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Promises broken: Breach of promise of marriage in England and Wales, 1753–1970

Frost, Ginger Suzanne, Ph.D.

Rice University, 1991
PROMISES BROKEN: BREACH OF PROMISE OF MARRIAGE IN ENGLAND AND WALES, 1753-1970

by

GINGER S. FROST

ABSTRACT

Breach of promise of marriage suits originated in the ecclesiastical courts; the Hardwicke Marriage Act, however, invalidated betrothals and forced jilted lovers to use the common law courts for redress. This study is based on 875 breach of promise cases in England and Wales between 1750 and 1970, most of which occurred between 1850 and 1900.

Lower-middle and upper-working class couples had a definite set of courtship rituals, based on their desire for respectability and their simultaneous lack of economic security. Though most couples wanted to find the companionate ideal, they also needed to have good homemakers (for men) and solid providers (for women). They indulged in middle-class sentimentality in their letters and poetry, yet their courting was less formal and unsupervised. This mixture of needs was also reflected in their motives for separating, a combination of ideological, structural and personal difficulties.

There was a sustained argument over breach of promise in the later Victorian period, which showed the tensions between individualism and companionate marriage in its culture. The legal community was divided over the desirability of the suit; most judges supported it and most lawyers did not. It also divided the populace, since the lower classes were favorable, but the upper classes abhorred it. Women, too, were unable to agree; breach of promise protected them, but it also placed them in a special category that was inherently unequal. Ironically, the
plaintiffs, by appealing to the patriarchal courts, proved to be strong feminists, since they refused to be passive in the face of victimization. This showed great determination, since most of the commentators on the action were hostile; breach of promise cases in fiction, in fact, were overwhelmingly negative, legitimizing the upper-class disdain for the suit and ignoring its usefulness for poorer women.
ACKNOWLEDGEMENTS

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The Interlibrary Loan Department at Fondren Library at Rice managed to uncover a number of valuable sources for me while I worked in the United States, some of which were not even at the British Library. I
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INTRODUCTION

Who marries whom, without courting alienation or rejection from a social set, is an acid test of the horizons and boundaries of what each particular social set regards as tolerable and acceptable, and a sure indication of where that set draws the line of membership. It is, therefore, unfortunate that historical insights into acceptability and unacceptability are so largely hemmed in by the nature of the evidence to the views of the educated and articulate, that is substantially to the upper and middle classes.\(^1\)

F.M.L. Thompson's pessimism about the availability of sources is well-founded; historians of courtship have long been limited to those classes who preserved letters, diaries, and family papers. Those who have overcome the limitations, most notably John Gillis, have relied largely on impressionistic evidence such as folk tales and customs to explore trends in working-class marriage and family. These types of evidence are valuable, but they still leave unknown the courtship habits of those who fall in the middle, particularly the lower middle class. One way to overcome these difficulties is to use breach of promise of marriage suits. Since the plaintiffs in these actions were mostly women in the lower-middle and upper-working classes, breach of promise of marriage cases dealt with people whose love lives normally went unheeded and unrecorded. And since this action was brought in the High Courts, the sources for it are numerous and detailed.

The primary basis for this study are 875 breach of promise cases between 1750 and 1970, most of which fall between 1850 and 1900. These cases were recorded in minute books and pleadings in the Public Record Office; the actual accounts, however, come from the assize reports in

provincial newspapers from across England and Wales. Breach of promise had a scandalous reputation, and local newspapers could not resist printing every salacious detail whenever one occurred. Editors faithfully published all of the testimony as well as love letters and poetry, thus giving a picture of private life in unprecedented detail. The result was a forum in which lower-middle and upper-working class people could speak for themselves about love, courtship, and marriage. It is the contention of this work that there was a different set of rules in courtship for these groups of people, mores that borrowed both from the middle and from the working classes. The peculiar nature of their courtship stemmed from their desire for middle-class respectability and their simultaneous lack of economic security. Though most couples wanted to find the companionate ideal stressed by their betters, they also needed to have good homemakers (for men) and solid providers (for women) for a marriage to be successful. They indulged frequently in middle-class sentimentality in their letters and poetry, yet their courtship customs were far less formal and largely unsupervised. And although the entire family had a role in courtship, relatives were unable to control the surprisingly high amount of sexual activity among these couples. In short, lower-middle class and upper-working class lovers had a peculiar set of rules that they followed which was suited to their station in life.

This class of suit offers more than simply a chance to see the courtship of an entirely new group of people, however. It also gives an unusual perspective on lovemaking. Most works written on the subject assume success, i.e., that marriage inevitably followed courtship. But these suits make it clear that many courtships were unsuccessful, that
"love and marriage" did not go together automatically. We therefore can see why and how courtships went wrong in the Victorian period and how men and women coped with the end of a relationship. Failure to marry was the one thing all of the couples that came into court had in common; their stories help explain the problems of poorer couples in getting to the altar.

Social issues make up only part of the story. Breach of promise was a civil action that asked the legal community to adjudicate affairs of the heart; this made for a peculiar combination of law, love, and social values. Studying its effects and various reactions to it offers an opportunity to combine legal and social history, each to enlighten the other. There was a sustained argument over the suit and numerous attempts to abolish it in the late-nineteenth century; these arguments throw light on the conflicting Victorian values of romantic love, individualism, and chivalry toward women. It is also ideal for exploring the motivations of judges and juries in domestic law, demonstrating the social values that informed their judgments, even as they claimed to treat these actions as ordinary contract cases.

Moreover, breach of promise cases open a gateway to hearing lower middle class women's views on love and courtship. The vast majority of plaintiffs in these actions were spinsters; the class of suit was one of the few that plaintiffs brought as single women, rather than as wives, mothers, or workers. In fact, women had a number of advantages when bringing the action, advantages that these spinsters parlayed into great successes. Furthermore, the action was thoroughly discussed by women leaders, both feminists and non-feminists. Women proved to have
ambivalent feelings about breach of promise cases; some disapproved heartily of the public and "unlady-like" display, while others saw it as valuable protection. The case demonstrates the divisions among 19th-century feminism that has already been explored by women's historians on other issues. Finally, and most interestingly, breach of promise allowed women to take the initiative in their lives; it is noteworthy how many and in what ways they chose to do so.

The manuscript is divided into three parts. The first part serves as an introduction to the main body, giving the legal and statistical background. Chapter One is a legal history of the action, tracing its beginnings as an ecclesiastical suit to its evolution into the common law. Chapter Two explains the process of bringing a breach of promise suit in the High Court, arguing that women plaintiffs had the advantage over men in this suit. This discussion, however, is based on a "model" of a typical case; there were plenty of actions that did not conform to this model. Chapter Three explains rise and fall in the numbers of breach of promise cases from 1859 to 1921 (the years that the Judicial Statistics recorded types of cases), as well as describing the Data Base for the study.

The second part deals with courtship, engagements, and weddings in the late nineteenth century. Chapter Four argues that there was a definite set of courtship practices in the lower middle and upper working classes which was based on their desire for respectability and the precariousness of their financial situations. The detail of the newspaper reporters allows a close look at the influence of family and class on courtship as well as the activities of engaged couples and preparations
for weddings. Chapter Five discusses the reasons for broken engagements in these cases, a combination of ideological, structural, and personal difficulties. Chapter Six deals with peculiar types of cases, especially with premarital sexual intercourse in the lower-middle classes. At least one-fourth of the actions involved seductions, allowing access to the most intimate moments of male-female relations. This chapter also explores mature courtship and unusual courtroom situations (for example, male plaintiffs). Chapter Seven is a closer look at five case studies which illustrate and reiterate the conclusions of Chapters Four through Six. Although these cases were not "typical" (or they would not be so well-documented), they do allow the reader to see the details of the many personal stories that the broader chapters might easily overlook.

The third section concerns breach of promise cases in Victorian culture. Chapter Eight is an analysis of the arguments over the attempts to abolish breach of promise, arguments that demonstrated the tensions between Victorian individualism and support for companionate marriage. This chapter also discusses the peculiar legal problems that breach of promise presented, since it was an anomalous action in any number of ways. The case split the legal community, since most judges supported the action and most lawyers did not; it also divided the populace, since the lower classes supported it and the upper classes abhorred it. Chapter Nine outlines the reaction of women to the class of suit, exploring their dilemma in confronting an action that protected women and yet placed them in a special category. Finally, Chapter Ten looks at breach of promise cases in fiction, arguing that the fictional account of the suit was a cultural invention that legitimized the upper-class disdain for the suit
without recognizing its usefulness for poorer women.

There are obvious limitations to this study. First, I have arbitrarily stopped in 1900 in all but the legal history chapter. Therefore, my conclusions are largely limited to the Victorian period; the vast majority of the cases I have occurred between 1870 and 1900. This fact also means that I am unable to show change over time, since I have in-depth information on only a short period. This chronological limitation was due to time and financial constraints and not to any ideological motive. Second, any legal action carries with it the problem of discovering the truth. At times, the couples agreed on almost all the points at issue in the trials, but these cases were the minority. When the accounts conflicted, I was forced to use my judgement to determine what happened in the courtship. This balancing act was difficult since the women plaintiffs had by far the most say in breach of promise trials. They almost always testified and brought witnesses, while the defendants seldom did more than plead for mitigation of damages. There was, therefore, a distinct temptation to always believe the plaintiff. I have tried to give both sides whenever I was unsure about the true picture.

