

THEODORA VASSILIOU,

Plaintiff,

v.

SOTERIOS DEMETRIOU,

Defendant.

(District Court of Limassol—Action No. 3498/70).

Promise to marry—Given by married man—Promisee unaware of the illegality—Whether promise valid or void for illegality and public policy—Action by the promisee for breach of promise of marriage—Maintainable—General and special damages—See further infra.

Breach of promise to marry—Evidence—Corroboration of the evidence as to the promise required—Section 6 of the Evidence Law, Cap. 9—Only such corroboration of complainant's testimony being defendant's (promisor's) silence when introduced as her fiancé—Whether silence in the circumstances amounts to corroboration under the said section.

Gift in consequence of promise—Breach of promise—Obligation to return—Special damages.

Breach of promise to marry—Damages—General damages—Assessment—Principles applicable—The age of the parties and their standing in society—The means of the defendant—The prospects of the match—The loss of the husband and the maintenance he would afford to the plaintiff—Impairment of her prospects—The conduct of the parties and injured feelings of the plaintiff—All the above are factors to be considered in assessing damages for breach of promise to marry.

Damages—General damages—Special damages—In cases of breach of promise to marry—See supra.

Evidence—Corroborative evidence—Section 6 of the Evidence Law, Cap. 9—Silence—When is silence evidence of admission—Cf. supra.

The facts sufficiently appear in the judgment of the learned Judge whereby he awarded £150 general damages and £40

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special damages (value of a gift not returned) to the lady plaintiff in this action for breach of promise to marry.

Cases referred to :

Wild v. Harris [1843–60] All E.R. Rep. 413 ; [1849] 7 C.B. 999 ;
Millward v. Littlewood [1850] 5 Ex. 775, at pp. 777–8 ;
Shaw v. Shaw and Another [1954] 2 All E.R. 638, and at p. 643 ;
Fender v. Mildmay [1937] 3 All E.R. 402, at p. 424 ;
Wiedemann v. Walpole [1891] 2 Q.B. 534, at p. 539 ;
Jacobs v. Davis [1916–17] All E.R. Rep. 374 ;
Markou v. Michael, 19 C.L.R. 282 ;
Robinson v. Cumming (1742) 2 Atk. 409.

L. Tsikkinis, for the plaintiff.

A. Kenevezos, for the defendant.

The following judgment was delivered by :—

STYLIANIDES, AG. P.D.C. : The plaintiff by this action claims special and general damages for breach of promise of marriage.

The plaintiff and a shop keeper of Limassol gave evidence for the plaintiff and the defendant was the sole witness for the defence.

It is the version of the plaintiff—a spinster, 31 years of age, who was living on her own—that the defendant, a married lorry driver, who was known to her by sight, after a conversation with her brother-in-law early in October, 1970 visited her at her house. There, in the presence of an old lady who was not called as a witness, the defendant presented himself as single and offered to marry the plaintiff. The plaintiff accepted the offer and thereafter the plaintiff considered the defendant as her fiancé. The plaintiff yielded to a request of the defendant and thereafter the litigants had repeated sexual intercourse. The defendant stayed in the plaintiff's room for about eight consecutive nights. The defendant accompanied the plaintiff once to the cinema and to the shop of P.W.1, Antonakis S. Ioannides, where on the 3/11/70 the plaintiff purchased a tape-recorder at £40 which she presented to her fiancé. There and then the defendant was introduced by the plaintiff to P.W.1 as her fiancé, and the defendant remained

silent On one occasion the defendant, who is a lorry driver, conveyed his fiancée (the plaintiff) to a remote place in Paphos District where he travelled in connection with his employment.

On the 15/11/70 it was disclosed to the plaintiff that the defendant was married with 3 minor children whom he had deserted. The Police were informed and they visited the plaintiff's room where they met the parties. On the 17/11/70 the relations of these two persons were severed obviously due to the marital status of the defendant and his inability to perform his promise to marry the plaintiff.

The defendant in his statement of defence denied the promise, he denied that he had sexual intercourse with the plaintiff, or that he even stayed over night in the plaintiff's house. He even denied that he was in possession of a tape-recorder either belonging to the plaintiff, or given to him by the plaintiff for any other reason.

In his evidence on oath, however, the defendant, though he insisted on his denial of the promise, conceded that he stayed in the plaintiff's house for about a week, but not consecutively, and that he had sexual relations with the plaintiff. He admitted that he accompanied the plaintiff to the cinema at the request of the plaintiff and further that he accompanied her to the shop of P.W.1 in the absence, however, of this witness. The tape-recorder was not only given to him but it is until today fitted on the lorry the defendant is driving.

