

ANDROULLA THEODOROU,

*Appellant-Plaintiff,*

v.

ANDREAS CHARALAMBOUS SEKKERIS,

*Respondent-Defendant.*

ANDROULLA  
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v.  
ANDREAS  
CHARALAMBOUS  
SEKKERIS

(Civil Appeal No. 4748).

*Contract—Promise to marry—Breach—Anticipatory breach—Treated as a cause of action.*

*Promise to marry—Breach—Rights and obligations of parties arise entirely out of their own contract—Principles of canon law inapplicable—See further infra.*

*Contract to marry—Breach of promise to marry—Law applicable—The parties having agreed by their contract that the matrimonial home would be established at the village where they were living at the time—The defendant having decided afterwards that the matrimonial home will be established at another village acted in breach of the original contract—And the plaintiff was justified in refusing, and stating unequivocally so, to agree to such decision—And the defendant refusing to proceed with the marriage due to the plaintiff's aforesaid refusal, amounts to a wrongful repudiation of the promise to marry i.e. a clear anticipatory breach of the contract between the parties—And the contract having been thus broken by the promisor defendant (respondent), and treated as broken by the promisee plaintiff (appellant)—The latter was entitled to claim damages by her action against the defendant for breach of promise—And it is not a defence to that claim that under the canon law of the Greek Orthodox Church (which admittedly governs the marriage) the wife is under the obligation to follow her husband to wherever he chooses to establish the matrimonial home.*

*Breach of promise to marry—Anticipatory breach—Damages—See supra.*

*Canon law of the Greek Orthodox Church—Promise to marry—Matrimonial home—Place of—See supra.*

In this very interesting breach of promise to marry case, the Supreme Court, reversing the trial Court's judgment, held that, the parties, engaged to be married, having agreed

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under their agreement that the matrimonial home would be established at *Lymbia*, the village where they were living at the time, the defendant (respondent) had not the right to change afterwards his mind and decide that the matrimonial home would be established elsewhere *viz.* at the village of *Livera* ; and that the plaintiff (appellant) having turned down definitely such suggestion, declaring unequivocally that she would never follow him at *Livera*, was acting within her rights under the contract, no matter that under the canon law of the Greek Orthodox Church (which admittedly governs the marriage) the wife is under an obligation to follow her husband wherever he chooses to establish the matrimonial home ; and that, consequently, the defendant (respondent) had no valid cause for refusing, on account of the plaintiff's said conduct, to proceed with the marriage, such refusal on his part constituting an anticipatory breach of the relevant contract between the parties.

This is an appeal by the plaintiff young woman from the judgment of the District Court of Nicosia dismissing her claim against the defendant in Action 4057/66 for breach of promise of marriage. The salient facts of the case are briefly as follows :—

A promise to marry each other was exchanged between the parties on March 9, 1966. The ceremony of marriage was to be performed in accordance with the rites and ceremonies of the Greek Orthodox Church and the time fixed for the marriage was October, 1968. One of the terms of the agreement was that the matrimonial home was to be at *Lymbia* village, the plaintiff (now appellant) having undertaken to provide a house for them to live after marriage at that village as agreed. The terms of the agreement, including terms regarding dowry, were embodied in a contract in writing signed by the parties and their parents respectively and duly witnessed. Two or three months after the signing on March 9, 1966 of the said agreement and as a result of certain events (dealt with in due course by the trial Court), the defendant changing his mind decided to establish the matrimonial home at *Livera* village (instead of at *Lymbia*). The plaintiff did not agree with that decision of the defendant and insisted that the matrimonial home should be at *Lymbia* as agreed ; in cross-examination, she agreed that she told the defendant that she would never go to live at *Livera* as suggested by the defendant. Following the plaintiff's refusal as aforesaid,

the defendant refused and/or failed to proceed with the marriage. Hence the action by the plaintiff claiming against the defendant damages for breach of promise to marry.