Finally, in any number of ways, breach of promise cases are limited as a way to explore courtship. For instance, many cases involved cross-class courtship, which means that their value as a barometer of lower-middle class values is lessened. Second, women tended to sue older, well-established men, since there was little point in suing someone without the means to pay damages. The conclusions about the ages and class of

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2 This problem has been well-defined by Thomas Kuehn in "Reading Microhistory: The Example of Giovanni and Lusanna," *Journal of Modern History* 61 (September, 1989), pp. 512-534.
courting couples, therefore, have to be taken with a grain of salt. Third, only a small minority of people who broke up ever brought their difficulties into the courtroom. The reader must always keep in mind, then, that these experiences are only a few of many that were never recorded. Breach of promise cases give wonderful detail of private lives, but they are only a window to such facts, not an open door.

Despite these limitations, breach of promise cases proved to be surprisingly enlightening about courtship, the common law, marriage, and women in late nineteenth-century England and Wales. Although not all types of action merit extended treatment, this class of suit lay at a crossroads of legal, social, and cultural values. Furthermore, it reveals the private thoughts of hundreds of previously faceless, nameless, and voiceless people in Victorian society, both men and women. It is their story, and the upper-class Victorians' misunderstanding of it, that is recorded on the following pages.
CHAPTER ONE--"A PECULIAR COMBINATION OF CONTRACT AND TORT": A LEGAL HISTORY OF BREACH OF PROMISE

In May of 1879, Mr. Farrer Herschell introduced to the House of Commons a resolution to abolish the action of breach of promise of marriage. One of the arguments he used to gain support for this resolution was that the class of suit did not have an especially long history:

The action for breach of promise of marriage was not so ancient as some persons might be disposed to imagine. This country flourished for many centuries in a perfectly satisfactory condition without any person thinking of bringing an action of this description. About two centuries ago it was established that such an action lay, so there is no flavour of venerable antiquity surrounding it.¹

As Herschell went on to explain, he did not mean that there were no breach of promise suits before 1679, but that these earlier cases were of a quite different character than those of the eighteenth and nineteenth centuries, and in this contention he was correct. However, what he did not explain was that the change, to a large extent, was due the slow erosion of the ecclesiastical remedies over the preceding two centuries, a fact his opponents did not fail to point out.² It would seem, then, that the history of breach of promise could be used both to criticize and to defend it; it was an action that was both old and new, a cause of law reform and a result of it. Its evolution illuminates the adaptability of the common law as well as the difficulties in amending or abolishing it in the nineteenth century.

¹Hansard's Parliamentary Debates 245 (May 6, 1879), p. 1869.
²See especially Sir Hardinge Gifford, the Solicitor General, Ibid., p. 1884.
Until 1640, breach of promise of marriage cases were primarily brought in the ecclesiastical courts. These courts offered two types of remedies because they recognized two distinct types of betrothals. A contract *in presenti* (which meant "I marry you") amounted to an actual marriage and was treated by the church as such. It still required ecclesiastical rites to be complete, and the couple was not to cohabit before the ceremony; nevertheless, if a woman or man sued for breach of this contract, the spiritual courts would compel the reluctant bride or groom to marry. Even a subsequent marriage to a third person was automatically voided once the courts had recognized the original betrothall. The second type was a contract *in futuro* ("I will marry you"). Church courts did allow dissolution of this contract, and a marriage to a third party was not immediately made invalid. The only remedy offered in this case was an admonition to the unfaithful suitor. However, there was one important exception to this: if the couple had cohabited, the spiritual courts then automatically ruled that the contract *in futuro* had become a contract *in presenti* and declared the couple married. Ecclesiastical law, therefore, offered a great deal of protection to women, and was mainly concerned with proving the existence of actual marriages. The breach itself was not as important as what had come before.\(^3\)

There were actions for breach of promise brought in the chancery courts before 1640, but they were largely concerned with money and property disputes, often alleging fraudulent conduct. They did not demand

damages for wounded feelings, and if they asked for compensation for the loss of the marriage, it was purely for monetary and not punitive losses. For example, in 1454, Margaret Gardyner and her daughter Alice sued John Keche for refusing to marry Alice. The women had paid him a total of twenty-two "marks" to do so (ten from the mother and twelve from Alice); he had accepted this payment, but was engaged to a certain Joan Bloys at the same time and married her instead. He then refused to return the money, so the Gardyners sued him for it and won. As one commentator pointed out, "The plaintiffs in this suit appear to have regarded the matter purely from a business point of view, for they seek only to recover money fraudulently obtained from them by the defaulting 'Keche' without making any claim for compensation to the lady whose affections had been so cruelly and wantonly disappointed." An example from the sixteenth century was Palmer v. Wilde, in which a man sued his fiancée after she married someone else. He claimed that she had deceived him into giving her money and gifts, and he only wanted the return of his "investment"; it was more like a fraud case than a breach of promise of marriage suit. Clearly, before the seventeenth century, litigants used the secular courts to recover pecuniary loss; after all, if they wished to enforce the contract or to vindicate their characters, they could use the spiritual tribunals.

The basis of the ecclesiastical action in the Tudor-Stuart period

4"Some Early Breach of Promise Cases," Pump Court 11 (February, 1891), pp. 592-93; article also has details of three other examples.

was the spousal, a much more binding agreement than the modern engagement would become. Both men and women brought cases before the church authorities in an effort to prove that an informal marriage contract, usually a verbal one, had been made and the defendant had subsequently broken it off. At least until the early seventeenth century, there were more male plaintiffs than female; often property considerations were paramount (when these declined, so did the incidence of male plaintiffs). Mostly bachelors and spinsters brought the action, and they were usually in their twenties or early thirties. All classes were known to bring the suit, but mostly they were tradesmen, yeomen, husbandmen, and craftsmen. In all these things, early modern suits were similar to medieval ones.\(^6\)

Five main types of breach of promise cases were brought before the Church courts. First, there were suits where it was clear that there was no case at all. The plaintiff was scheming to get some money or was desperate (i.e., pregnant). Second, there were cases where the promise had been made, but insincerely or fraudulently. These usually involved a seduction; a woman agreed to have intercourse with a man on promise of marriage and then was deserted. A third type was one where both sides were sincere in contracting for the marriage, but one promise had been withdrawn for any number of reasons (loss of affection, downturn in prospects, illness of family member, etc). There were also cases in which two or more suitors were in competition for the same lover; very often, in these cases, the families of the jilter pressured him or her to accept a rich or more suitable mate than the original choice. Finally, there

were arranged marriages which had fallen through. The church had to try
to steer a course between all of the conflicting claims to find the just
solution.\textsuperscript{7}

Toward the middle of the seventeenth century, the betrothal became
less formal; it was beginning to resemble the modern "engagement." Binding spousals were in the decline, and the Church courts began to
retreat from trying to enforce them. As a result, more and more cases
were settled out of court, often for monetary compensation. It was in
fact in the late sixteenth century that the earliest records of the common
law action of breach of promise are found, although the action was not
well-established until much later. Nevertheless, church courts were
beginning to see unsolemnized contracts as unenforceable and this
encouraged the shift to secular courts. Since manorial courts had settled
cases over breach of covenants for hundreds of years, this practice was
not unheard of. Furthermore, because so many actions were settled out of
court, it was no longer thought necessary to resolve the exact
relationship between the two people in dispute; the church courts were not
as necessary.\textsuperscript{8}

The trend away from using the spiritual courts was only accelerated
by the Civil War and the Interregnum. The church courts were disbanded
for almost twenty years and even after the Restoration never regained
their former authority. Contracts \textit{in presenti} could still be enforced,

\textsuperscript{7}Ibid., pp. 198-204.

\textsuperscript{8}Ibid., pp. 205-209; Ralph Houlbrooke, \textit{Church Courts and the People During the English Reformation, 1520-1570} (Oxford: Oxford University
Press, 1979), pp. 66-67; and S.F.C. Milson, \textit{Historical Foundations of the
especially after cohabitation, but otherwise religious sanctions were negligible, since the Restoration Acts limited the penalties of the Church courts. Plaintiffs, dissatisfied with these results, began to turn to the Common Law courts more and more often, bringing the action on a writ of assumpsit, like an ordinary contract action. From 1660 to 1700, a slow trickle of cases definitely established that the action could lie in secular courts. The decisive case was *Dickison v. Holcroft* in 1674. The plaintiff, Mary Holcroft, alleged that the defendant "by the breach of his promise . . . had hindered her preferment to her damage of 100 pounds." After a long argument, the court decided that the action did lie, even where only founded on mutual promises. The plaintiff did, however, lose all rights to a remedy in spiritual courts (since the church courts were so ineffectual, this hardly discouraged cases). Another important case in the same period was *Harrison v. Cage et uxor* in 1698. This suit was brought by a man against his fiancee who had jilted him and married someone else (the new husband was the defendant, since as a married woman, Mrs. Cage could not be sued). The woman was worth £3000, and had expectations of more on the death of her brother; the jury awarded damages of £400. The defendant appealed, arguing that "as in the eye of the law a man was not advanced by marriage, the woman's promise was of no value in law, and thus the contract must fail for lack of consideration."

The court refused to countenance a difference between a man's promise and

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a woman's and upheld the decision of the lower court. In its early stages at least, breach of promise was not biased toward one sex or the other.

