiff I should consider awarding her the full amount of the damages asked for, on the ground that the plaintiff's father had expended a large sum of money on this case. Judged by the same standards the defendant himself would probably have spent a small fortune in his defence. The amount spent on a case of this nature by either of the parties is hardly a criterion by which the amount of damages to be awarded, should be arrived, at. In this case it could hardly be said that the defendant had done anything unseemly by which plaintiff's chances of contracting a marriage have been prejudicially affected. The defendant on his part wished to drop the matter quietly as the dowry was not provided as promised, but it was the plaintiff who courted publicity. If it is to be held that there has been a breach on the part of the defendant of an actionable promise of marriage, I would not be disposed to award more than nominal damages to plaintiff and in that event not more than Rs. 5000. 00.

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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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Nearly forty years ago Chief Justice Lascelles pointed out the need for a change in our law. He said:

“Hard cases are the inevitable result of a law which, in a transaction where the promise is not ordinarily made in writing, lays down as a rigid and inflexible rule, that the promise in order to found an action must be in writing.”

10 In England where the law is not so rigid and the need for a written promise to found such an action does not arise, it has recently been advocated that actions for breach of promise should be abolished altogether.

This case as far as I can see, appears to me to have been brought with a desire to wreak vengeance on the defendant rather than to right any great wrong suffered by plaintiff.

The plaintiff's action is dismissed with costs.

Sgd. E. A. V. de Silva.
District Judge.

Judgment delivered in open Court in the presence of Mr. Ramachandran for plaintiff and Mr. A. I. de S. Abeywickreme for defendant

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Intd. E. A. V. de S.
D. J.

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No. 12.

Decree of the District Court.

DECREE

IN THE DISTRICT COURT OF KEGALLE.

No. 7873

IRANGANIE BOANGE of Boange
Walawwa, Kadugannawa.

Plaintiff.

vs

C. V. UDALAGAMA, of Kegalle,
presently of Magistrate's Bungalow,
Point Pedro.

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Defendant.

This action coming on for final disposal before E. A. V. de Silva Esquire, District Judge of Kegalle, on the 14th day of July, 1953, 15th day of July, 1953, 15th day of October, 1953, 16th day of October, 1953, 30th. day of November, 1953, 1st. day of December, 1953, 15th day of January, 1954, 19th day of January, 1954 8th day of February, 1954, and 10th day of February, 1954 in the presence of Mr. C. Thiagalingam, Q. C., Advocate with Mr. Ivor Misso, Advocate instructed by Mr. S. Ramachandran, Proctor on the part of the plaintiff, and of Mr. E. G. Wickramanayake, Q. C., Advocate, with Messrs R. F. Perera and Fernandopulle, Advocates, instructed by Mr. A. I. Abeywickreme, Proctor, on the part of the defendant and the judgment having been reserved and delivered on the 10th day of March, 1954.

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It is hereby ordered and decreed that the plaintiff's action be and it is hereby dismissed with cost.

This 10th day of March, 1954.

Sgd. E. A. V. de Silva.
District Judge.

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Drawn by me.

Sgd. A. I. Abeywickreme.

Proctor for defendant.

No. 13.

PETITION OF APPEAL TO THE SUPREME COURT.
 IN THE SUPREME COURT OF THE ISLAND
 OF CEYLON.

No. 13.
 Petition
 of
 Appeal
 to the
 Supreme
 Court
 17. 3. 54

D. C. Kegalle.

No. 7873.

IRANGANIE BOANGE of Boange
 Walauwa, Kadugannawa.

Plaintiff.

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vs

C. V. UDALAGAMA, of Kegalle

*Defendant.**and*

IRANGANIE BOANGE of Boange
 Walauwa. Kadugannawa.

*Plaintiff Appellant.**vs.*

C. V. UDALAGAMA, of Kegalle.

Defendant Respondent.

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To:

Their Lordships,

The Chief Justice and the Other Justices of the Honourable
 the Supreme Court of the Island of Ceylon.

On this 17th day of March, 1954.

The petition of appeal of the plaintiff-appellant abovenamed
 appearing by her Proctor S. Ramachandran states as follows:—

1. The plaintiff appellant sued the defendant - respondent in this action to recover a sum of Rs, 20,000. 00 being damages sustained by her by reason of breach by the respondent of his promise to marry the appellant. The

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- said promise of the respondent to marry the appellant was contained in the correspondence the Respondent had with the appellant.
2. The respondent filed answer denying the jurisdiction of the Court to hear the action and denied that he made a promise of marriage to the appellant. He however pleaded that he made a proposal to become engaged to or promise to marry the appellant if and when the agreement with regard to dowry was finalised.
 3. The case went to trial on the several issues framed and by his judgment of the 10th March, 1954, the Learned District Judge made order dismissing the appellant's action with costs. 10
 4. Being aggrieved by the said Judgment the appellant begs to appeal to Your Lordships Court on the following among other grounds which may be urged by Counsel at the hearing of this appeal.
 - (a.) The said Judgment is contrary to law and against the weight of evidence led in the case.
 - (b.) It is submitted that the Learned District Judge misdirected himself on the evidence both oral and documentary led on behalf of the appellant. 20
 - (c.) The learned Judge has failed to consider the documents P 4 to P7 dealing with the Respondent's earlier engagement affair with a Miss Kempitiya. These documents establish that the Respondent was not guided by considerations of Kandyan custom and unswearing obedience to the wishes of his father in the matter of his engagement and are contradictory of the oral evidence he offered in this case to justify his breach of promise to the appellant. 30

- (d.) The learned Judge has failed to appreciate the background and the circumstances leading up to the writing of the letters D7 and D8, which offer intrinsic proof that at the request of the respondent the appellant was assuring him of her loyalty and faithfulness to him for all time. These two letters negative the finding of the learned Judge that in fact there was no exchange of promises and that there was no need for such an exchange of promise.
- (e.) The learned Judge has also wholly failed to consider in proper perspective the purport and effect of the two letters D7 and P1 read together which it is submitted, clearly establish a promise in writing to marry within the meaning of the law and the decisions of Your Lordships Court.
- (f.) The learned Judge has also failed to consider the true meaning and effect of the letters P9, D9, D17, P10, D 28, D 1 and D 2 which by themselves establish that while on the one hand the appellant was asking the respondent to fix a date for the formal engagement, the respondent on the other hand was dealing with the appellant with great mental reservations and that for reasons known to himself he was beginning to look for another marriage with better prospects.
- (g.) It is submitted that the evidence led relating to Boange the father of the appellant and his failure to provide the dowry was in the nature of a red herring and that inadmissible evidence including letters of Boange and what he said was permitted by the learned Judge in this respect of the case, and that in any event the evidence of Anula Udalagama which the Judge wholly accepts and the evidence of the respondent and his brother were to

effect that Boange was ready at all times to provide the dowry and never refused to do so at anytime.

It is submitted that the learned Judge has misdirected himself on this evidence particularly when he made this respect of the matter the basis of his whole judgment against the appellant. This is not an action by or against Boange.

- (h.) It is further submitted in any event that whatever the part played by Boange in the marriage negotiations there was as between the Appellant and Respondent a clear promise to marry unaccompanied by any conditions and stipulations and that the Respondent committed breach of this promise. 10
- (I.) It is submitted that the Learned Judge having accepted the evidence of Anula Udalagama in preference to that of the Respondent, has erred in his findings on several matters connected with relations between the appellant and the respondent, in as much as Anula Udalagama's evidence clearly established that the respondent had promised to marry the appellant and not let her down and was permitted on this footing to meet and talk with the appellant. 20
- (J.) The Learned Judge has failed to give due weight to the cross examination of the Respondent and the explanations given by him both in regard to his relations with the Appellant and the meaning and effect of the documents D7, and P 1. It is clear from this evidence that the Respondent had promised marriage to the Appellant and that the vital passage in D7, and P1, refer only to that promise. 30
- (k.) The learned Judge has also misdirected himself in regard to the obvious meaning and purport of the letter

of demand sent by the Appellant's Proctor. The language and obvious meaning of the letter refers inter alia to a proposal of marriage by the Respondent to the appellant herself resulting in the appellant and respondent becoming engaged and the subsequent breaking off of the engagement by the Respondent which resulted in the loss and damage to the appellant. In any event it is submitted that whatever the contents of the letter of demand the Learned Judge had to decide from a consideration of D7, D8 and P1 alone as to whether there was a promise to marry and that the letter of demand did not bear on that question.

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(I.) It is submitted that the oral and documentary evidence show clearly that the Respondent unequivocally promised to marry the Appellant broke his said promise without any cause or justification offered by the appellant and that in so doing blasted her whole career and involved her in loss in her social status, and in great humiliation and that the Appellant was entitled to full damages therefore.

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(m.) At all events a promise to marry by respondent is clear on the oral evidence. The parties are Kandyans. Hence even in the absence of a 'writing' this action for damages can be had and maintained.

(n.) The damages asked for is reasonable and moderate. The judge is wrong in assessing possible damages at Rs. 5000.00.

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(o.) The learned Judge has not even acted on the evidence of Anula Udalagama whose evidence both sides accepted. On the other hand the Judge has wrongly acted on the evidence of the Respondent even after quoting Shakespeare why the respondent ought not to be believed,

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though he does not expressly say that he (the Judge) disbelieved the Respondent on vital matters in the case.

Wherefore the Appellant prays that Your Lordships' Court be pleased:

- (a.) To set aside the said judgment of the Learned District Judge, and to enter judgment for the appellant as prayed for.
- (b.) To grant the Appellant all costs and for such other and further relief as shall seem fit to Your Lordships' Court in the premises.

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Sgd. S. Ramachandran.

Proctor for Plaintiff-Appellant.

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JUDGMENT OF THE SUPREME COURT.

No. 14
Judgment
of the
Supreme
Court
25. 11. 55

S. C. No. 444-M/1954 (F) D. C. Kegalle No. 7873

IRANGANIE Boange

Plaintiff-Appellant

vs.

C. V. Udagama

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Defendant-Respondent

Present : Gratiaen J and Swan J.

Counsel : C. Thiagalingam Q. C., with I. Misso and A. Nagendra
for the Plaintiff-Appellant.

E. G. Wikramanayake, Q. C., with H. W. Jayawardene Q. C., J. N. Fernandopulle, P. Ranasinghe, W. Wickramasinghe and Daya Perera
for the Defendant-Respondent.

Argued on : 8th, 9th, 10th and 11th November 1955.

Decided on : 25th November, 1955.

Gratiaen J.

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10 This is an action for breach of promise of marriage. 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. The plaintiff, who was born in 1930, had done very well at Hillwood School in Kandy from which she passed out in 1949 as Head Girl after a good scholastic career. It is common ground that she is a well-mannered, good-looking young lady of unquestionable good character.

The defendant was enrolled as an Advocate of the Supreme Court in 1944, and within five years had established himself in a promising professional practice at Kegalle. In 1949, his father, a retired Government servant, decided that the time had arrived to “arrange” a suitable marriage for the young man, who was then about 31 years of age. The procedure which Mr. Udalagama senior proposed to follow in this connection is best explained in his own words:

20 “Among the class of persons to whom I belong, marriages come about in this way; we ordinarily send a man first, and he speaks to the partents of the girl and finds out whether the proposal would be accepted. Thereafter a day is fixed and the father goes there and 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 in the Divorce Courts. Once the dowry is finalised, a visit is made, and they visit us and a day is fixed. As
30 a matter of fact, in arranged marriages, young couples are not in any way consulted because the parents know whom their sons should marry.”

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One gathers from the evidence that, after the dowry has been "finalised", a formal betrothal ceremony takes place on an auspicious day in the presence of the close relatives of both families; the intended bridegroom puts a chain round the neck of the intended bride, and she in turn gives him a ring. Thereafter the young couple (being virtually strangers) are given some latitude to get to know each other; in due course the marriage ceremony takes place.

Negotiations on these lines were initiated by Mr. Udalagama senior with the wealthy parents of a young Kandyan girl whose name was disclosed at the trial. A considerable dowry was "finalised", and 24th November 1949 was fixed for the betrothal ceremony or, as some witnesses called it, "the formal engagement". But shortly before that date, the defendant saw the girl for the first time and persuaded his father to discontinue the negotiations: he apparently considered her illfavoured and insufficiently educated. Accordingly, Mr. Udalagama senior wrote a letter to the girl's father on 10th November 1949 postponing the ceremony on some shadowy pretext, and requesting that no further preparations be made "until you hear from me again." The request was understood in the spirit in which it was intended. The matter was dropped, presumably without ill-will on either side. Let it be recorded to the credit of the procedure adopted that no hearts were broken on that occasion.

Very soon afterwards, 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". 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,

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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 a 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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I now proceed to relate the history of "the arranged marriage" and its ultimate frustration. Formal visits between the two parties were paid and returned. In due course, "experts" were again consulted for advice as to the selection of alternative auspicious times and dates in April and May 1951 for the

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customary betrothal ceremony. Two dates in April and three in the following month were submitted on 19th March 1951 to the defendant who by then had assumed duties as Magistrate of Point Pedro. He chose the latest point of time suggested, namely, "6. 01 a. m. on 21st May 1951", which, according to the editor of the ephemeris almanac maintained by a school of astrology at Peradeniya, was "auspicious for exchange of rings". The plaintiff had herself written to the defendant on 6th March 1951 pleading that he should select an earlier but equally auspicious date, namely, 11th April, and expressing a fear that "if we have it in May, he (her father) may delay over the wedding." This plea was ignored by the defendant. The evidence which the learned Judge has accepted is to the effect that, in selecting 21st May for the betrothal ceremony, the defendant orally explained to Mrs. C. H. Udagama and later to Mr. Boange himself, who visited him at Point Pedro on 20th April, that if the dowry was not given before the particular date, "the marriage was off". The defendant admits that this was the first occasion on which this condition precedent was imposed by him and communicated to Mr. Boange.

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The defendant seems to have suspected that Mr. Boange would not make over the promised dowry before the stipulated date, and secretly communicated his prophecy to his father in a letter dated 7th May 1951. "Hence", he advised, "without kicking up a row, slowly drop it; keep everything to yourself, and communicate everything only with me. Don't tell anyone anything, even those at home for they cannot keep their tongues quiet." One gathers from this attitude that the defendant, knowing Mr. Boange's tendency to procrastination, was not averse to considering himself released from his obligation to marry the plaintiff. A week later he wrote another letter to his father in the same strain, and raised the question of an alternative plan for marriage. "If some other proposition is to

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be arranged," he said, "I want a minimum dowry of Rs. 25,000/-. The girl must be educated, good-looking, respectable and youngPlease keep anything you do to yourself and me."

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As prophesied, Mr. Boange did not make over the dowry on or before the 21st May 1951. In the result, the defendant adopted the attitude (which was not, however, notified to the plaintiff) that he was again free to enter the "arranged marriage" market; and his father, unknown to other members of the family circle, made discreet inquiries for another candidate answering to the description given in the defendant's letter dated 14th May. On this occasion, everything went smoothly and according to plan. On or about 20th July 1951 a marriage was arranged with the parents of Miss. Nugawela. But the present action relates to the mutual promises which, according to the plaintiff, were contemporaneously but independently made by herself and the defendant to marry each other. She alleges that in or about August 1951 the defendant wrongfully repudiated his personal promise to marry her and she claimed Rs. 20,000/- as damages on this account.

The defendant, who had married Miss Nugawela before he filed his answer, pleaded by way of defence that he at no time made any promise, orally or in writing, to marry the plaintiff. His position was that he had merely "intimated" (whether to Mr. Boange or to the plaintiff was not expressly stated in his pleadings) that he "would be willing to become engaged to or to promise to marry" the plaintiff in a certain eventuality which did not arise.

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; and if so, whether the defendant's promise had

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been made “in writing” within the 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.

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?

It would appear that, shortly after the plaintiff left school, she was persuaded early in 1950 by Mrs. C. H. Udalagama to accept an appointment as a teacher in a well known Government school in Kegalle, of which Mrs. Udalagama was the Principal. Tentative arrangements had also been made for the plaintiff to attend a school in Colombo in May 1950 with a view to offering herself as a candidate for the University Entrance examination.

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During the first school term of 1950 the plaintiff resided at the teachers’ hostel at Kegalle, visiting Mr. and Mrs. C. H. Udalagama’s home during the week ends. But from about May 1950 she stayed with this couple in their bungalow opposite that in which the defendant lived with his father. By this time, the dowry conditions agreed upon between the parents had been “finalised” and Mr. Boange had been invited to fix the betrothal ceremony “for any date convenient to him” (P11). On 15th June 1950 formal visits between the families were also exchanged.

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It was now confidently assumed by everyone that the marriage between the young couple, as arranged between their respective parents, would take place in due course. Pending University for higher studies. And, from this point of time, he plaintiff and the defendant, who met frequently at the home

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of Mr. and Mrs. C. H. Udalagama, fell violently in love with each other. The romantic courtship which followed, though perfectly proper and honourable according to modern standards of behaviour, was apparently contrary to what is expected in conservative Kandyan circles from young persons who are not yet "formally engaged". Mrs. C. H. Udalagama took the matter up with the defendant who, being an Advocate of 6 years standing, was in a better position to understand the delicacy of the situation than a girl who had just left school. Mrs. C. H. Udalagama's version of this conversation is to the following effect:

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"I thought Teddy (i. e. the defendant) should not come so often to my house. I thought there should be a formal engagement before Teddy continued to meet the plaintiff so frequently in my house. Teddy replied 'You need not mistrust me'. I understood by that that he would not let down the girl."

