1973
Oct. 4
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SAVVAS PARASKEVAS
v.
DESPINA MOUZOURA

[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

SAVVAS PARASKEVAS,
Appellant-Defendant,

v.

DESPINA MOUZOURA,
Respondent-Plaintiff.

(*Civil Appeal No.* 4950).

Promise of marriage—Breach—Damages—Principles upon which damages for breach of promise of marriage have to be assessed—Especially regarding the question whether exemplary damages may be awarded, particularly in cases where there had been seduction of the promisee girl—In Cyprus ever since 1953 (*see* Marcou's *case* infra) *the Courts rightly are awarding, in a proper case, such damages, taking into account,* inter alia, *the conduct of the parties up and at the time of the trial, injury to the personal feelings and the like—Seduction of the promisee girl—Exemplary damages may be awarded in that respect—Plaintiff's marriage after trial and during the pendency of this appeal—A factor which has to be considered by the Court of Appeal—A factor leading to mitigation of damages awarded by the trial Court—Cf. immediately herebelow.*

*Exemplary damages—In cases of breach of promise to marry—Such damages may be awarded—*Rookes *v.* Barnard [1964] 1 *All E.R.* 367, *not applicable in Cyprus ;* not followed—*Cf.* supra.

Breach of promise to marry—See supra.

Civil Procedure—Appeal—Fresh evidence before the Court of Appeal—Facts which occurred after trial—Leave to adduce fresh evidence granted—No need for special reasons—Discretion—The Civil Procedure Rules, Order 35, *rule* 8*—Leave to adduce evidence before the Court of Appeal regarding the plaintiff's marriage after trial and pending this appeal—Cf.* supra.

Fresh evidence on appeal—See supra.

Damages—Breach of promise of marriage—Principles upon which damages have to be assessed—Exemplary damages—Seduction

of the promisee girl to be met by such damages—Cf. Section 73 (1) of the Contract Law, Cap. 149—Cf. Markou *v.* Michael (1953) 19 *C.L.R.* 282, *declaring* Philippou *v.* Moschovia, 15 *C.L.R.* 116, *no longer law.*

This is a most interesting case of breach of promise of marriage. Its main features are the following two: (1) The Supreme Court, interfering with the award of damages made by the trial Court, thought fit and proper to reduce it substantially on account of a subsequent event, this being the marriage, after the trial and during the pendency of this appeal, of the plaintiff girl (now respondent) to a person other than the defendant (now appellant), the latter having obtained the appropriate leave to adduce before this Court the relevant fresh evidence regarding this event. (Cf. Order 35, rule 8, of the Civil Procedure Rules); and (2) the Supreme Court, re-affirming the well settled principles in Cyprus relating to exemplary damages in cases of breach of promise of marriage, especially in cases of seduction of the promisee girl, upheld the award of such damages by the trial Court in the instant case, thus declining to follow the restrictive principles laid down in respect of exemplary damages by the House of Lords in *Rookes* v. *Barnard* [1964] 2 All E.R. 367.

The salient facts of this case are very briefly as follows:

This is an appeal by the defendant from the judgment of the District Court of Nicosia dated November 30, 1970, awarding the plaintiff girl in action No. 1458/70 the sum of £900 general damages for breach of promise to marry her. The trial Court found that the contract to marry was concluded orally some time *circa* November 1968 and that the breach thereof by the defendant (now appellant) occurred early in March, 1970. The trial Court found also that the plaintiff, relying on the defendant's continuous assurances that he would marry her, yielded to his desires and as a result in December, 1968 the defendant deflowered her. In March, 1970, the defendant slept with the plaintiff and two days later he announced through the press his engagement with another girl whom he eventually married. The plaintiff was at the time 28 years of age, a civil servant in the Ministry of Agriculture earning £61 monthly, whereas the defendant was 33 years of age, and a qualified veterinary officer in the same Ministry, his salary reaching £1,250 per year.

The trial Court awarded the plaintiff (respondent) the sum of £800 general damages taking into consideration her seduction, her financial loss, her injured feelings and wounded pride, the conduct of the parties (and especially that of the defendant) up and at the trial, as well as the impairment of plaintiff's chances of marrying another person, and the means of the parties.

It is now pertinent to point out that after judgment was delivered by the trial Court and before the hearing of this appeal, the plaintiff girl (respondent) married another person a young scientist in agriculture, holding a good job with a good salary. The Supreme Court granted the appellant leave to adduce before it evidence in this respect and, eventually, taking into consideration this new factor reduced the said award of damages by £200, varying the judgment appealed from accordingly, but leaving it undisturbed in every other respect.

Allowing partly the appeal as aforesaid, the Supreme Court :—

Held, I : Regarding (a) the point arising out of the aforesaid marriage after the trial of the plaintiff, and (b) the bearing of such subsequent event on the award of damages :

(1) (*a*) We think that by our law, unlike that of many other countries, the maxim " interest *reipublicae ut sit finis litium* " is, in the usual case, strictly followed. Damages are accordingly assessed once and for all at the time of the trial, notwithstanding that in many cases, and this applies especially to cases of breach of promise and of personal injuries, uncertain matters have to be taken into account.

(*b*) The trial Court, therefore, when the assessment is made, has to make the best estimate it can as to events that may happen in the future ; and " when a litigant has obtained a judgment in a Court of Justice . . . . . he is by law entitled not to be deprived of that judgment without very solid grounds . . . . . " (*Brown* v. *Dean* [1910] A.C. 373, at p. 374, *per* Lord Loreburn L.C.).

(2) *Note : After referring to rule* 8 *of Order* 35 *of the Civil Procedure Rules* (*see the full text of rule* 8 *post in the judgment*) *:*

(*a*) Thus it appears that the Court of Appeal is given an unfettered discretion to receive evidence in a case such as this where there has been a change of circumstances after

the date of the trial. Furthermore the terms of rule 8 show that as regards matters occurring since the trial, no special grounds need be shown.

(*b*) The question remains on what principle ought our discretion to be exercised. In order to answer this point, we think we can do no better than refer to some of the English cases in which fresh evidence has been admitted in the Court of Appeal on matters falling within the field or area of uncertainty in which the trial Judge's estimate has previously been made. (See : *Curwen* v. *James* [1963] 2 All E.R. 619, at pp. 622, 623–24 ; *Jenkins* v. *Richard Thomas and Baldwins Ltd.* [1966] 2 All E.R. 15, at p. 16 ; *Mulholland* v. *Mitchell* [1971] 1 All E.R. 307, at pp. 310, 313 and 314 ; *Murphy* v. *Stone Wallwork (Charlton), Ltd.* [1969] 2 All E.R. 949, at pp. 953–54, 959, H.L. ; *McCann* v. *Sheppard* [1973] 2 All E.R. 881).