Almost immediately after *Dickison v. Holcroft*, the action of breach of promise was threatened in two ways by the provisions of the Statute of Frauds. Breach of promise to marry could not be held actionable without written evidence if the courts ruled that it was either an "agreement made upon consideration of marriage," or if it was an "agreement that is not to be performed within the space of one year from the making thereof." In *Cork v. Baker* (1729), the court decided that the first objection did not apply to contracts to marry, although the second could. They thus drew a distinction between "contracts to marry" and "contracts in consideration of marriage." As a result, the way was cleared for further cases, although the number of these remained relatively few until the middle of the eighteenth century.

The character of early-18th century cases was similar to those of the early modern period. An example is *Robinson v. Cumming* in 1742. The main point of issue in that suit was the presents the male plaintiff had given to the young and wealthy defendant in an effort to gain her hand in marriage after the death of her grandfather. Sir John Robinson claimed

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13White, "Breach of Promise of Marriage," p. 137. The case can be found in 1 *Strange's Reports* 34.

1426 *English Reports* 646-648.
to have given Miss Cumming £120 worth of gifts in the hopes of inducing her to become his wife (he was her executor and had been expressly promised her entire estate if he married her, according to her grandfather's will). The defendant, on the other hand, insisted that Robinson had "insinuated himself" with her grandfather, but that she herself had never given him the slightest encouragement since he was much poorer than she and thus an unsuitable match. The Lord Chancellor ruled:

... if a person has made his addresses to a lady for some time, upon a view of marriage, and, upon reasonable expectation of success, makes presents to a considerable value and she thinks proper to deceive him afterwards, it is very right that the presents themselves should be returned ... but, when presents are made only to introduce a person to a woman's acquaintance, and by means thereof to gain her favour, I look upon such person only in the light of an adventurer, especially when there is a disproportion between the lady's fortune and his, and therefore, like all other adventurers, if he will run risques, and loses by the attempt, he must take it for his pains.

He therefore ruled in the defendant's favor, and Sir John lost his £120 as well as the hand and estate of the wealthy Miss Cumming. All the same, there was little consideration for "wounded affections" or "loss of marriage" in the decision.¹⁵

Hardwicke's Marriage Act of 1753, however, accelerated the change in the nature of the action. This law was meant to eliminate "clandestine" and "irregular" marriages by taking control of matrimony firmly out of the province of the church. The spiritual courts could no longer enforce contracts in presenti (nor those in futuro after cohabitation). By abolishing the legality of betrothals, Parliament left jilted lovers with no remedy except the Common Law, particularly women who

had been seduced and then deserted. Plaintiffs were not slow to realize this, and the number of actions rose in the last half of the eighteenth century. The nature of the case began to change almost immediately as well. By the 1760s, men and women were bringing actions in assize courts, asking for damages for the "non-performance of a marriage-contract," rather than for specific pecuniary loss. In Horam v. Humphreys in 1772, Mr. Justice Aston instructed the jury on "the nature of the action" in the following terms:

... the injury of fixing a young woman's affections, and then trifling and flying off, after a solemn deliberate engagement, so far advanced; and the prejudice it might be to her in future life: that they should give such damages as the circumstances in evidence, either aggravating or extenuating, should require; and that the rank and condition of the parties would be to be [sic] considered.

Other cases in the 1770s continued this trend.

By the end of the 18th century, breach of promise had evolved into its "modern" form, i.e., the way it would be brought in the 19th century. For example, in Atchinson v. Baker (1796), a man sued his ex-fiancée for

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16Jenks, A Short History of English Law, p. 311; MacColla, Breach of Promise, p. 13.


1898 English Reports 543. The jury gave her £500, despite the fact that the defendant was a pawnbroker and her father was on the board of works.

reneging on a promise to marry him when her father died; her defense was that the plaintiff was too ill to marry her. Here the argument centered on two issues: did a promise to marry after an uncertain future event (her father's death) constitute a general promise to marry? and, was a "bodily infirmity" a good reason for a breach? The court found for the defendant, arguing that her promise had been conditional only and that the state of the plaintiff's health was a valid defense. Even more significantly, the court rejected the plaintiff's later attempt to get a settlement on pecuniary grounds. He alleged that she had defrauded him of a settlement of £5000 by her actions. Lord Kenyon, however, responded with the following: "... it has never been usual or thought necessary to state the pecuniary arrangements of the parties in a declaration for not marrying; that the ground of the promise was the mutual engagement of the parties; the fortune was, or at least ought to be, merely collateral."20 Rules about admitting "pecuniary arrangements" would change, but the important aspect of this was the court's centering on the "mutual engagement" as the crucial aspect to be proved.

Despite the similarities to the 19th century, however, 18th-century cases had peculiarities all their own. As in the early modern period, men were quite as willing to bring an action as women, and often received substantial awards. A good example is Schreiber v. Frazer in 1780. Schreiber was a merchant who sued his fiancee, the widow of a General who died at the Battle of Saratoga. Both parties were well-off; much of the evidence proving the promise consisted of the plaintiff's many purchases in view of the coming union, and the defendant had property worth £24,000

20170 English Reports 217, 209.
in the colonies. Her only defense was that she began to see that they would not get along and therefore backed out at the last minute. Mr. Schreiber was awarded £600 to repay him for some of his expenses.\textsuperscript{21} The class of people bringing these actions (at least as far as the scanty records indicate) were higher than both before and after the century. Plaintiffs and defendants are people "of property" and "eminent" in their respective fields. The awards were therefore quite high, ranging from £100 to £1200.\textsuperscript{22} As could be seen from the Schreiber case, considerations of pecuniary loss were still a part of breach of promise, although not the main issue. Finally, these cases were still rather rare; reporters referred to them as "remarkable," and worthy of special attention in national publications. Breach of promise cases appeared to be something of a novelty, and there was little criticism of them as yet in the public press.

Because breach of promise evolved as part of the common law, the laws governing it were worked out through precedent over the 250 years of its active use. It was "a curious legal action, a peculiar combination of contract and tort."\textsuperscript{23} Despite this fact, most writers agreed on the nature of the suit and the standard procedures for both the plaintiff and

\textsuperscript{21}"Chronicle," \textit{Annual Register} 23 (1780), pp. 218-19.

\textsuperscript{22}See footnotes 17 and 19 above.

the defense.24

The "engagement" was considered a contract to marry and was legally binding on both parties. Unlike most contracts, it could not be enforced because the civil courts would not coerce a couple to marry (particularly since the church courts did not even still do so). However, the party breaking the contract was liable to damages. The contract had to be mutual and between parties competent under law to make legal contracts, e.g., those who were old enough and sane. Of course, the man had to have made and the woman to have accepted a specific and definite promise, but it was not necessary that all the terms be settled at once. The court assumed that the marriage would take place within a "reasonable" time, whether or not the couple had actually set a date; the definition of a

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"reasonable" time varied with the age, wealth, and general circumstances of the couple. The court also accepted the validity of conditional promises if the conditions were "suitable." For instance, a man could promise to marry when a business venture had been completed, or a woman could agree to marry upon attaining her marriage portion. However, should the man or woman definitely repudiate the promise even before the condition had been met, the jilted party could still sue.\(^{25}\) On the other hand, judges deemed conditions in "restraint of marriage" (i.e., ones that made marriage impossible or uncertain for either party) as contrary to public policy and void.

If no specific time had been set, the plaintiff must first have requested fulfillment of the promise and demonstrated his or her readiness to marry for a breach to have occurred. If the plaintiff were female, this request could be tendered by a third party or without witnesses, in deference to a woman's modesty. Normally, a breach happened immediately when the defendant married another person, when the plaintiff discovered that the defendant was already married, or when the defendant broke off the engagement. Even if the defendant later retracted the repudiation, the suit could still be brought.

Breach of promise was a personal action; only the injured party was entitled to sue (not parents or guardians, unless the plaintiff was an infant). An infant could sue but not be sued for a promise made before the age of twenty-one. Furthermore, the action ended with the death of

\(^{25}\)This was established in the celebrated case Frost v. Knight. It can be found in Albany Law Journal 3 (February, 1871), pp., 133-37 and 5 (March, 1872), pp. 152-53; 7 Law Reports, Exchequer Cases 111-118; and Times, June 22, 1871, p. 11. See Chapter Seven for details of this case.
either the defendant or the plaintiff. The only exception was if the plaintiff could prove "special damages," as, for instance, if his or her estate had suffered on account of the engagement or if s/he had lost a good job on the expectation of marrying. In actual practice, no damages were deemed "special" enough to warrant an award after the defendant's death. This handicap on plaintiffs was not changed until the 20th century.

The burden of proof was on the plaintiff, but because of the private nature of courtship and marriage, judges accepted circumstantial evidence and hearsay. This relaxation of normal rules on evidence was extremely important; without it, few breach of promise cases could have succeeded. Proof that the man proposed could be inferred from visiting, "walking out" together, stating his intentions to third parties, wedding preparations, gifts (particularly rings), and the expectations of relatives, neighbors and friends. The woman's acceptance could be inferred simply by her lack of objection to the offer, or by a number of other factors: her apparent attachment to him, declarations of intent to marry him either to him or to others in his presence, and distress at the subsequent rejection. However, mere courtship and politeness were not sufficient to prove an engagement.

The defendant could choose between a variety of defenses, the most popular of which was to prove the bad character of the plaintiff. In practice, this meant proving unchastity on the part of a woman and cruelty or inability to provide on the part of a man. However, the defendant had to prove that s/he was unaware of the "misconduct" when s/he got engaged. A related defense was to claim to be the victim of fraud. A woman, e.g.,
was expected to reveal information like unchaste behavior in her past or unfitness for sexual intercourse. In these cases, however, the plaintiff must deliberately have misled her fiance; otherwise, the court expected the defendant to have discovered all relevant information before proposing marriage.