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Mrs. Udalagama accepted the defendant's assurance as to his intentions, which were certainly quite honourable at that stage. The young couple continued to meet regularly on this basis throughout the rest of the year 1950, and, indeed, until the defendant left Kegalle at the end of February 1951 in order to take up his first Judicial appointment in Point Pedro.

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The learned Judge was satisfied that during the period May 1950 to February 1951, many acts of endearment passed between them; the defendant gave her presents, (all of which she produced at the trial); they promised eternal loyalty to one another, and discussed their plans for their future happiness together as man and wife.

The defendant denied that he had given the young lady the presents referred to, or that any "acts of endearment" had taken place between them. He was disbelieved on these points

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and considerable significance should be attached to these false denials. It suffices only to quote his own words of explanation:

Q. "Why didn't you give her presents?"

A. "Because there was no formal engagement."

The inference to be drawn from these denials is to my mind irresistible. The defendant was well aware that much that had taken place (though perfectly innocent) in anticipation of the betrothal ceremony would be regarded in the conservative society to which he belonged as appropriate only to couples who were in fact bound to one another by mutual promises of marriage. Having regard to the evidence which the learned trial Judge has accepted, it is purposeless to speculate further as to whether the defendant had "in so many words" promised to marry the girl. The proved conduct and behaviour of these two young persons towards one another establishes more convincingly than any "express words" which passed between them that they now regarded themselves as solemnly engaged to be married.

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Let it be said in fairness to the defendant that this conclusion is far more favourable to his sense of honour than the inference which he himself had invited the Court to draw from his own version of the facts. He admitted in re-examination that he had no doubt in his own mind at any time of his courtship that the marriage "arranged" by the parents would ultimately materialise. It occurred to nobody that Mr. Boange (unwisely, as things turned out) insisted on postponing the betrothal ceremony until he had renovated his house so as to entertain his guests on a far more lavish scale than was necessary. The learned Judge's theory that the defendant had merely agreed to marry the plaintiff "subject to the condition that the promised dowry would be provided" is unacceptable for more than one reason. In the first place, this was not

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the defendant's case. In the second place, the theory was categorically put to him in the witness box, and he repudiated it :

Q. "Did you make it clear to the plaintiff that you would marry her only if you got the dowry?"

A. "No."

Finally he admitted that the purported imposition of a condition as to the settlement of dowry did not arise until the end of April 1951 :

10 Q. "Did you ever tell Mr. Boange or his wife that unless the dowry was given by a particular date the marriage was off?"

A. "I told Boange."

Q. "When?"

A. "When he came to see me at Point Pedro
(i. e. on 20th April 1951)"

20 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.

30 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.

The plaintiff had returned to her parents' home for the Christmas holidays, and she kept her promise to write to the

defendant who remained at Kegalle but was himself expecting to visit Nuwara Eliya for a few days. This correspondence is the best evidence of the state of mind of the parties and of their sincerity at the time. In D7 dated 18th December 1950 she writes:

“It has always been my one idea to love only one. Take my word for it. I am not a person who is easily tempted. I have always aimed at having a pure character and you can be sure that in rain or sunshine I will stand by you till the end of my life. It was my ambition to find a man too with a pure character and I have found it in you. Therefore don't fear. I will always be faithful to you, my darling.”

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To this part of the letter the defendant replied as follows in P1 of 21st December :

“Girlie dear, I have been missing you very badly these days. Indeed the evenings are very dull and boring without you.....I am much thankful to you and for the kind thoughts you have been thinking about me. Girlie, I don't think I need repeat all what you have written to me, because I feel just the same way as you have explained. I can assure you that all the expectations and the dreams you have of your future will not be in vain; you can confidently hope. The sooner it is the better, I think.”

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The defendant's suggestion that these words of reply, read in conjunction with what the plaintiff had written, should be construed as a mere “intimation that he would be willing to be engaged to, or promise to marry the plaintiff if and when the (father's) agreement with regard to the dowry was finalised” was quite fanciful. I find myself equally unconvinced by the learned Judge's theory that the promise of marriage contained in

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P1 was unenforceable because it was qualified by a condition which has not been satisfied.

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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 the risk or 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. Wimalasuriya (1941) 42 N. L. R. 390. The letter P1 completely satisfies this minimum test.

After the letter P1 was written, the young couple met frequently in Kegalle. She accepted an invitation from his parents to join them and the rest of the family in celebrating his appointment to the Judicial Service, and, as Mrs. C. H. Udalagama explained, everybody present “considered her as the person whom Teddy was going to marry.”

The relationship in March 1951 between the newly-appointed Magistrate of Point Pedro (aged 33) and the young school teacher of Kegalle (aged 21) was perfectly clear. A marriage had been “arranged” for them by their respective parents according to Kandyan custom; at the same time there was a subsisting private agreement whereby they were pledged to become man and wife. On 6th March 1951 he wrote from Point Pedro professing his love for her, and expressing the wish that she should visit him during her Easter vacation chaperoned by his brother and sister-in-law. She replied confirming how much she missed his

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companionship, and mentioning that she had summoned sufficient courage to persuade her father to fix tentative dates in April and May for the betrothal ceremony. She expressed a personal preference for April 11th, and promised that if he agreed to that date "I will see that we get married soon....If April is convenient for you, why not have it then? In any case in your next letter to me please let me know about your arrangements."

The defendant's reply of 16th March evaded this special request and merely stated that he was expecting a letter from Mrs. C. H. Udalgama on the subject. However, he indicated that he would not be able to leave Point Pedro during the Easter vacation, and hoped that she would accompany the C. H. Udalagamas on their visit to him in April.

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This was the last letter which the defendant wrote to his fiancée. He did not directly communicate with her regarding the fresh condition which (so he says) he had subsequently imposed on Mr. Boange to the effect that marriage would not take place unless the dowry was deposited before 21st May; nor did he give her the slightest indication that he had in anticipation advised his father "slowly" to let the matter drop. This behaviour would have been less inexcusable if his obligations towards the girl were regulated solely by the terms of a "quasi-commercial" contract arrived at for his benefit between his parents and hers. But, examined in the light of his commitments voluntarily undertaken under a private agreement with the young lady herself, his behaviour deviated from a course of conduct which had previously been honourable. He gave the plaintiff no opportunity to exercise her personal influence over her father

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to deposit the cash and the title deeds before 21st. May. His sister-in-law, who had been the intermediary in the dowry arrangements, was also kept in the dark as to the new plans which were on foot - so much so that even in August 1951 Mrs. C. H. Udalagama re-assured the girl concerning rumours that the defendant was now contemplating marriage to Miss Nugawala.

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10 In August 1951, the defendant received three letters from the plaintiff which admittedly led him to realise that she was heart - broken by his silence. He ignored them all. Mr. Boange's letters to the effect that the house would soon be ready for the betrothal ceremony, and that the dowry would be made over, were treated with equal discourtesy. In September he became formally engaged to another lady and a few months later he married her. This was an unequivocal repudiation of the solemn promise of marriage which he had given to the plaintiff. In her shame and humiliation, she left Kegalle and returned to her parents' home. He had irrevocably put it out of his power to redeem his pledge, and the plaintiff's cause of action was complete.

20 The learned Judge seems to have taken a most unfavourable view of Mr. Boange's conduct. But the gentleman concerned was not a witness in the case, and the plaintiff did not need to call him to rebut an issue as to whether the defendant's personal promise to marry the plaintiff was qualified by any conditions. Nor was the question raised as to whether a reasonable time for implementing the dowry arrangements had elapsed so as to release the defendant from his obligations.

30 The plaintiff's objections to the admissibility of certain statements alleged to have been made by Mr. Boange were over - ruled on the ground that he was her agent with implied

No. 14
Judgment
of the
Supreme
Court
25. 11. 55
—Continued

authority to make admissions that bound her under section 18 of the Evidence Ordinance. I really cannot understand how anything that Mr. Boange said or did could fairly be construed to have any bearing on the terms of a private contract of which he was completely unaware.

Let it be recorded in fairness to both to Mr. Boange and to Mr. Udalagama senior that neither parent had the slightest idea that, apart from the "arranged marriage" which they had negotiated, the young couple had independently pledged themselves to marry one another. If the parents had realised this, I do not doubt that Mr. Boange, out of respect for his daughter's feelings, would have ceased to dawdle over the arrangements for the betrothal ceremony; nor would Mr. Udalagama senior, mindful of his son's honour have countenanced the suggestion that he should drop the matter "slowly" as he did. To my mind, the most reprehensible aspect of the defendant's conduct was that he kept both parents in ignorance of the extent to which he had personally committed himself and compromised the girl. These conservative gentlemen did not know that he was no longer in a position, either in law or in decency, to back out of the marriage "arranged" for him without committing a breach of his private obligations.

10

20

The defendant did not inform the plaintiff after 20th April 1951 of the new "condition" that "time was of the essence of the contract". As a matter of law, this uncommunicated stipulation did not bind her.

On the issue as to damages, the learned Judge considered that the amount to be awarded the plaintiff should not exceed Rs. 5000/—in the event of his decision on the other issues being set aside by this Court. I take the view that this amount is in no way excessive if one takes into account only the personal unhappiness that has been caused to her by the

30

defendant's later conduct in repudiating his obligations (honourably undertaken in the first instance) without so much as an expression of regret for what he had done. At the trial, she was publicly cross examined on the basis of his instructions that she was a liar and a "gold - digger". To his knowledge, she deserved neither condemnation. I would allow the appeal and enter judgment for the plaintiff for Rs. 5000/— with costs in both Courts.

No. 14
Judgment
of the
Supreme
Court
25. 11. 55
—Continued

Sgd/ E. F. N. Gratiaen.
Puisne Justice

10

SWAN J:

I agree.

Sgd/ S. C. Swan.
Puisne Justice

No. 15.

Decree of the Supreme Court.

ELIZABETH THE SECOND, QUEEN OF CEYLON AND
OF HER OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH

No. 15
Decree
of the
Supreme
Court
25. 11. 55

20

D. C. (F) 444^M
1954.

IN THE SUPREME COURT OF THE ISLAND
OF CEYLON

IRANGANIE BOANGE of Boange Walauwa,
Kadugannawa.

Plaintiff - Appellant.

against

C. V. UDALAGAMA of Kegalle.
Defendant Respondent-

Action No. 7873.

30

District Court of Kegalle

No. 15.
Decree
of the
Supreme
Court
25. 11. 55
—Continued

This cause coming on for hearing and determination on the 9th, 10th, 11th and 25th day of November, 1955 and on this day, upon an appeal preferred by the Plaintiff Appellant before the Hon. E. F. N. Gratiaen, Q. C., Puisne Justice and the Hon. S. C. Swan, Puisne Justice, of this Court, in the presence of Counsel for the Appellant and Respondent.

It is considered and adjudged that this appeal be and the same is hereby allowed and judgment is entered for the plaintiff for Rs. 5000/- with costs in both Courts.

Witness the Hon. Hema Henry Basnayake, Q. C., Acting Chief Justice at Colombo, the thirteenth day of December in the year One thousand Nine hundred and Fifty - Five and of Our Reign the Fourth.

10

Sgd/ W. G. Woutersz
Dy. Registrar, S. C.

No. 16.

**Application for Conditional Leave to Appeal
to the Privy Council.**

IN THE SUPREME COURT OF THE ISLAND
OF CEYLON.

No. 16
Application
for
Conditional
Leave to
Appeal to the
Privy Council
19. 12. 55

20

In the matter of an application for conditional leave to appeal to the Privy Council.

IRANGANIE BOANGE of "Boange Walawwa"
Kadugannawa.

Plaintiff.

vs :

C. V. UDALAGAMA of Kegalle.

Defendant.

C. V. UDALAGAMA of Kegalle.

Defendant-Appellant.

vs :

S. C. No. 444-M/ IRANGANIE BOANGE of "Boange Walawwa"
1954 (F) Kadugannawa.

D. C. Kegalle.
7873.

Plaintiff-Respondent.

No. 16.
Application
for
Conditional
Leave to
Appeal to the
Privy Council
19. 12. 55
—*Continued*

C. V. UDALAGAMA of Kegalle.

Defendant Appellant.

Petitioner.

vs :

IRANGANIE BOANGE of "Boange Walawwa"
Kadugannawa.

Plaintiff Respondent.

10

To.

The Honourable the Chief Justice and the other Judges
of the Honourable The Supreme Court of the Island of Ceylon.

On this 19th day of December 1955.

20

The Humble Petition of the Defendant Appellant, the
Petitioner abovenamed, appearing by A. I. Abeywickreme his
Proctor showeth as follows:—

(1) The Petitioner abovenamed is the defendant in D. C.
Kegalle Case No. 7873.

(2) Feeling aggrieved by the Judgment and decree of
this Honourable Court in the aforementioned case pronounced
on the 25th day of November 1955 allowing the Appeal of
the abovenamed Plaintiff - Respondent, the Defendant-Appellant
Petitioner is desirous of appealing therefrom to Her Majesty
The Queen in Council.

No. 16
Application
for
Conditional
Leave to
Appeal to the
Privy Council
19. 12. 55
—Continued

(3) The said judgment is a final judgment of Your Lordships' Court and the matter in dispute on the Appeal amounts to and is of the value of Five thousand Rupees.

(4) The Petitioner has duly given notice of his intended application to the Plaintiff-Respondent in the manner set out in the Affidavit of A. Jamis of Nuwara Eliya dated the 16th day of December 1955 annexed here to and marked "X". A copy of the notice served on the Plaintiff Respondent is also annexed hereto marked "Y".

WHEREFORE THE DEFENDANT - APPELLANT

10

PRAYS :—

1. For conditional leave to appeal against the judgment of Your Lordships' Court dated the 25th day of November 1955 to Her Majesty The Queen in - Council upon such terms and conditions as Your Lordships' Court thinks fit.
2. For such other and further relief as to Your Lordships' Court shall seem meet.

Sgd. A. I. Abeywickreme

Proctor for Petitioner.

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No. 17.

No. 17.
Decree
Granting
Conditional
Leave to
Appeal to the
Privy Council
17. 1. 58

**Decree Granting Conditional Leave to appeal to the
Privy Council.**

ELIZABETH THE SECOND, Queen of Ceylon and of
Her other Realms and Territories,

Head of the Commonwealth

IN THE SUPREME COURT OF THE ISLAND
OF CEYLON

In the matter of an application dated 19th
December 1955, for Conditional Leave to appeal

30

to Her Majesty the Queen in Council by Defendant-appellant - Petitioner against the decree dated 25th November 1955.

C. V. UDALAGAMA of Kegalle.

No. 17.
Decree
Granting
Conditional
Leave to
Appeal to the
Privy Council
17. 1. 56
—Continued

Defendant - Appellant.

Petitioner.

against

IRANGANIE BOANGE of "Boange Walawwa"
Kadugannawa.

Plaintiff Respondent.

10

Action No. 7873 (S. C. 444 - M/1954 Final)

District Court of Kegalle.

This cause coming on for hearing and determination on the 17th day of January 1956 before the Hon. K. D. de Silva, Puisne Justice and the Hon. H. N. G. Fernando, Puisne Justice of this Court, in the presence of Counsel for the Petitioner and there being no appearance for Respondent.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicant do within one month from this date :-

20

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3000/- and hypothecate the same by bond or such other security as the Court in terms of Section 7 (1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve.

2. Deposit in terms of provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300/- in respect of fees mentioned in Section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85)

No. 17
Decree
Granting
Conditional
Leave to
Appeal to the
Privy
Council
17. 1. 56
—Continued

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record on any part thereof in Ceylon for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Hema Henry Basnayake, Q. C. Chief Justice at Colombo, the thirtieth day of January, in the year One thousand Nine hundred and Fifty Six and of Our Reign the Fourth.

Sgd/ W. G. Woutersz.
Dy. Registrar. S. C.

10

No. 18
Application
for Final
Leave to
Appeal to the
Privy
Council
15. 2 56

No. 18.

Application for Final Leave to appeal to the Privy Council.

IN THE SUPREME COURT OF THE ISLAND
OF CEYLON.

In the matter of an application for final leave to appeal to Her Majesty the Queen in Council.

Between

D. C. Kegalle C. V. UDALAGAMA of Kegalle. 20
No. 7873. *Defendant - Appellant.*
S. C. 444-M/1954 and
Final. IRANGANIE BOANGE of "Boange Walawwa"
Kadugannawa. *Plaintiff - Respondent.*

To.

The Hon'ble the Chief Justice and the other Judges of the Supreme Court of the Island of Ceylon.

On this 15th day of February 1956.

The Petition of the Defendant - Appellant abovenamed appearing by his Proctor A. I. Abeywickrema showeth as follows :-

30

1. The Petitioner abovenamed obtained conditional leave on the 17th day of January 1956 to appeal to Her Majesty the Queen in Council from the judgment of this Court pronounced on the 25th day of November 1955.