(3) Having received evidence regarding the said marriage of the plaintiff (respondent), we have to re-hear the case in the light of that evidence and re-assess the damages by reference to the position at the time the appeal was heard, because the trial Court's estimate has been clearly falsified by the subsequent event of the plaintiff's marriage in question.

(4) With all this in mind, in reviewing the amount of damages, we think that the best this Court can do is to say that the learned trial Judges have given more than they should have given and that if they had had the knowledge that the plaintiff's marriage was likely to accrue as early as it did in fact accrue, they would have awarded, or could reasonably have awarded no more than £700 (instead of £900) damages. In these circumstances, and on the particular facts of this case, we would allow the appeal and vary the order for damages accordingly. Cf. *Curwen* v. *James and Others* (*supra*) at p. 622.

Held, II : Regarding the principles upon which damages for breach of promise of marriage have to be measured ; and especially regarding the question whether exemplary damages may be awarded for such breach, particularly in cases where the promisor seduced the promisee girl :

(1) Although the action for breach of promise of marriage is based upon the hypothesis of a broken contract, yet it

is attended by some of the special consequences of a personal wrong. (See : *Finlay* v. *Chirney* [1888] 20 Q.B.D. 494) ; and damages may be awarded of a vindictive and uncertain kind not merely to repay the plaintiff for temporal loss, but also to punish the defendant in an exemplary manner (*Rookes* v. *Barnard* [1964] 1 All E.R. 367, *not followed*).

(2) (*a*) In assessing damages, therefore, the injury to the affections of the plaintiff, the prejudice to her future life and prospects of marriage because of the seduction, the rank and condition of the parties, and the defendant's means are all matters to be taken into consideration (see : *Berry* v. *Da Corta* [1865] L.R. 1 C.P. 331, at pp. 333–334 *per* Willes J.).

(*b*) Although it appears that losses following from seduction are not losses which flow from the breach of promise and, in any event, they would be too remote to be allowed by the Courts under the rule in *Hadley* v. *Baxendale* [1854] 9 Exch. 341, such items would seem to be admissible in evidence going in aggravation of damages. The seduction, of course, brings in the further aggravating factor of injury and shame to the plaintiff as a matter to be allowed for and also because of the lessening of her prospects of marriage. Cf. *Millington* v. *Loring* [1880] 6 Q.B.D. 190.

(*c*) There is no doubt, therefore, that this comes to giving damages for the seduction itself, because it increases the injury to the plaintiff's feelings and it can certainly be part of the exemplary damages.

(3) (*a*) From this it follows that the conduct of both parties as well as other circumstances regarding matters in aggravation and in mitigation may be taken into account in assessing damages (see : *Quirk* v. *Thomas* [1916] 1 K.B. 516, at p. 523 ; *Markou* v. *Michael* (1953) 19 C.L.R. 282).

(*b*) Our law is now settled and ever since 1953 (see *Marcou's* case, *supra*) our Courts in awarding damages in a case of breach of promise have felt free, after taking into consideration all facts and circumstances of each case, including the conduct of the parties, to award damages in aggravation or mitigation (see *Marcou* v. *Michael*, supra).

(4) (*a*) With those principles in mind we find ourselves in agreement with the judgment of the trial Court, both as regards the legal position and the factual one, and particularly that in the case in hand there were no mitigating facts in the

defence of the defendant (appellant) falling within the recognized exemptions enumerated in the judgment of the trial Court. It follows that the submission that the trial Court was wrong in awarding also damages for the seduction of the plaintiff is untenable and we would therefore dismiss this ground of law.

(*b*) On the other hand we are of the view that the award of £900 damages was right by reference to the position as it existed at the time of the trial ; but as we have said earlier it was open to the Court of Appeal to receive evidence about matters which had occurred after trial and we cannot now close our eyes to the subsequent marriage of the plaintiff. (*Note :* And the Supreme Court proceeded to reassess the damages to £700 (instead of £900) in the light of the said marriage of the plaintiff).

Appeal partly allowed as aforesaid. No order as to costs.

Cases referred to :

Brown v. *Dean* [1910] A.C. 373, at p. 374, *per* Lord Loreburn L.C. ;

Curwen v. *James* [1963] 2 All E.R. 619, at pp. 622, 623–24 ;

Jenkins v. *Richard Thomas and Baldwins Ltd.* [1966] 2 All E.R. 15, at p. 16, *per* Lord Denning M.R. ;

Mulholland v. *Mitchell* [1971] 1 All E.R. 307, at pp. 310, 313 and 314 ;

Murphy v. *Stone Wallwork* (*Charlton*), *Ltd.* [1969] 2 All E.R. 949, at pp. 953, 959, H.L. ;

McCann v. *Sheppard* [1973] 2 All E.R. 881 ;

Agrotis v. *Salahouris*, 20 C.L.R., Part 1, p. 77 ;

Thomaides and Co. Ltd. v. *Lefkaritis Bros.* (1965) 1 C.L.R. 20;

Philippou v. *Moschovia*, 15 C.L.R. 116 ;

Wertheim v. *Chicoutimi Pulp Co.* [1911] A.C. 301 P.C. ;

Monarch Steamship Co. Ltd. v. *Karlshamns Oljefabriker A/B* [1949] A.C. 196, at p. 220, H.L. ;

Victoria Laundry (Windsor) Ltd. v. *Newman Industries Ltd.* [1949] 1 All E.R. 997 ;

Hadley v. *Baxendale* [1854] 9 Exch. 341 ;

Finlay v. *Chirney* [1888] 20 Q.B.D. 494 ;

Rookes v. *Barnard* [1964] 1 All E.R. 367, at pp. 407, 410 ;

Addis v. *Grammophone Co. Ltd.* [1909] A.C. 488 ;

Broome v. *Cassell and Co. Ltd.* [1971] 2 All E.R. 187, at pp. 198–199, C.A. ;

Cassell and Co. Ltd. v. *Broome* [1972] 1 All E.R. 801, at pp. 821, 833–834, H.L. ;

Berry v. *Da Costa* [1865] L.R. 1 C.P. 331, at pp. 333–334 ;

Millington v. *Loring* [1880] 6 Q.B.D. 190 ;

Markou v. *Michael* (1953) 19 C.L.R. 282 ;

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Stavrinakis and Stylianides, D.JJ.) dated the 30th November, 1970, (Action No. 1458/70) whereby he was adjudged to pay the sum of £900 damages to the plaintiff for breach of promise to marry her.

L. Papaphilippou, for the appellant.

C. Glykys, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :—

HADJIANASTASSIOU, J.: This is an appeal by the defendant from the judgment of the Full District Court of Nicosia dated November 30, 1970, awarding the plaintiff in Action No. 1458/70 the sum of £900 damages with costs, for breach of promise to marry.