A man or woman plaintiff could try to plead illness until 1859. In that year, the Court of Exchequer handed down a decision in Hall v. Wright, in which the male defendant had pled that he was too ill to marry anyone. The barons reversed the lower court decision in favor of the defendant in a four to three decision, on the grounds that "The delicacy of health, alleged as an excuse, is the man's misfortune, not to be visited, beyond what is inevitable, upon the woman. . . . [It] might make the woman even more anxious to marry, in order to be the companion and the nurse, if she could not be the mistress, of her sweetheart" (Justice Willes). Even if he could not marry her, he should make some restitution; as Justice Martin asked, "Why should the consequences of the misfortune fall on her, and not upon the defendant?"26 Thus, the plea of ill health was no longer good, although the defendant could still use the illness of the plaintiff to good effect if it incapacitated him or her from fulfilling marital duties. But the illness had to be current; even the former insanity of the plaintiff did not constitute a good defense if s/he were sane at the time of the promise.27

Some circumstances or conditions of the contract could render it

26120 English Reports 695-706; Willes' quote on p. 703; Martin's quote on p. 705.

27See Baker v. Cartwright (1861) in 142 English Reports 397-98.
void. First, contracts in restraint of marriage were not valid, nor were those made under duress. Second, those made in return for sexual favors were considered "illicit commerce"—i.e., prostitution—and this automatically cancelled the obligation. In a similar way, a promise given in order to induce a woman to remain a man's mistress did not stand; judges insisted that illicit cohabitation not be encouraged by allowing it to serve as a consideration for marriage. Such promises "tended to immorality" and were therefore "against public policy." However, if the proposal of marriage were made independently of sexual intercourse, the fact that the couple had engaged in premarital sex or had even cohabitated could not be held against the plaintiff. Third, the fact that the marriage, when consummated, would be illegal made a good defense. For example, if the two parties were too closely related by blood (or if she were his deceased wife's sister), or if the defendant was divorced (and unable to remarry by law) then these defenses were upheld. In addition, if the defendant was already married, and the plaintiff was aware of the fact, the promise was not enforced, though this defense did not succeed if the plaintiff was ignorant of the marriage. Fourth, the defendant could claim that the promise had been broken by mutual consent.

The amount of damages remained entirely up to the jury. If the award seemed excessive or in reckless disregard of the facts, then a defendant could appeal for a reduction or a new trial; however, the higher courts seldom interfered with the jury's discretion. Damages included compensation for wedding preparations, the loss of the benefits of marriage, and punitive damages for "wounded feelings" and "blighted affections." The jury considered the social standing and wealth of the
defendant particularly if s/he was of higher station than the plaintiff. Also, the length of time the plaintiff had been engaged, and thus "on the shelf" was a factor, since a woman of thirty hardly had the same chances at marriage as a woman of twenty, or even twenty-five. Finally, they could also keep in mind the plaintiff's loss of virtue and reputation, if applicable.

The plaintiff could bring up numerous circumstances in aggravation of damages. For example, although seduction was a separate action, it could still serve as an aggravation of the plaintiff's distress; juries often gave large awards that were clearly meant to compensate women for their loss of marriageability. However, the seduction had to have come after the promise and to have been accomplished on the faith of that promise. Aggravation could also be claimed if the defendant unsuccessfully attacked the plaintiff's character during the court battle, especially with insinuations of unchastity. In other words, the defense of unchastity was a dangerous one; it could work, but it could also backfire.

On the other hand, the defendant could offer some circumstances in mitigation of damages. The bad conduct of the plaintiff, either before or after the engagement, might not be a complete defense, but could lessen the award. If either set of parents disapproved or if his/her motives were honorable in breaking off the match, juries would take these circumstances into consideration. However, the defendant could not successfully argue that s/he had saved the plaintiff from an unhappy marriage, nor could he impugn her character if her disgrace was the result of his actions (e.g., a seduction). Finally, the defendant could plead
lack of means, and juries were known to consider how much a man could pay before they awarded huge amounts. On the whole, the law of damages worked to the plaintiff's advantage, but the peculiarities of juries never made a substantial award a "sure thing." Odd factors could make the difference: the impression both parties made in the witness box, the ages of the litigants (if the women were older, the jury gave less awards), their previous marital histories (widows on the whole got less than spinsters), and the presence or lack of real affection on the part of the plaintiff.

All of these rules were brought about through the workings of the court, but there were also several statutory changes in the nineteenth century that affected the action. The first attempted change was in 1840. Mr. William Miles introduced a bill to grant a remedy for seduction under a promise of marriage at the summary level so that poor women could use the petty sessions. This was, in effect, a reform of the Bastardy Clause of the New Poor Law of 1834, which had placed total responsibility for illegitimate children on women. Since most working-class women could not afford attorney's fees or the costs of the High Court, Miles hoped to give them a cheaper alternative which would at the same time get around the harsh provisions of the poor law. According to this proposal, a woman could not simply sue for breach of promise; only if the promise had been followed by a seduction and a pregnancy could she bring the action. If the seduction was accomplished after a promise of marriage, the woman could sue herself, but if there were no promise, her parents could sue for loss of service. Thus, this bill would have partially transferred the high court actions of breach of promise and seduction to the petty
sessions. Awards were limited to £30 which "the magistrates might award to be paid at once, or spread over six installments, the whole payable within eighteen months." The magistrate would decide whether the case should be brought and there would be "no judgement against the man on the unsupported evidence of the woman."²⁸

This attempt to soften the harsh aspects of the Bastardy Clause of the New Poor Law was roundly criticized, both in the Parliament and out. The journal Justice of the Peace, although admitting the "necessity of some enactment of some kind" to help seduced women, criticized minutely almost every provision of the bill.²⁹ Most other commentators refused to admit the need for any new laws whatsoever. They thought it would bring back the worst abuses of the Old Poor Law. For example, the editor of The Jurist complained in April of 1840:

The moral tendency of the enactment relating to seduction, is, at least, equal to that relating to breach of promise. Any young woman, providing she select a man of some little property, may assure to all the bastards she chooses to bring into the world, a much better provision, than she, supposing her to be in an humble condition of life, could by marrying a respectable man of her own station. Can any person be in doubt as to the tendency of such a law?³⁰

Similarly, Sir Edmund Head, a minor scholar and an assistant (and later full) poor-law commissioner, wrote that same year that such an action would encourage vice, particularly because it allowed the woman to


testify in her own behalf. It was impossible, he insisted bluntly, to have the same law for the rich and the poor. "In the middle and higher classes," he wrote, "when the sense of shame in certain rare instances is overcome by resentment, and a woman or her friends have recourse to legal proceedings for breach of promise of marriage, or seduction, the result is generally the payment of a sum of money, and there the matter ends." But for the poor, this resolution was impossible, since lower-class men had no money to give. The man would be forced to marry the woman, therefore bringing about more unhappy marriages and, more seriously, an increase in the number of people on the poor rates.

Sir Edmund went on to point out the numerous practical problems with the scheme: the difficulties of proving the promise; the fact that it rewarded being seduced, since one could only sue after having had an illegitimate child; and the delicate questions that would have to be asked in public and at the petty sessions to get to the truth of the matter:

"What constitutes a promise of marriage? Has such a promise been given? Was the man sober when he gave it? If not quite sober, was he so drunk as not to know what he said? Is he the father of the child? Has the woman had connection with no one else? Is she of good, middling, or bad previous character? Has she, or have her friends, entrapped the man, and connived at her disgrace for the sake of compelling marriage or extorting money? What damages are to be given? What is the ability of the man to pay them?" &c. &c.31

To Sir Edward, the bill was simply a clumsy attempt to reinstate the Old Poor Law, and to reward women for sinning. Women, on the contrary, must be forced to be virtuous on their own and not be aided in their "falls" by the state.

Many of the men in the Parliament agreed with Head; though the bill passed its second reading in the House of Commons by a majority of one vote (57 to 56), it never got a third reading. Some change in the harsh provisions of the bastardy clause had already occurred in 1839, and a further, more substantial revision would come in 1844. In this instance, however, the desire to protect women did not overcome reservations about aiding vice. Many of these same arguments would be replayed in later debates about the desirability of breach of promise itself.\(^\text{32}\)

The next legislative issue to affect the action dealt with the law of evidence. Until late in the nineteenth century, neither the plaintiff, nor the defendant was allowed to testify in breach cases. In 1851, The Evidence Amendment Act changed the rules of evidence to admit more parties to the witness box, but breach of promise cases were expressly excluded from its provisions. It was felt that in such cases, the temptation to perjury would be too great if the plaintiff and defendant were allowed to testify in their own behalf.\(^\text{33}\) However, feeling about this issue slowly changed over the next fifteen years; it coincided with a wide-ranging desire to reform the antiquated aspects of the Common Law. In 1865, Sir Fitzroy Kelly introduced a bill that would have, among other things,

\(^{32}\)Hansard's Parliamentary Debates\ 3rd series, 54 (1840) pp. 971-975. The 1839 act returned affiliation proceedings to the petty sessions, though it required corroboration of the woman's word and she received none of the money. The "Little Poor Law" of 1844 allowed the mother of an illegitimate child to directly sue the father in the petty sessions (with corroborative evidence), but the magistrates themselves did not sue. Ursula Henriques, "Bastardy and the New Poor Law," Past and Present No. 37 (1967), pp. 117-26.