Those were briefly the facts of the case. In dismissing the action the trial Court was obviously influenced by the expert evidence adduced *viz.* that under the canon law of the Greek Orthodox Church, the wife is under the obligation to follow her husband to wherever he chooses to establish the matrimonial home, save in case where the husband's decision is utterly unreasonable. The trial Court had this to say in this respect :—

“ The defendant (now respondent) was faced, before the marriage, with a clear and unambiguous refusal on the part of his future wife to comply with one of her fundamental obligations after marriage. Was he expected to go on with the marriage thus fulfilling his part of the agreement and then take divorce proceedings immediately after? Although there may be some arguments for the opposite view, we are inclined to the view that he was justified in following the course which he did. One analogy may perhaps be found in the law of contracts relating to anticipatory breach.”

It is to be noted here that in view of the line taken by the Supreme Court the question whether or not the decision of the defendant (respondent) to change his mind and to establish the matrimonial home not at *Lymbia* as agreed but at *Livera*, is reasonable, does not arise.

The Supreme Court held that the trial Court misdirected itself and allowed the appeal.

*Held*, (1). We are in agreement with counsel for the appellant that the trial Court misdirected itself on the question of anticipatory breach on the part of the plaintiff. The rights and obligations of the parties arise here entirely out of their own contract ; and we cannot see how the principles of Canon Law can be invoked to justify the non-fulfilment of the promise of the defendant.

(2) (a) The establishment of the matrimonial home at *Livera* village was decided only by the defendant and it was not to be part of the promise to marry. On the contrary, under the contract of March 9, 1966 it was agreed between all concerned that the matrimonial home would be established at

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*Lymbia* village. Such contract, apart from the fact that it carries with it consequences of the utmost importance to the parties, appears to afford a striking illustration of the expediency of holding that an action may be maintained on the repudiation of the contract to be performed in future.

(b) The contract, having been thus broken by the promisor defendant, and treated as broken by the promisee plaintiff (appellant), performance at the appointed time becomes excluded ; and the eventual non-performance may therefore, by anticipation, be treated as a cause of action, and damages be assessed and recovered in respect of it, though the time for performance may be yet remote.

(3) Having found that anticipatory breach is treated as a cause of action, it therefore could not be used by the defendant as a defence to the action for breach of promise ; and we fail to see how the plaintiff's action could be dismissed once the defendant never made part of his contract the possibility of establishing the matrimonial home at *Livera* village.

(4) In the light of what we have said, and since the defendant has created a duty upon himself by his contract, he is bound to make it good by paying damages to the plaintiff for this breach. (*Note* : damages agreed by the parties at £505). We, therefore, reverse the judgment of the trial Court and we give judgment for the appellant (plaintiff) for the sum of £505 agreed damages, with costs here and in the Court below.

*Appeal allowed with costs.*

### **Appeal.**

Appeal by plaintiff against the judgment of the District Court of Nicosia (Ioannides, Ag. P.D.C. and Santamas, Ag. D.J.) dated the 24th June, 1968, (Action No. 4067/66) dismissing her claim for damages for breach of promise of marriage.

*A. Triantafyllides* with *L. Papaphilippou*, for the appellant.

*D. Liveras*, for the respondent.

*Cur. adv. vult.*

TRIANTAFYLLIDES, P. : Mr. Justice Hadjianastassiou will deliver the judgment of the Court.

HADJIANASTASSIOU, J. : The appellant in this case appeals to this Court from the judgment of the District Court of Nicosia dated June 24, 1968, dismissing the claim of the plaintiff against the defendant in Action 4057/66 for breach of promise of marriage.

The plaintiff, a young woman of twenty-one years of age, brings this action for breach of promise of marriage against the defendant, a man of twenty-eight, a mason by profession. In paragraph 3 of her statement of claim, she alleges an engagement on or about the 9th March, 1966, which was published in two newspapers. On April 17, 1966, the defendant and the plaintiff solemnized before a priest their promises to marry each other. The ceremony of marriage was to be performed in accordance with the rites of the Greek Orthodox Church and the time fixed for the marriage was October, 1968. The terms of the agreement, including the dowry, were embodied in a contract, signed by the parties and their parents respectively, as well as by two witnesses.