No. 18
Application
for Final
Leave to
Appeal to the
Privy Council
15. 2. 56
—continued

2. The Petitioner has in compliance with the conditions on which leave was granted deposited a sum of Rs. 3000/- with the Registrar of this Court being security for costs of the Respondent on the 15th day of February 1956 and mortgaged and hypothecated the said sum of Rs. 3000/- with the Registrar on the 15th day of February 1956.

10

3. The Petitioner has further deposited with the Registrar of this Court a further sum of Rs. 300/- in respect of the amount and fees mentioned in Section 4 Sub Sections 2 (b) and 2 (c) of The Appeals (Privy Council) Ordinance on the 15th day of February 1956.

4. The Pititioner has given notice of this application to the Respondent and produce herewith proof thereof to wit the certificate of posting P1.

WHEREFORE THE PETITIONER PRAYS:-

20

- (a) That he be allowed final leave to appeal to Her Majesty the Queen in Council from the judgment and decree of this Court dated 25th day of November 1955.
- (b) For costs and for other and further relief as to Your Lordships' Court shall seem meet.

Sgd. A. I. Abeywickreme

Proctor for Defendant - Appellant.

No. 19
Decree
Granting
Final Leave
to Appeal to
the Privy
Council
17. 2. 56

No. 19.

**Decree granting Final Leave to appeal to the
Privy Council.**

ELIZABETH THE SECOND, QUEEN OF CEYLON
AND OF HER OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application by the Defendant-
appellant dated 15th February 1956, for Final Leave to appeal
to Her Majesty the Queen in Council against the decree of
this Court dated 25th November, 1955.

10

C. V. UDALAGAMA of Kegalle.

Defendant - Appellant - Petitioner

against

IRANGANIE BOANGE of "Boange Walawwa"
Kadugannawa.

Plaintiff - Respondent.

Action No. 7873 (S. C. 444-M/1954 Final)

District Court of Kegalle

This cause coming on for hearing and determination on
the 17th day of February, 1956 before the Hon. H. H.
Basnayake, Q. C., Chief Justice and the Hon. K. D. de Silva,
Puisne Justice of this Court, in the presence of Counsel for
the Applicant and Respondent.

20

The applicant has complied with the conditions
imposed on him by the Order of this Court
dated 17th January 1956, granting Conditional
Leave to Appeal.

It is considered and adjudged that the Applicant's Application for Final Leave to Appeal to Her Majesty the Queen in Council be and the same is hereby allowed.

No. 19
Decree
Granting
Final Leave
to Appeal to
the Privy
Council
17. 2. 56
—*Continued*

Witness the Hon. Hema Henry Basnayake, Q. C., Chief Justice at Colombo, the sixth day of March, in the year One thousand Nine hundred and Fifty Six and of Our Reign the Fifth.

Sgd. W. G. Woutersz
Dy. Registrar, S. C.

**PART II
EXHIBITS.**

Exhibits
—

P 4.
Letter from
J. W.
Udalagama
to
Kempitiya
12. 10. 49

P 4.

**Letter from J. W. Udalagama to
Kempitiya.**

Kegalle.
12 Oct. 1949.

My dear President,

I must thank you most sincerely for the kind hospitality extended to us by you, Kumarihamy and daughter and in return we invite you all, offering a cordial welcome. 10

Meanwhile, if you are in accord with me, may I ask you to kindly give us a date for the engagement.

Thanking you again.

With best wishes.

Yours sincerely,
J. W. Udalagama

P 5

**Letter from J. W. Udalagama to
Kempitiya.**

P 5.
Letter from
J. W.
Udalagama
to Kempitiya
24. 10. 49

Ranwala Walawwa,
Kegalle.
24. X. 49.

20

My dear President,

Thanks very much for your kind letter of the 21st instant. November 24, 1949 suits us very well. We will be there in time 9.10 a.m. on the said date for the exchange of rings. Please send me the size of your daughter's finger.

With best wishes for all

Yours very sincerely.

P. S.

J. W. Udalagama.

30

We thank Mrs. Kempitiya sincerely for the kind sentiments expressed.

Intd. J. W. U.

P 6.
Letter from J. W. Udalagama to
Kempitiya.

Ranwala Walawwa,
 Kegalle.
 1. 11. 49.

Exhibits
 ———
 P 6.
 Letter from
 J. W.
 Udalagama
 to Kempitiya
 1. 11. 49

My dear President,

10 I received the size of the ring of your daughter with many thanks. It was given to my son by me so that he may go down to Colombo and buy a ring for her from Marikar Bawa Ltd. the Fort Jewellers. At the same time, I told him to select a ring for himself and to ask the Company to communicate with you for your approval. I hope this arrangement will be to your satisfaction.

With best wishes, to all.

Yours very sincerely.

J. W. Udalagama.

P. S.

My son wants a ring with a brilliant set in platinum as he means to wear it to Court to be seen by his lawyer friends daily.

P 7.

Letter from J. W. Udalagama to
Kempitiya,

Kegalle.
 10. 11. 49.

P 7.
 Letter from
 J. W.
 Udalagama
 to Kempitiya
 10. 11. 49

20

My dear President,

30 Thank you for your letter of the 4th instant. With much regret I write this to ask you to kindly postpone the function from the 24th to another date. My son states he cannot get postponements in his cases. Please do not make any preparations until you hear from me again.

With my apologies.

Yours V. Sincerely,

J. W. Udalagama.

Exhibits.

P 11
Letter from
Mrs. C. H.
Udalagama
to Plaintiff's
Mother
27. 4. 50

P 11.
**Letter from Mrs C. H. Udalagama to
Plaintiff's Mother.**

Balika Vidyalaya,
Circular Road.
Kegalle.
27. 4. 1950

My dear Aunt,

I wrote to Uncle some days ago, but have received no reply. I wrote and told him, that father had sent the horoscopes saying that uncle had consented to Teddy's proposal and that they (father and co) were happy about it. The horoscopes compare favourably, and as father-in-law did the reading, and he is not so very good at it, he said he would like the reading uncle had as he could follow that, and to ask him to please send it.

10

Father-in-law also wanted me to write and tell uncle to fix the engagement for any date convenient to him. If he wants a good date Father-in-law can easily send one, if you indicate about when you would like to have the engagement.

Father-in-law had sent word yesterday asking whether I had received a reply, so can you please send the horoscope reading.

20

By the way about when would you like the engagement to take place.

I trust all of you are keeping well.

With love from all of us.

Yours Affectionately.

Anula.

P. S.

Father wrote to say that uncle seemed upset about a letter written by Nanda. Personally, I could ask you to ignore anything she has to say as she is foolish, and she does not seem to use her brains or think of what she is saying. I wonder what on earth she could have written or said.

30

P 12.

**Letter from Mrs. C. H. Udalagama to
Plaintiff's Father.**

Balika Vidyalaya,
Circular Road,
Kegalle. 11. 6. 1950.

P 12.
Letter from
Mrs. C. H.
Udalagama
to Plaintiff's
father.
11. 6. 50

My dear Uncle,

Mother-in-law wanted me to write and ask you if Teddy and she may come there on Thursday the 15th of this month in the

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evening at about 4 p.m. or between 4 p.m. and 5 p.m, after work. If this will not be convenient to you, she would like to know a day convenient to you. Carl's wedding is on the 16th, and the Home coming on the 18th, so those two days will be inconvenient. She has been ill the whole of last week. But she hopes to be better by next week.

Please reply.

With love to all.

Yours. Affectionate Neice.

Anula.

Exhibits

P 12.

Letter from
Mrs. C. H.
Udalagama
to Plaintiff's
father.

11. 6. 50

—Continued

10

P 2.

Letter from Pathmi to Plaintiff.

Nugawela Walawwa,
Katugastota.

12. 7. 50.

P 2.

Letter from
Pathmini to
Plaintiff.

12. 7. 50

My dearest Ira,

Why is it that you haven't written to me for ages. Are you so busy with your Teddy that you can't even pen a few words to me.

I feel very lazy to stick at home with my usual house-hold duties. Akka of course goes for her sewing classes. Its no use being like this everyday. That's why I asked you to get me a post where you are.

Again Damayanthe Ratwatte wants me to go where she is. But my parents and I will never dream of that. You never know what those mean Ratwattes are up to. I hated her though others thought she was my friend. You are my only best friend. Ira dear, you must get me a post for I am sick of staying at home.

Tissama told us that at school everyone is talking of your engagement to Udalagama. Mother was anxious to know if he has many brothers. I suppose there are unmarried ones too. But some say that he's dark and not good looking enough for a sweet girl like you. I think he's very lucky to get someone like you. So Ira, when you marry him I may be able to spend a week or so with you two.

Please come home for a week end. We'll take you back. I must help you with your trousseau. Mother and the rest want me to get you home. All at home send their fondest love to you. So Cheerio! Write soon.

In haste.

With much love.

Your loving cousin.

Pathmi.

40

Exhibits.
 D 26 A
 Journal
 Entries
 in D. C
 Kurunegala
 Case No. 6646
 24. 7. 50 to
 12. 7. 51

D 26 A.

Journal Entries in D. C. Kurunegala.
Case No. 6646.

In the District Court of Kurunegala

No. 6646.

Class.

Amount. Rs. 350. 00

Una Abdul Majeed of

Nature Money.

Talgaspitiya.

Procedure. Regular.

Plaintiff.

vs.

10

M. B. Boange, Boange Walawwa,

Kadugannawa in Kandy District.

*Defendant.***JOURNAL.**

The 24th day of July, 1950.

Mr. D. A. S. Ranaweera files appointment and plaint
 together with documents marked, and moves that the same may
 be accepted and that summons on the defendant be allowed.

Plaint accepted and summons ordered for

31. 8. 50.

20

Intd. A. S. P.

District Judge.

Summons issued to Fiscal N. W. P. with Precept returnable
 the 30th day of August, 1950.

31. 8. 50. SS served on defendants (Personal)

M. B- Boanga.

Proxy filed Ans. 14. 9.

Intd A. S. P.

14. 9. 50. Mr. Ranaweera for Plaintiff.

Answer of defendant due from M/S Perera & Perera
 28. 9.

30

Intd. A. S. P.

28. 9. 50. Answer by M/S Perera & Perera filed.
Replication 12. 10.
Intd. A. S. P.
18. 7. 51. Notice on defendant issued to Fiscal C. P., Kandy.
Intd. G. A. N.
16. 8. 51. Notice not served.
Reissue for 18. 9. 51.
Intd. W. W. M.
A. D. J
- 10 21. 8. 51. Reissued.
Intd. G. A. N.
18. 9. 51. Notice reissued - no return.
Await and reissue for 18. 10. 51.
Intd. W. W. M.
D. J.
5. 10. 51. Reissued.
Intd. G. A. N.
18. 10. 51. Notice not served.
Reissue for 20. 11. 51.
Intd. W. W. M.
A. D. J.
- 20 31. 10. 51. Reissued.
Intd. G. A. N.
20. 11. 51. Notice under Sec. 219 served on defendant
Defendant is said to have paid his claim.
No order.
Intd. W. W. M.
12. 10. 50. Replication by Mr. Ranaweera 19. 10.
Intd. A. S. P.
- 30 19. 10. 50. Replication by Mr. Ranaweera filed.
Trial 2. 2.
Intd. A. S. P.

Exhibits

D 26 A
Journal
Entries
in D. C.
Kurunegala
Case No. 6646
24. 7. 50 to
12. 7. 51

--Continued

Exhibits
D 26 A
Journal
Entries
in D. C.
Kurunegala
Case No. 6646
24. 7. 50 to
12. 7. 51
—Continued

9. 1. 51. Mr. Ranaweera for plaintiff files plaintiff's list of witnesses & documents.
20. 1. S S on witness issued to Fiscal N. W. P. Kurunegala (Plaintiff)
Intd. G. A. M.
Mr. D. A. S. Ranaweera for plaintiff
M/s. Perera and Perera for defendant.
2. 2. 51. Trial—Case settled.
Of consent I enter judgment for plaintiff in a sum of Rs. 150.00 without damages or costs. The claim in reconvention is dismissed without costs.
Intd. A. S. P.
Explained. by me.
Sgd. O. M. G. de Silva. Sgd. In Tamil. Plaintiff.
Sgd. M. B. Boanga - Defendant.
15. 6. 51. Mr. Ranaweera moves for notice on the defendant Under Sec. 219
Allowed for 12. 7. 51.
Intd. W. W. M.
.D.J.
4. 7. 51. Notice not issued. Tendered late.
Intd. G. A. N.
12. 7. 51. Notice not issued as tendered late.
Issue now for 16. 8. 51.
Intd. W. W. M,
A. D. J.
Intd.....

10

20

10.11.52

D. 26 B.**Plaint in D. C. Kurunegala case No. 6646.**

In the District Court of Kurunegala.

No. 6646.

UNA ABDUL MAJEED of Talgaspitiya.

Plaintiff.

vs.

M. B. BOANGE. Boange Walawwa, Kadugannawa.

in Kandy District.

Defendant.

10

This 25th day of July, 1950

The plaintiff of the plaintiff abovenamed appearing by D. A. S. Ranaweera his proctor states as follows:-

1. The parties to this action reside at the respective places above mentioned and the cause of action arose within the jurisdiction of this court.

20

2. The defendant abovenamed leased his field called Naranwela alias Narammalaulawela situated within the jurisdiction of this court to the Plaintiff abovenamed for a period of two years commencing from the month of August 1949 for a sum of Rs. 300.00 and a sum of Rs. 250,00 were paid in advance.

3. The plaintiff in terms of the said lease took possession of the field and worked the Maha season in 1949 and reaped the harvest in January, 1950.

4. On or about the 6th of March, 1950 the defendant wrongfully kept out the plaintiff from possession and fails and neglects to pay to the plaintiff the balance lease money and the damages suffered by the plaintiff by the wrongful act of the plaintiff.

Exhibits

D 26 B
Plaint
in D. C.
Kurunegala
Case No. 6646
25. 7. 50

Exhibits
D 26 B
Plaint
in D. C.
Kurunegala
Case No 6646
25. 7. 50
—Continued

5. The plaintiff assesses his damages at Rs. 250. 00 but restricts his claim to Rs. 175. 00.

6. In the premises a cause of action has accrued to the plaintiff to sue the defendant for the recovery of the sum of Rs. 350. 00 to wit:- Rs. 175. 00 balance lease money and Rs. 175. 00 being damages which sum or any portion of which the defendant has failed and neglected to pay though thereto often requested.

Wherefore the plaintiff prays:-

For judgment against the defendant for the sum of Rs. 350. 00 to wit:- Rs. 175: 00 being balance lease money and Rs. 175. 00 being damages. 10

For costs of suit and for such other and further relief as to this court shall seem meet.

Sgd. D. A. S. Ranaweera.

Proctor for Plaintiff.

D 26 C.

Answer in D. C. Kurunegale case No. 6646.

D 26 C
Answer
in D. C.
Kurunegala
Case No. 6646
28. 9. 50

In the District Court of Kurunegale
No. 6646.

UNA ABDUL MAJEED of Talgaspitiya.

Plaintiff.

vs.

M. B. BOANGE of Boange Walawwa, Kadugannawa

In Kandy District.

Defendant.

This 28th day of September, 1950.

The answer of the defendant abovenamed appearing by C. L. W. Perera, A. C. Amerasinghe and K. I. G. L. W. Perera,

Proctors practising in partnership under the name, style and firm of Perera and Perera and their assistant S. G. Pieris, Proctor, S. C. state as follows:-

Exhibits
D 26 C.
Answer
in D. C.
Kurunegala
Case No. 6646
28. 9. 50
—continued

1. The defendant denies that this court has jurisdiction to hear and determine this action as the alleged contract was entered into at Kadugannawa.

2. The defendant denies all and singular the rest of the averments in the plaint which are inconsistent with this answer and puts the plaintiff to the proof thereof.

10 3. The defendant denies that the lease relied on by the Plaintiff is of any force or avail in law or that any cause of action hath accrued to plaintiff.

4. The defendant paid a sum of Rs. 125. 00 being part of one year's consideration for working the field called Naranwela which the property of the Plaintiff's wife and reaped the crop at the end of the year.

20 5. The plaintiff was aware that the said field was due to be sold and the same was in fact sold when the crop was ready to be reaped and the plaintiff appropriated the crop without let or hindrance.

6. The plaintiff is liable to pay to the defendant as agent of his wife the sum of Rs. 25.00 being balance due as rent for one year which sum the defendant claims in reconvention.

7. Alternatively the defendant pleads that no cause of action hath accrued to plaintiff as against him as he was acting only as agent of the said field.

30 Wherefore the defendant prays that plaintiff's action be dismissed with costs, for judgment against the plaintiff in the said sum of Rs. 25-00 and for such further and other relief as to this court shall seem meet.

Sgd. Perera & Perera.

Proctors for Defendant.

Exhibits
 D 26 D.
 Replication
 in D. C.
 Kurunegala
 Case No. 6646
 19. 10. 50

D 26 D.

Replication in D. C. Kurunegala.
Case No. 6646.