\(^{33}\)Hansard's Parliamentary Debates 116 (1851), pp. 1-20; 118 (1851), pp. 838-49. There was little real debate about breach of promise, but the general point was made about allowing husbands and wives to testify against and for each other.
allowed both parties to testify. At that time, the House of Commons did not receive the bill favorably and it failed to be passed, to the disappointment of law reformers. But they did not stop arguing for the change. Alfred Waddilove, for example, pointed out how ludicrous it was that the two people most closely involved in a promise—indeed, the only two people who knew what had happened—to be the sole people excluded as witnesses. Furthermore, he offered several other arguments for reform:

... in an action for damages by reason of breach of contract the evidence of the plaintiff is received, and why not in an action for breach of promise of marriage, which is, in fact, a breach of contract? On the other hand, the defendant might explain away all or much that was adduced to fix him with the promise. In actions for seduction, and in suits for nullity of marriage, the woman gives evidence subject to cross-examination, at times of a very disagreeable and painful nature.34

Waddilove went on to pooh-pooh opponents’ worries that designing women would fool credulous juries with ridiculous accusations. He felt, in fact, that a good cross-examination would expose most frauds on both sides of the dispute.

Many people came to agree with Waddilove, although some still had reservations. Mr. Robert Wilson, for instance, who commented on Waddilove’s paper, agreed that parties should be competent as witnesses, but felt that plaintiffs should be required to corroborate their stories in some way. Mr. Forsythe, who was a barrister, even suggested requiring written proof of the promise as corroboration. These arguments and suggestions would be echoed in the House of Commons when Mr. (later Lord)

Denman tried for the second time to change the law of evidence in 1869.  

Denman, when he introduced the Evidence Amendment Bill, emphasized the way it would help ferret out the truth of the relationship between the two people. Only good would come of cross-examination of the plaintiff; it would, he urged, promote "the discovery of truth." Furthermore, he highlighted the bill's additional provision: "that no plaintiff in such an action should recover a verdict unless his or her testimony should be corroborated by some other material evidence in support of such promise." The legislators had left vague what they meant by "material evidence," but it was clearly an attempt to reduce the number of cases where a woman succeeded through perjury (requiring written proof was supported, though not adopted.)  

Though opponents continued to warn that allowing women to tell their stories would only increase the bringing of suspect actions, the bill was passed by a substantial majority and went immediately into effect. *The Law Journal* probably expressed the general feeling in 1869:  

... this exception to the existing rule has only lasted to the present time because it is an insignificant exception, because no one sympathizes very deeply with either party to such suits, and because the interests of the general community are not sensibly affected by it. But at the same time Mr. Denman's proposition is recommended, not only upon the higher ground of uniformity in the law, but also on the higher ground of justice and fair dealing.  

Because of its vague wording, the results of the act were not

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35Wilson's and Forsythe's arguments can be found in "Summary of Proceedings," Ibid., pp. 241 and 247.  

36Hansard's Parliamentary Debates 195 (April 28, 1869), p. 1801. Further debate can be found on pp. 1802-12.  

37Ibid., pp. 1801 and 1807.  

perhaps as far-reaching as its authors might have hoped. Both sides promptly began taking the stand, but the "material evidence" rule was applied unevenly. *Besela v. Stern* in 1877 was a good example. The plaintiff, a servant in the defendant’s father’s house, claimed to have been seduced on a promise of marriage; she eventually gave birth to an illegitimate child. The corroboration for her claim came from her sister, Maria Besela. Maria testified that the defendant had promised her that he would marry the plaintiff before the child’s birth; in addition, after the child was born, she overheard the plaintiff tell him, "You always promised to marry me and you don’t keep your word," which he did not deny. The lower court ruled that Maria’s testimony did not constitute "material evidence," but on appeal, the Court of Common Pleas reversed the decision. The court considered the defendant’s silence when confronted by the plaintiff as confirmation enough; "material evidence," Mr. Justice Cockburn reasoned, was expected to corroborate the promise, but not prove it absolutely.39 Despite the new law, then, a great deal of leeway was still afforded the plaintiff in "proving" a contract to marry.

But the act was not totally ineffectual, particularly if the plaintiff’s honesty was obviously questionable. In *Wiedemann v. Walpole* (1891), for instance, the plaintiff, Valerie Wiedemann, met the defendant, Robert Walpole, at a hotel in Constantinople and had intercourse with him within ten days, she claimed against her will. She also claimed that he had proposed to her after a week’s acquaintanceship. He gave her £100 and then left her there, thinking the matter finished. Valerie, though, went

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392 *Law Reports, Common Pleas Division* 265-72 (1877); *Times*, February 8, 1877, p. 10.
to Rome and harassed his mother; then, when he still ignored her, she wrote several insulting letters to him and his family. She subsequently had a child and supported herself until 1887, when she read that Robert had married another woman. She then sued. The case went through three trials, with Valerie's story changing each time. (She could not remember, for example, the fate of her child.) After the third trial, Robert appealed on the basis that she offered no "material evidence" beyond the fact that he had not replied to her letters of accusation. Without rejecting the precedent in Besela v. Stern, the court reversed the jury's decision. They held that there was a qualitative difference between failure to deny a face-to-face accusation and refusing to answer insulting letters. As Mr. Justice Bowen pointed out: "Silence is not evidence of an admission, unless there are circumstances which render it more reasonably probable that a man would answer the charge made against him than he would not." Mr. Justice Kay added, "His declining to answer is just as consistent with his not having made the promise as with his having made it." Though used sparingly, the Evidence Amendment Act did affect rulings in breach of promise cases; 10 of the 875 cases under study were ruled for the defendant because of this law. It may also have

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40 Times, June 11, 1891, p. 13; June 13, 1891, p. 18; June 16, 1891, p. 3; June 17, 1891, p. 3; and June 18, 1891, p. 4. The first trial found for the defendant; the second, the jury was unable to agree; and the third found for the plaintiff, damages for £300. This case is discussed in more detail in Chapter Six.

412 Law Reports, Queen's Bench Division 537-42. Quotes on pp. 539 and 541.

42 Examples include Watkins v. Davis, Times, April 20, 1872, p. 11 and "Breach of Promise of Marriage," Carnarvon and Denbigh Herald, March 30, 1872, p. 3; Callan v. Price, ASSI 54/2 (1880); Liverpool Daily Post, February 9, 1880, p. 6; Fishwick v. Barrow, ASSI 54/14 (1896); "Breach of
discouraged some dubious actions from being brought.

Nevertheless, the immediate result of the act was to increase the number of breach of promise cases brought each year. Opponents of the change triumphantly pointed to this fact to show that they had been right all along. The Law Times complained bitterly in March of 1870 about the stupidity of juries, concluding: "the consequences of the facility now provided for fraud and falsehood provoke the question, whether the law, so inconsiderately made, should not be forthwith repealed . . ." The Law Journal was gentler, but admitted that "both judges and juries have a disposition to be too generous to plaintiffs in actions for breach of promise." Even some judges and solicitors took the opportunity during dubious new actions to complain about the change. Nevertheless, most legislators agreed with The Journal of Jurisprudence that to repeal the law would be to take a step backward, which they refused to do. The

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43See Chapter Three for statistics.


Evidence Amendment Act continued in use as long as the action survived.

The rights of legal minors was the next issue to affect breach of promise actions. In 1874, Parliament passed the Infants Relief Act. This law required that all contracts made by persons under twenty-one years of age had to be completely remade once s/he came of age. They drew a distinction between mere "ratification" of the old promise and creating a new contract; only the latter was sufficient. Although in all probability, law reformers had not considered breach of promise cases when they passed this measure, solicitors were not slow to see the implications for their clients. Judges and juries soon had to determine if young lovers had made new promises or just "ratified" the old promise when they became twenty-one; in such a private matter it was a fine line to draw.

The first major case decided on the issue was Coxhead v. Mullis in 1878. Charlotte Coxhead and John Mullis first courted when they were both underage in 1874. John turned twenty-one in March of 1877; after having courted her for over three years, he suddenly broke it off in December of 1877 so he could marry someone else. The Court of Common Pleas found for the defendant, since the judges did not believe that Charlotte had proved there was a new proposal after John's birthday in March. She had only his lover-like conduct to put into evidence and nothing else. Lord Coleridge explained the Court's decision:

The action is brought against a person of full age, for the breach of a contract of marriage which he undoubtedly had made.

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47 The measure was not subject to full debate in either house, and the examples used by the supporters of the bill were commercial contracts by seamen and young men at Oxford and Cambridge. *Hansard's Parliamentary Debates* 4th series, vol. 219 (June 9, 1874), pp. 1225-26.
when an infant. There had been various disputes between the parties, and finally the engagement was broken off after the defendant had become of full age. It was admitted that there had been no fresh contract or promise after the defendant came of age; or, at all events, there was no evidence of any such fresh promise. ... Evidence of ratification is one thing, evidence of a fresh promise is another; and, if there is positive proof that the promise was made before and the ratification after the defendant became of full age, supposing the Act applies to such a case, I am of opinion that the ratification would not be evidence of a fresh promise, but must be referred to the promise made before the defendant was of age.48

If this interpretation had dominated legal thinking, the Infants Relief Act would have limited the number of possible cases in the later 19th century.

