Privy Council Appeal No. 152 *of* 1924.

Thomas Charles William Skipp - - - - - - *Appellant*

v.

Lilian Mildred Kelly - - - - - - - *Respondent*

Lilian Mildred Kelly - - - - - - - *Appellant*

v.

Thomas Charles William Skipp - - - - - - *Respondent*

(*Consolidated Appeals*)

FROM

THE COURT OF THE RESIDENT IN MYSORE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 26th JANUARY, 1926.

Present at the Hearing:
VISCOUNT DUNEDIN.
MR. AMEER ALI.
SIR ARTHUR CHANNELL.

[*Delivered by* VISCOUNT DUNEDIN.]

This is an action by a lady for breach of promise of marriage against the defendant. The case was tried by the District Judge of the Civil and Military Station, Bangalore. He formulated the following issue: "Was there a valid contract of marriage?" Their Lordships think perhaps the expression there used ought rather to have been whether there was a definite promise of marriage, because the expression "contract of marriage" is usually used in another sense, but it is quite plain what he actually meant. He found that issue in favour of the plaintiff. He then went on

[3] (B 40—4386—4)T

with another issue : " If there was such a valid contract, did the defendant or the plaintiff break it either expressly or impliedly ? " He found that issue also in favour of the plaintiff. When the case went to appeal the learned Resident in Mysore found that the engagement did subsist up to the time of the defendant's marriage with another lady, and therefore a breaking of the contract was necessarily inferred.

The point was taken by the plaintiff, the respondent in the main appeal, that these two findings, being concurrent findings of fact, cannot be interfered with, and, to a certain extent their Lordships think that is true, but at the same time the defendant put forward what he considered a legal plea, because he said that upon a proper consideration of the promise which had been held proved, that promise was not a promise which could be recognised in law, because it was merely a ratification of a void promise which had been made before.

That plea arises upon these facts. It is undoubtedly the case that the defendant first promised to marry the plaintiff when, as a matter of fact, she was a married woman. It was understood between them that a divorce was going to take place, and a divorce afterwards did take place ; but it has been quite well settled, and no one can doubt the law upon the subject, that a promise made in such circumstances is a void promise. Nevertheless, the parties considered themselves as engaged persons ; behaved as engaged persons, and, though their Lordships need not go through the various circumstances of the case, it is certain that after the divorce proceedings had gone through, and consequently the plaintiff became a free woman, the defendant bought her a ring and actually arranged the date on which they were to be married.

The legal point is whether, from circumstances like that, it is possible to infer what really is in law a new promise to marry. There is no difficulty as to consideration because the promise to marry is sufficient consideration. It seems to their Lordships that the case is in precisely the same position as the case of *Ditcham* v. *Worrall* (5. C.P.D. 410), and their Lordships cannot do better than read a few words from the judgment of Lindley, J. (as he then was) in that case. He says at page 414 :—

> " Unless, therefore, the statute " (he is speaking of the Infants Relief Act) " forbids such an inference from their conduct, it appears to me that the jury might have found, and ought to have found, that there was a promise by the defendant after he came of age to marry the plaintiff on the day ultimately fixed for the marriage, and not a mere ratification of a promise made previously to marry at a day to be thereafter fixed,"

and then he gives reasons for saying that that opinion is warranted by the decision of the House of Lords in the case of *De Thoren* v. *Attorney General* (1 App. Cas. 686). Their Lordships entirely agree with that reasoning. It seems to them that when persons fix a day for their marriage it may be inferred from this that there is a promise of marriage, and one is not bound to take it as a ratification

of a contract which in itself is void, and which, therefore, in law cannot be rectified by anything that can be subsequently done.

Accordingly their Lordships think that the learned Judges here on the facts, which cannot be controverted because they are concurrent findings, came to a conclusion which they were perfectly warranted in law in coming to.

Although their Lordships did not stop the appellant from reading the evidence, they really think that the examination of the evidence as to how the parties behaved afterwards was scarcely relevant in view of these two findings, but, as it has been gone into, their Lordships would wish to say that they think that the learned Resident has taken a perfectly correct view of what happened between these two parties. They had lover's quarrels, each was unwilling to take the first step of reconciliation, and so they drifted on with periods of separation, but after a time came together in India, when this renewed promise was made.

Now the learned District Judge held that the matter was made worse by what he considered was a proof of seduction. That proof of seduction was rejected, and rejected their Lordships think upon perfectly right grounds, by the learned Resident on appeal. The result was that the learned Resident, on appeal, reduced the damages from Rs. 50,000 to Rs. 15,000.

Their Lordships, whatever their own views would have been if they had been trying the case, would never think of interfering with a measure of damages which had been fixed by a learned Judge unless they saw that there was something very clearly wrong with the figure which he had fixed upon, and, therefore, as regards this part of the judgment also they do not consider it right that it should be altered.

Their Lordships will therefore humbly advise His Majesty that the main appeal should be dismissed, and that the respondent should have such costs as a pauper can obtain, because she has been allowed to defend *in forma pauperis*, and, as her cross-appeal has not been insisted upon, it should also be dismissed, and that there should be no costs to either party in that cross-appeal.

In the Privy Council.

THOMAS CHARLES WILLIAM SKIPP

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DELIVERED BY VISCOUNT DUNEDIN.

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