In the District Court of Kurunegala.

No. 6646.

UNA ABDUL MAJEED of Talampitiya.
Plaintiff.

vs.

M. B. BOANGE, Boange Walawwa, Kadugannawa.
Defendant:

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This 19th day of October, 1950

The replication of the plaintiff abovenamed appearing by D.A.S. Ranaweera, his Proctor, states as follows:-

1. The plaintiff denies all and singular the several averments in the answer of the Defendant except such averments as are not inconsistent with what is already stated in the plaint and joins issue with the defendant on the several matters of fact and law pleaded in the answer.

2. The plaintiff specially denies that a sum of Rs. 25. 00 is due to the defendant.

20

Wherefore the plaintiff prays:-

That Defendant's claim in reconvention be dismissed and judgment be entered for the Plaintiff as prayed for in the plaint.

Sgd. D. A. S. Ranaweera.

Proctor for Plaintiff.

True copy of journal Entries plaint, answer and replication filed in D. C. Kurunegala, Case No. 6646.

Sgd. Illegible.

Secretary, D. C.

30

D. C. Kurunegala.
 17-11-52.

D 20.

**Plaint Answer and terms of settlement in
D. C. Kandy Case No. M. B. 1597.
In the District Court of Kandy.**

Exhibits
—
D 20
Plaint
Answer and
terms of
settlement in
D. C Kandy
case No.M.B.
1597.
1950-51

Nature : Mortgage Bond.

Value : Rs. 7535-00.

Procedure : Regular.

Class. 4.

No. M. B. 1597.

10

Leila Ellawala Dunuwille of
Peradeniya.

Plaintiff.

vs.

Pilimalauwe Wijesundera Rajakaruna Nawaratne
Bandaranayake Mudiyanse Ralahamillage Medduma
Banda Boange of Arambegama in Medapalata of
Yatinuwara.

Defendant.

On this 20th day of November, 1950.

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The plaintiff of the Plaintiff abovenamed appearing by her
Pröctor Bertram Henry Dunuwille states as follows :-

1. By writing obligatory made at Kandy within the jurisdiction
of this court bearing No. 2211 dated 6th January, 1948 herewith
filed marked " A " the defendant abovenamed bound himself his
heirs executors administrators and assigns to pay on demand Plaintiff
the sum of Rs. 6000-00 together with interest thereon at and after
the rate of twelve per centum per annum to be computed from the
date of the bond till payment in full.

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2. For securing the payment of the said principal and
interest the Defendant abovenamed specially mortgaged and

Exhibits
 D 20.
 Plaintiff
 Answer and
 terms of
 settlement in
 D. C. Kadny
 case No. M. B.
 1597.
 1950-5 1
 —Continued

hypothecated to and with the plaintiff the land and premises described in the schedule hereto as a first or primary mortgage free from all encumbrances.

3. The defendant paid Plaintiff from time to time only a sum of Rs. 535-00 towards interest on the said bond.

4. There is now due and owing from the defendant to plaintiff the sum of Rs. 6000-00 as principal and Rs. 1535-00 as balance interest up to 20th November, 1950, the date of this plaint, both aggregating the sum of Rs. 7535-00 which sum or any portion thereof, the defendant abovenamed has failed and neglected to pay plaintiff, though thereto often demanded.

10

WHEREFORE THE PLAINTIFF PRAYS:

a. For judgment against the defendant in the said sum of Rs. 7535-00 together with further interest on the said sum of Rs. 6000-00 at the aforementioned rate of twelve per centum per annum from 20th November, 1950 till date of decree and thereafter with legal interest on the full amount of the decree till payment in full and costs of suit.

b. That the premises mortgaged and hypothecated to as aforesaid may be declared specially bound and executable under the footing of the said bond.

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c. That the Court do order the defendant to pay the plaintiff the amount of the decree and costs of suit and some day to be named by the court, and in default thereof the premises mortgaged as aforesaid may be sold by the Fiscal Central Province, Kandy and the proceeds applied in and towards the payment of the said sum interest and costs of suit, and, if the proceeds be insufficient for the payment in full of such amount then the Court do order the defendant to pay the amount of the deficiency, and for that purpose all proper directions may be given and accounts taken by Court.

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d. That the plaintiff further prays that in the event of a sale of the mortgaged premises she be allowed to bid and purchase the

said premises at the sale, and that credit be given to the Plaintiff to the extent of her claim and costs of suit.

e. That on conveyance being executed in favour of the purchaser in respect of the mortgaged premises, an order of delivery of possession to issue to the Fiscal Central Province to put the purchaser in possession of the said premises, and if need be, by removing any person, who may refuse to vacate the same, and for such other and further relief as to this Court shall seem meet.

Sgd. B. H. Dunuwille,

Proctor for Plaintiff.

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The Schedule above referred to.

1. All that allotment of land called the seven acres field of Giragama Estate comprising lots 3A, 3B, 3C, 3D, and 3E on Plan No. 4516 dated 25th January, 1944 made by Arthur A. Perera Licenced Surveyor situate at Pilimatalawa village in Medapalata aforesaid and bounded on the North by paddy field and Kehelange-kotuwa on the East by Boange Walauwewatta belonging to B. Medduma Banda and Ittalawawehena, on the South by Ittalalawe hene belonging to Cunju Moosa and Road, and on the west by Kuda Oya and Nainadeniya kumbura belonging to P. Rankira containing in extent seven acres two roods and ten perches according to the said plan No. 4516, which said allotment of land as above described is the same as all these lands called Nainadeniyewatta and hena situate at Pilimatalawe aforesaid bounded on the East by Boangewalauwa watta, Agalheeriya, on the South by Ittalalaweagala and the Road leading to Alagalle, on the West by Kuda Oya and Nainadeniyakumbura, and on the North by boundary of Kehelangekotuwa containing in extent three amunams of paddy sowing, and registered in B 167/135.

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2. All that allotment of land comprising lots 5A, 5D, 5E, 5F, 5G, and 5H on the said Plan No. 4516 (being part of the

Exhibits

D 20.

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—Continued

Exhibits
 D 20.
 Plaintiff,
 Answer and
 terms of
 settlement
 in D. C.
 Kandy case
 No. M. B.
 1597.
 1950-51.
 —Continued

Delgahawatte field of Giragama Estate) situate at Giragama in Medapalata aforesaid bounded on the North by the garden of W. G. Thenuwara, Pepolangekumbure belonging to the heirs of H. C. S. Jeerananda, Gansabawa path and Road to Murutalawa, on the East by the Dunuagala field of Giragama Estate shewn as field 8 on the said Plan and paddy field of W. M. Gunawardene on the South by Pinkumbura belonging to Rambukpotha Kumarihamy, Lot 5B, Dewakawatte belonging to D. Siyatu and Malwattehena belonging to B. Kuda Banda and on the West by Aradeniya belonging to M. B. Gunasekera and Meelangehena belonging to B. Medduma Banda containing in extent nine acres two roods and twelve perches (9A. 2R. 12P.) according to the said plan which allotment of land as above described is a specific and divided portion of the following allotments of land to wit:-

10

a. All that Northern one amunam and five lahas or two acres one rood and twenty two perches of the land called Arandeniye-watta of the extent of five amunams of paddy sowing situated at Arambegama aforesaid and bounded on the East by the Gansabawa Road on the South by the limit of the remaining portion of this land, on the West by the ditch of Milalangewatta and on the North by the field.

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b. All those allotments of land called Pinkumburewatte of about fifteen lahas in paddy sowing extent Weragalahena of one Amunam, Daluggalhena of six pelas, Meeambegahamulahena of one amunam and two pelas, Kalaotuwehena of six pelas, Dunuagalehena of two amunam, Morragahahinnehena of six pelas, Munamalgodahena of two pelas and Leemagahakotuwa Deniya, Asweddume Dunuagalehena Walauwewatta and Moragahahinnewatte of twelve amunams in paddy sowing extent more or less, which said lands adjoin

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each other and from their situation as respects each other can be included in one survey and are situated at Giragama aforesaid, and are bounded on the East by Walgampaye Ellenuda, Ditch of Kalunda's garden above the old plantations in Leemagaha Kotuwe ditches of Daskarayagewatte and Bolagederawatte, above the bank of the field Pihillewalakadadeniye in Weragala Walawatte on the South by Weregale gala Dry stream in Weragalahena appertaining to Paladewekegedera and the fence of Ritigalamudunehena on the West by the ditch of Aradeniyewetta, appertaining to Boange Walauwwa and on the North by the fence of Dumagala appertaining to Diyakelinawala Walawwa, fence of Dunuagala belonging to the Crown, ditch in the summit of Talagahayawatta and Agalheeriya lying above Kalalwala Malwatta (excluding therefrom the lands called Pattapolawatte alias Kiriyahitinaegodapattapolawatta of 15 Lahas of paddy sowing extent Bandigewatte of three pelas of paddy sowing and Ilpegodahena of three amunams paddy sowing extent) and together registered in B 167/136 Kandy.

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Sgd. B. H. Dunuwille

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Proctor for Plaintiff.

Documents filed with the plaint.

Mortgage Bond No. 2211 dated 6th January, 1948 marked A.

Sgd. B. H. Dunuwille

Proctor for Plaintiff.

In the District Court of Kandy.

No. M. R. 1597.

Leila Ellawela Dunuwille of Peradeniya.

Plaintiff.

vs.

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P. W. R. M. B. M. R. Medduma Banda Boange of
Arambegama.

Defendant.

Exhibits
D 20.
Plaint
Answer and
terms of
settlement
in D. C.
Kandy case
No. M. B
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—Continued

Exhibits
 D 20.
 Plaintiff
 Answer and
 terms of
 settlement
 in D. C.
 Kandy case
 No. M. B.
 1597.
 1950-51
 —Continued

On this 8th day of March, 1951.

The answer of the defendant abovenamed appearing by his Proctors Mohamed Abdul Sattar Marikar and Mohamed Alim Sahib Mohamed Mushin, carrying on business under the name and style of Marikar and Marikar states as follows:—

1. The Defendant denies all and singular the allegations in the plaint save and except those hereinafter specially submitted.

2. The defendant admits the execution of the bond sued on but specially denies that the amount claimed is due.

3. The defendant states that the plaintiff has charged interest at exorbitant rate, which he is not legally entitled to and the defendant has paid plaintiff interest at the rate of 12 per centum per annum till September 1950 and admits that interests from October is due. 10

4. The defendant further states that this case is not properly constituted as required by the new Mortgage Ordinance and therefore this action is not maintainable.

5. The defendant states that he is prepared to pay plaintiff the amount found to be due, in the event of the Court holding that this action is properly constituted provided he is granted about 2 years time. 20

Wherefore the defendant prays:-

- a. That plaintiff's action be dismissed
- b. In the event of the Court holding that this action is properly constituted judgment be entered against the defendant in the amount actually found to be due.
- c. That he be granted two years time to pay such amount.
- d. For his costs and for such other and further relief as to the court shall seem meet.

Sgd. Marikar & Marikar

Proctor for Defendant,

In the District Court of Kandy.

No. M. B. 1597.

L. E. Dunuwille of Peradeniya,
Plaintiff.

vs :

P. W. Medduma Banda Boange of Medapalata
in Yatinuwara.

Defendant.

Exhibits
—
D 20
Plaint
Answer and
terms of
settlement
in D. C.
Kandy case
No. M. B.
1597.
1950-51
—Continued

Before

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E. Bertram Corea Esquire,

A. D. J.

Plaintiff's claim having been settled, I move that this action be dismissed without costs.

I further move to withdraw the mortgage bond No. 2221 of 6. 1. 48 to have the same cancelled and the cancellation registered in the Land Registry.

Sgd. B. H. Dunuwille.

Proctor for Plaintiff.

4. 10. 51.

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We consent.

Sgd. Marikar & Marikar.

Proctors for defendant.

Trial on 5. 10. 51

5. 10. 51

Trial.

Mr. Dunuwille for plaintiff.

Marikar for defendant.

Proctor for plaintiff files consent of proctor for defendant and moves that action be dismissed without costs as plaintiff's claim has been settled, and moves to withdraw bond for cancellation.

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1. Allowed.

2. Bond to be returned on 18. 12. 51.

Sgd. F. Conrad Perera

A. D. J.

Exhibits
 D 20
 Plaintiff
 Answer and
 terms of
 settlement
 in D. C.
 Kandy case
 No. M. B.
 1597.
 1950-51
 —Continued

True copies of Plaintiff, Answer and Terms of settlement in D. C. Kandy case No. M. B. 1597.

Sgd. Illegible.

Secretary, D. C., Kandy.

D 7.

Letter from Plaintiff to Defendant.

D 7
 Letter from
 Plaintiff to
 Defendant.
 18. 12. 50

Boange Walawwa,
 Kadugannawa.
 18. 12. 50

My darling Teddy,

10

I asked Mumy if I may write to you, and though she did not say no, she does not like me corresponding fearing that I might fall into trouble. But I thought it is my duty to write to you, and keep to my promise inspite of any obstacle standing in my way.

The other day I was anxiously waiting to meet you before leaving, but I had to come away with a heavy heart, as Daddy came early. I am still feeling wretched without you. The evenings are unbearable. When I think of you darling, I wish I could fly back to you. I don't know how I will stay here all alone till the 7th.

20

I would have liked to spend even the whole holiday there, but I have to please so many, with the result that I am unable to do what I want. I hope you understand me, my darling, and will not get angry with me for leaving you, inspite of you worrying me so much to stay behind. To spend even a minute with you is a great joy to me, though you seem to think that I was impatiently waiting to come home.

I am everready to do anything for you, but unfortunately it is my fate that I am forbidden to do all I can for you,

30

whom I love more than any one in this world. I know you always think that I don't care for you because I say can't for anything at all. Please don't think that I have no love for you, as I will truthfully tell you that I really love you from the very bottom of my heart.

Exhibits
 D 7.
 Letter from
 Plaintiff to
 Defendant.
 18. 12. 50
 —Continued

10 G. B. came here a few minutes after we came home. He was very good and did not try any of his pranks on me. Please don't tell anything to G. B. because I don't want the others to say that I made up false stories about an innocent man. I am sure, now
 20 you have room to think that I too encouraged him; that is why I don't want you to speak to G. B. about this. I am not boasting, but it is the actual fact. I have never had anything to do with another person, and it has always been my one idea to love only one. Take my word I am not a person who is easily tempted. I have always aimed at having a pure character and you can be sure that in rain or sunshine I will stand by you till the end of my life. It was my ambition to find a man too with a pure character and I have found it in you. Therefore don't fear. I will always be faithful to you, my darling. I hope you are
 20 going for a change. If you are going to N'Eliya please be careful the way you drive the car. Can't you get someone to accompany you, without going alone? I think I had better stop writing as I am getting late for the post. I will write to you again on Thursday.

With much love and kisses.

from

Yours for ever.

Girlie.

D 8.**Letter from Plaintiff to Defendant.**

Exhibits
 D 8.
 Letter from
 Plaintiff to
 Defendant.
 19. 12. 50

Boange Walauwa,

Kadugannawa.

19. 12. 50

My darling Teddy,

I hope my letter has reached you safely. Please be careful with my letters because there are silly people waiting to make unnecessary fuss.

Where did you all go yesterday? I heard that you were going home last evening. 10

A little while ago we returned after a days outing in Kandy. I had a long jaw with Aunt about the girl whom G. B. and sister went to see at Kurunegala. As for me I was anxiously waiting to come back soon, so that I may keep to my promise.

Have you decided about your holiday? Darling, you must go somewhere and have a good time. Again I am telling you, if you are going to N'Eliya please be careful the way you drive your car.

Though I am here my thoughts are with you my love. Day and night, I think of nothing else but you my darling. The house is still been built. My one work is telling Mummy how unfair they are in delaying like this. She too agrees with me, but I haven't got the courage to go and tell Daddy. He doesn't understand our position and is ready to get upset for the least thing. That is why I am telling you that I am placed in such a difficult position where I have to please so many. 20

Only I know what a lot of mental agony I have to undergo. In spite of everything I never show it because I don't wish others to say that I can't get on in life. 30

I am also very anxious to know about your arrangements etc. therefore please write to me on Saturday. I can send one of my brothers to the post on that day. So please don't fail to let me know all about yourself. I am taking a great risk in asking you to write to me, but I hope everything will be O. K. Another thing, if you are going anywhere or not please let me know your holiday address.

Exhibits
 D 8.
 Letter from
 Plaintiff to
 Defendant.
 19. 12. 50
 —Continued

I am sending you the Observer Crossword puzzle. If it is possible please do it and send it to me.

10 I have sat up till late today because I wanted to write to you somehow, when no one is about the place. It's past one o'clock and I am feeling sleepy too, so I think I had better conclude. Now please don't disappoint me.

With much love and kisses.

From

Yours for ever,

Girlie.

P 1.

Letter from Defendant to Plaintiff.

P 1.
 Letter from
 Defendant
 to Plaintiff.
 21 12 50

20

Kegalle.

21st. December 1950.