The facts are these :—The plaintiff was 28 years of age, a civil servant working at the Ministry of Agriculture and Natural Resources as a rural home economics officer, earning an amount of £60,935 mils per month. The defendant was 33 years of age, and a qualified veterinary officer, working at the same Ministry, his salary scale reaching

£1,250 per year. In October or November, 1968, the plaintiff was introduced by her brother to the defendant. After that, they started going out together with other friends to various places of entertainment. Apparently, that association developed into something more, and the defendant told the plaintiff that he liked her and that he intended to marry her. She returned the compliment by telling the defendant that she too liked him and agreed to marry him.

As a result of his promise of marriage, the defendant started visiting regularly the house in which the plaintiff was residing, and although at first she was objecting to having sexual intercourse with him, later on she yielded to his desires and as a result she was deflowered by him in December, 1968, because of his continuous assurances that he would marry her. This state of affairs continued, and when the father of the plaintiff visited them in December, 1968, he asked the defendant about his intentions and the date the betrothal would be officiated, and his reply was, "we do not propose to go into a betrothal ceremony, we want to go straight to the marriage". To a further question by the father of the plaintiff as to the dowry, the defendant said that he did not want anything, he only wanted Despina, meaning the plaintiff.

The plaintiff later on, sometime in 1969, moved to another house at Ayios Pavlos quarter, belonging to a certain Demos Pavlides, and one night when Mrs. Pavlidou visited the plaintiff, she met the defendant there and after inquiring as to who he was, his reply was that he intended to marry the plaintiff. The plaintiff and the defendant continued behaving as though they were married even when the defendant had promised to marry another girl (without bringing it to the knowledge of the plaintiff) ; and on March 5, 1970, he slept with the plaintiff, 2 days prior to the publication of his engagement to the other girl. Finally, he married the other girl.

The plaintiff, during the trial of this case, was subjected to a long cross-examination by counsel on behalf of the defendant, on the lines that she had sexual intercourse with the defendant without any promise on his part to marry her. On the other hand, the defendant, after giving evidence to the effect that he never promised to marry the plaintiff and that he never introduced her as his fiancée called evidence to support his allegations. The trial Court, after dealing with the evidence of the defence witnesses,

and after commenting that all the witnesses of the defendant did not carry the case for the defence any further because such defence did not contradict or render the plaintiff's or her witnesses' version as unnatural or unreasonable, had this to say at pp. 29 and 30 :—

" We accept the evidence of the plaintiff as corroborated not only by the evidence of her witnesses, which we accept, but also by the evidence of this last mentioned defence witness 4. We cannot accept the preposterous allegation of the defendant that he was a good friend of the plaintiff only and he was visiting her as a friend even during nights without anything more. The plaintiff's allegation is more natural and this is also borne out by the following significant admissions of the defendant :—

(*a*) that on the day of his engagement the plaintiff visited him at his house and he drove her to a nearby farm (and had the story of the defendant been correct, we do not see the reason why) and there the plaintiff told him ' I am an emancipated girl ; I am not going to create troubles for you '.

(*b*) That the marks and scars on his genital organs and his abdomen in fact exist.

(*c*) His stay in the house of the plaintiff late in the night where he was actually found by the father of the plaintiff and P.W. 4 and on this point we accept the version of the plaintiff that he, the defendant, said to her father ' Ti pandremeni, ti hartomeni '.

For all the above reasons we accept the plaintiff's version ; we accept that the defendant gave to her a promise for marriage and as a result of which the plaintiff yielded to his demands, he deflowered her and thereafter they had almost regularly sexual intercourse. We find that the defendant had repeated sexual intercourse with the plaintiff and this is borne out of the fact that the plaintiff knew about the scars on his private parts, something which she would not have seen as a good friend had it not been for the sexual intercourse."

The trial Court then proceeded to examine the question of the quantum of damages to which the plaintiff was entitled to in view of the breach of the promise of the defendant to marry her, and after taking into consideration her seduction,

her financial loss, her injured feelings and wounded pride, the conduct of both parties up and at the trial, as well as the impairment of plaintiff's chances of marrying another person, and the means both of the defendant and of the plaintiff, they proceeded as follows :—

> " As regards mitigating facts, there are none. The defendant himself described the plaintiff as a clever, educated woman with high morals, able to look after herself and her interest and not the sort of a woman that would indulge in sexual practices with a man without promise on his part to marry her.
>
> The defendant by breaking his promise to marry the plaintiff exposed her and her prospects of marriage have been diminished bearing in mind the local conditions and notions that prevail in Cyprus, a country with restricted society."

Then the Court finally said :—

> " Taking all the above into consideration, we consider that the damages the plaintiff is entitled to must be substantial to compensate her not only for her financial loss but also for her wounded feelings and impairment of her future prospects of marrying another person in view of the period she stayed with the defendant and her sexual activities with him. We assess the damages at £900 with costs ....."

Counsel on behalf of the defendant on November 1, 1971, raised in the notice of appeal eight grounds of law, challenging the findings of fact made by the trial Court and also the finding of the Court that the amount of damages awarded to the plaintiff were excessive and should be reduced.

The appeal was fixed for hearing on February 4, 1972, but on January 27, 1972, counsel for the defendant made an application to the Court of Appeal, supported by an affidavit, for leave to adduce fresh evidence on the ground that there has been a change of circumstances since the learned Judges made their award, in particular that the plaintiff on September 9, 1971 got married to Stelios Avraam Savva, a young scientist in agriculture, holding a good job with a good salary and that in those circumstances she suffered no damage.

In the light of our ruling delivered on February 4, 1972 admitting fresh evidence, we shall now proceed to give our reasons : We think that by our law, unlike that of many

other countries, the maxim interest *reipublicae ut sit finis litium* is, in the usual case, strictly followed. Damages are accordingly assessed once for all at the time of the trial notwithstanding that in many cases, and this applies especially to cases of breach of promise and of personal injury, uncertain matters have to be taken into account. The trial Court, therefore, when the assessment is made, has to make the best estimate it can as to events that may happen in the future. This is the function of the Court. Thereafter, to repeat the words of Lord Loreburn L.C., in *Brown* v. *Dean* [1910] A.C. 373 at p. 374 ; " When a litigant has obtained a judgment in a Court of Justice . . . . . he is by law entitled not to be deprived of that judgment without very solid grounds . . . . . ".

It appears, however, that this fundamental principle cannot be absolutely preserved, and our Civil Procedure Rules have provided in substance for some time that the Court of Appeal shall have power to admit further evidence on questions of fact. As to matters arising before trial, the practice recommended to be followed is to be found stated in the judgment of Denning L.J. (as he then was) in *Ladd* v. *Marshall* [1954] 3 All E.R. 745, where the dictum of Lord Loreburn was applied and amplified. With regard to matters arising after trial, Order 35, Rule 8 of the Civil Procedure Rules provides as follows, so far as material to the present case :—

> " The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the trial Court, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be . . . . . by affidavit . . . . . Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court."