However, two major subsequent cases modified this view. In Northcote v. Doughty in 1879, the Court of Common Pleas ruled that the defendant's saying "'Now I may and will marry you as soon as I can,"' three days after his coming of age constituted a new promise, not a ratification. Justice Denman insisted that "in all cases where the language is such as was used here, it is for the jury to say whether the defendant meant to make a fresh engagement to marry the plaintiff, or merely to ratify a former promise."49 In Ditcham v. Worrall the following year, the same court held that the defendant's asking the plaintiff to set a wedding date was enough to constitute a new promise. Justice Denman even expressed his doubts that the Infants Relief Act applied to breach of promise at all, adding that "in any case, the statute was not intended and ought not to be construed to go so far as to warrant a nonsuit in the


present case." The court was not unanimous, however, since Lord Coleridge insisted that his decision in Coxhead v. Mullis should be followed, since otherwise the Infants Act was "a dead letter" and may as well be repealed. 50

Obviously, there was no consensus on the issue, and suits continued to be decided on a case by case basis. For example, in 1882, in Whitehead v. Hall, the evidence for a new promise was only the plaintiff's sister's story that the defendant had told her children to call him "Uncle Joe" and the continued attentions of the defendant. Nevertheless, Justice Day refused to nonsuit, because he believed Coxhead to be wrong: "He was of the opinion that the Infants Relief Act, 1874, did not apply to promises of marriage at all; and even if the Act did apply, he considered the conduct of the defendant, subsequent to his attaining majority, was sufficient evidence of a fresh promise." 51 Yet in 1888, the case of Holmes v. Brierly went the other way, though the plaintiff's evidence of a new promise appeared just as strong, if not stronger. The couple had become engaged when both were underage. After the defendant turned twenty-one, the plaintiff's father went bankrupt and she offered to release the defendant, an offer he indignantly refused. Later Brierly did break it off, and the Court of Queen's Bench found that his refusal to be

50 Law Reports, Common Pleas Division 410-23. First quote from p. 416; second from p. 421. See also Times, March 12, 1880, p. 4; May 10, 1880, p. 6; June 24, 1880, p. 6.

released was not sufficient proof of a new promise. 52 Clearly, the success of this defense depended on the feelings of the judge and jury, the skill of the barristers, and any number of other factors.

The final change in law in the nineteenth century was the County Courts Act of 1888, which allowed breach of promise suits to be brought in the County Courts rather than the High Courts if both parties agreed to it. Until then, at least theoretically, the original jurisdiction of breach of promise was the assizes, although there were certainly breach of promise cases brought irregularly in the lower jurisdiction before then. 53 The County Courts Act made this practice legitimate; however, since both parties had to agree to change, the act had less of an impact than it might have. Any defendant who wished to stop a destitute plaintiff from suing need only refuse to move. Nonetheless, such cases were not unknown.

Perhaps because of the limited impact of these changes, there were numerous attempts to abolish the action of breach of promise in the late nineteenth century. In 1879, Farrer Herschell introduced the resolution mentioned above, which read as follows: "Resolved, That, in the opinion of this House, the action for Breach of Promise of Marriage ought to be abolished except in cases where actual pecuniary loss has been incurred by reason of the promise, the damages being limited to such pecuniary

52"Holmes v. Brierly," The Law Times 59 (Sept. 8, 1888), p. 70-72; see also commentary in Pump Court 7 (June 2, 1888), p. 117; for the three latter cases, see further commentary in Pump Court 8 (July 24, 1889), p. 32.

53For example, Copley v. Ottley, brought in the Holmfirth County Court as early as 1871. Reported in "Amusing Breach of Promise Case," Lady's Own Paper 8 (October 14, 1871) p. 253.
loss." After a spirited debate, the abolitionists won the vote, 106 to 65. However, repeated bills to abolish breach of promise, beginning in 1878 and continuing to 1890, failed. The resolution passed in a lightly attended sitting, and since it had no binding power it was able to attract the widest possible support. One contemporary observer suggested that the vote was a spontaneous display of frustration by men who often had to defend or prosecute these cases, but this does not explain why these same MPs did not vote for a bill. For whatever reason, attempts at abolition did not even approach success; the ministries were unwilling to devote time and energy to what was, after all, a minor reform and which clearly went against the opinion of the majority of the population. Breach of promise remained a fact of life well into the twentieth century.

In the current century, in fact, the class of suit evolved and changed in rather remarkable ways, proving that it was an eminently adaptable action. Early on, the main issue was dealing with promises made before or during divorce proceedings. As stated above, any promise made while one of the two people was married was declared void because it tended to immorality and was therefore against public policy. But as divorce became easier, judges and juries had to determine at what point the first marriage formally ended and a new contract could begin. Between 1905 and 1935, most of the cases continued to support the old doctrine: a man or woman could not contract a new marriage until the old had been completely rescinded. An example was Prevost v. Wood in 1905. In this

54Hansard's Parliamentary Debates 245 (May 6, 1879), pp. 1867, 1887. For details of this debate, see Chapter Eight.

55MacColla, Breach of Promise, pp. 51-52.
case, Mrs. Emily Prevost filed a petition to divorce her husband in March of 1903; the decree nisi was made in December of the same year, and the decree absolute came in June of 1904. She claimed that in May of 1903, Sydney Wood promised to marry her when her divorce was final, and relying on that promise, she allowed herself to be seduced. He later refused to marry her, and she sued him for breach of promise. Wood admitted the carnal relations but denied ever promising marriage. Mr. Justice Darling wrote the opinion for the Court of King's Bench, finding for the defendant on the traditional grounds: "He (the learned Judge) had to apply that principle of law; and if this plaintiff were to be allowed to maintain this action by having deceived the Divorce Court, it would be allowing an action to be founded on deceit, immorality, and fraud."56

Other cases, however, did not follow these precedents. In Skipp v. Kelly in 1926, the plaintiff, Mrs. Lilian Kelly, succeeded in her suit despite the fact that she had been married when the defendant promised her. She did so because she was able to convince the court that Thomas Skipp had promised her again after her divorce was final, and therefore the second promise was not an immoral one. Although this adhered to the letter of the law, the fact that the judges allowed flimsy evidence to prove the second promise (a ring, setting the date of the wedding) showed that they were becoming more lenient to this type of case. At the same time, though, the Appeals court lessened the award, and this was allowed

56Times Law Reports 21 (July 19, 1905), pp. 684-85; quote from p. 685. Another example is Siveyer v. Allison in 1935, in which the plaintiff did not know originally that the defendant was married, but stayed with him even after she discovered the truth. Because she did the latter, she was not allowed to sue, since she had become party to the immorality. 2 Law Reports, King's Bench Division (1935) 403-408.
to stand.\textsuperscript{57}

The most controversial and important case dealing with this issue was \textit{Fender v. St. John-Mildmay} in 1938; it was not settled until it had reached the House of Lords. The plaintiff had begun an affair with the defendant in 1932, with the full knowledge that he was a married man. His wife soon petitioned for a divorce on the grounds of adultery and received a decree \textit{nisi} in January 1933. In February and again in April of 1933, the defendant promised to marry the plaintiff after the divorce came through. The decree became absolute in July, but the defendant then declined to marry his former mistress, so she sued him for breach of promise. In many ways, this case was similar to \textit{Prevost v. Wood}, because the promise was made after a divorce was only partially granted. It was different, though, in that St. John-Mildmay was not the injured party in the divorce and so did not deceive the Divorce Court in order to obtain the divorce. The jury in the first trial found for the plaintiff with £2000 damages, but on appeal, the decision was overturned on the grounds that the contract was against public policy. The plaintiff then appealed to the House of Lords.

The Lord debated the case at length in 1937. Although several of the Lords objected vigorously, the majority found for the plaintiff, thus overturning \textit{Prevost}. The decision was based on the Lords' belief that a marriage was truly over as soon as the decree \textit{nisi} had been granted. Lord Atkin, e.g., compared a "normal" marriage with one that was almost over:

\begin{quote}
It is said that the status of marriage exists until decree absolute. Of course it does. . . . But let us consider how far the normal obligations and conditions of marriage continue
\end{quote}

\textsuperscript{57}\textit{Times Law Reports} 42 (February 12, 1926), pp. 258-59.
in ordinary circumstances after decree nisi. They have disappeared: there is no consortium, and the parties are living apart: they owe no duties each to the other to perform any kind of matrimonial obligation: the custody of the children has been provided for by the court: the maintenance of the wife, if petitioner, is similarly provided for: the petitioning spouse has said: 'I have done with you.' In these circumstances what possible effect can a promise to marry a third person have by way of interference with matrimonial obligation? ... it appears to me merely fanciful to suggest that the public interests are in any respect being impaired.\footnote{Appeal Cases Before the House of Lords (1938), p. 17; entire case is found on pp. 1-56.}

Although some of the Lords argued that such a contract prevented reconciliation, which was theoretically possible up to the last minute, the others insisted that almost no reconciliations occurred after the decree nisi. Fender, therefore, won her case, and in the process, partially overturned a long-held tenet of the Common Law.