My darling dearest Girlie,

I received both your letters safe & sound. It was indeed sweet of you to have written to me exactly as promised. As you wanted to know my arrangements for the holidays - well here they are. Tomorrow morning I will be going to Kandy and Katugastota. As a matter of fact as the Post Mark will show you, I am

Exhibits
 P 1.
 Letter from
 Defendant
 to Plaintiff.
 21. 12. 50
 —Continued

posting this letter from Kandy. I will try to pick up Shelly and failing I will go up alone even to Nuwara Eliya. If I go up alone I will stay at the Grand Hotel Nuwara Eliya, Otherwise I cannot definitely tell you where I will stay. I shall send you a Christmas Card from Nuwara Eliya to reach you on the 25th Morning. Thank you Darling for the anxiety you have expressed regarding my driving up. I shall indeed try to be careful as possible. Somebody has given you some wrong information, since I have not left Kegalle since you left on the 16th instant.

10

I am glad to hear that you have been getting out a bit. I think Darling if you can manage it, you too, should take a holiday somewhere, why not induce your Daddy to go somewhere for a few days. You have been working very hard and I think you fully well deserve a good holiday.

Girlie dear, I have been missing you very badly these days. Indeed the evenings are very dull and boring without you and I am waiting to go somewhere for a little rest. I am much thankful to you for the kind thoughts you have been having about me. Girlie I don't think I need repeat all what you have written to me, because I feel just the same way as you have expressed. I can assure you that all the expectations and the 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 could put it to him.

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30

.....is yet down with measeles and it looks as if Sister and them will not be going any where for the holidays.

Darling I hope you are keeping good health. Please be careful of yourself and don't fall ill like last time what happened. I suppose the mornings are bitterly cold there.

Exhibits
P 1.
Letter from
Defendant
to Plaintiff.
21. 12. 50
—Continued

10 Daya and I just returned from seeing "The Prince & the Pauper". It was a nice picture with a fine story of how Henry viii's son Edward for a lark exchanged places with a pauper's son and it became a serious matter and it was with great difficulty that the Prince managed to convince the people that he was the real Prince. I wonder whether you have seen any pictures since you left on the 16th. Yes, that day, I thought you might still be there, when I came after the pictures and it was with great sorrow that I learnt from Daya that you had left. Darling my thoughts are always of you every day and I am most anxiously waiting till the 7th of next month. So please on no account must you keep away from coming on the 7th.

20 Don't worry I will not tell G. B. a word of what you have told me, nor will I tell anyone a word of it. But Darling you must be extremely careful of your self and don't allow people to treat you in the same manner that you were treated when you were a small girl of 8 or 9 years. Show them a little reserveness on your part and I am sure they will understand.

As regards the Puzzle I don't think you are in a hurry. I think the closing date is 16th January. I will have it made and give it to you when you come on the 7th.

30 Well, Girlie my sweetheart, what do you want from Nuwara Eliya—don't tell me you want the lake, or the park. I always think how wonderful it would have been if you could have accompanied me on this holiday—just you and me with all the cares and worries of this world forgotten for ten glorious days!

L. B. and Nanda were here last Friday evening. They too don't intend going anywhere. L. B. it seems is going to

Exhibits take a course of medicine at Galagedera and I suppose Nanda
P 1. too will be there. Daya told me today that Nanda's little
Letter from daughter is also down with measles—that means they too will
Defendant. have to stick at Yatiyantota.
to Plaintiff
21. 12. 50
—Continued

Well Darling I think I better stop, now it is nearly 11.30 p. m. In the Christmas Card I shall give you my address in Nuwara Eliya and the date of my last day of stay there. Write to me then if you can.

Cheerio my sweetheart.

With love.

Teddy.

10

P 9

Letter from Defendant to Plaintiff.

P 9.
Letter from
Defendant to
Plaintiff.
4. 3. 51

Magistrate's Bungalow,
 Point Pedro.
 4th March 51.

My darling Girlie,

Sorry I could not write to you earlier. I was busy there last few days getting settled down. Everything is unpacked and I have started running my house. It is indeed a handful.

20

I suppose, by now you must have had a graphic description of the place from uncle. My Bungalow over looks the Bay of Bengal and the blowing is really fine and interesting. The Bungalow is large with 5 bedrooms, Hall, Dining Hall, long front Verandah, 3 store rooms, Kitchen with a dover stove, garage with servants quarters attached. At present I am very comfortable.

3 times a week I have to go to Chavacachcheri which is about 16 miles from here. The rest of the week is spent at Point Pedro.

30

I think Punchiah, sister and them will be coming for Easter, then make it a point to come along with them. I dont think I will be able to come that way for a long time as we are not allowed leave during this period. I am not as free as I was, before I accepted this post! I cant go about when ever I want.

Exhibits
P 9.
Letter from
Defendant to
Plaintiff.
4. 3. 51
—Continued

I hope you are keeping fine. How is Balika Vidyalaya and your friends there.

10 It is 11 p. m. now and I really feel very sleepy. You must be feeling the evenings awfully dull these days. There is no Cinema here and the only recreation is walking up and down the lawn in front of my bungalow and taking in the fresh ozonised breeze.

I think I better stop.

With love.

Teddy.

D 9.

Letter from Plaintiff to defendant.

D 9.
Letter from
Plaintiff.
to Defendant
6. 3. 51

Balika Vidyalaya,

Kegalle.

6. 3. 51.

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My darling Teddy,

Thank you very much for your letter. It was indeed a pleasant surprise to me, because I never thought that you will be able to find the time to write so soon.

30

I am glad that you have settled down and find life quite comfortable. If not for the seabreeze the climate would have been terrible. Specially at this season. I couldn't get any news of you till your letter reached me, because I was away at home during the week-end, and returned only this morning.

Exhibits
 D 9.
 Letter from
 Plaintiff to
 Defendant.
 6. 8. 51
 —continued

Darling the day you left for Point Pedro, I felt your absence greatly. Even the following day I was utterly miserable. On Friday I accompanied Sister to Millet Aiya's, to see his baby son. It was a good thing that I got the chance of going home during the week-end. Usually I long to come back. But this time I did not feel like returning. The only thing that induced me to come back this morning was the thought that I may receive a letter from you. When I get up in the morning the first thing that comes into my mind is that I have to spend another day without you my darling, and it makes me most unhappy. I cannot tell you my love, how much I miss the glorious evenings we spent together. I was very glad about your new appointment, but I only wish it had come in April and not so suddenly.

10

Our carnival is commencing tomorrow and it will go on till next Tuesday, so there is something else that will keep me fully occupied. We are not having school till next Wednesday. I will be spending the nights at the hostel as I don't wish to keep up till late. A week after the carnival we are closing school. This time I am longing for the holidays, and I will push off the day we get our holidays. At any rate I don't intend coming here next term. Therefore, I don't mind if the carnival goes on for some time.

20

Indra has chicken-pox, and she was brought home on Sunday. It looks as if this time too their holiday will be spoilt. If they come there even, I don't think I will come. My friends here are the same old people. They are very anxious to know how you are faring at Pt. Pedro.

I am sending you some sweets and two books. I cannot say what sort of books they are, because I haven't read them. Anyway I hope you will find them interesting.

30

The other day when I was going to Colombo with Daddy I picked up courage and pointed out to him how unfair he has been in keeping you waiting for such a long time. He took it up very well and went home and got four dates March 23rd, 26th, April 9th, 11th to fix up our engagement. He had come here when we were away to give you the dates for you to choose a suitable date. But as he did not meet you he has given the paper to Punchi Aiya, to be handed over to you before you left. But I don't think Punchi Aiya was able to give it to you. Punchi Aiya had told Daddy to have it in May. Just think about it and before you let him know of the date that is suitable for you write to me. As for me I prefer April 11th for many reasons. I expect you will be getting a few days off as a result of the Sinhalese New Year. If we have it in May he may delay over the wedding. Some say that March and May are both unlucky months. And at times I also believe these superstitious things, therefore I like to have it in April, only if it is convenient for you. Another thing, I like to have all my brothers and sisters with me at that time. If its during Term time they may not be granted permission to come. When you write to Daddy please don't mention anything about our wedding because I will see that we will get married soon. Only now I realize that it is totally my fault for not having told him all this time. Sister may write to you asking you to decide a date in May. But if April is convenient for you why not have it then. In any case in your next letter to me, please let me know about your arrangements.

Darling, I hope you are careful of yourself and not driving too fast. I always remember you in my prayers my love, and pray that you will be a great success. Now I shall stop writing. The next time you write to me try and post the letter somewhere else. So that it may not have the Pt. Pedro post mark.

Cheerio!

With much love

Girlie.

Exhibits
D 9.
Letter from
Plaintiff to
Defendant.
6. 3. 51
—Continued

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20

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D 17.

Letter from C. H. Udalgama to Defendant.

Exhibits
 D 17.
 Letter from
 C. H.
 Udalgama
 to Defendant
 14. 3. 51

Kegalle,
 14th March, 1951.

My dear Teddy,

Thanks for your letter. I am glad you like the work and with gods' help I know you will do well. I am myself worried on your matrimonial affair. I have, as I promised, informed Anula to convey that the promises must be kept before anything further could take place. I think she has written to him about it, but the man has not replied as yet. I think he was busy last week as he had an intention of contesting a B. N. ship again. I shall attend to it and let you know again. I quite understand that there is no purpose in delaying if it is to come off. Father and I intend coming that way during the holidays. We shall inform you of the date. Yes, Uncle gave us a graphic description of your bungalow and all the rest. There is no trouble about your work as I told a few who came that you had gone to Point Pedro. It has been raining cats and dogs here since you left and the evenings are miserable. We have been trying to get you a cook but no suitable chap has been found, yet. I know you must be feeling very lonely so do we, after you left. Our usual meeting place under the bamboo trees have dropped as the V. H. is not to be found these days. He has got a son and he says that he must be more careful now of his money.

10

20

All the lawyers of course the good chaps are daily making inquiries about you. We won Laminduwa's case and the chap is very sorry you are not here. In haste as I want to go home as rain clouds are getting for another good shower.

30

With love.
 Brother,

Letter from Defendant to Plaintiff.

Point Pedro,
16th. March 51.

Exhibits
—
P 10.
Letter from
Defendant
to Plaintiff.
16. 3. 51

My darling Girlie,

I hope you received my last letter. I received the books. Thanks for the same. I have been having a very busy week this last few days. There was a dinner for the District Judge. All the Judges of the District attended. Then the day after there was a play at Hartley College Point Pedro. The play was Rabindranath Tagore's Post Office. I had to be one of the Judges and pick out the best actor. It was altogether a nice show and I enjoyed it very much.

These last few days I have been out of Point Pedro on circuit at Chavakachcheri.

I don't think I will be going any where for Easter. As a matter of fact I find I am on 24 hours duty here. I expected a letter about the matter you mentioned in your letter but I have not received one yet.

I wonder when you all are getting your holidays. There is one thing I want to tell you and that is I don't think it will be proper for me to write to you when you go back home. I told you about it some time ago too. I don't think you should give up your teaching at the Vidyalaya. After all it will be quite dull for you at home, doing nothing.

I had a letter from Nanda; L. B. and I saying that they would be coming here for Easter. I wonder whether sister is also coming. If they are coming I would like if you too could come. I have to do a great deal of writing. From morning 9.30 till 4.30 I have to write and write and write oh it is terrible. I hope Indra's chicken pox is over. Please convey my kind regards to my cousin Suwarna and your cousin Suwarna No. 2. I am feeling dreadfully sleepy.

So Cheerio for the present.

With love.

Teddy.

Exhibits

D 16
 Letter from
 Mrs. C. H.
 Udalgama
 to Defendant
 19. 3. 51

D 16.**Letter from Mrs. C. H. Udalgama to Defendant.**

Balika Vidyalaya,
 Circular Road,
 Kegalle.
 19-3-51.

My dear Teddy,

Uncle sent the enclosed dates sometime ago to Cecil but I was so busy that I could not sent them to you. In fact we are in the midst of a Carnival. It rained cats and dogs for the first six days, so we had a break, and are now having another three days of it, but to go back to the enclosed. Uncle wants you to choose a date, from the many given, that is convenient to you for the engagement, and to give notice of marriage.

10

He 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 every thing before the engagement.

We are hoping to come and see you during the Easter holidays, so I hope the trip materializes.

20

I trust this letter will find you in the best of health.

Everyone in Kegalle is doing well. Please reply soon.

With all fond wishes for your success.

Yrs. affly

Sister.

D. 16 A.
List of Dates.

Exhibits
 D 16 A.
 List of Dates
 (undated)

Translation.

Monday the 9th April, 1951, morning at 6.50 facing the South.

Wednesday the 11th April, 1951 morning at 6.7 facing the South.

Wednesday the Second May, 1951, morning at 7.6 facing the South.

10 Thursday the 17th May, 1951, morning at 6.50 facing the North.

Monday the 21st May, 1951, morning at 6.1 facing the South.

Auspicious for exchange of rings.

Editor of the ephemeris almanac.

L. A. Ratnayake.

“Nawatheja” School of Astrology,

Peradeniya.

Translated by me.

Sgd. T. B. Chandrasekera.

Interpreter,

20 District Court,

Kegalle.

Exhibits
 P 3.
 Letter from
 Pathmi to
 Plaintiff.
 20. 3. 51

Letter from Pathmi to Plaintiff.

Nugawela Walawwa.

Katugastota

20-3-51.

My dear Ira.

Thank you for your letter. I am happy that you got the card and money order.

What Ira, can't you ask your Teddy to help you a bit now that he's a Magistrate. We were quite interested to see his appointment in Pt. Pedro. I'm sure you must be missing your long heart chats. I wonder if he misses you. 10

So Ira. Nanda Ekanayake too is getting married. I'm sure I told you of Sudharma's wedding. How lucky. So what about yours. That's the way when one is good looking. But Ira, don't you think its better for you to continue your studies and ask him to wait. If you had only continued at Methodist this day you would have been at the Varsity with so many after you. What a pity you didn't do it. Then you would have had a wider choice too.

Hope you haven't told anyone about Kupa Ratwatte's marriage. I'm frighten I may fall into trouble. 20

How's your cousin? You must write again and give me news of your Kegalle doings. We are anxious to know everything about you.

Now shall wind up. Hope to hear soon. All at home send their love to you.

With love.

Yours affectionately,
 Pathmi,

D 21 A.**Plaint in D. C. Colombo Case No. 24406.**

In the District Court of Colombo.

No. 24406/Money.

Brown & Co. Ltd., of Colombo.

*Plaintiff.**vs.*M. B. BOANGE of "Boange Walauwa,"
Kadugannawa.*Defendant.*

10

On this 29th day of March, 1951.

The Plaintiff of the plaintiff above named appearing by
Clement A. S. Mather, its Proctor, states as follows:-

1. The plaintiff is a Company duly incorporated limited
in liability and having its registered office in Colombo within
the local limits of the jurisdiction of this Court. The defen-
dant resides at Kadugannawa.

20

2. At Colombo aforesaid between the 12th day of April
1950 and the 24th day of October, 1950 the plaintiff bar-
gained sold and delivered to the defendant certain goods and
at the request of the defendant executed certain work and
furnished the materials therefor and the value of the said
goods and of the said work and materials amounts to
Rs. 451.35 as shown in the account particulars filed herewith
marked. "A" and pleaded as part and parcel of this plaint.

30

3. It was agreed between the plaintiff and the defendant that
the defendant should be allowed three months credit and that
thereafter interest at 12 per centum per annum should be paid by the
defendant upon money due by the defendant to the plaintiff and a
sum of Rs. 13.77 is due to the plaintiff from the plaintiff by way
of interest, as shown in the said account particulars.

Exhibits

D 21 A
Plaint in
D. C.
Colombo
case No.
24406.
9. 3. 51

Exhibits

D 21 A
Plaint
in D. C.
Colombo
case No.
24406.
29 3. 51

-Continued

4. The defendant on the date mentioned in the said account particulars paid the plaintiff a sum of Rs. 100-00 in part payment of the said debt.

5. There is now due and owing by the defendant to the plaintiff as aforesaid the balance sum of Rs. 365-12 which sum or any part thereof the defendant has failed and neglected to pay although thereto often demanded.

WHEREFORE THE plaintiff prays for judgment against the defendant.

1. For the said sum of Rs. 365-12 with legal interest thereon from date hereof till date of decree and thereafter on the aggregate amount of the decree till payment in full. 10

2. For costs of suit, and

3. For such other and further relief as to this Court shall seem meet

Sgd. C. A. S. Mather,

Proctor for Plaintiff.

Documents filed with plaint :

Account particulars marked " A " and referred to in the plaint.

Documents relied on by the plaintiff. 20

1. Plaintiff's Books of Account.

2. Correspondence between the plaintiff and the defendnnt.

Sgd. C. A. S. Mather,

Proctor for Plaintiff.

True copy of Plaint filed in D. C. Colombo case No. 24406/
Money.

Sgd. Illegible.

Asst. Secretary, D. C. Colombo.

Certified this 4th day of November, 1952.

Sgd. Illegible.

for Secretary. 30

Decree Nisi in default of appearing by defendant.

Class. 1.

No. 24406/M

In the District Court of Colombo.

Brown & Co. Ltd. of Colombo.

Plaintiff.

against.