Thus, it appears that the Court of Appeal is given an unfettered discretion to receive evidence in a case such as this where there has been, and this has not been denied by the other side, a change of circumstances after the date of trial. Furthermore, the terms of Rule 8 show

that as regards matters occurring since the trial, no special grounds need be shown. The matter lies in the discretion of the Court, but the question remains on what principle ought our discretion be exercised. In order to answer this point, we think that we can do no better than refer to some of the English cases in which fresh evidence has been admitted in the Court of Appeal on matters falling within the field or area of uncertainty, in which the trial Judge's estimate has previously been made.

The first case is *Curwen* v. *James* [1963] 2 All E.R. 619, and the Court gave some indication as to the way in which the Court of Appeal's discretion may be exercised. In this case, (a fatal accident), the trial Judge found that the plaintiff's husband was one-third to blame for the accident, that the amount by which the widow would have been likely to benefit in the future was £6 per week and assessed the damages at £4,000, saying that the widow was a presentable young lady who would have opportunities, if she were so minded, of re-marriage, and that it was right to make some real diminution in the amount of damages awarded, because of that factor. Owing to the fact that she had broken down when giving evidence at the trial, the widow had not been asked about the possibility of re-marriage. In March, 1962, before the expiry of the time for giving notice of appeal, she re-married. On appeal by the defendants against the amount of damages awarded, they sought leave under R.S.C., Ord. 58, r. 9 (2) to adduce evidence of the widow's re-marriage on the ground that if it was granted they would contend that by her re-marriage the widow had not lost the financial support assessed by the Judge. The defendants tendered no evidence as to the amount by which the re-marriage was benefiting the widow.

Sellers, L.J. dealing with the power of the Court of Appeal to receive further evidence, under Order 58, r. 9 (2) (which corresponds to our Order 35 r. 8), said at p. 622 :—

> " In the present case, although the proceedings are not wholly regular, it is desirable that the Court should decide the matter on the known fact of the marriage rather than that it should remain decided on an uncertainty for the future as it stood before the learned Judge. That is a factor which would justify this Court admitting the new evidence to that effect in the particular circumstances of this case."

Pearson, L.J., delivering a separate judgment, said at pp. 623-624 :—

"As my lord has pointed out, in *A.—G.* v. *Birmingham, Tame & Rea District Drainage Board* [1911-1913] All E.R. Rep. 926 at p. 939, Lord Gorell dealt with this matter and he said in terms :

'It seems clear, therefore, that the Court of Appeal is entitled and ought to re-hear the case as at the time of re-hearing . . . . .'

It follows, therefore, that, once the evidence of the new event (that is to say, the event which has occurred after the date of the trial or hearing) has been admitted, the new event should be taken fully into account and the decision should be given in the light of all the evidence, including the evidence as to the new event which has occurred—in this case, the re-marriage of the plaintiff, who brought the action under the Fatal Accidents Act, 1846."

Later on his Lordship had this to say :—

"However, I think it right to emphasise what has already been pointed out—that, in this case, the event in question occurred quite soon after the trial or hearing, and in fact, within the time limited for serving the notice of appeal. This case, as it stands, is limited to a case on those facts, and I do not propose to say what the position would be if the event had occurred at some later stage. I do feel anxiety on this subject, because the normal rule in accident cases is that the sum of damages falls to be assessed once for all at the time of the hearing. When the assessment is made, the Court has to make the best estimate it can as to events that may happen in the future. If further evidence as to new events were too easily admitted, there would be no finality in such litigation. There are quite often uncertain matters which have to be estimated and taken into account to the best of the ability of the Judge trying the action."

The second case is *Jenkins* v. *Richard Thomas & Baldwins Ltd.* [1966] 2 All E.R. 15, (a case of personal injury. Evidence was admitted by the Court of Appeal of the plaintiff's inaptitude for work thought suitable for him at the trial). Lord Denning, M.R. said at p. 16 :—

"It is very unusual for this Court to grant a new trial, but we were urged to do so here on the authority of

Curwen v. *James* [1963] 2 All E.R. 619. In that case, a widow had married after the trial. The expectation (on which damages had been assessed) had been entirely falsified by the event. So, here, the plaintiff said that he could show that, immediately after the trial, the Judge's estimate had been falsified by the event. We have had evidence from most distinguished medical men on each side. We have to make up our minds whether there is any continuing optical injury which prevents the plaintiff doing this grinder's work."

See also the doubts as to the correctness of the course adopted in that case by Lord Pearson in *Mulholland* v. *Mitchell* [1971] 1 All E.R. 307 at p. 314.

The third case is *Murphy* v. *Stone-Wallwork (Charlton) Ltd.* [1969] 2 All E.R. 949, H.L. (A case of dismissal of plaintiff by defendant after judgment). Lord Pearce had this to say at p. 953 :—

"It is an important principle that there should be finality in judgments or, if one prefers a Latin maxim, *ut sit finis litium*. For that reason a time limit is set within which any appeal to overset a judgment must be launched. Only in exceptional circumstances is this time limit extended. For the same reason the Courts have refused to re-open a case on appeal by the admission of evidence which the appealing party could have made available at the trial. Only in very exceptional circumstances will it allow this fresh evidence. The hardship in a particular case must be balanced against the general evil of allowing judgments to be disturbed and thereby prolonging and extending litigation.

Thus, in normal circumstances there are two stages in the finality of a judgment. First, during the time within which an appeal may be launched, it is final subject only to an appeal which in normal circumstances can only be allowed if there is some error in the adjudication on the evidence produced at the trial. There is, however, a discretion to allow fresh evidence if the unusual circumstances justify it. Secondly, after the time for appeal has expired, the judgment is final without recourse to appeal. Even then the Appellate Court has a discretion to re-open the matter on fresh evidence if the particular exigencies of justice clearly outweigh the general undesirability of doing so."

Finally, he said at p. 954 :—

" For these reasons, in view of the fact that the appeal was started within the time allowed, I think that there is just sufficient to allow the Court to hear the evidence of the dismissal and to re-open the case in the light of it. I would therefore admit the evidence and allow the appeal."

Lord Pearson, delivering a separate judgment at p. 959 quoted a passage from the judgment of Harman, L.J., in *Curwen* v. *James* (*supra*) in these terms :—

" Why should we, when we know that the plaintiff has married, pretend that we do not know it and assess the damages, as we are assessing them anew here, on the footing that she may or may not marry? As we know the truth, we are not bound to believe in a fiction.

