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IN THE SUPREME COURT OF THE )  
TERRITORY OF PAPUA AND NEW GUINEA )

ELIZABETH ENGLISH Plaintiff

v.

JOHN READ Defendant

JUDGMENT

This is an action for breach of promise of marriage. The plaintiff's claim is set out in the Writ and the defence is the mere statement, provided by the then existing Rules of Civil Procedure, that the Defendant intends to defend the action.

The plaintiff's claim is that in December 1959 the defendant promised to marry the plaintiff and the plaintiff agreed to marry the defendant, and the plaintiff in reliance upon the defendant's promise to marry allowed the defendant to seduce her with the result that she is now pregnant yet the defendant has neglected and refused to marry the plaintiff whereby the plaintiff has lost the benefit of the said agreement and the plaintiff has sustained injury in her feelings and her future prospects of marriage have been greatly prejudiced and the plaintiff has had to give up her employment and has lost and will lost the wages she would otherwise have earned and the plaintiff has been otherwise greatly damaged. The particulars of the plaintiff's claim are loss of wages from 19th June 1960 and continuing at the rate of £37.10.0 per month. The over-all claim for damages is stated at the sum of £5,000.

The plaintiff is a girl of mixed blood aged twenty-five years who lives with her parents, Ted English and his wife, Mala, at the village of Hanuabada, Port Moresby. The defendant is an European presently working for the Department of Public Works in Port Moresby.

Towards the end of the year, about the end of November 1959 both the plaintiff and the defendant were employed at the store premises of Burns Philp (New Guinea) Limited in Port Moresby but although they knew each other it does not appear that they were on friendly terms until about one week before Christmas 1959, when the defendant asked the plaintiff to go to the pictures. Upon this invitation being made the plaintiff asked the defendant to see her father. He saw her father with the result that they went to the pictures.

Now the plaintiff says that she first met the defendant at her home about a week before Christmas on a Saturday in December. The Defendant puts it earlier than that, about the end of November when he went to the house because he was a friend of her brother, Tom. Defendant says that on this occasion he did not ask the plaintiff to marry him. That first occasion was when they went to the pictures and there is nothing in the evidence of the plaintiff that he did ask her to marry him on that occasion. The defendant at the end of his evidence-in-chief said generally, "I never promised to marry Plaintiff". It was a Saturday night that they went to the pictures and the plaintiff says the defendant came out to her home the next day and continued visiting her nearly every night. It was two or three nights after the first meeting that defendant asked her to marry him and then she told him to go and ask her father. Her father said the defendant did ask him and after consultation with the plaintiff's mother, Mala, the father gave his consent. Ted English, the father, said that before this the defendant had been to the house plenty of times but this was the first occasion on which the defendant had talked with him. The evidence of the plaintiff and that of her father are in sufficient accordance.

The plaintiff says that the defendant asked her to marry him after he had seen her father. Plaintiff says that defendant asked her to marry him on another night, saying, "We are going to marry in Hanuabada Church. We are going to have two children, one girl and one boy." This was after he had seen her father. He said further, "After we get married we are going to live down in Town." She said, "A better place is out at Boroko". But he said, "No, somewhere down in Town. We will have the engagement at the end of February." At the end of January he gave her £10 saying, "Keep this £10 until I give you some more money then I will buy an engagement ring at the end of February." None of this conversation is denied by the defendant, nor does he refute the girl's statement that he gave her £10 at the end of January, 1960. He was not, however, obliged to deny.

On the night of 26th December, 1959 the plaintiff and defendant left to go to the pictures at Badili at about 7 p.m. When they got to the Badili Theatre it was very full so they went back to the English home about 8.30 p.m. They were sitting on a bed on the verandah. Defendant put his hand on plaintiff's leg and he asked her to do something with him. His words were, "I want to do something with you." She said, "I don't want you to make me in trouble." He asked her again and said, "I want to marry you. I

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am not like the other boys. If I go out with one girl I will not chase the other girls." Plaintiff said, "I am gold enough to get married", and told him to go inside her bedroom. There intercourse took place and the defendant left about 10.30 p.m. to go home leaving the plaintiff in a physical condition consequent upon the loss of virginity. Later in the night, she says, she felt ill, called to her parents and was found by them in a faint on the floor of the bedroom about 3 o'clock in the morning. She said nothing about the reason for her condition but she was taken to the Taurama Road General Hospital immediately and there was seen by the Assistant Medical Officer who examined her, fixed her up and she returned home. According to the medical evidence she had been prior to this occasion virgo intacta.