M. B. Boange of "Boange Walauwa "

Kadugannawa.

Defendant.

Exhibits
 D 21. A
 Plaintiff in
 D. C.
 Colombo
 case No.
 24406
 29. 3. 51
 —Continued

10 This action coming on for disposal before N. Sinnatamby
 Esquire, District Judge of Colombo, on the 7th day of September
 1951, being the day fixed for exparte hearing of the action and the
 plaintiff appearing by Proctor and the defendant not appearing
 either in person, or by proctor, or by counsel, although he was duly
 served with the summons, together with a copy of the plaint, as by the
 affidavit of the process server dated 28th July, 1951 filed the 28th
 day of July, 1951 appears: It is decreed that the defendant do pay
 to the plaintiff the sum of Rs. 365-12 with legal interest thereon from
 20 29th March, 1951 till payment in full and his costs of action, unless
 sufficient cause be shown to the contrary on the 5th day of October,
 1951.

Sgd. N. Sinnatamby.

District Judge.

The 7th day of September, 1951.

DECREE Absolute for default of showing cause, or sufficient
 cause not being shown.

30 The above decree Nisi coming on for final order before
 N. Sinnatamby Esquire, District Judge, Colombo, on this 30th day
 of November, 1951, being the day appointed in the said Decree for
 showing cause against it of which Decree the defendant received
 notice as appears by the affidavit of Process Server, dated 26th
 October, 1951 and plaintiff appearing by proctor and the defendant

Exhibits. appearing by proctor but failing to file his objections and no cause
 being shown to the contrary the above decree is made absolute.
 D 21 A
 Plaintiff in
 D. C.
 Colombo
 case No.
 24406.
 29. 3. 51
 —Continued

Sgd. N. Sinnatamby.
 District Judge.

The 30th day of November, 1951.

True copy of the Decree Nisi and Decree Absolute entered of
 record in D. C. Colombo Case No. 24406/M.

Sgd. Illegible.

Senior Assistant Secretary,
 D. C., Colombo.
 13-10-53.

10

D 31
 Telegram to
 Defendant
 20. 4. 51

D 31.

Telegram to Defendant.

CEYLON TELEGRAPHS,
 TELEGRAM.

No. 51.

Address.

Udalagama,
 Magistrate,
 Pt. Pedro.

(*) Seal Point Pedro
 Postoffice.

20

Coming dinner. four

geebee.

D 28.
 Letter from
 Plaintiff to
 Defendant.
 2. 5. 51

D 28

Letter from Plaintiff to Defendant.

Balika Vidyalaya,
 Kegalle.
 2. 5. 51

My Darling Teddy,

I am very sorry for not writing to you, all these days.
 I received both your letters last term. Thanks for the same.
 I had no way of writing to you during [the holidays, that is
 the main reason why I decided to come back.

30

So how did you spend your holidays? I heard that you had a grand time during Easter. When are you thinking of coming this way? It looks as if you will not be able to come for a long time.

Exhibits
D 28
Letter from
Plaintiff to
Defendant.
2. 5. 51
—Continued

Our annual inspections are close by, therefore we are busy adding up registers etc. We have a nice new big building. Grace and I have been put into one corner of it for our English classes. A new graduate is coming in June as Sister is going away in July. At present she is having a hard time as Savitri is also down with mumps.

10

Once again I thought of staying in the hostel. I asked for a separate room and they were able to give me only a small one.

I have no proper companion here. So I am studying for an exam to keep myself occupied. Please write to me during your spare time. Now I think I'll stop writing as school has just started.

With much love.
Girle

D 1

20

Letter from Defendant to his father.

C. V. Udalagama, B. A. (Lond)

Point Pedro.
7. 5. 1951.

D 1.
Letter from
Defendant to
his Father.
7. 5. 51

My dear Father,

Uncle reached this place safely the other day. He is enjoying his stay over here.

30

I wonder what happened to P's matter. In fact I wrote to S. B. the other day to meet his friend at Whittals and try to fix up P on one of their estates. Anyway I am anxious to know what happened and whether he is getting the job.

Exhibits
 D 1.
 Letter from
 Defendant to
 his Father.
 7 5. 51
 —Continued

As regards my marriage business, it looks as if this chap is unable to give the dowry promised. Otherwise there is absolutely no reason for this failure on his part to write the deeds and deposit the money before the end of last month. I think as he is unable to meet the promise he made, the matter will have to be dropped. Hence without kicking up a row slowly drop it. I find a lot of what you have said has gone into the ears of vicious and unreliable people who are capable of a lot of mischief. Hence keep everything to yourself and only communicate with me. Don't tell anyone anything even those at home for they cannot keep their tongue quiet. If you feel like it you can ask Sister-in-law whether this man can meet the promise he made although their promised date has expired. Anyway Punchiah might know about it and I would like to know what their intentions are.

10

It is very hot at this time of the year over here. The temperature is over 105% in the shade.

There is nothing more in the way of news. I am keeping good health and I am doing my work to the best of my ability.

20

Hope all of you are also keeping in good health.

With love.

son.

P. S.

Uncle wants all his letters directed here. He is very anxious to know whether his salary has been sent. If not he wants Martin to go to the E. E.'s Office and find out from the chief clerk or Peduru as to what is happening re salary.

Intd. C. V. U.

D 2.**Letter from Defendant to his father**

Exhibits
D 2.
Letter from
Defendant.
to
His father
14. 5. 51

C. V. Udalagama, B. A. (Lond)

Point Pedro,

14. 5. 51.

My dear father,

10 I received your letter and thanks for the same. As regards your car, Jinadasa tells me that he put all the papers you gave him under the "Atuwa". If you had informed the Commissioner of Motor transport and the A. G. A. when you transferred the car, you need not worry. Furthermore you are guilty under the ordinance only if you "possess or use" a car without a tax licence for the current year: If there is any trouble you can get.....to speak to Jayawardene.

20 If Martin is coming this way for Wesak kindly tell him to bring the following things. If he has no money uncle will give him when he comes. 3 jak fruits, 2 measures pepper 3 lbs of Maldive fish, 1 dozen pine apples, 2 cabbages, 1 dozen beetroots, 1 dozen carrots, 6 salad trees, and 1 dozen leeks. If he comes by the night mail of the 18th instant to Chavakachcheri he can come to Pt. Pedro with me. Tell him to wait at the Court house till I come.

30 The weather is daily getting unbearable over here. It is intensely hot and sleeping in the nights at times becomes impossible. There is a request I want to make from you. I want you to give me a present of a Refrigerator. I have written to Cargills and they have sent me all the literature and their prices. The one suitable for my purpose cost Rs. 1450-00. I find without a Refrigerator it is impossible to live here.

Exhibits
 D 2.
 Letter from
 Defendant.
 to his father
 14. 5. 51
 —Continued

As regards Boange's affair the final date I told sister-in-law when she came here was May 21. I have not heard from her or from anyone re this matter.

I am very anxious to know what is happening. Why did Boange and wife come home? What did they say and what was their proposition? I have told them in plain words, that the agreed promise must be carried out before the due date. Please meet sister - in - law and Punchiah and ask them whether this man can give this or not. If he cannot, to say so point blank and have done with it. This sort of hanky panky business only confirms ones opinion of the man that he is a damn rogue. What is the other alternative? If some other proposition is to be arranged, I want a minimum dowry of 25,000.00 rupees. The girl must be educated, good looking, respectable and young. What about A. S. P. Dambawinne's matter? Whatever it is I am reaching the end of my patience in this matter. Please keep what ever you do to yourself and me. Dont tell even Martin any thing. Further handle the matter very tactfully and diplomatically.

10

I hope P. will get that job he went for. Uncle is getting on very well here. He is not taking any drinks at all. The weather is too hot for drinks. I would remind you once again about the Refrigerator.

20

Hope you are keeping good health.

Your loving son.

Teddy.

P. S.

I am herewith sending a note from uncle to Jayawardene.

Intd. C. V. U.

D. 24 A.**Journal Entries in D. C. Kandy Case No. M. R.4361.**

In the District Court of Kandy.

No. M. R. 4361.

Class. 1.

Amount. Rs. 599-67.

Nature, Money.

Procedure Reg.

Exhibits
 D 24 A.
 Journal
 Entries in
 D. C. Kandy
 Case No.
 M. R. 4361
 9. 6. 51. to
 25. 8. 52

10

P. V. C. Abdulla & 7 others of Business
 firm T. P. Cunji Moosa and Company,
 Kadugannawa.

*Plaintiff.**vs.*

M. B. Boange of Arambegama,
 Kadugannawa.

Defendant:

JOURNAL.

The 9th day of June, 1951.

Mr. L. B. Kolugala files appointment and plaint.

20

Plaint accepted and summons ordered for 14-8-52.

Sgd. F. Conrad Perera

District Judge.

(1) 19. 7. 51. S. S. on debt issued.

(2) 14. 8. 51. Mr. L. B. Kolugala for plaintiff.

S. S. not served on defendant R. I. for 12.10.51.

Sgd. F. Conrad Perera.

D. J.

Exhibits
 D 24 A.
 Journal
 Entries in
 D. C. Kandy
 Case No.
 M. R. 4961
 9. 6. 51 to
 25. 8. 52
 —Continued

(3) 17. 8. 51. S. S. on defendant re-issued.

(4) 12. 10. 51. Mr. Kolugala for plaintiff.

SS not served. Gone to Colombo. R. I. to
 correct Address for 14. 12. 51.

Intd. F. C. P.

(5) 5. 11. 51. Mr. Kolugala for plaintiff files affidavit and
 moves for re-issue of s. s. on defendant for
 substituted service by affixation.

Fiscal does not report that he is evading
 service.

. 10

Ascertain the present address and re-issue for
 personal service.

Intd. E. B. S. C.

(6) 9. 11. 51. Mr. Kolugala for plaintiff.

S. S. served on defendant.

He is absent.

Mr. Marikar files proxy. Ans. on
 11. 1. 52.

Intd. K. D. de S.

(8) 15. 1. 52. Mr. Kolugala for plaintiff.

20

Mr. Marikar for defendant.

Answer due. filed. Claim in reconvention
 Replication. 22. 1. 52.

Intd. N. K.

(9) 22. 1. 52. Mr. Kolugala for plaintiff.

Mr. Marikar for defendant.

Replication due. on 5. 2.

Intd. F. C. P.

- (10.) 5. 2. 52. Mr. Kolugala for plaintiff.
 Mr. Marikar for defendant.
 Replication -- not filed.
 Trial 14. 8.
 Intd. N. K.

Exhibits
 D 24 A.
 Journal
 Entries in
 D C. Kandy
 Case M. R.
 4361.
 9. 6 51 to
 25. 8. 52
 —Continued

- (11.) 19. 8. 52. Mr. Kolugala for plaintiff.
 Mr. Marikar for defendant.
 Case called today as 14. 8. 52. fell during
 Court vacation.
 Call 25. 8. before A. D. J. (11) to fix date
 of trial.
 Trial 18. 11
 Intd. N, K.

10

- (12) 25. 8. 52 Mr. Kolugala for plaintiff.
 Mr. Marikar for defendant.
 Case called (11)
 Trial 18. 11
 Intd. F. C. P.

D. 24 B.

Plaint in D. C. Kandy Case No. M. R. 4361

No. M. R. 4361.
 Value. Rs. 599.87.
 Class.

In the District Court of Kandy.

1. P. V. C. Abdulla,
2. P. V. Cunji Ahammed,
3. C. R. Uppie,
4. J. K. Moidoo,
5. P. V. Cunji Ahammed Hadjiar,

20

D 24 B.
 Plaint in
 D. C. Kandy
 Case No.
 M. R. 4361.
 9. 6. 51

Exhibits
 D. 24 B.
 Plaintiff in
 D. C Kandy
 Case No.
 M. R. 4391
 9. 6. 51
 —Continued

6. T. P. Usunan,
7. T. P. Mohideen Cutty,
8. P. Cunji Moosa carrying on business under the name style and firm of T. P. Cunji Moosa and Company Kadugannawa.

Plaintiffs.

vs

M. B. Boange of Arambegama Kaduganawa

Defendant.

On this 9th day of June, 1951.

10

The plaint of the plaintiffs abovenamed appearing by their Proctor Loku Banda Kolugala states as follows:—

1. The defendant resides within the jurisdiction of this Court.

2. The defendant at Kadugannawa within the jurisdiction of this Court purchased goods from the plaintiff and also borrowed and received moneys from the plaintiffs and also now a sum of Rs. 599-87 due to the plaintiffs which sum or any part thereof the defendant have failed to pay the plaintiffs though thereto often demanded.

20

3. A cause of action has therefore accrued to the plaintiffs to sue the defendants for the recovery of the said sum of Rs. 599-87.

Wherefore the plaintiffs pray:—

- (a.) For judgment against the defendant for the said sum of Rs. 599-87.
- (b.) For costs of this action and for such further and other relief as to this court shall seem meet.

Sgd. L. B. Kolugala.

Proctor for plaintiffs.

30

DOCUMENTS relied on by the plaintiffs.

Account Books of plaintiffs.

Sgd. L. B. Kolugala.

Proctor for Plaintiffs

D 24 C**Answer in D. C. Kandy Case No. M. R. 4361**

In the District Court of Kandy.

No. M. R. 4361.

Exhibits
 —
 D 24 C.
 Answer in
 D. C. Kandy
 Case No.
 M. R. 4361
 15.1.52

10

1. P. V. C. Abdulla,
2. P. V. C. Unji Ahammed,
3. C. K. Uppie,
4. J. K. Moidoo,
5. P. V. Cunji Ahammed Hadjiar,
6. T. P. Udana,
7. T. P. Mohideen Cutty,
8. P. Cunji Moosa carrying on business under the name style and firm of T. P. Cunji Moosa and Company, Kadugannawa.

*Plaintiffs.**vs.*

M. B. Boange of Arambegama., Kadugannawa.

Defendant.

20

On this 15th day of January, 1952.

The answer of the defendant above named appearing by his proctors Mohamed Abdul Sattar Marikar carrying on business under the name and style of "Marikar & Marikar" and his Assistant Mohamood Alim — sahib Mohamed Muhsin states as follows:-

1. The defendant denies all and singular the allegations in the plaint save and except those hereinafter specially admitted.

Exhibits
 D 24 C
 Answer in
 D. C. Kandy
 Case No.
 M. R. 4361
 15.1. 52
 -Continued

2. The defendant admits the allegations in paragraph 1 of the plaintiff.

3. Answering to paragraphs 2 and 3 of the plaintiff the defendant states that he supplied green tea leaf purchased certain goods from the plaintiff and the plaintiffs promised to pay defendant two cents per lbs of green tea leaf more than the price paid by them to bought leaf supplier but the plaintiffs appear to have not done so.

4. The defendant specially denies that the amount claimed or any sum whatsoever is due to the plaintiffs and states that if accounts are looked into the plaintiffs will be indebted to the defendant in over a sum of Rs. 100.00 and the defendant however restricts his claim to Rs. 100.00 and claims the same in reconvention.

10

5. Further answering the defendant states that the plaintiffs are not properly before Court and this action is badly constituted and the plaintiffs' claim if any, is barred by lapse of time.

Wherefore the defendant prays:-

1. That plaintiffs' action be dismissed.
2. That judgment be entered in his favour against plaintiffs in the said sum of Rs. 100.00
3. For his costs and for such other and further relief as to this court shall seem meet.

20

Sgd. Marikar & Marikar.

Proctors for defendant.

True copies of Journal Entries, plaintiff, and Answer in D. C. Kandy M. R. 4361.

Intd. Illegible.

Secretary.

30

D 24 D**Decree in D. C. Kandy case No. M. R. 4361.**

Decree.

In the District Court of Kandy.

No. 4361.

Exhibits
—
D 24 D.
Decree in
D. C. Kandy
Case No.
M. R. 4361
18. 11. 52

1. P. V. C. Abdulla.
2. P. V. Cunje Ahammed
3. C. R. Uppie.
4. J. K. Moidoo.
- 10 5. P. V. Cunje Ahammed Hadjar.
6. T, P. Udana.
7. T. P. Mohideen Cutty.
8. P. Cunji Moosa Carrying on business under the name style and firm of T. P. Cunji Moosa and Company, Kadugannawa.

Plaintiffs.

vs.

M. B. Boange of Arambegama; Kadugannawa.

Defendant.

20 This action coming on for final disposal before F. Conrad Perera Esqr. Additional District Judge Kandy, on the 18th day of November, 1952 in the presence of the Proctor for the plaintiff and of the proctor for the defendant.

It is ordered and decreed of consent that the defendant do pay to the plaintiffs the sum of Rs. 475.00 in monthly instalments of Rs. 50.00 commencing from 18th December, 1952 and subsequent instalments on the 18th of each succeeding month. On failure of payment of any instalment execution to issue for the full amount then due.

30 Sgd. F. Conrad Perera.

Additional District Judge.

The 18th day of November,
1952.

True copy of decree.

Sgd. Illegible.

Secretary. 16. 1. 53.

Exhibits

D 11.
Letter from
M B. Boange
to Defendant
2. 8. 51

D 11**Letter from M. B. Boange to Defendant.**

Boange Walauwa
 Kadugannawa,
 2nd August, 1951.