I think it is quite clear that if on appeal fresh evidence is admitted as to subsequent events (events occurring after the date of the judgment appealed from) and the fresh evidence justifies a re-assessment of the damages, the damages should be re-assessed in the light of the relevant facts as known at the date of the re-assessment."

Later on his Lordship added :—

" I think the question whether or not the fresh evidence is to be admitted has to be decided by an exercise of discretion. The question is largely a matter of degree, and there is no precise formula which gives a ready answer. It can be said in the present case that the basis on which the case had been conducted on both sides and decided both at the trial and in the Court of Appeal was suddenly and materially falsified by a change of mind, involving a reversal of policy, on the part of the respondents, and in the circumstances it would not be fair or equitable to allow the respondents to retain the advantage of the decision given by the Court of Appeal on the basis which has been so falsified. It is reasonably clear in the present case that leave should be given to adduce the fresh evidence, with the result that there must be a re-assessment of the damages."

The next case is *Mulholland* v. *Mitchell* [1971] 1 All E.R. 307. The respondent to this appeal had been awarded damages for injuries sustained as a result of a road accident which had occurred while he was travelling as a passenger in the appellant's car. Damages had been assessed on the

basis, *inter alia*, that it would be possible for him to be looked after at home and, if that proved to impose too much of a strain on his family, in an ordinary nursing home. He appealed to the Court of Appeal against the award of damages. While the appeal was pending an application was made on his behalf for leave to adduce fresh evidence on the ground that there had been a dramatic change of circumstances since the award had been made at the trial. The fresh evidence was that the respondent's mental condition had subsequently and unexpectedly deteriorated to such an extent that he could no longer be looked after at home, that he needed specialist care at a psychiatric rather than an ordinary nursing home and that as a result the cost of nursing care over a long period of years would be about double that originally estimated at the trial. The appellants appealed from the order of the Court of Appeal giving the respondent leave under R.S.C. Ord. 59, r. 10(2)(*a*) to adduce fresh evidence.

Lord Hodson, dealing with the power of the Court of Appeal to receive further evidence, had this to say at p. 310 :—

> " In view of the decision which I have reached that the order of the Court of Appeal should be upheld, I think that it is undesirable to examine the facts further. As I have already said, the question whether fresh evidence is admitted or not is to be decided by an exercise of discretion. As my noble and learned friend Lord Pearson said in *Murphy* v. *Stone-Wallwork* (*Charlton*) *Ltd.* [1969] 2 All E.R. 949 at p. 960, the question is largely a matter of degree and there is no precise formula which gives a ready answer. In this case I think that it can be fairly argued that the basis on which the case was decided at the trial was suddenly and materially falsified by a dramatic change of circumstances. An appeal on the whole question of damages is pending and it would be unsatisfactory for the Court to deal with that appeal without taking into account the falsification, if such there be, of the basis of the trial Judge's award. In the absence of the fresh evidence, the Court of Appeal would be restrained from dealing with the reality of the case before it. I would therefore not interfere with the Court of Appeal's order for the admission of fresh evidence. It is not shown that the Court took into consideration matters which should not have been considered, nor can it be said at large that the decision was wrong."

Lord Wilberforce, delivering a separate judgment had given also helpful guidance on how the discretion should be exercised and said at p. 313 :—

> " I do not think that, in the end, much more can usefully be said than, in the words of my noble and learned friend, Lord Pearson, that the matter is one of discretion and degree (*Murphy's* case (*supra*)). Negatively, fresh evidence ought not to be admitted when it bears on matters falling within the field or area of uncertainty, in which the trial Judge's estimate has previously been made. Positively, it may be admitted, if some basic assumptions, common to both sides, have been clearly falsified by subsequent events, particularly if this has happened by the act of the defendant. Positively, too, it may be expected that Courts will allow fresh evidence when to refuse it would affront common sense, or a sense of justice. All these are only non-exhaustive indications ; the application of them, and their like, must be left to the Court of Appeal. The exceptional character of cases in which fresh evidence is allowed is fully recognized by that Court."

See also *McCann* v. *Sheppard* [1973] 2 All E.R. 881, the judgment of the Court of Appeal which was delivered after our ruling was made on February 4, 1972. Cf. *Agrotis* v. *Salahouris*, 20 C.L.R. Part 1, p. 77 relied upon by counsel for the appellant, where the application to admit fresh evidence was refused.

On February 4, 1972, having heard both counsel on the question of the power of this Court to receive further evidence regarding the event of the marriage of the plaintiff, which had occurred after the hearing of the case and during the pendency of the appeal, we have decided, directing ourselves with those judicial pronouncements, to exercise our discretionary powers to admit fresh evidence regarding the new event of the plaintiff getting married, an event which counsel for the plaintiff admitted and raised no objection.

In the light of our ruling, counsel for the appellant, relying on the principle formulated in *Thomaides & Co. Ltd.* v. *Lefkaritis Bros.* (1965) 1 C.L.R. 20, abandoned the grounds of Law 2–7 inclusive, dealing with questions of fact. In our view, having read the well prepared judgment of the learned Judges and their findings of fact, we think that counsel was properly advised in abandoning the said grounds, because we are satisfied that the reasoning behind

such findings is neither unsatisfactory nor that they were not warranted by the evidence considered as a whole. In these circumstances, we would, therefore, dismiss those grounds of law.

Having received evidence regarding the marriage of the plaintiff, we have to re-hear the case in the light of that evidence and re-assess the damages at the time the appeal was heard, because the learned Judges' estimate has been clearly falsified by the subsequent event of marriage of the plaintiff on September 9, 1971.

The first submission of counsel for the defendant was that the amount of damages awarded was on the high side, and that the learned Judges erred in that amount because (*a*) they were greatly influenced regarding the seduction of the respondent ; and (*b*) that in the light of the admitted fresh evidence of marriage of the respondent, the amount of damages should be substantially reduced because the plaintiff has not lost the financial support or maintenance assessed to her by the learned Judges. Counsel relies as to point (*a*) on *Eleni A. Philippou* v. *Varnava N. Moschovia*, 15 C.L.R. 116.

We think that it is true that the exemplary damages the learned Judges awarded were intended as compensation for the injured feelings of the girl herself, for her financial loss of losing the person who would marry her, as well as because she was seduced whereby her future prospects of marriage may have been reduced.

