American Legal History – Russell

Maria Wightman versus Joshua Coates , 15 Mass. 1 (1818).

An action lies for a breach of a promise of marriage. In such action, evidence of an express promise is not required; but it may be inferred from circumstances usually accompanying such a relation between the parties.

Assumpsit on a promise to marry the plaintiff, and a breach thereof by refusal, and having married another woman.

At the trial on the general issue, at the last November term, before *Parker*, C.J., the evidence of a promise resulted from sundry letters written to the plaintiff by the defendant, and from his attentions to her for a considerable length of time.

It was objected by the defendant that, there being no direct evidence of an express promise, the action could not be maintained.

This objection was overruled by the judge; and the jury were instructed that if, from the letters of the defendant read in evidence, and the course of his conduct towards [*2] the plaintiff, they were satisfied that there was a mutual understanding and engagement between the parties to marry each other, they might find for the plaintiff, which they did.

If the said direction was right, judgment was to be rendered on the verdict; otherwise, a new trial was to be granted.

G. Sullivan, for the defendant, insisted that evidence of a mutual and express promise of marriage was necessary to maintain this action. The promise must undoubtedly be mutual, and a mutual promise can be no other than an express one. They must be simultaneous: it is not sufficient that one party makes the promise at one time, and the other at another.[FN omitted]

Such are the importance and solemnity attached to this particular species of contract, that, from the earliest times to which history reaches, and in every civilized country upon the globe of whose customs and institutions, as to this point, there is any information, promises of marriage have been required to be express, and always

accompanied with some visible ceremony or token, in nature of a pledge.

It is important that a distinction should be observed between expressions of attachment which, in process of time, may ripen into an engagement to marry, and this engagement itself. The letters in this case, it must be confessed, furnished plenary evidence of a warm attachment on the part of the defendant towards the plaintiff; and it may even be granted that they are evidence of an intention in the defendant, at the time they were written, to offer himself to the plaintiff in marriage--provided no unpropitious circumstances should afterward arise, sufficient to change that intention. But such an attachment, or the intention arising out of it, is wholly different from a legal promise, which should be the foundation of an action for pecuniary damages.

Webster was also to have argued for the defendant, but [*3] was at this time attending the Supreme Court of the *United States* at the seat of government.

Hubbard for the plaintiff.

Parker, C.J., delivered the opinion of the Court. Respectable counsel having expressed doubts upon the point reserved in this case, and having also suggested an opinion that the action was of a nature and having also suggested an opinion that the action was of a nature to be discountenanced rather than favored, we have given more consideration to the case than our impression of the mertis of the objections would have required.

We can conceive of no more suitable ground of application to the tribunals of justice for compensation, than that of a violated promise to enter into a contract, on the faithful performance of which the interest of all civilized countries so essentially depends. When two parties, of suitable age to contract, agree to pledge their faith to each other, and thus withdraw themselves from that intercourse with society which might probably lead to a similar connection with another,--the affections being so far interested as to render a subsequent engagement not probable or desirable,--and one of the parties wantonly and capriciously refuses to execute the contract which is thus commenced, the injury may be serious, and circumstances may often justify a claim of pecuniary indemnification.

When the female is the injured party, there is generally more reason for a resort to the laws than when the man is the sufferer. Both have a right of action, but the jury will discriminate and apportion the damages according to the injury sustained. A deserted female, whose prospects in life may be materially affected by the treachery of the man to whom she has plighted her vows, will always receive from a jury the attention which her situation requires; and it is not disreputable for one, who may have to

mourn for years over lost prospects and broken vows, to seek such compensation as the laws can give her. It is also for the public interest, that conduct tending to consign a virtuous woman to celibacy, should meet with that [*4] punishment which may prevent it from becoming common. That delicacy of the sex which, happily, in this country gives the man so much advantage over the woman, in the intercourse which leads to matrimonial engagements, requires for its protection and continuance the aid of the laws. When it shall be abused by the injustice of those who would take advantage of it, moral justice, as well as public policy, dictates the propriety of a legal indemnity.

This is not a new doctrine. As early as the time of Lord *Holt*, it was enforced, as the common law, by that wise and learned judge and his brethren, that a breach of promise of marriage was a meritourious cause of action; [FN omitted] and although the value of a marriage in money might have had some influence in that decision, there is no doubt that the loss sustained in other respects--the wounded spirit, the unmerited disgrace, and the probable solitude, which would be the consequences of desertion after a long courtship--were considered to be as legitimate claims for pecuniary compensation as the loss of reputation by slander, or the wounded pride in slight assaults and batteries.

Nor is this *English* law become obsolete. It is the common law of our country, always recognized when occasions have offered; and the occasions have not been unfrequent since the adoption of our constitution.[FN omitted] In the case of *Paul* vs. *Frazier*,[FN omitted] Chief Justice *Parsons* says, "As the law now stands, damages are recoverable for a breach of promise of marriage." Several actions of this nature have been before this Court since I have been upon the bench; and I remember several, when I was in practice at the bar, in which I was counsel. Indeed, there is no country, in which the relative situation of the sexes, and their joint influence on society, would render such a principle of jurisprudence more useful or necessary.

As to the technical ground upon which the objection to the verdict now rests, we entertain no doubts. The exception taken is, that there was no direct evidence of an express promise of marriage made by the defendant. The [*5] objection implies that there was indirect evidence from which such a promise may have been inferred; and the jury were instructed that if, from the letter written by the defendant, as well as his conduct, they believed that a mutual engagement subsisted between the parties, they ought to find for the plaintiff. They made the inference, and without doubt it was justly drawn.

Is it, then, necessary that an express promise in direct terms should be proved? A

necessity for this would imply a state of public manners by no means desirable. That young persons of different sexes, instead of having their mutual engagements inferred from a course of devoted attention and apparently exclusive attachment, which is now the common evidence,[FN omitted] should be obliged, before they considered themselves bound, to call witnesses, or execute instruments under hand and seal, would be destructive of that chaste and modest intercourse which is the pride of our country; and a boldness of manners would probably succeed, by no means friendly to the character of the sex or the interests of society.

A mutual engagement must be proved, to support this action; but it may be proved by those circumstances which usually accompany such a connection. No case has been cited in support of the defendant's objection. On the contrary, it is very clear, from all the *English* cases, that a promise may be inferred, and that direct proof is not necessary. In the case before referred to, of *Hutton* vs. *Mansell*, Lord *Holt* says expressly, that, where one has promised, and the behavior of the other is such as to countenance the belief that an engagement has taken place, this is evidence enough of a promise on the part of the person so conducting; and the same principle will apply to both the parties.

In the present case, however, the evidence on which the jury relied was of a decisive nature; for the letters of the defendant, which were submitted to them, were couched in terms which [*6] admit only of the alternative, that he was bound in honor and conscience to marry the plaintiff, or that he was prosecuting a deeply-laid scheme of fraud and deception, with a view to seduction. The jury believed the former; and in so doing have vindicated his character from the greater stain; and he ought to be content with the damages which they thought it reasonable to assess for the lighter injury.[FN omitted] *Judgment on the verdict.*

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