My dear Teddy,

My house is about to complete and as I promised you that I would fulfil the promise I made to you. I shall be sending the Pass Book and the deed of gift for your approval.

Now I am free to carry out the engagement and wedding any day Convenient to you. 10

With best wishes.

Yours sincerely.

Sgd. M. B. Boange.

D 13.**Letter from Plaintiff to Defendant.**

D 13.
Letter from
Plaintiff to
Defendant.
8. 8. 51

Balika Vidyalaya,
 Kegalle.
 3. 8. 51.

My darling Teddy,

20

I am sure this letter of mine will be a great surprise to you. I am extremely worried and sad and I really don't know what to do. I think you are the only one who can help me out of this difficulty. I hope you won't disappoint me.

At the beginning of this term I wrote to you. Since you did not send me a reply I was wondering whether you were annoyed with me or whether it was for some other reason. Yet I did not take anything seriously and never dreamt that there were evil preparations going on. There was a rumour to say that you were going to marry D. N. Nugawela's daughter. But I ignored it for your words were quite sufficient for me. Then a few days ago I heard that D. N. had gone across and that you all were engaged. Late last night I got to know that he was coming to meet you soon to fix up the date of marriage. After hearing these things I have spent so many sleepless nights thinking of what to do. Today I thought I don't care for rumours, only thing I must have faith in you and find out from you. So darling I beg of you to write to me immediately.

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I know it is my fault for not having the courage to make my father understand that delaying is no good. I never knew that I was surrounded by so many enemies. Enemies whom I thought were most sincere. D. N's two daughters and I were together for fifteen years. I have been more than a sister to them. Specially to Swarna the elder one. When she suffered from epileptic fits in school I used to always stay near her bedside till she became conscious. I went to the extent of even accompanying her to the bathroom through fear that she may hurt herself. Even her own sisters didn't do these things to her. I have been nice to the second one also. When others refused to wash the boils she used to get. I felt so sorry and I did it with my own hands. Although even in school twice they broke my friendship with three of my faithful friends. Once when we were in the fourth standard and once in the H. S. C. form. In spite of the trouble they created I forgave and forgot everything. Now that they have left school they won't leave me in peace. They are

Exhibits
 D 13.
 Letter from
 Plaintiff to
 Defendant
 3. 8. 51
 —continued

Exhibits

 D 18.
 Letter from
 Plaintiff to
 Defendant.
 3. 8. 51
 —Continued

trying to be worse than ever. I always knew all about D. N.'s crafty tricks. He has ruined so many people in this same manner, and now he has turned on me. I knew that when D. N.'s wife sometime back wanted to know if you had any unmarried brothers, there was something behind it. When one of them wanted a post here some of my friends told me not to go to the extent of helping them too much for they will turn against me. This is why most probably they used to write to me constantly and ask news of you. These few days there was no letter from them, so I can just guess the reason why. I never knew they were so jealous of me. They don't mind even ruining a person's whole life in order to gain their own ends.

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But whatever it is I don't think you have changed so soon my darling. I feel so sad to think that others are trying to deprive me of a happy future. If I hadn't met you and enjoyed your company I would have never felt it. I could have easily got into the Varsity this year. But I loved you too dearly, that is why I gave up studying. In spite of getting so many scoldings and being almost bullied at times I bore it all up for your sake. I knew that whatever others may say I had you to stand by me. But now I feel completely lost. I am writing this with a very heavy heart because now that sister is also away I am left all alone with no one to help me in my troubles. I feel that I am about to lose the only valuable possession I have in this world. Its not worth my living if I am going to lose you. It is I who will have to suffer not you or anyone else. Really this disappointment to me may even shorten my life for only I know how much I love you. Your letter made me feel so happy and when you stopped writing I felt miserable. But then I consoled myself thinking that you must be very busy. Though I don't write to you my thoughts are the whole time of you. Morning and night I never forget you in my prayers. This term I didn't want to come but as you told me not to give up teaching till I get married and I couldn't write to you that I came back

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with the greatest difficulty.

10 There too I got so many scoldings but I didn't care, for your words come into my mind. Now that I didn't study too I am ruined for ever. I always tell my mother that I feel proud to say that I am getting a very good husband to guide me right throughout life, and now to think that my life's guiding star is being taken away from me make me want to kill myself. The others who are planning all this do not realise what I will have to face in the world. If only one of them was in my place would have realized my plight. No harm will come to you but I such a sinful girl is ruined for ever. How could I face the world. I think death is the only solution to this, for it is useless living if I don't have you. I had great hopes of a happy future and now to lose them is unbearable for no one do I love so much as I love you. I sacrificed so many privileges for your sake and if I have to even sacrifice my life for your sake I'll do it, as a result of the great love I have for you. A little while ago I read the letter you had sent me and I couldn't help but cry. Your snap which I always keep close to me makes me feel worse.

20 I have never experienced such a state of affairs, so I feel heart broken. At this moment I am shivering while writing this. So darling if you really love me you will write at least one line to me immediately. I will be anxiously waiting for a reply. Write and tell me anything as I will be in the office to take the letters from the postman. Darling my sweetheart please write soon.

With much love,

Girlie.

Exhibits

D 13.

Letter from
Plaintiff
to Defendant

3. 8. 51

- *Continued*

Exhibits

D 14.
Letter from
Plaintiff to
Defendant.
14. 8. 51

D 14**Letter from Plaintiff to Defendant.**

Balika Vidyalaya
Kegalle.
14. 8. 51.

My darling Teddy,

I really can't account for your silence. Its strange that you haven't written to me. My future stay in Kegalle, depends entirely on your word. I must decide what I am to do with myself, if I have to leave this place. Now that we are closing on the 24th of this month I have to tell, the people here whether I will be coming back or not, before that date. I have to tell this to my father too, a thing which I detest doing. That's why I am anxiously waiting for a reply.

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I want to write and tell my father before the holidays, because I know what I will have to face if I tell him when I go home. Therefore as a last favour please write to me by return post. I am extremely sorry for worrying you, but I can't help it.

With much love.
Girlie.

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D 15.

D 15.
Letter from
Plaintiff to
Defendant
15. 8. 51.

Letter from Plaintiff to Defendant.

Balika Vidyalaya,
Kegalle.
15. 8. 51.

My darling Teddy,

I hope you received the letter I sent you yesterday. Just now I had a letter from my Daddy saying he has at last finished building the house and is prepared to have our engagement and wedding quickly. He says he must have

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them on two days that will be convenient for you and he has written to you about it. I wrote back saying I too wish to contact you on this matter and hereafter not to postpone things any further. This time he sounded definite.

Exhibits
D 15.
Letter from
Plaintiff to
Defendant.
15. 8. 51
—Continued

10 So darling, now it is up to you to let me know your arrangements. Again I am telling you my future depends entirely on your word. Still I haven't mentioned a word of this rumour to any of my people for it came to me from a complete outsider. If I have offended you in any of my letters please forgive me and write to me by return post. Thank you for all the trouble and I am very sorry for worrying you.

With much love,
Girle.

D 3

Letter from Marikar & Marikar Proctors

Kandy
18. 8. 1951.

Dear Mr. Udalagama,

20 Mr. M. B. Boange has instructed me to send you the draft of a deed of transfer to be executed in favour of his daughter for your approval.

D 3.
Letter from
Marikar &
Marikar
Proctors
18. 8. 51

The said draft is annexed hereto. As the said conveyance is virtually a gift by my client, the consideration has been arbitrarily fixed at Rs. 15,000.00.

I shall be pleased if you will send me the said draft duly approved.

Thanking you.
Yours faithfully,
Sgd. Illegible.

D 4.

Exhibits
D 4.
Draft of Deed
of Transfer
by P. M. B.
Boange.

Draft of Deed of Transfer by P. M. B. Boange.

Prior Registration.

Registrar of Lands.

No.

Rs. 15,000-00.

TRANSFER.

Lands. 2.

Know all men by these presents that I Pilimatalawe Medduma Banda Boange, of Boange Walauwa in Arambegama in Medapalata of Yatinuwara in the District of Kandy Central Province of the Island of Ceylon (hereinafter called and referred to as the Vendor) for and in consideration of the sum of Rupees Fifteen Thousand (Rs. 15,000-00) of lawful money of Ceylon well and truly paid to me by Pilimatalawe Wijesundara Rajakaruna Nawaratne Bandaranayake Mudiyanse-ralahamillage Boange Walauwe Iranganie Boange, of Balika Vidyalaya of Kegalle in Sabaragamuwa Province. (hereinafter called and referred to as the vendee) the receipt whereof do hereby admit and acknowledge have granted, bargained, sold assigned, transferred set over and assured and do by these presents, grant, bargain, sell, assign, transfer, set over, and assure unto the said Vendee heirs, executors administrators and assigns. The premises in the Schedule hereto fully described together with all and singular the rights, ways, easements, advantages, servitudes and appurtenances whatsoever thereto belonging or in any wise appurtenant or usually held occupied, used, or enjoyed therewith or reputed or known as part or parcel thereof together with all the estate, right, title, interest, property claim and demand whatsoever of the said vendor in, to upon or out of the said premises and every part thereof together with all title deeds, vouchers and other writings therewith held or relating thereto which said premises have been held and possessed by the said vendor in the manner

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hereinafter mentioned TO HAVE AND TO HOLD THE SAID PREMISES HEREBY sold and conveyed with the rights and appurtenances thereto belonging unto the said Vendee and aforewritten absolutely for ever and the said Vendor for heirs, executors administrators and assigns do hereby covenant, promise and declare with and to the said vendee heirs, executors administrators assigns that the said premises hereby sold and conveyed are free from any encumbrance whatsoever and that have not at any time heretofore made done or committed or been party or privy to any act, deed, matter or thing whatsoever whereby or by reason whereof the said premises or any part thereof are, is can, shall or may be impeached or encumbered in title, charge, estate or otherwise howsoever and that and aforewritten shall and will at all times hereafter warrant and defend the same or any part thereof unto and aforewritten against any person or persons whomsoever and further also shall and will at all times hereafter at the request and cost of the said vendee or aforewritten do and execute or cause to be done and executed all such further and other acts, deeds matters assurances, and things, whatsoever for the further and more perfectly assuring the said premises hereby sold and conveyed and every part thereof unto or aforewritten as by or aforewritten may be reasonably required.

In witness whereof the said Vendor do hereunto and to two others of the same tenor and date as these presents set hand at on this day of August One Thousand Nine Hundred and Fifty one.

The Schedule above referred to:—

1. All that land called Egodawatte of three pelas of paddy sowing extent or One Acre Two Roods and Sixteen Perches (1 A. 2 R. 16 P) according to the Plan dated 7th and 8th September, 1926, made by M. C. D. Jayasinghe Licensed Surveyor situated at Arambegama in Medapalata of Yatinuwara in the District of Kandy Central Province of the Island of Ceylon and bounded on the East by the fence of Paladawakugedera

Exhibits
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D 4.
Draft of Deed
of Transfer
by P. M. B.
Boange
—Continued

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Exhibits
 D 4.
 Draft of Deed
 of Transfer
 by P. M. B.
 Boange.
 —Continued

watte, on the South by Welagedara Ranhamy's field on the West by Boange Kumbura and on the North by Keenagaha Kotuwe watta Agale together with everything standing thereon.

2. All that land called Ittaralauwe watta of Four Acres in extent situated at Arambegama aforesaid and bounded on the East and South by ditch on the West by the boundary limit of Giragama Tea Estate and on the North by above the Bamboo Bush of Walauwe Watta, together with everything standing thereon.

Which said land and premises are held and possessed by me under and by virtue of deed Nos. 14891 dated 11.5.1922 and No.17749 dated 25th June, 1925, both attested by E. M. B. Seneviratne Notary Public, of Kandy.

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D 5

D 5.
 Letter from
 Nanda
 Udalagama
 to Defendant
 (undated)

Letter from Nanda Udalagama to Defendant.

Malabar Street.

My dear Teddy,

Think, I've found you match so don't fail to come here this Saturday. Didn't L. B. tell you I wanted you to come here last week end.

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In haste,

Your Affect. Sister,

Mrs. Nanda Udalagama.

D 10.**Letter from M. B. Boange to Defendant.**

Boange Walauwa,
Pilimatalauwa,
22nd August, 1951.

Exhibits
D 10.
Letter from
M. B. Boange
to
Defendant.
22. 8. 51

My dear Teddy,

I have instructed Messrs Marikar and Marikar, proctors, Kandy to send you the draft deed for your approval.

10 Please send it back to me early to enable me to execute it.

With best wishes.

Yours sincerely,

Sgd. M. B. Boange.

D 18.**Letter from Plaintiff's father to Defendant's father.**

Boange Walauwa,
Pilimatalauwa,
Kadugannawa,
27th August, 1951.

D 18.
Letter from
Plaintiff's
father to
Defendant's
father.
27. 8. 51

20 Dear Mr. Udalagama,

I have reliable information that your son Teddy is to be engaged to a Miss Nugawela in the early part of next month.

I have written to Teddy himself and enquired whether this information is correct, but have had no reply, and I am now writing to you for any information you can give me in this matter.

I need hardly tell you what my interest in the matter is. You are aware that for practical purposes there was a positive agreement on the part of Teddy to marry my daughter.

Exhibits
 D 18.
 Letter from
 Plaintiff's
 father to
 Defendant's
 father.
 27. 8 51
 —Continued

Should I receive no reply to the contrary within the next few days, I am writing this letter to inform you that I shall as a first step bring this conduct of your son to the notice of the Attorney General, as head of the Judicial Service, immediately I have positive information that the proposed engagement to Miss Nugawela has taken place. Thereafter, I shall proceed to take legal Action for damages, and breach of promise in the usual way and I am confident that I have ample reliable evidence from respectable witnesses to avail me to succeed in my action.

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I hope that even at this late stage in fairness to my daughter you will see that this cause of action I propose becomes un-necessary.

Yours sincerely,
 Sgd. M. B. Boange.

D 19

Letter from Plaintiff's father to Defendant.

D 19.
 Letter from
 Plaintiff's
 father to
 Defendant
 27. 8. 51

Boange Walauwa,
 Pilimatalauwa,
 Kadugannawa
 27th August, 1951.

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My dear Teddy,

I trust you have received the telegram I sent you today in the following terms — "My letter and Proctor Marikar's letter sent Registered cover - No reply yet - Invite Early attention - Boange."

I am enclosing herewith also a letter which I have addressed to your father, reply to which I now await from him.

My letter is self explanatory and I will not labour to explain in any great detail what my position in the matter is.

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I need hardly say how surprised I am that you should show such scanty regard and concern for the feelings of Girlie even if you were disposed to disregard my feelings as her father. More perfectly is this the case where you have written letters of endearment to her, all are which, I now have and can assess the extent to which you have taken liberties with her are the positive understanding you gave me that you would get married to her.

Exhibits
D 19.
Letter from
Plaintiff's
father to
Defendant.
27 8. 51.
—Continued

10 I am sending a copy of this letter for the information of your father. I expect a reply from you to this letter within the next few days.

The tone of this letter should hardly surprise you. I am after all Girlie's father and you must remember her mother is still alive and she has feelings too and you cannot be allowed to treat us and particularly my daughter in the way you now contemplate without serious damage to yourself.

Yours sincerely.

Sgd. M. B. Boange.

D 27

20 **Telegram from Boange to Udalagama**

CEYLON TELEGRAPHS

TELEGRAM

Address

Udalagama,
Police Magistrate,
Pt. Pedro.

() Point Pedro Seal.

27th August 1951

30 My letter and proctor Marikars letter sent registered cover.
No reply yet invite early attention.

Boange.

D 27.
Telegram
from Boange
to
Udalagama
27. 8. 51

Exhibits
 D 6.
 Letter of
 Demand
 from
 Plaintiff's
 Proctor to
 Defendant
 15. 9. 51

D 6**Letter of Demand from Plaintiff's Proctor to Defendant**

243, Hultsdorf Street,
 Colombo, 12.

15th of September, 1951.

C. V. Udalagama Esq.,
 Magistrate,
 Point Pedro.

Dear Sir,

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, 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.

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I am further instructed that at the time of your proposal of marriage to my client arrangements had been made to pursue her higher studies at the University with a view to graduation and that it was with very great difficulty that her parents were persuaded to allow her to give up her career with a view to getting married to you.

My client states that after considerable arrangements had been made by her parents in regard to the marriage including the preparation of the dowry deed and when the marriage itself was being expected by relations and friends to take place any time you suddenly, inexplicably and without a word of

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explanation, whatsoever, to my client, even up to date, became cold and indifferent to her and appeared to have unilaterally broken off your engagement to her. Thereafter, I am instructed you have entered into an engagement to marry another young lady.

Exhibits
D 6.
Letters of
Demand from
Plaintiff's
Proctor to
Defendant.
15. 9. 51
—Continued

It is needless for me to state that my client has suffered deep humiliation and incalculable harm as a result of your action, to say nothing of her future which has been blasted.