What then are the principles on which damages are measured for breach of a contract to marry ? Although the governing purposes of awarding damages is to put the party whose rights have been violated in the same position, so far as money can do so, as if his rights had been observed, (*Wertheim* v. *Chicoutimi Pulp Co.* [1911] A.C. 301 P.C.; *Monarch Steamship Co. Ltd.* v. *Karlshamns Oljefabriker A/B* [1949] A.C. 196 H.L. at p. 220), yet the damages awarded for breach of contract are limited by the presumed reasonable contemplation of the parties as to the consequences of the breach. (*Victoria Laundry (Windsor) Ltd.* v. *Newman Industries Ltd.* [1949] 1 All E.R. 997). The damages to be awarded for breach of contract are thus damages for the ordinary consequences which follow in the usual course of things from the breach, or for those consequences of a breach which may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract. (*Hadley* v. *Baxendale* [1854] 9 Exch. 341 ; *Monarch S.S. Co. Ltd.* (*supra*)).

Although the action for breach of promise of marriage is based upon the hypothesis of a broken contract, yet it is attended by some of the special consequences of a personal wrong. In *Finlay* v. *Chirney* [1888] 20 Q.B.D. 494, Bowen, L.J. described the action in these terms :—

> " It is ..... a class of action which, though in its form and substance contractual, differs from other forms of actions *ex contractu* in permitting damages to be given as for a wrong. This double aspect of an action for breach of promise creates the perplexity in the present instance. On which side of the line is to fall an action which is based on the hypothesis of a broken contract, yet is attended with some of the special consequences of a personal wrong, and in which damages may be given of a vindictive and uncertain kind, not merely to repay the plaintiff for temporal loss but to punish the defendant in an exemplary manner."

Lord Esher, M.R. in his judgment said at p. 498 :—

> " The complaint in an action for breach of promise of marriage is indeed a complaint of a breach of contract, but the injury is treated as entirely personal, and not only are damages always given in respect of the personal injury to the plaintiff, but also damages arising from and occasioned by the personal conduct of the defendant ; and evidence of the conduct of both parties is allowed to be given in mitigation or aggravation. The ages of the respective parties may be taken into account, as well as their whole behaviour ; and the damages may be much enlarged if the conduct of the defendant has been an aggravation of the breach of his promise. A consideration of these facts goes to shew that an action for breach of promise of marriage is strictly personal, and that, although in form it is an action for breach of contract, it is really an action for a breach arising from the personal conduct of the defendant and affecting the personality of the plaintiff."

Thus, it appears that the action for breach of promise of marriage is based upon the hypothesis of a broken contract yet it is attended with some of the special consequences of a personal wrong and damages may be given of a vindictive and uncertain kind not merely to repay the plaintiff for temporal loss, but also to punish the defendant in an exemplary manner. Such punitive or vindictive damages were permitted in some cases of tort until 1964 when the

House of Lords in *Rookes* v. *Barnard* [1964] 1 All E.R. 367, restricted their use in such cases by specifying, we think, only two categories where they may be awarded.

The right, of course, to receive exemplary damages for breach of contract was, for many years before 1964 confined to the single case of damages for breach of promise of marriage (*Addis* v. *Gramophone Co. Ltd.* [1909] A.C. 488). We think we should have added, however, that in 1964 the House of Lords in *Rookes* v. *Barnard* (*supra*) did not advert to this case, which is outside the two permitted categories in tort, where exemplary damages may be awarded. Whether or not the reasoning of their Lordships indicates that they will not approve of the continued use of exemplary damages for this type of breach of contract, we are at least in doubt, and we think that it is necessary to quote from Lord Devlin who delivered the only speech in the House of Lords, and had this to say at p. 407 :—

> " The cardinal feature of the summing-up on this part of the case was a direction to the jury that they might (counsel for the respondents submits that it amounted almost to ' must ') award exemplary damages and your lordships have therefore listened to a very penetrating discussion about the nature of exemplary damages and the circumstances in which an award is appropriate. The Court of Appeal, having found for the respondents on liability, did not consider this issue, so your lordships must begin at the beginning. Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter. It may well be thought that this confuses the civil and criminal functions of the law ; and indeed, so far as I know, the idea of exemplary damages is peculiar to English law. There is not any decision of this House approving an award of exemplary damages and your lordships therefore have to consider whether it is open to the House to remove an anomaly from the law of England.
>
> It must be remembered that in many cases of tort damages are at large, that is to say, the award is not limited to the pecuniary loss that can be specifically proved. In the present case, for example, and leaving aside any question of exemplary or aggravated damages, the appellant's damages would not necessarily be confined to those which he would obtain in an action for wrongful dismissal. He can invite the jury to

look at all the circumstances, the inconvenience caused to him by the change of job and the unhappiness may be by a change of livelihood. In such a case as this, it is quite proper without any departure from the compensatory principle to award a round sum based on the pecuniary loss proved. Moreover, it is very well established that in cases where the damages are at large the jury (or the Judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation. Indeed, when one examines the cases in which large damages have been awarded for conduct of this sort, it is not at all easy to say whether the idea of compensation or the idea of punishment has prevailed."

Later on his Lordship, after dealing with a number of authorities, continued his speech and said at p. 410 :—

"First, that your lordships could not without a complete disregard of precedent, and indeed of statute, now arrive at a determination that refused, altogether to recognise the exemplary principle. Secondly, that there are certain categories of cases in which an award of exemplary damages can serve a useful purpose in vindicating the strength of the law, and thus affording a practical justification for admitting into the civil law a principle which ought logically to belong to the criminal. I propose to state what these two categories are ; and I propose also to state three general considerations which, in my opinion, should always be borne in mind when awards of exemplary damages are being made. I am well aware that what I am about to say will, if accepted, impose limits not hitherto expressed on such awards and that there is powerful though not compelling, authority for allowing them a wider range. I shall not therefore conclude what I have to say on the general principles of law without returning to the authorities and making it clear to what extent I have rejected the guidance which they may be said to afford."

Then Lord Devlin proceeded to specify these two categories, the first category being oppressive, arbitrary or unconstitutional action by the servants of the Government,

and the second is whether the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff. To these two categories, which are established as part of the common law, Lord Devlin said " There must, of course, be added any category in which exemplary damages are expressly authorised by statute ". Finally, Lord Devlin said on this issue :—

> " Thus a case for exemplary damages must be presented quite differently from one for compensatory damages ; and the Judge should not allow it to be left to the jury unless he is satisfied that it can be brought within the categories which I have specified."

