

APPELLATE CIVIL.

Before Mr. Justice Mya Bu.

MA PWA KYWE v. MAUNG HMAT GYI.*

1938

Feb. 21.

Minor—Contract to marry. Capacity to—Proposal by person of full age—Acceptance by minor promisee—Breach of promise to marry—Suit for damages—Contract Act, ss. 2, 10, 11.

A minor is not competent to enter into a valid or binding contract to marry. Even where the proposal for marriage is by a person of full age, a minor is incapable of making a valid acceptance of the proposal. A minor cannot therefore sue for damages for breach of promise of marriage.

Maung Tun Aung v. Ma E Kyi, I.L.R. 14 Ran. 215, referred to.

Zakaria for the appellant. This case is distinguishable from *Maung Tun Aung v. Ma E Kyi* (1). In that case both parties were minors and the marriage contract could not be enforced against either. In the present case the promisee is a minor, but the promisor is of full age, and there is no reason why the minor cannot obtain damages for the breach of promise of marriage by the adult person. Mortgages and sales of immovable property in favour of minors have been held not to be void. A minor is entitled to recover money which he has lent on a mortgage or on a promissory note. *Ragava v. Srinivasa* (2). A minor is competent to enforce a contract made in his favour, for while no liability can be incurred by a minor, he is not debarred from acquiring a title to anything valuable. *Bhola Ram v. Bhagat Ram* (3).

K. C. Sanyal for the respondent. *Maung Tun Aung's* case makes it clear that a contract to marry is void where either party is a minor. It makes no difference that the promisor is of full age. A minor

* Special Civil Second Appeal No. 29 of 1937 from the judgment of the Assistant District Court of Tharrawaddy in Civil Appeal No. 25 of 1937.

(1) I.L.R. 14 Ran. 215.

(2) I.L.R. 40 Mad. 308.

(3) 8 Lah. L.J. 539.

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cannot sue for damages for a breach of promise of marriage. *Kan Gaung v. Mi Hla Chok* (1). In case of a marriage contract, both parties must be competent to contract. A contract of marriage creates reciprocal rights and liabilities. When a minor recovers a loan made by him, there is no reciprocal liability on his part. Under the Contract Act a "promise" can only be made to or by a person competent to contract. A minor cannot "consent" to a proposal of marriage. See Contract Act, ss. 2, 10, 11.

MYA BU, J.—This appeal arises out of a suit for compensation for breach of promise to marry. The plaintiff, Ma Pwa Kywe succeeded in getting a decree for compensation in the sum of Rs. 50 in the Township Court of Nattalin, which has found the following facts proved, namely, that the plaintiff and the defendant, Maung Hmat Gyi, having fallen in love with each other, the defendant in the month of *Wagaung* 1298 B.E. (August 1936) promised to marry the plaintiff in the following *Tabodwe* (January, February 1937) and in the month of *Tawthalin* 1298 B.E. (October 1936) the defendant seduced the plaintiff with the result that the plaintiff found herself in the family way. The marriage alleged to have been promised did not take place in *Tabodwe* or at any time as the defendant subsequently refused to marry the plaintiff.

In the written statement no question as to the validity of the alleged promise by reason of want of contractual capacity in either the plaintiff or the defendant was raised. It, however, transpired in the course of the plaintiff's evidence that she was still in her minority according to the Majority Act at the time of the alleged promise. But, apparently, the learned Township Judge's attention was not invited to this

(1) (1907-09) 2 U.B.R. Contract 5.

matter, with the result that the point was not discussed in the judgment of the Township Judge. Nor was this point raised in the grounds of appeal filed by the defendant in the lower appellate Court; but the point was pressed on behalf of the defendant in the course of the argument in support of the appeal in the Assistant District Court.