There is no dispute about the promise to marry and the plaintiff in paragraph 6 of her statement of claim alleges that because of the promise of the defendant to marry her she allowed him to deflower her on or about March 13, 1966, and had regular sexual intercourse after that date. In paragraph 8 she alleges that in breach of this promise the defendant refused to marry her ; and in paragraph 10 she alleges that she is and always has been ready and willing to marry the defendant.

The defendant, in paragraph 4 of his statement of defence, denied the allegation of the plaintiff that he deflowered her and alleged that the plaintiff confessed to him that she had been deflowered by a co-villager of hers called Michalis, with whom she had relations before her engagement. Moreover, in paragraph 5 he alleged that after such confession the plaintiff and her parents agreed to his suggestion that the matrimonial home should be at Livera instead of at Lymbia. In paragraph 7 it was alleged that by reason of the fact that the plaintiff did not want the defendant to establish a matrimonial home in Livera, she rescinded the contract to marry each other.

The record of the trial Court of November 23, 1967, reads :—

“ 1. At this stage both sides agree as follows :—

(a) That a promise to marry was exchanged between the parties on the 9th March, 1966, and that

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the marriage was to be celebrated in accordance with the Greek Orthodox church rites.

- (b) One of the terms of the aforesaid agreement to marry was that the matrimonial home was to be at Lymbia.
- (c) That at a later stage the defendant decided that their matrimonial home would be at Livera instead of Lymbia with which decision the plaintiff did not agree.
- (d) That following the plaintiff's refusal as aforesaid, the defendant refused and/or failed to proceed with the marriage.

2. The parties allege the following :—

- (a) The plaintiff contends that :—
  - (i) The defendant's decision to establish the matrimonial home at Livera was unreasonable and consequently her refusal was justified,
  - (ii) that even if her refusal was unjustified, she was under no duty to agree at the time with the decision of the defendant as in paragraph 1(c) above.
- (b) The defendant contends that :—
  - (i) His decision as in paragraph 1(c) aforesaid was reasonable and consequently the plaintiff's refusal was unjustified,
  - (ii) that the plaintiff's refusal amounted to a breach on her part, thus releasing him from the duty to proceed with the marriage.

Parties further agree that in the event of the Court deciding in favour of the plaintiff, the amount of damages to which she will be entitled is £505.

Defendant withdraws his counterclaim."

On January 9, 1968, the plaintiff stated before the trial Court that when they exchanged promises with the defendant to marry, it was agreed that she should provide a house for them to live after marriage at Lymbia. The house was to be built at the expense of her father and brother on a site next to the house of her father. On March 13, 1966, four days after they exchanged promises to marry each other, the defendant deflowered her when she happened to

be at the house of his sister at Karavas. Following that event, they used to have sexual intercourse regularly. About two or three months later, the defendant asked her father, in her presence, to have their house built at Livera instead of at Lymbia. He asked him for £1,500 for the cost of the house. Her father did not agree. As a result of this, the defendant stopped going to her house. She denied that she told the defendant that she was deflowered by a neighbour of hers called Michalis, and alleged that she did not have a neighbour by that name. In cross-examination, she agreed that she told the defendant that she would not ever go to live at Livera.

The defendant, on the other hand, stated that he conceived the idea of having a house built at Livera sometime in the middle of June, because he wanted to live at Livera in order to be away from Lymbia because of the plaintiff's confession that she had sexual intercourse with Michalis and because of the fear that this relationship might continue later on. He alleged that he informed the plaintiff of his fears and that she agreed to this suggestion ; as a result, he contacted the father of the plaintiff and informed him of his decision, and although the father agreed to help him with the building of a house at Livera, nevertheless, he did not keep his promise. He further explained that because of the refusal of the plaintiff, he stopped visiting her. However, he agreed that he had sexual relations with the plaintiff, but alleged that she was not a virgin.

It is not in dispute that the decision of the defendant to establish the matrimonial home at Livera was made after the contract to marry. See paragraph (c) of the agreed facts before the trial Court quoted in this judgment.