Later on this Sunday, the 27th December, the defendant came to her house. She says it was in the morning about 9 a.m., while he says it was in the afternoon. Defendant saw plaintiff in her bedroom and he sat on her bed talking to her. Her father had told him first and then later plaintiff told defendant that she had been taken to the hospital. She was crying and defendant agrees that she was. The plaintiff said, I was bleeding last night and my father and mother took me to the hospital." He said, "Don't worry about anything. I am going to marry you."

About one week later she says defendant again had intercourse with her and continued to have intercourse with her in her bedroom at her home. These acts took place about two or three times a week during the remainder of December and throughout January and half of February, 1960. He took her to the pictures once or twice a week during that period.

Now the Defendant does not specifically deny the instances of sexual intercourse. As to the first alleged on the 26th December, he skates around the challenge and invites the inference to be drawn that he was not a party to the sexual intercourse experienced by the plaintiff and which undoubtedly took place on the night of 26th December 1959. According to the plaintiff's story of that night there was no-one else there when they sat upon the verandah on the bed there before they went into the bedroom. He did go into the bedroom, for he admits that much. He told the Court that the bedroom was shared by the plaintiff's sister but he does not relate that the sister was there at the time. The plaintiff was not cross-examined as to whether anyone else was at the house that night nor as to the presence of the sister nor that the doors of the bedroom were open. The medical evidence was that it was reasonable that any one of the

acts of intercourse which plaintiff says occurred between 20th January and 14th February, and about which the defendant says nothing, could have caused the conception. The plaintiff gave birth to a female child on 23rd November 1960. The medical evidence showed that the defendant could have been the father of the child. To my mind there is sufficient corroboration of the plaintiff's evidence that on the night of 26th December, 1959 the defendant had sexual intercourse with her.

Now the plaintiff's story is that the defendant did ask her to marry on several occasions but the defendant has evaded this issue. One can not, however, accept her story merely as being true when there is nothing from the defendant to refute the promise, because there is substantive law which provides that in such a case as this there must be corroboration of the promise to marry by some other evidence in support of the promise alleged.

What corroboration, therefore, is there of the plaintiff's evidence of the promise? Three letters from the plaintiff were received by the defendant, the first was in June 1960 and the contents of this letter was only a request for the defendant to go and see plaintiff, which the defendant did, and intercourse took place, according to the plaintiff. After that night the defendant did not come again so the plaintiff wrote (Exhibit "A") a letter to defendant dated 20th June 1960. In that letter, among other things, plaintiff used the words "Because you promised to marry me." To this letter defendant made no reply, so again the plaintiff wrote to defendant dated 7th July 1960 in which she said she was still waiting for an answer to the letter of 20th June 1960 and in which she described her distress. To this letter there was no reply. The mere fact that the defendant did not answer the letters (Exhibits A and B) does not constitute corroboration (Wiedemann v. Walpole (1891) 2 Q.B.534).

Corroboration may be found in the observed conduct of the parties' acts of intimacy, displays of mutual regard and possessiveness.

From some time in the middle of December 1959 to the middle of February 1960, the defendant was a constant visitor to the plaintiff's home and in continual attendance on the plaintiff. The defendant took the plaintiff to the pictures in his car often, according to her father. The first time it was with the consent of both her parents and after that he came every evening to the house. Sometimes he went to Church with the family; according to the mother, Mala, the defendant would sit on plaintiff's bed while she, the mother, would prepare a meal. Sometimes the defendant had a meal with the family.

The plaintiff's father, Ted English, said in evidence that defendant told him he wanted to marry plaintiff; that he consulted his wife and then told defendant that he could. This was a short time before Christmas, 1959.

Up to the night of 26th December 1959 the plaintiff was a virgin. She relates that she had had a boyfriend in 1957, but since that time until the defendant began to visit her she had no other male visitors and there were no others visiting her at the time the defendant was seeing her. This is according to the evidence of the father.