The fact that the plaintiff was still in minority at the time of the alleged promise admitted of no doubt because the plaintiff, Ma Pwa Kywe, stated under cross-examination in the trial Court, that she was born in the month of *Nadaw* 1280 B.E., which shows that she was about four months short of eighteen years in *Wagaung* 1298 B.E. Relying upon this fact the learned Assistant District Judge held that there was no valid contract between the parties which could have constituted the legal basis of a claim for compensation for its breach. This conclusion was arrived at on the authority of the Full Bench decision in *Maung Tun Aung v. Ma E Kyi* (1) in which it was held *inter alia*, that a Burman Buddhist who is under the age of eighteen is not competent to enter into a valid or binding contract to marry *in futuro*, and the Burmese Buddhist Law has no application in such a case. That case was one in which the alleged promisor was a minor at the time of the making of the alleged promise; but considering the line of reasoning leading to that decision I have no doubt that the proposition that a Burman Buddhist who is under the age of eighteen is not competent to enter into a valid or binding contract to marry *in futuro*, is applicable as well to a case where the promisor is a major and the promisee is a minor, for a marriage is a matter to which there must be two parties and there cannot be a valid contract to marry

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unless there are reciprocal promises between them amounting to an agreement to marry *in futuro*. The technical use of the word "promise" in the Contract Act is far narrower than the popular use. Express words of promise often are in law no more than a proposal, see *Dhonbhat Narharbhat v. Atmaram Moresbhar* (1). "Proposal" is defined in section 2 (a) of the Act thus :

"When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal."

Clause (b) of the same section provides :

"When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise."

Then by clause (e) it is provided :

"Every promise and every set of promises, forming the consideration for each other, is an agreement."

According to clause (g) and (h) an agreement not enforceable by law is void, while an agreement enforceable by law is a contract.

According to these definitions a proposal is merely an offer to be bound by a promise and a promise in law is an accepted proposal. It is such promise or promises only which can give rise to an agreement which if enforceable by law is a contract, but if not, is a void agreement.

Agreements to be contracts must have been made by the free consent of parties competent to contract, for a lawful consideration and with the lawful object, and must not be such as to be expressly declared to be void by the Contract Act (section 10). Every person

(1) (1889) I.L.R. 13 Bom. 669.

is competent to contract who is of the age of majority according to the law to which he is subject (section 11). The law to which he is subject is held to be the Majority Act, *Maung Tun Aung v. Ma E Kyi* (1). Judged in the light of these principles there can be no doubt that the alleged promise upon the breach of which the plaintiff's suit was founded did not constitute a contract upon which an action for damage of breach can be based. The plaintiff (the girl) being a minor was not competent to enter into a contract at the time of the alleged promise. She was incompetent at that time to make a valid acceptance of the proposal by the defendant to marry her. The alleged promise was no better than an unaccepted proposal.

In one of the grounds of appeal filed in this Court it was alleged that although at the time of the original promise the girl was in minority, she had attained majority at the time of the second promise, which is alleged in the plaint, and that therefore there was a valid acceptance by the plaintiff of the defendant's proposal. The statement in the plaint referred to runs thus :

" In the month of *Pyattho*, that is about five months after the making of the original promise, when the defendant was asked with reference to the proposed marriage he repeated that he would marry in the following month of *Tabodwe*."

This was not specifically put forward as an occasion on which a ratification took place and nothing was heard of it in the course of the proceedings subsequent to the filing of the plaint. What Ma Pan Myaing, the plaintiff's mother, stated was that in the month of *Pyattho* she questioned the defendant if he was going to marry her daughter, but there is not a word about either what the defendant said or what the plaintiff said on

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that occasion. Be that as it may, as a minor's agreement is void there can be no question of ratifying it.

The action is based on contract, and it is not an action for damages for seduction. The question whether any action for damages for seduction will lie or not does not arise in this case. The suit is founded upon contract ; in order to succeed it is incumbent upon the plaintiff to prove a valid contract. If she proves a valid contract and a breach thereof and thus shows herself entitled to compensation for breach of contract, seduction and pregnancy may be taken into consideration in the assessment of the quantum of damages. Since no valid contract took place between the plaintiff and the defendant this suit fails, and it has been rightly dismissed by the lower appellate Court.

The appeal is dismissed. In the circumstances of the case I make no order for costs in this appeal.