

[STRONGE, C.J., THOMAS AND FUAD, JJ.]

ELENI A. PHILIPPOU

v.

VARNAVA N. MOSCHOVIA.

(Appeal No. 3579.)

1937.
Dec. 16.
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ELENI A.
PHILIPPOU
v.
VARNAVA N.
MOSCHOVIA.

Breach of Promise of Marriage—Damages under Section 73 (1) of the Contract Law, 1930—Principles of Assessment.

The plaintiff brought an action against the defendant for breach of promise of marriage claiming damages therefor. It was proved in the action that the defendant had promised to marry the plaintiff but broken his promise, and that plaintiff's prospects of marriage were practically annihilated by reason of her having been seduced by the defendant. The trial Court being of opinion that there had been no actual loss or damage according to the Contract Law as interpreted by the Supreme Court in Appeal No. 3553 awarded the plaintiff £1. 1. 0 by way of nominal damages. From this decision the plaintiff appealed.

Held: (1) That an action for breach of promise of marriage is in form and substance an action for breach of contract;

(2) that under section 73 (1) of the Contract Law, 1930, damages for breach of contract can only be in the nature of compensation for loss or damage actually suffered, and that nominal damages cannot be awarded;

(3) that in a case of breach of promise of marriage the damage to a woman's prospects of marriage, and the loss of a husband and the maintenance to which she would have been entitled are temporal losses which should be evaluated and assessed as damages for the breach; and that in such assessment seduction may be taken into account only in so far as it has injured the prospects of marriage.

Appeal by the plaintiff from the judgment of the District Court of Famagusta. (Action No. 179/35.)

J. Clerides (with him *A. Gavrielides*) for appellant (plaintiff):

In a breach of promise of marriage the plaintiff sustains the loss of a husband and all the benefits derived from marriage such as companionship and maintenance, and a diminution of her prospects of marriage. The damage sustained must be assessed by the Court upon the evidence before it, and evidence may be called in regard to the value of the husband lost. There is power to award nominal damages even where there is no loss. In this case there was also seduction of the plaintiff and the birth of a child.

G. Mylonas for respondent (defendant):

Plaintiff never alleged any special items of loss. Nominal damages cannot be awarded and the action should have been dismissed in the absence of proof of actual damage, as decided in Appeal No. 3553. Her loss of prospect of

marriage cannot be assessed and damages cannot therefore be awarded. No damages can be claimed in respect of the maintenance of the child.

The judgment of the Court was delivered by the Chief Justice.

STRONGE, C.J.: In this case the plaintiff proved at the trial a promise by the defendant to marry her, her *seduction by the defendant and subsequent refusal by the defendant to carry out his promise*. She also proved, though she had made no mention of it in the written claim served by her on defendant, that by reason of her seduction her marriage prospects had been practically annihilated.

In England an action for breach of promise of marriage, though in form an action for breach of contract, is in substance an action for personal injury, *i.e.* an action in tort. Hence, in England, the conduct of both plaintiff and defendant may, in such an action, be taken into consideration and damages aggravated, vindictive, punitive or exemplary as they are variously called may be awarded on grounds which find no place in actions which both in form and substance are contractual. In England in such an action the plaintiff's feelings of injured pride, and her disappointment due to the breach, may be taken into consideration, and so may her seduction by the defendant as grounds for enhancing the damages.

In Cyprus, the action both in form and substance is an action for breach of contract because a contract to marry comes within section 10 of the Contract Law, 1930. The remedy given by section 73 (1) of the Contract Law, 1930, to a person injured by breach of such a contract is compensation for loss or damage caused by the breach and as it makes no provision for the award of nominal damages where no loss due to the breach has been established it is clear that if a plaintiff fails to establish loss or damage caused by the breach the action must be dismissed. The trial Court appears to have been led into the error of thinking that this Court in using the words "actual loss or damage" in its judgment in Civil Appeal No. 3553 (Limassol action No. 273/35) intended thereby to limit the loss or damage provable in such an action to money expended by the plaintiff. This Court did not so intend and perhaps the meaning would have been clearer had the words used been "loss or damage actually suffered."

The scheme of section 73 (1) of the Contract Law, then, is compensation for loss or damage sustained by the breach, and it is limited to such loss or damage as flows naturally from the breach or which was known to both parties when

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making the contract as likely to result therefrom. In the present case the plaintiff has proved (1) loss or damage to her prospects of marriage, (2) loss of defendant as her husband, and the maintenance to which if he had carried out his promise she would have been entitled. Each of these matters is a temporal loss or damage caused by defendant's breach of promise to marry the plaintiff and as it cannot be said that either of them is incapable of being estimated in money the case will be remitted back to the District Court to evaluate them, and for this purpose the parties are to have liberty to adduce further evidence.

It may be appropriate to refer here to the following passage from the judgment of Vaughan Williams, L.J. in *Chaplin v. Hicks*, an action for breach of contract (1911, 2 K.B., p. 792). "I only wish to deny with emphasis that because precision cannot be arrived at the jury has no function in the assessment of damages."

Finally the seduction of the plaintiff can only be taken into consideration in the assessment of the damages in so far as it has injured the plaintiff's prospects of marriage to somebody else, and not in the light of its being misconduct on the part of the defendant to be visited with punitive damages.

Appeal allowed: Action remitted to the District Court for assessment of damages.

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SYMEON N.
CHEILIDES
v.
YACOUMI
NICOLA AND
ANOTHER.

[STRONGE, C.J., AND FUAD, J.]

SYMEON N. CHEILIDES

v.

YACOUMI NICOLA AND ANOTHER.

(*Appeal No.* 3605.)

Agreement for sale of land—Action for balance of purchase price or, alternatively, delivery of possession, resulting in judgment for payment of such balance—Fresh action for payment of the judgment debt or, in default, delivery of possession—Abuse of process—"Res judicata".

Plaintiff brought an action against defendants on an agreement for the sale of land, claiming the balance of the purchase price or, alternatively, an order directing the defendants to deliver to him possession of the land in accordance with the agreement. Defendants submitted to judgment for the balance of the purchase price, and plaintiff accepted judgment for such balance, withdrawing his alternative claim for delivery of possession without prejudice to his rights. Shortly after obtaining this judgment plaintiff brought a fresh action against the same defendants, claiming that they should pay him the judgment debt and accept registration in their names, or, in default, deliver the