I am accordingly instructed by my client to demand of you the payment of a sum of Rs. 20,000.00 being damages sustained by her by reason of your wrongful conduct. I have also instructions to file action against you for the recovery of the same in the event of your failing to comply with this demand before the 25th instant.

Yours faithfully,

Sgd. Henry G. Geddes.

D 23 A

Plaint in D. C. Kandy Case No. M. R. 4179

In the District Court of Kandy.

D 23 A
Plaint in
D. C. Kandy
Case No.
M. R. 4179.
22. 11. 50

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K. D. William, Managing partner of the business carried on under the name style and firm of N. Porolis Fernando and Co., Kandy.

Plaintiff.

No. M. R. 4179.

vs.

M. B. Boange of Arambegama.

Defendant.

This 22nd. day of November, 1950.

30

The plaintiff of the plaintiff abovenamed appearing by his proctors, Tribby Noel Reimers Misso and Nanediri Wimalasena, carrying on business under the name, style and firm of "Misso & Wimalasena" states as follows:—

Exhibits
D 25 A
Plaintiff
D. C.
Kandy Case
No. M. R.
4179.
22. 11. 50
—Continued

1. The defendant abovenamed at Kandy within the jurisdiction of this court, between 9th June and 6th July, 1950 became indebted to the Plaintiff in the sum of Rs. 541.35 on account of timber supplied to him at his request and for his use, as enumerated in the account particulars "A" hereto annexed, which Plaintiff prays may be taken and read as part and parcel of this plaint.

2. The defendant has failed and neglected to pay the said sum of Rs. 541.35 or any part thereof although thereto often requested.

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Wherefore the Plaintiff prays for judgment against the defendant for the said sum of Rs. 541.35 with legal interest thereon from 7th July, 1950, till payment in full and costs of suit, and for such further and other relief as to the court shall seem meet.

Sgd. Misso & Wimalasena.

Proctors for Plaintiff

" A "

Kandy, 16th November,
1950.

No.....

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Terms.

Limit of credit.

two months only.

Thereafter interest.

Chargeable at

12% per annum.

M. B. Boange Esqr.,
Arambegama, Pilimatalauwa.

Dr. To.

N. Porolis Fernando & Co.,
Colombo Street & Ward Street, Kandy.
Telephone:— 57.

Exhibits.
D 23 A.
Plaint in
D. C. Kandy
Case No.
M. R. 4179.
22. 11. 50
—Continued

9	To 4 pieces 10ft. x5" x3" Hora 40 Ln. ft. x -/80	32.00	
	" 1 " 15ft. x5" x2" do 15 "		
	" " 6 ft. x5" x2" do 6/21 " x-/65	13.65.	
	" 4"x/2 Milla 22 Ln. ft. x-/65	14.30.	
	" 22 pieces 8 ft. x4"x2" Sapu 176 Ln. ft. x/25	44.00.	
10	" 2"x 1/2" Sapu Reepers @-/04	48.00.	
6	" 4 pieces 18 ft. x8" x4" Meeriya 72x 3/-	216.00.	
	" 6"x2" Keena 66 x-/80	52.80.	
	" 5" x3" Milla 66 x -/80	52.80.	
	" 1/2" x2" Jack Reepers 618 x -/10	61.80.	
	" Lorry Hire.	6.00.	541.35
			<u>541.35</u>

Rupees Five Hundred & Forty One & Cents Thirty Five

Exhibits.

—
 D 23. B.
 Answer in
 D. C. Kandy
 Case No.
 M. R. 4179.
 4. 12. 51

D 23 B.**Answer in D. C. Kandy Case No. M. R. 4179**

In the District Court of Kandy.

No. M. R. 4179.

K. William, Managing Director of the business carried on under the name style and firm of "N. Porolis Fernando and Company Kandy.

Plaintiff.

vs.

10

M. B. Boange, Arambegama, Pilimatalauwa.

Defendant

On this 4th day of December, 1951.

The answer of the defendant abovenamed appearing by his Proctors Stanser Eardley Spencer and James Lionel Percival Perera carrying on business under the name and style of "Liesching & Lee" states as follows:-

1. Pleading to paragraph one of the plaint the Defendant while admitting that he had dealings with the plaintiff denies the correctness of the account particulars filed therewith and puts the plaintiff to the strict proof thereof.

20

2. Further answering the defendant states that certain payments made by him have not been credited to his account

Wherefore the defendant prays that Plaintiff's action be dismissed with costs and for such further and other relief as to this court shall seem meet.

Sgd. Liesching & Lee.

Proctors for Defendant

D 23 C**Proceedings in D. C. Kandy Case No. M. R. 4179.**

Mr. Martin instructed by Mr. Wimalasena for plaintiff.
Messrs. Leiching & Lee for defendant.

Of consent judgment for plaintiff in a sum of Rs. 541.35 only, payable by monthly instalments of Rs. 65.00 commencing from 10.6.52. No costs. Usual terms.

Enter Decree accordingly.

Intd. N. K.

10

A. D. J.

29. 5. 52.

True copies of Plaintiff, Answer and proceedings in
D. C. Kandy case No. M. R. 4179.

Intd. ILLEGIBLE.

Secretary, D. C. Kandy.

D 23 D.**Decree in D C. Kandy Case No. M. R. 4179**

Decree.

In the District Court of Kandy.

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No. M. R. 4179.

K. D. William, Managing partner of the
business carried on under the name style
and firm of N. Porolis Fernando & Com-
pany, Kandy.

Plaintiff

vs.

M. B. Boange of Arambegama, Pilimatalauwa.

Defendant.

Exhibits

—
D 23 C.
Proceedings
in D. C.
Kandy
Case No.
M. R. 4179.
29. 5. 52

D 23 D.
Decree in
D. C. Kandy
Case No.
M. R. 4179.
29. 5. 52

Exhibits
 D 23 D.
 Decree in
 D. C. Kandy
 Case No.
 M. R. 4179
 29. 5. 52
 —Continued

This action coming on for final disposal before N. Kirisnadasa Esqr., Additional District Judge, Kandy on the 29th day of May, 1952, in the presence of Messrs. Misso & Wimalasena Proctors on the part of the plaintiff and of Messrs. Leishing & Lee Proctors on the part of the defendant. It is ordered and decreed of consent that the defendant do pay to the plaintiff the sum of Rs. 541.35 in monthly instalments of Rs. 65.00 (sixty five) commencing from 10th June, 1952 and subsequent instalments on the 10th of each succeeding month.

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On failure of payment of any one instalment execution to issue for the full amount then due.

Sgd. F. Conrad Perera.
 Addl. District Judge.

The 29th May, 1952.

True copy of Decree.

Sgd. Illegible.
Secretary.
 16. 1. 53.

D 25

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Plaint in D. C. Kandy Case No. M. S. 3725.

D 25.
 Plaint in
 D. C. Kandy
 Case No.
 M. S. 3725.
 17. 9. 52

In the District Court of
 Kandy.

Class '3'

Nature: Money.

Value Rs. 2000.00

Procedure. Summary.

No. M.S. 3725.

C. A. C. Marikar of Kadugannawa.
Plaintiff.

vs

M. B. Boange of Pilimatalauwa.
 Kadugannawa.

Defendant.

30

On this 17th day of September, 1952.

The plaintiff of the plaintiff abovenamed appearing by Mohamed Abdul Sattar Marikar, and his Assistant Mohamood Alim Sahib Mohamed Mussin carrying on business under the name and style of Marikar & Marikar his proctors state as follows:—

Exhibits
—
D 25.
Plaint in
D. C. Kandy
Case No.
M. S. 3725
17. 9. 52
—Continued

10 1. That the defendant abovenamed at Kandy within the jurisdiction of this Court by his cheque dated the 9th day of November, 1951 herewith filed marked "A" directed the National Bank of India Limited Kandy to pay cash or bearer the sum of Rs. 2000.00 and endorsed the same to the plaintiff for valuable consideration.

2. The plaintiff presented the said cheque for payment at the said bank but the same was dishonoured and returned to the plaintiff with remarks "Not arranged for", and the defendant had due notice of dishonour.

3. There is now and owing to the plaintiff from the defendant upon the said cheque the said sum of Rs. 2000.00 which sum or any part thereof the defendant has failed and neglected to pay plaintiff though often requested.

20 Wherefore the plaintiff prays:

- a. For leave to proceed under chapter 53 of the Civil Procedure Code.
- b. For judgment against the defendant in the said sum of Rs. 2000.00 with legal interest thereon from the date hereof till date of payment in full and costs of suit.
- c. And for such and further relief as to this Court shall seem meet.

Sgd. Marikar & Marikar.

Proctor for Plaintiff.

30 Documents referred to filed with the plaint.

Cheque dated the 9th November, 1951 marked "A".

Sgd. Marikar & Marikar.

Proctor for Plaintiff.

D 25 B.**Affidavit of M. B. Boange in D. C. Kandy
Case No. M. S. 3725.**

Exhibits
—
D 25 B.
Affidavit of
M. B.
Boange in
D. C. Kandy
Case No.
M. S. 3725
8. 10. 52

In the District Court of Kandy.

No. M. S. 3725.

C. A. C. Marikar of Kadugannawa.

Plaintiff.

vs.

M. B. Boange of Pilimatalawa, Kadugannawa.

Defendant.

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I, Meddumabanda Boange of Pilimatalauwa, Kadugannawa, not being a Christian do hereby solemnly sincerely and truly affirm and declare are follows :-

1. I am the defendant abovenamed.

2. The cheque sued upon was given by me when I received an advance when I was supplying green tea leaf to the Maradangoda Tea Factory at Kadugannawa owned and managed by the Plaintiff.

3. Thereafter I have supplied tea leaf up to and including the 14th of July, 1952.

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4. The plaintiff is unlawfully retaining the pass book shwing the accounts for leaf supplied and moneys paid up to the end of March, 1952. He took the book from me to have it entered up till 14th July, 1952 and has not returned it.

5. The leaf supply pass book shows all leaf amounting to 58,054 lbs supplied by me up to 13th July, 1952.

6. In addition tea leaf has been supplied on chits not entered in the said pass book.

7. I plead that the plaintiff cannot maintain this action till he gives a full accounting.

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8. The plaintiff has unlawfully deducted 2106 lbs. of tea leaf out of the leaf supplied.

Affirmed to at Kandy on this 8th day of October, 1952.

Sgd. M. B. Boange.

Sgd. M. A. Latiff.

J. P.

True copy of plaint and affidavit of defendant in D. C. Kandy case No. M. S. 3725.

Sgd. Illegible.

Secretary, D. C. Kandy.

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D 22 A.

Plaint in D. C. Kandy case No. M. R. 4635.

Regular. In the District Court of Kandy.
Money.
Claim Rs. 434. 17.
Class. I
No. M. R. 4635.

D. 22 A.
Plaint in
D. C. Kandy
case No.
M. R. 4635
19. 2. 25

The Chettinad Corporation Limited
by its Attorney R. M. Subbiah of
Ward Street, Kandy.

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Plaintiff.

vs.

M. B. Boange, Boange Walauwa, Kadugannawa.
Defendant.

On this 19th day of February, 1952.

The plaint of the Plaintiff abovenamed appearing by Nallathamby Coomaswamy and Kadirawelpillai Robert Navaratnam practising in partnership under the name style and firm of Coomaswamy and Nawaratnam, its proctors, state as follows:-

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Exhibits
D 25 B.
Affidavit of
M. B.
Boange in
D. C. Kandy
Case No.
M. S. 3725
8. 10. 52
—Continued

Exhibits.

D 22 A.
Plaint in
D. C. Kandy
Case No.
M R. 4685.
19. 2. 52
—Continued

1. The plaintiff is a duly incorporated corporation limited in Liability having a branch office at Kandy within the jurisdiction of this Court.

2. The plaintiff at Kandy aforesaid on the days and dates mentioned in the account, particulars appended hereto marked "A" which Plaintiff prays may be taken and read as part and parcel of this plaint sold and delivered goods to the defendant at his request and for his use and benefit.

3. On the 9th day of January, 1951 accounts were looked into between the plaintiff and defendant and a sum of Rs. 534.17 was found to be due to the plaintiff whereupon an account was stated between the plaintiff and defendant owing the said sum of Rs. 534.17 as due to the plaintiff from the defendant.

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4. Thereafter the defendant has paid sum of Rs. 100.00 leaving a balance of Rs. 434.17 which sum the defendant has failed and neglected to pay plaintiff though thereto often requested.

Wherefore the plaintiff prays for judgment against the defendant for the said sum of Rs. 434.17 with legal interest thereon from date hereof till payment in full and costs of suit and for such other relief as to this Court shall seem meet.

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Sgd.....
Proctor for Plaintiff

Account particulars marked "A"

Exhibits

D 22 A.
Plaint in
D. O. Kaudy
Case No.
M. R. 4635.
19. 2. 52
--Continued

1950.			
July	3.	To goods.....	73.13
	4.	To goods	8.00
	11.	To goods.....	65.41
	12.	To goods.....	127.50
August	2.	To goods.....	1.75
November	16.	By cheque.....	100.00
	25.	To goods.....	44.10
10 December	5.	By cash.....	48.29
	6.	To goods.....	141.43
	30.	By credit note No. 68.	127.50
1951.			
January	9.	By cheque.....	185.00
	"	To goods.....	533.64
July	7.	By cheque.....	100.00
	10.	To returned cheque	100.00
	12.	By cheque.....	100.00
		Total.	<u>660.79</u> <u>1094.96</u>

Exhibits. To balance.
 D 22 A.
 Plaintiff in
 D. C. Kandy
 Case No.
 M. R. 4635.
 19. 2. 52
 —Continued

Rs. 434.17

Sgd. Coomaraswamy & Nawaratnam.
Proctors for Plaintiff.

D 22 B.

Answer in D. C. Kandy case No. M. R. 4635.

In the District Court of Kandy.

The Chettinad Corporation Limited, Kandy.

Plaintiff.

vs

No. M. R. 4635.

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M. B. Boange of Boange Walauwa,
 Kadugannawa.

Defendant.

D 22 B.
 Answer in
 D. C. Kandy
 Case No.
 M. R. 4635,
 25. 4. 53

On this 25th day of April, 1953.

The answer of the defendant abovenamed appearing by Mohamed Abdul Sattar Marikar carrying on business under the name and style of Marikar and Marikar, and his Assistant Mohamood Alim Shaib Mohamed Mushin his Proctors state as follows :-

1. The defendant denies all and singular the allegations in the plaint save and except those hereinafter specially admitted.

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2. The defendant admits the allegations in paragraph 1 of the plaint, but specially denies that the plaintiff company is properly before Courts.

3. Answering to paragraph 2 of the plaint the defendant while admitting that he bought goods from the plaintiff's

company specially denies the accuracy of the account particulars filed with the plaintiff.

4. Answering to paragraph 3 of the plaint, the defendant specially denies that accounts were looked into on 9th day of January, 1951 or at any time whatsoever and that the said amount has found to be due.

10 5. The defendant specially denies the allegations in paragraph 4 of the plaint, the defendant states that only a sum of Rs. 200.00 is due to the plaintiff company but states that the plaintiff's claim if any is barred by lapse of time.

Wherefore the defendant prays. That plaintiff's action be dismissed with costs, and for such other and further relief as to this court shall seem meet.

Sgd. Marikar & Marikar.

Proctors for Defendant.

True copies of Plaint and Answer in D. C. Kandy case No. M. R. 4635.

Sgd. Illegible.

Secretary.

D. C., Kandy.

Exhibits
 ———
 D 22 C.
 Decree in
 D. C. Kandy
 case No.
 M R. 4635
 2. 7. 52

D. 22 C.

Decree in D. C. Kandy Case No. M. R. 4635.

DECREE.

No. M. R. 4635.

In the District Court of Kandy.

The Chettinad Corporation Limited by
 its Attorney R. M. Subbiah of Ward
 Street, Kandy. *Plaintiff.*

against.

M. B. Boange, Boange Walauwa, Kadugannawa.

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Defendant.

This action coming on for final disposal before F. Conrad Perera Esquire Additional District Judge, Kandy on the 2nd day of July, 1952, in the presence of Messrs Coomarsawamy and Navaratnam, Proctors on the part of the Plaintiff and of Messrs Marikar and Marikar, Proctors on the part of the Defendant, it is ordered and decreed of consent that the defendant do pay to the plaintiff the sum of Rs. 450.00 by instalments of Rs.40.00 per month commencing from 2nd. August, 1952. No. costs.

In default of payment of any one of this instalment on the due date writ to issue for the amount then due.

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Sgd. M. M. I. Kariapper.

Additional District Judge

The 2nd. day of July, 1952.

True copy of Decree in D.C., Kandy Case No.

M. R. 4635.

Sgd. Illegible.

Secretary;

D. C., Kandy.

Supreme Court of Ceylon
No. 444 (Final) of 1954.

District Court, Kegalle,
No. 7873.

In Her Majesty's Privy Council
On an Appeal from the Supreme Court of Ceylon.

BETWEEN

IRANGANIE BOANGE of Boange Walauwa,
Kadugannawa.
Plaintiff-Respondent.

AND

CYRIL VERNAL UDALAGAMA of Kegalle.
Defendant-Appellant.

RECORD
OF PROCEEDINGS