The plaintiff and the defendant are the two interested parties but P.W.1 is a stranger to them, an independent shop keeper who impressed the Court as a witness of truth and I accept his evidence.

The plaintiff, though a young lady whose 31 years is the explanation of her anxiety to get married, impressed me that she was telling the truth notwithstanding the fact that she failed to disclose at first that she was deflowered by another person who promised to marry her earlier. I watched the demeanour of both parties carefully in the witness box and without hesitation I prefer the evidence of the plaintiff. Furthermore, the defendant made admissions in his evidence which, except with regard to the promise, are in accord with the evidence of the plaintiff.

I find the true facts to be briefly as follows :—

The defendant, a married man with children, early in October, 1970 promised to marry the plaintiff who, being

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ignorant of his marital status, accepted his offer to marry her. They lived as husband and wife until the plaintiff came to know of the existing marriage of the defendant to another woman. During this period the defendant was introduced by the plaintiff as her fiancé, at least to P.W.1, but the defendant remained silent. The parties went to the pictures once and they travelled together once in the defendant's lorry. On the 3/11/70 the plaintiff, a charwoman earning £12.600 mils per fortnight, presented to the defendant a tape-recorder which she purchased at £40. The plaintiff, on realising the inability of the defendant to perform his promise, filed this action.

The following questions fall for determination by the Court :—

(A) In view of the marriage of the defendant, is the promise valid or is it void for illegality and public policy?

The matter is not devoid of authorities.

In *Wild v. Harris* [1843-60] All E.R. Rep. p. 413, the plaintiff said that in consideration of her promising to marry the defendant he promised to marry her, that accordingly she remained unmarried and had always been ready and willing to marry him, but that he had failed to marry her at the time of making the promise and thence forward had been married to another woman.

Wilde, C.J. in delivering the judgment of the Court (Common Pleas) said :—

“ It would be strange, indeed, to allow the defendant to rely upon his own wrong—to set up his fraudulent concealment of his marriage—in order to discharge himself from his promise, the plaintiff having performed her part of the consideration by remaining unmarried and ready to marry the defendant, until she discovered that he was already a married man.”

In *Millward v. Harris* [1850] 5 Ex. 775, Parke, B said at page 777, 778 :—

“ I entirely concur in what was said by the Court of Common Pleas in *Wild v. Harris*. The promise by the defendant to marry the plaintiff implies, on his part, that he is then capable of marrying, and he has broken that promise at the time of making it. The consideration to support the promise is, that the plaintiff, at the request of the defendant, engaged to marry him within a reasonable time, and therefore she remained unmarried ; and that is a sufficient consideration to bind the defendant.”

In *Shaw v. Shaw and Another* [1954] 2 All E.R. p. 638, it was held :—

“The plaintiff being unaware at all material times that the deceased was married, the Court was under no duty to raise the question whether the promise to marry was unenforceable as contrary to public policy, and the action was maintainable.”

Singleton, L.J., referred to the following passage from the speech of Lord Wright in *Fender v. Mildmay* [1937] 3 All E.R. 402 at pp. 424–425 :—

“I must first attempt to explain what I think to be the modern law in regard to the duty of the Court concerning rules based on public policy. It is important to realise what is meant by public policy in this connection. In one sense, every rule of law, either common law or equity, which has been laid down by the Courts, in that course of judicial legislation which has evolved the law of this country, has been based on considerations of public interest or policy. In that sense SIR GEORGE JESSEL, M.R., referred to the paramount public policy that people should fulfil their contracts. But public policy in the narrower sense means that there are considerations of public interest which require the Courts to depart from their primary function of enforcing contracts, and exceptionally to refuse to enforce them. Public policy in this sense is disabling. It is important to determine, first of all, on what principles a Judge should exercise this peculiar and exceptional jurisdiction when a question of public policy is raised. What is, I think, now clear is that public policy is not a branch of law to be extended, as LORD BLANESBURGH, then YOUNGER, L.J. said in *Re Wallace* ([1920] 2 Ch. 303); to the same effect the EARL OF HALSBURY, L.C., in *Janson v. Driefontein Consolidated Mines Ltd.* ([1902] A.C. 491) said: ‘I deny that any Court can invent a new head of public policy’.”

At page 643 Singleton, L.J. had this to say :—

“The two authorities (*Wild v. Harris** and *Milward v. Littlewood***) which I have just mentioned show that neither the Court of Exchequer nor the Court

* [1849] 7 C.B. 999.

** [1850] 5 Ex. 775.

of Common Pleas in those years, 1849 and 1850, thought it necessary for the Court to raise any such question in a case in which the plaintiff did not know that the defendant was married, and did not know that his promise might be contrary to public policy. I believe that to be right. I do not consider that it is the duty of the Court to make such a point on the facts of this case.”