Although the House of Lords having in *Rookes* v. *Barnard* (*supra*) rejected exemplary damages as an anomalous feature in English law, yet the Court of Appeal in *Broome* v. *Cassell & Co. Ltd.* [1971] 2 All E.R. 187 (a case of libel) upholding a substantial award of exemplary damages, had declared *Rookes* v. *Barnard* to have been decided per incuriam. Lord Denning, after criticising severely *Rookes* v. *Barnard* because prior to that decision the law as to exemplary damages was settled, said at pp. 198–199 :—

> " Yet, when the House came to deliver their speeches, Lord Devlin threw over all that we ever knew about exemplary damages. He knocked down the common law as it had existed for centuries. He laid down a new doctrine about exemplary damages. He said that they could only be awarded in two very limited categories but in no other category ; and all the other Lords agreed with him.
>
> This new doctrine has up till now been assumed in this Court as a doctrine to be applied : See *McCarey* v. *Associated Newspapers Ltd.* [1964] 3 All E.R. 947 ; *Broadway Approvals Ltd.* v. *Odhams Press Ltd.* [1965] 2 All E.R. 523 ; *Fielding* v. *Variety Incorporated* [1967] 2 All E.R. 497 and *Mafo* v. *Adams* [1969] 3 All E.R. 1404. It was applied by Widgery J. in *Manson* v. *Associated Newspapers Ltd.* [1965] 2 All E.R. 954. But it has not been accepted in the countries of the Commonwealth. The High Court of Australia has subjected this new doctrine to devastating criticism and has refused to follow it : See *Uren* v. *John Fairfax & Sons Pty Ltd.* [1967] A.L.R. 25. The Privy Council has supported the High Court of Australia in a judgment which marshals with convincing force the arguments against the new doctrine : See *Australian Consolidated Press Ltd.* v. *Uren* [1967] 3 All E.R. 523.

The Supreme Court of Canada, together with the Courts of Alberta, Ontario, British Columbia and Manitoba, have repudiated the new doctrine : See *McElroy* v. *Cowper-Smith and Woodman* (1967) 62 D.L.R. (2nd) 65 ; *McKinnon* v. *F. W. Woolworth Co. Ltd.* and *Johnston* (1968) 70 D.L.R. (2nd) 280 ; *Bahner* v. *Marwest Hotel Co. Ltd.* (1969) 6 D.L.R. (3rd) 322 ; and *Fraser* v. *Wilson* (1969) 6 D.L.R. (3rd) 531. The Courts of New Zealand also declined to follow it : See *Fogg* v. *McKnight* (1968) N.Z.L.R. 330. The Courts of the United States of America know nothing of this new doctrine. They go by the settled doctrine of the common law as to punitive damages and would not dream of changing it. It is well stated in the Restatement of the Law of Torts Vol. 3 paragraph 908.

The wholesale condemnation justifies us, I think, in examining this new doctrine for ourselves ; and I make so bold as to say that it should not be followed any longer in this country. I say this primarily because the common law of England on this subject was so well settled before 1964—and on such sound and secure foundations—that it was not open to the House of Lords to overthrow it. It could only be done by the Legislature."

Having read carefully the judgment of the Court of Appeal, it appears to us that it was based on the proposition that the decision in *Rookes* v. *Barnard* so far as it affected punitive or exemplary damages, was made per incuriam, and without prior argument by counsel and that Judges should in future ignore it as unworkable, and that, in directing juries, Judges of first instance should return to the *status quo ante* *Rookes* v. *Barnard* as if that case had never been decided at all.

On further appeal to the House of Lords in *Cassell & Co. Ltd.* v. *Broome* [1972] 1 All E.R. 801, all seven members delivered separate speeches and five members decided not to depart from the principle formulated by Lord Devlin in *Rookes* v. *Barnard.*

Lord Hailsham, rejecting the devastating criticism of Lord Denning, had this to say in his speech at p. 821 :—

" I make no complaint of their view that *Rookes* v. *Barnard* ([1964] 1 All E.R. 367) clearly needs reconsideration by this House, if only because of the reception it has received in Australia, Canada and New

Zealand. I view with dismay the doctrine that the common law should differ in different parts of the Commonwealth, which is the effect of the decision in *Australian Consolidated Press Ltd.* v. *Uren* [1967] 3 All E.R. 523, and anything one can do in this case to bring the various strands of thought in different Commonwealth countries together ought to be done. Moreover, as I shall show, many of Lord Devlin's statements in *Rookes* v. *Barnard* ([1964] 1 All E.R. 367) have been misunderstood, particularly by his critics, and the view of the House may well have suffered to some extent from the fact that its reasons were given in a single speech. Whatever the advantages of a judgment of an undivided Court delivered by a single voice, the result may be an unduly fundamentalist approach to the actual language employed. Phrases which were clearly only illustrative or descriptive can be treated in isolation from their context, as being definitive or exhaustive. I am convinced that this has happened here and that to some extent at least, the purpose and nature of Lord Devlin's exposition has been misunderstood."

Later on the Lord Chancellor, after referring to a number of authorities, said at pp. 833–834 :—

" It follows from what I have said that I am not prepared to follow the Court of Appeal ([1971] 2 All A.R. 187) in its criticisms of *Rookes* v. *Barnard* ([1964] 1 All E.R. 367) which I regard as having imposed valuable limits on the doctrine of exemplary damages as they had hitherto been understood in English law and clarified important questions which have previously been undiscussed or left confused. From one point of view, there is much to be said for the interpretation put on Lord Devlin's speech by Windeyer J. in *Uren* v. *John Fairfax & Sons Pty. Ltd.* [1967] 117 C.L.R. at 152 immediately before the passage I have just quoted :—

> ' What the House of Lords has now done is, as I read what was said, to produce a more distinct terminology. Limiting the scope of terms that often were not distinguished in application makes possible an apparently firm distinction between aggravated compensatory damages and exemplary or punitive damages.'

But it is not to be inferred from this that the ruling in *Rookes* v. *Barnard* is a pure question of semantics:

It may well be true that in most individual cases the precise terminology in which the question is asked of the jury may not make much difference to the amount of the award. Both Windeyer J. in the passage just cited and Lord Devlin ([1964] 1 All E.R. at 412) were evidently of this view. But the following positive advantages can be gained from adhering to the rules he laid down, if properly interpreted : (1) The danger of double counting, of adding a pure 'fine' to what has already been awarded as solatium, without regarding the deterrent or punitive effect of the latter, has been eliminated, or at least reduced to a minimum. (2) In all cases where the categories do not apply, the jury must be told to confine the punitive or deterrent element in their thinking within the limits of a fair solatium. In other words, to borrow the language, though not the sentiments, expressed in *Forsdike* v. *Stone* [1868] LR 3 CP 607 at 611, the jury must be told to consider only what the plaintiff should receive after giving full allowance to the need to re-establish his reputation and for the outrage inflicted on him, and not what the defendant should pay independently of this consideration. (3) In cases where the categories do apply, juries can be given directions a little more informative and regulatory that was the case up to and including the new analysis.