Regarding the law which governs the present case, it has to be remembered that the action for breach of promise of marriage is still treated as an action of breach of contract, although it differs from other forms of actions *ex contractu* in permitting damages to be given as for a wrong. A contract of marriage, of course, like any other contract, may be shown to be void on the ground of fraudulent misrepresentation or of public policy. This contract of marriage, likewise has peculiar incidents, by reason of which the performance of it may be excused : If, subsequent to the contract the woman has been found guilty of unchastity, the man, at his choice, is excused from the performance of his promise, which was given under the implied condition that the woman should continue chaste.

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With regard to the question of unchastity of the plaintiff before the date of promise of marriage, and whether she had confessed to the defendant that she had sexual relations with another man, the trial Court said that it had no reason to doubt the plaintiff's evidence, and has accepted her version to the contrary as being correct. As regards, however, the question where the parties should live after their marriage, the Court had this to say :—

“ That the defendant had suspicions that something of that kind had happened, we do not doubt and this is shown from the evidence of the plaintiff herself who admitted that the defendant had expressed similar doubts to her. But whether the defendant's suspicions were well founded or not, is another matter. It is obvious, however, that because of his suspicions he decided that the couple should live at Livera after their marriage and in order to make his demand appear more reasonable and to by-pass the agreement as to the intended matrimonial home, he invented the story of the plaintiff's confession.”

The appellant's case before this Court was presented by counsel for the appellant under two main heads : Firstly, it was said that the finding of the Court that there was an anticipatory breach on the part of the plaintiff was erroneous in law. Secondly, it was contended that the Court erred in applying the principles of the Canon Law and not the Contract Law which governs the contract of breach of promise.

Although the Court in dealing with the principles of Canon Law took the view that it had no bearing in this case, nevertheless, it appears that in approaching the question of breach of the contract of marriage it was influenced by the relevant expert evidence before it. *viz.*, that the wife is under the obligation to follow her husband to wherever he chooses to establish the matrimonial home, subject only to whether the husband's decision is utterly unreasonable.

The trial Court had this to say :—

“ The defendant was faced, before the marriage, with a clear and unambiguous refusal on the part of his future wife to comply with one of her fundamental obligations after marriage. Was he expected to go on with the marriage thus fulfilling his part of the agreement and then take divorce proceedings immediately after? Although there may be some arguments for the opposite view, we are inclined to the



view that he was justified in following the course which he did. One analogy may perhaps be found in the law of contracts relating to anticipatory breach."

We are in agreement with counsel for the appellant that the trial Court misdirected itself on the question of anticipatory breach on the part of the plaintiff. The rights and obligations of the parties arise here entirely out of their own contract, and we cannot see how the principles of Canon Law can be invoked to justify the non-fulfilment of the promise of the defendant. As we have said earlier, the establishment of the matrimonial home at Livera was decided only by the defendant and it was not to be part of the promise to marry. The contract of marriage, apart from the fact that it carries with it consequences of the utmost importance to the parties, appears to afford a striking illustration of the expediency of holding that an action may be maintained on the repudiation of the contract to be performed in future. The contract, having been thus broken by the promisor defendant, and treated as broken by the promisee plaintiff, performance at the appointed time becomes excluded; and the eventual non-performance may therefore, by anticipation, be treated as a cause of action, and damages be assessed and recovered in respect of it, though the time for performance may yet be remote.

Having found that anticipatory breach is treated as a cause of action, it therefore could not be used by the defendant as a defence to the action of breach of promise; and we fail to see how the plaintiff's action could be dismissed by the trial Court once the defendant never made part of his contract the possibility of establishing his matrimonial home at Livera.

In the light of what we have said, and since the defendant has created a duty upon himself by his contract, he is bound to make it good by paying damages to the plaintiff for this breach. Of course, if the amount of damages was not agreed by the parties, the conduct of the plaintiff could be taken into consideration by the trial Court as evidence relevant to the amount of damages.

We would, therefore, reverse the judgment of the trial Court and allow the appeal; there shall be judgment for appellant for the sum of £505,000 mils agreed damages with costs in the Court below and before this Court.

*Appeal allowed with costs.*

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