The defendant in this case promised to marry the plaintiff and presented himself to be single when he was not in a position to marry her. The acts of the defendant constitute a warranty that he was in a position to marry her. They lived for some time as husband and wife until the plaintiff discovered the misrepresentation and the inability of the defendant to go through a legal ceremony of marriage.

Denning, L.J. in *Shaw v. Shaw and Another (supra)* commenced his judgment with the following :—

“Every man who proposes marriage to a woman impliedly warrants that he is in a position to marry her, and that he is not himself a married man ;” and concluded his judgment in the following way :—

“If the plaintiff had known that Mr. Shaw was a married man the case would be altogether different. Then, of course, no Court would allow such a contract to be enforced, but, she being quite unaware of the position, the case falls within *Wild v. Harris** and *Millward v. Littlewood***, and it is interesting to notice that there are cases in the United States of America on exactly the same lines.”

In view of the authorities and the facts of the present case, the promise is a valid one and the plaintiff is entitled to the remedies given to her by the law for breach of the promise by the defendant.

(B) Is the plaintiff entitled to recover judgment in view of the provisions of Section 6 of the Evidence Law, Cap. 9? Section 6 of Cap. 9 is a reproduction of Section 2 of the English Evidence Further Amendment Act, 1869. It is provided by Section 6 of Cap. 9 that no plaintiff in an action for breach of promise should recover judgment unless his or her testimony is corroborated by some other material evidence in support of the promise alleged.

* [1849] 7 C.B. 999.

** [1850] 5 Ex. 775.

In the present case the plaintiff introduced the defendant to P.W.1, the shop keeper, from whom the tape-recorder was bought, but the defendant remained silent.

In *Wiedemann v. Walpole* [1891] 2 Q.B. 534 at p. 539 it was said :—

“ Silence is not evidence of admission, unless there are circumstances which render it more reasonably probable that a man would answer the charge made against him than that he would not.”

Had the defendant not promised to marry the plaintiff, had he not been the plaintiff's fiancé, one would expect him to deny this and in some way to refute the introduction. He kept silent. A man, in the ordinary behaviour of mankind, cannot be introduced as a fiancé and remain silent if this silence cannot be explained. The defendant failed to give any explanation of his silence. He elected to deny the introduction, alleging that P.W.1 was not in the shop at the time.

In the particular circumstances of this action, this amounts to corroboration of the plaintiff's evidence.

Though I find for the plaintiff I have to remark that both sides failed to call other witnesses who were better acquainted with their actual relationship and the promise.

(C) *DAMAGES* :

Special damages :

The plaintiff presented to the defendant a tape-recorder valued at £40. He has not returned it.

In *Jacobs v. Davis* [1916-17] All E.R. Rep. p. 374, Shearman, J. adopted the following passage from the judgment of Hardwicke, L.C., in *Robinson v. Cumming* [1742] 2 Atk. 409 :—

“ I think, in cases of this nature, these rules may be laid down. That if a person has made his addresses to a lady for some time, upon a view of marriage, and, upon reasonable expectation of success, makes presents to a considerable value, and she thinks proper to deceive him afterwards, it is very right that the presents themselves should be returned, or the value of them allowed to him.”

The plaintiff is entitled to £40, the value of the tape-recorder.

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General damages :

The plaintiff, aged 31, had the misfortune of being abandoned by her first fiancé who deflowered her. She is a char-woman earning £12.600 mils per fortnight. The defendant is a lorry driver earning about £12 per week. The prospects of a happy marriage were not at all bright. The promise lasted only for a short time.

Having regard, *inter alia*, to the age of the parties, their standing in society, the means of the defendant, the prospects of the match, the loss of the husband and the maintenance he would afford to the plaintiff, the short duration of the engagement, the impairment of her prospects of marriage, the conduct of the parties, the injured feelings of the plaintiff and the decision of the Supreme Court in *Christos Markou v. Gregoria Michael*, 19 C.L.R. p. 282, I assess the plaintiff's loss at £150.

Before concluding, however, I wish to place on record that the time has come for the abolition of this cause of action. This cause of action in *its present form* was introduced in Cyprus from England. In that country, however, by section 1 (1) of the Law Reform (Miscellaneous Provisions) Act 1970, an agreement between two persons to marry one another is not to have effect as a contract giving rise to legal rights, and no action is to lie for breach of such an agreement.

In the result, judgment is given for the plaintiff for £190 with costs in the scale of £100-£200.

*Judgment and order as to
costs as above.*