The second way breach of promise changed in the 20th century was the mirror image of these divorce cases: the class of suit expanded into a way to protect women from fraudulent marriages. The most important of these cases was Shaw v. Shaw and Another in 1954.\footnote{Law Reports, Queen's Bench Division (1954) 429-43.} The story behind this action was an unusual one. In 1937, Mr. Shaw married the plaintiff in this case, representing himself to her as a widower. However, Shaw's first wife (and only legal one) did not die until 1950, although the second Mrs. Shaw was unaware of this until after her husband's death. Shaw himself died in 1952 without leaving a will. At first, his second wife inherited everything, but eventually her stepson discovered that his mother had been living during most of the second marriage, and that therefore his stepmother should receive nothing from his father's estate.
Mrs. Shaw then sued for breach of promise of marriage, claiming that Shaw had not fulfilled his promise to marry her and that she was thus entitled to damages. The court found in her favor on several grounds. First, they determined that the breach occurred in 1950, upon the death of the first Mrs. Shaw, because at that time (for the first time) it became possible for Mr. Shaw to fulfill his promise. Thus, the statute of limitations had not run out, as her stepson claimed in his defense. Furthermore, the contract was not immoral, since the second Mrs. Shaw had no idea his first wife was still living. She was therefore entitled to recover the amount she would have received on the death of her husband, i.e., life interest on one-half of the estate. This came to £1000. Although one historian has called this use of breach of promise "bizarre," it was apparently needed to fill in a gap in the Common Law in protecting nominal "spouses" from fraudulent marriages.\(^60\)

Finally, breach of promise actions in the late 20th century more and more came to deal with foreign and commonwealth marriage problems. First, several cases established that if a man promised to marry a foreign national, particularly if he planned to bring her to England, he could be sued in English courts, and she could collect damages on the English scale.\(^61\) Second, women from commonwealth countries could sue if their "husbands" refused to go through the English wedding ceremony once they had immigrated. For instance, in 1969, Sukhvinder Kaur Chana, aged 20,


sued Gurmit Singh Chana, 25, because he would not marry her according to English law, although she had been his Sikh bride since 1966. Because of Sikh customs, she could not marry again; therefore, Gurmit’s refusal to be her true husband put her in a terrible position, particularly since they had had intercourse in the two weeks they had lived together after the Sikh ceremony. Gurmit claimed that any promise he had made was on the condition that he liked her when he saw her and insisted he had never slept with her. However, the judge believed Sukhvinder, and awarded her £700.62 Here again, breach of promise was used in an unusual way to protect women only nominally married in English law.

In addition to the evolution of case law, there were also significant statutory changes in the 20th century that affected breach of promise. First, the action was specifically excluded from the Administration of Justice Act in 1933, which, among other things, took some actions out of the hands of juries. Breach of promise, along with all criminal proceedings and a few other civil actions (such as slander, seduction, malicious prosecution, and fraud), was excluded on the grounds that certain cases should not be left solely to a judge. Such cases were highly personal and risked the reputation of both parties, so legislators felt they needed the judgement of the parties’ peers. Also, the bill was primarily meant to expedite commercial cases; since juries seldom understood the technical points at issue, they were slow and unhelpful in those types of actions. Several of the MPs, although approving of the bill in principle, disliked the provisions for excluding breach of

promise. Sir Stafford Cripps, e.g., argued that "Cases like breach of promise of marriage . . . are not cases to be encouraged in any way at all," and several others complained about the leniency of juries. For instance, Sir Walter Greaves-Lord insisted that "there are verdicts of juries in regard to damages which are really oppressive and wrong," and Mr. Llewellyn Jones claimed, "I have known cases where there was danger with a jury. . . . One knows how many counsel have succeeded, by appeals to the sympathies of the jury, in securing a verdict which probably would never have been given by a judge sitting down coolly and considering the case . . . on its merits as between party and party." Despite these reservations, the act passed easily because of its many beneficial provisions; verdicts in breach of promise cases, therefore, stayed securely in the hands of juries.63

Second, the Law Reform (Miscellaneous Provisions) Act of 1934 allowed breach of promise actions to survive the death of the defendant. This was part of an attempt to allow "all causes of action subsisting against or vested in the deceased person, except causes of action for defamation or seduction" to "survive against or for the benefit of his estate."64 This bill passed easily, and for the first time jilted lovers could sue after the death of the jilter. (It was only because of this law that Mrs. Shaw was able to recover in the case mentioned above, and it undoubtedly remedied many similarly hard cases.) Previously, judges had been very strict about stopping breach of promise actions on the death of


64Parliamentary Debates 290 (1933-34), pp. 2111-2122.
either party; therefore, the 1934 act was a significant change. However, the damages in such an action were limited to actual pecuniary loss. In a way, the act simply defined "special damages" less strictly so that the plaintiff could recover money for businesses lost, jobs given up, money expended for the wedding, and so forth, even if punitive damages were still out of reach.

Third, the action was explicitly excepted from the Legal Aid and Advice Act of 1949, a law that provided funds for people with limited incomes in using the law courts. Again, as in 1933 and 1934, breach of promise was classed with several torts; in this instance, slander, libel, and common informer actions were also excluded from the act's provisions. The Attorney-General, in introducing the measure, explained that the reason breach of promise was excluded was that "many" of these actions "are actions of rather a blackmailing type." Parliament carefully removed those classes of suit that could possibly inundate the courts with frivolous disagreements; although most of their concern was over slander and libel, they also felt that breach of promise cases needed no encouragement.

Breach of promise appeared to be expanding and growing stronger as the century went on. But appearance belied the reality. The number of cases declined after the second World War, despite the use of the action

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65A particularly sad example was Quirk v. Thomas in 1916, found in 1 Law Reports, King's Bench Division 516-41; Times, February 4, 1915, p. 5 and February 5, 1915, p. 3, and discussed in detail in Chapter Seven.

in unusual circumstances. In addition, efforts at abolition continued in the twentieth century, although for many years they had the same lack of success as their 19th-century counterparts. Throughout the 1930s, 1950s, and 1960s, various MPs questioned the different governments about the desirability of abolishing breach of promise suits, but no actual bills to do so were entered in those decades. Finally, in 1969, the Law Commission, after thoroughly studying the action, recommended that it be abolished, with adequate remedies for property disputes. These recommendations were accepted and passed as the Law Reform (Miscellaneous Provisions) Act of 1970. This law held that "no agreement to marry shall take effect as a legally enforceable contract and that no action shall lie in this country for breach of such agreement, wherever it was made." Almost a century after Herschell's first efforts to eliminate it, breach of promise was no longer a part of English jurisprudence.


CHAPTER TWO—"THE EXPOSE OF FAMILY INDISCRETIONS":
BRINGING A BREACH OF PROMISE SUIT

I feel that personally I and my family have been grossly
insulted and wronged by your disgraceful behavior—and it is
of course hardly necessary for me to state that legal
proceedings will be forthwith taken against you with a view
that your superior officer and others may know how you have
so disgraced yourself and wrecked the life of one you have so
many times professed to have such a tender regard for.¹

So wrote Thomas Parker, brother-in-law of Olive Bardens, to her delinquent
fiancée, J.H. Amey, in June of 1892. Amey was the boatswain on the H.M.S.
Conqueror and had refused to marry Olive, accusing her of having had an
affair with his brother Edmund. Parker wrote denying those allegations
and warning Amey of the impending breach of promise suit. In only a
matter of days, both parties had acquired solicitors and set the intricate
process of bringing a suit into motion.²

Suing for breach of promise in the nineteenth century was a long and
sometimes complicated process. The description which follows is a model
or "ideal type" of breach of promise cases, not all of which was true in
many cases. The first step was for the plaintiff to believe (or pretend
to believe) that the defendant had committed a definite breach of his
promise to marry. This could happen when he married someone else, stated
his intentions to abandon the courtship, or simply stopped visiting and

¹ASSI 28/8; Bardens v. Amey, Correspondence, letter from Thomas Parker
to J.H. Amey, June 26, 1892, pp. 1-2.

²ASSI 28/8; Bardens v. Amey, Correspondence, pp. 1-9. The case came
to trial on March 8, 1893 at Exeter. Bardens submitted to a medical
examination to prove her virginity and won her case, damages £100. ASSI
22/41; The Western Times, March 9, 1893, p. 3.
writing. Before doing anything else, the plaintiff almost always wrote to the defendant or went to see him to determine if he truly intended to desert her. Only when she was convinced that he would not change his mind did she turn to her family and friends for support and advice. Her parent or closest relative then also wrote or visited the defendant, remonstrating, in words similar to those quoted above, on the defendant's heartless conduct. Of course, in the vast majority of broken engagements, this was the end of the matter; only a minority of women were angry enough to threaten a suit. Also, even if she did so, the defendant might change his mind or at least admit that he owed his ex-fiancée some compensation for her loss. Such cases never reached the courts; the couple either agreed to part, married, or had an independent arbitrator settle the terms. But if after all of this correspondence and confrontation the defendant still refused to admit any liability and the plaintiff was determined to force him to do so, she turned the matter over to a solicitor. Her counsel's first action was to communicate to the defendant that he would soon be served with a writ and to advise him to find his own solicitor as soon as possible.

Then began the process of negotiation for an out-of-court settlement that often lasted up to and even into the trial itself. Both solicitors

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3Because the vast majority of plaintiffs in the nineteenth century were women, this chapter will assume that plaintiffs are female and defendants male.