That up to the night of 26th December 1959 the plaintiff had not had sexual intercourse with any men is without doubt on the medical evidence. That the defendant was at the girl's home and in her bedroom on the night of the 26th December 1959 up to 10.30 is quite true, for the defendant admits it. It is true that he went to plaintiff's home on the Sunday and was told that she had been taken earlier to the hospital for attention. He found her in bed and sat on her bed for some time talking to her. She was crying.

All these circumstances are corroborative of the plaintiff's evidence that there was a promise to marry. The plaintiff was a girl of good character.

For the defence it was said that if there had been a promise the plaintiff had released defendant from it. The release is said to have been on the occasion of the meeting between the plaintiff and defendant at the bus stop near the premises of Burns Philp (New Guinea) Limited where the plaintiff was waiting for a bus to take her home. This was in February 1960, sometime in the first two weeks, and apparently after the defendant had ceased to visit the plaintiff. The defendant asked plaintiff to go to the pictures with him saying, "Why don't you come to the pictures with me?" She did not want to go with him, saying, "You were going out with other girls," and he said, "I don't want that other girl." Plaintiff says she did not say anything because the bus was coming along. She got into the bus and went home.

In cross-examination she said she was very angry with him because she had heard that he had been going out with another girl. She also said she was so angry with John Read that she decided not to go out with him any more. I cannot regard that incident as any more than a lover's quarrel and not as a mutual discharge of the promise to marry.

The defendant apparently had wished to abandon the plaintiff, for he did not visit her in March, April or May. In June the plaintiff sent the defendant a written message that she wished to see him. He went in response to this message and she did not, she says, tell him of her condition. That night, according to her story, they had sexual intercourse. After that he did not come to visit her any more so she wrote a letter (Exhibit "A") dated 20th June, 1960, and getting no reply, she wrote again on the 7th July, 1960 (Exhibit "B"). She received no reply to this second letter.

I have already found that there was a promise to marry- at a date before the 26th December, 1959. These two letters show that in the mind of the plaintiff there had been no mutual discharge of the promise to marry. I am unable to find that there was a mutual discharge of the promise of marriage in any part of the evidence.

It remains to consider the question of damages. Now I might consider the lessened prospects of marriage because of the seduction and the birth of a child and that she is no longer a virtuous member of the family. She is now of the age of twenty-five years. She was, up to the night of 26th December, 1959, a girl who had not surrendered her virginity. She was a girl of good character living with her parents in an environment of decency. She was of mixed blood and educated to a standard equivalent to her station in life. She was a business girl working for a well-known business house in Port Moresby. Her prospects of marrying someone above or equal to her station in life have, in my view, been lessened by the birth of a child. I am not able to say that, in the circumstances, she has ceased to be a respected member of the family.

I have been invited to consider the loss of her earning capacity but I would point out that I am not here trying the issue of seduction as in an affiliation case. I am considering the matter of damages for the breach of promise to marry, and the seduction is to be considered in the light of aggravating the injury done to the plaintiff by the breach of contract. The amount of damages is not merely to depend on the pecuniary loss to the plaintiff, but I think some notice should be taken of the pecuniary loss.

One may consider circumstances which aggravate the damages such as the social position of the defendant and his pecuniary condition. The defendant is an European and it can be said that the plaintiff, as a mixed blood, might have entered a society higher than her own by marrying the defendant. The defendant promised her, she said, a house in Town, no doubt in an environment on a higher plane than that which she had been used to in Hanuabada.

There were suggestions made to the plaintiff in cross-examination that the Defendant has a wealthy father. But what his father has is no way relative to what the defendant has; as far as I could gather the defendant himself is of little financial substance, depending upon whatever salary he receives as a Plant Operator for the Public Works Department - a salary which cannot be large. Plaintiff says that when he came to see her in Jund, 1960 he said, "I have a good job now," and he told her about the wages he was getting from the Public Works Department and that it was more than he had got at Burns Philp (New Guinea) Limited.

In my view, looking at all the circumstances, in relation to damages, a proper amount to allow would be the sum of £500.

I give Judgment to the plaintiff in the sum of £500 with costs to be taxed.

J.

9.30 a.m. 21/4/61