Rookes v. *Barnard* has not perhaps proved quite the definitive statement of the law which was hoped when it was decided. This is often the case..... But the way forward lies through a considered precedent and not backwards from it. I would hope very much that, in the light of observations made on *Rookes* v. *Barnard* in this case, Commonwealth Courts might see fit to modify some of their criticisms of it. I do not know how far it can be of value in the United States of America where it seems to me that the decisions of the Supreme Court have been influenced greatly by the terms of the First Amendment to the Constitution, and by the unsatisfactory rules prevalent in American Courts as to the recovery of costs. However, that may be, we cannot depart from *Rookes* v. *Barnard* here. It was decided neither per incuriam nor *ultra vires* this House ; we could only depart from it by tearing up the doctrine of precedent, and this was not the object of this House in assuming the powers adopted by the practice declaration of 1966." (See Note [1966] 3 All E.R. 77).

Reverting now to the question of damages in the present case, in assessing damages, the injury to the affections of the plaintiff, the prejudice to her future life and prospects of marriage because of the seduction, the rank and condition of the parties, and the defendants means are all matters to be taken into consideration. See *Berry* v. *Da Costa* [1865] L.R. 1 C.P., 331 at pp. 333–334 per Willes, J.

Although it appears that losses following from seduction are not losses which flow from the breach of promise and on general principles of contract would be too remote to be allowed by Court under the rule in *Hadley* v. *Baxendale* (*supra*), such items would seem to be admissible in evidence in aggravation of damages. The seduction, of course, brings in the further aggravating factor of injury and shame to the plaintiff as a matter to be allowed for and also because of her lessened prospects of marriage. Cf. *Millington* v. *Loring* [1880] 6 Q.B.D. 190. There is no doubt, therefore, that this comes to giving damages for the seduction itself, because it increases injury to the plaintiff's feelings and it can certainly be part of the exemplary damages. From this it follows that the conduct of both parties as well as other circumstances regarding matters in aggravation and in mitigation may be taken into account in assessing damages. (See *Quirk* v. *Thomas* [1916] 1 K.B. 516 at p. 523).

Although in Cyprus the action for breach of promise is also a common law provision applicable to our own country by the provisions of s. 29 (1) of the Courts of Justice Law, 1960 (Law 14/60) and earlier repealed enactments, yet our own law remained unsettled for a number of years, which fortunately finally settled in 1953. The first case of an action of breach of promise which reached our Supreme Court consisting of 3 Judges in 1937, is *Philippou* v. *Moschovia*, reported in 15 C.L.R. 116. The Court, after taking the correct view that in England an action for breach of promise, though in form an action for breach of contract is in substance an action for personal injury, *i.e.* an action in tort, yet they reached the conclusion that in Cyprus " 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 ; and (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 ".

Pausing here for a moment, we would like to observe that regarding the question of damages, our section 73 (1) of the Contract Law, now Cap. 149, follows the principles enunciated in the celebrated case of *Hadley* v. *Baxendale* (*supra*) referred to earlier in this judgment. Section 73 (1) is in these terms :—

> " When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.
>
> Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach."

The second case is *Markou* v. *Michael*, 19 C.L.R. 282, and 16 years later on in 1953, the Supreme Court of Cyprus consisting of two Judges only, after criticizing the decision in the earlier case of *Philippou* v. *Moschovia* (*supra*) as being based on faulty reasoning of the law, came to the conclusion that it would have been necessary to change it. The Court held :

> " (1) The Contract Law (Cap. 192) s. 73 merely enacts the Common Law rule in *Hadley* v. *Baxendale* for assessing damages in contract. This Common Law rule is subject to exceptions which include the amount of damages in actions for breach of promise.
>
> (2) Following the principle established in the case of *R.* v. *Charalambos Erodotou* (19 C.L.R., 144, *supra*) not only the Common Law rule but its exception should also apply. The decision in *Philippou* v. *Moschovia* is no longer good law. Applying the Common Law rule in actions for breach of promise, the plaintiff's conduct can be taken into account in mitigation of damages."

Thus our law is now settled and ever since 1953, our Courts in awarding damages in a case of breach of promise,

have felt free, after taking into consideration all facts and circumstances of each case, including the conduct of the parties, to award damages to be given in aggravation or mitigation of damages.

Directing ourselves, therefore, with those principles, we find ourselves in agreement with the well-prepared judgment of the trial Court, both as regards the legal position and the factual one, and particularly that in the case in hand, there were no mitigating facts in the defence of the defendant falling within the recognized exceptions enumerated in the judgment of the trial Court.

For the reasons we have endeavoured to advance in reviewing the legal position in England and in Cyprus, and in the light of the fact that *Philippou* v. *Moschovia* (*supra*) is no longer good law, regarding the question of the seduction of the plaintiff, we have reached the view that the submission of counsel that the trial Court was wrong in awarding also damages for the seduction of the plaintiff is untenable, and we would, therefore, dismiss this ground of law.

Regarding the second ground of law on the quantum of damages, we are of the view that if they were to be assessed at the time of the trial, the Court's award of £900 was right, and we would not interfere. But as we have said earlier, it was open to the Court of Appeal to receive evidence about matters which had occurred after trial and we cannot now shut our eyes to the fact of the marriage of the plaintiff taking place, and we therefore have to re-assess the damages in the light of the new evidence at the time the appeal was heard.

Having heard full argument from both counsel, and taking into consideration the younger age and academic qualifications of the husband of the respondent, and the amount by which the re-marriage is benefiting her (amount of £1.650 mils per day as conceded by counsel for the respondent) and his prospects of a permanent post in the Ministry of Agriculture, it enabled us to say that the matter as to the probability of marriage to which the Judges applied their mind has actually occurred, and that that fact of marriage would definitely give the respondent some benefit. With all this in mind, in reviewing the amount of damages, we think that the best this Court can do is to say that the learned Judges have given more than they should have given and that if they had had the knowledge that the marriage was likely to accrue as early as it did in fact accrue, they would

have awarded, or could reasonably have awarded no more than £700 damages. In these circumstances, and in the particular facts of this case, we would allow the appeal and vary the order for damages accordingly. Cf. *Curwen* v. *James & Others* (*supra*) at p. 622.

Before concluding, however, we would like to observe regarding the question of exemplary damages, that even if the reasoning of their Lordships in the House of Lords in *Rookes* v. *Barnard* (*supra*) indicates that they would not approve of the continued use of exemplary damages for this type of a breach of contract of marriage, because such use would be anomalous, then once we are of the view that our law was developed by slow processes and not of faulty reasoning, we would have felt even if this point was argued, that there would be no need indeed to change the law on this issue. On the contrary, the policy of awarding exemplary damages for this type of breach of contract is so deeply rooted in our country because of the notions prevailing in Cyprus, and is fashioned so largely by judicial opinions until recently, that the decision in *Rookes* v. *Barnard* does not compel us to change the law which as we have said earlier, it is well-settled and it could only be done by the House of Representatives.

The order of the Court is, therefore, appeal allowed but under these circumstances, we make no order as to costs.

Appeal allowed. No order as to costs.