4See, e.g., ASSI 37/1; Searing v. Newton Correspondence, 1866, especially letters 9-11, 13-14, and 17-19. Records of this case also found in ASSI 37/1 and ASSI 32/36. Eventually, the case was withdrawn.

tried to bluff each other and the two principals into settling on the best possible terms for their respective sides. The correspondence in *Bardens v. Amey* was typical. Albert Akaster, Amey’s solicitor, wrote to Olive’s brother-in-law: "I think from the tone of your letter that you must be entirely ignorant of the character of the person whose claims you are advancing and no doubt in due time will apologize therefor"; he also wrote to Miss Bardens, warning her that she probably would not want to have the action come to trial and that his client "feels very thankful that the discoveries were made in due time and before it was too late."\(^6\) Parker, for his part, was undaunted, and promptly replied: "In due time I think you will be conclusively satisfied of the utter worthlessness of your clients [sic] instructions. All his attempts to aggravate his base conduct by cowardice in bringing false charges against his intended wife will be comp[ensated]."\(^7\) In this case, the bluffing did not work, but in many other cases the parties were persuaded to come to terms.

Usually, it soon became clear that there would not be an immediate settlement, and the solicitors switched to communicating through formal legal papers. A number of these had to be completed before a high court action even reached the trial stage. First, the plaintiff served the defendant with a writ, setting out the claims she brought against him. These claims followed a standard form, stating that the couple had promised to marry one another (and often giving an exact date), but that the defendant had "neglected and refused" to marry her. If the defendant


\(^7\)ASSI 28/8. Letter from Thomas Parker to Albert Akaster, June 28, 1892.
had married another woman, the plaintiff entered that fact, and also put in that she had always been "ready and willing" to marry him, up to the time of the breach. She also put in a claim for an exact amount that would compensate her for his cruelty, usually an enormous sum (£500 to £1000 was not unusual). Solicitors did not expect to receive that much, but inflating the claim was a precaution against having to amend it later if the jury proved unusually generous; although some judges allowed amendment if they felt it was proper, others did not.\footnote{Examples of detailed pleadings include Frampton v. Veeley, ASSI 28/12; and James v. Phillips, ASSI 75/3; "Local Breach of Promise Case," Cardigan and Tivy-Side Advertiser, March 1, 1889, p. 4. On claims for damages, see Mr. Justice Charles' remarks in Fawkes v. Harding, ASSI 54/11; "Breach of Promise of Marriage," Carlisle Journal, February 1893, p.3. For an amendment of claim, see Bingley v. Barnes, ASSI 54/11; Manchester Examiner and Times, March 9, 1893, p. 7; for a case where amendment was not allowed, see Solicitor's Journal and Reporter, 17 (December 28, 1872), p. 159.}

The defendant's solicitors replied with a statement of defense, taking each of the plaintiff's pleas point by point. Usually, the defendant made a flat denial of the promise and then added several other pleas in case the denial failed during the trial (these included infancy, drunkenness, mutual exoneration, and fraud). These papers were often quite dry, though they could be more detailed; Joseph Brooks, e.g., insisted that he had been exonered from his promise, because the last time he had visited his fiancee, she "threw the rings he had given her from off her fingers threw his hat and gloves across the room told him to go away and not come back again."\footnote{Price v. Brooks, ASSI 8/3 in his Statement of Defense; case also found in ASSI 1/66 and Worcester Chronicle, March 16, 1878, p. 8.} The plaintiff, after receiving the defense statement, replied by joining issue with him on the points of
disagreement, and the date for the trial was then set. Each participant received a notice of the trial when the case was officially on the list. Occasionally, one or both of them would be requested to give "particulars" of their pleas, e.g. exactly what dates the promises were made or how many letters were to be put into evidence. This was most likely to happen when there was more than one action to be tried, as, e.g., if the plaintiff's father were also suing for seduction or the defendant had a counterclaim. ¹⁰

The plaintiff's solicitor had the responsibility of putting the action on the cause list for the next Assize. Both sets of solicitors, of course, were also expected to retain barristers to argue the matter in court. Quite often, actions were settled in this period between registering the suit and the day of the trial. In fact, between 1859 and 1922, over twenty-two percent of breach of promise cases entered on the lists were withdrawn before a hearing. Both barristers and solicitors involved themselves in keeping the cause from coming to trial. Thomas Crispe, a late nineteenth-century barrister and Queen's Counsel, felt it was a barrister's duty to "avoid, if possible, the expose of family

¹⁰The pleadings in Frampton v. Veeley included particulars on the dates of the promises and whether they were oral or written, and the plaintiff also had to state exactly what documents she intended to submit into evidence. Harriet Frampton was suing for the return of several pieces of furniture as well as for breach of promise, so she also had to specify the items she wanted returned. She had the writ served in June of 1896, but did not get a trial date until December. ASSI 8/12, Pleadings, Frampton v. Veeley. Other cases with particulars: Ormen v. James, ASSI 22/43 and ASSI 28/13, which listed five times the defendant proposed; Corio v. Salmon, ASSI 32/38 and ASSI 37/7, in which the plaintiff had to tell the number and dates of her letters (49 between May of 1884 and March of 1885).
indiscretions in a court of law."\(^{11}\) In addition, a large number were settled during the trial itself, often after the plaintiff had proved the promise, and the defendant decided his best course was to keep the decision from a jury. For instance, in *Wilkinson v. Rylands* (1882), the wealthy defendant had seduced and deserted the daughter of a cashier, leaving her to care for their illegitimate child alone. He refused to marry her because his father disapproved, and he added insult to injury by offering to keep her as a mistress, an offer her father indignantly refused. Then, when Margaret threatened to sue him, he threatened in return to blacken her character in court. Once the plaintiff had established these facts to the jury, the defendant instructed his barrister to settle. The two sides agreed on a verdict for the plaintiff with damages of £750, and the defendant withdrew all imprecations on her character.\(^{12}\) Particularly in cases that involved seductions, the plaintiff also was happy to settle, since revealing her "fall" was extremely painful for her and her family. Judges approved of settlements as well, since they disliked spending a great deal of court time on these cases, and they especially disapproved of exposing sordid

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\(^{12}\)ASSI 54/3 and *Liverpool Mercury*, May 4, 1882, p. 8 and *Liverpool Daily Post*, May 4, 1882, p. 6. Other cases settled in the middle of the trial include *Pepperell v. Grills*, ASSI 22/33 and *Devon Weekly Times*, August 1, 1878, p. 8; and *Williams v. Mathias*, ASSI 75/3 and *South Wales Daily News*, June 25, 1894, p. 7.
details of seductions in open court.\textsuperscript{13}

All the same, most of the cases did not end so amicably. In the majority, negotiations failed and the barristers began to build their cases. There is evidence that the some barristers specialized in breach of promise cases. Only thirteen of the scores of barristers employed in the actions under study appeared in breach of promise cases over 10 times (for either the plaintiff or the defendant). Since few of the cases record the names of the barristers (under 300), even ten appearances is significant.\textsuperscript{14} Few of these men showed a preference for one side or the other, although Mr. Bulwer usually worked for the plaintiff (8 of 11 times), and Huddleston preferred to represent the defendant (10 of 15 times). Although the information is limited, there may well have been certain lawyers that worked on breach of promise habitually.

Whatever their experience, once the barristers had been retained, they had to go through the evidence; the plaintiff’s lawyer, especially, often had to peruse stacks of letters, marking the places to read and

\textsuperscript{13}For instance, in \textit{Williams v. Mathias} (1894), the judge openly approved of a settlement in court, even adding that he hoped this would be the end of the couple’s squabbles and that the defendant would not forget that the plaintiff was the mother of his child, \textit{South Wales Daily News}, June 25, 1894, p. 7. See also \textit{Haun v. Bradford}, \textit{Times}, July 29, 1872, p. 11 and July 31, 1872, p. 11, in which the judge intervened to settle the case; until his intervention, the two sides had been unable to come to terms.

\textsuperscript{14}These barristers include: Addison (13); Bullen (14); Bulwer (11); Coleridge (10); Gully (10); Huddleston (15); Matthews (15); MacIntyre (12); McKeand (14); Metcalfe (12); O’Malley (13); Powell (11); and Shee (16).
highlight.\textsuperscript{15} Both sides rounded up as many relatives and friends as possible to be witnesses, and here the women had a definite advantage, since they were usually still living at home and had plenty of eyewitnesses to the courtship. The plaintiff's side also tried to get an idea of the amount of money the defendant made; such evidence was admissible to help the jury assess the damages.

On the day of the trial, the lawyers on both sides began to employ a variety of tactics to induce the judge and jury to believe their side of the dispute. Plaintiff's barristers, e.g., invariably found out what the lady looked like and displayed her prominently if she were attractive and young. Barrister Jack Lee used this maneuver in a trial in the Norfolk Circuit early in the century, complaining pointedly of the "abominable cruelty" of the defendant to "the lovely and confiding female" the jury saw before them. Unfortunately for Lee, the plaintiff also had a wooden leg, and when his opponent pointed this out, the jury were so embarrassed at having been led along that they found for the defendant.\textsuperscript{16} Lawyers firmly believed that a pretty face was an asset; Robert Walton, e.g., insisted that "the prettier the face, the heavier are the damages," and newspapers seldom failed to record the appearance of the plaintiff as

\begin{footnotes}
\textsuperscript{15}Mrs. Searing's barrister, e.g., went through her correspondence and underlined crucial passages with a blue pencil. He also put reminders in the margin, either double vertical lines or simply "Read!". ASSI 37/1, letters 1-5, 9-12. See also the extensive notes of Elizabeth Jones' barrister in Jones v. Griffiths, ASSI 59/144; case also found in "Breach of Promise and Seduction by a Local Preacher," The Chester Chronicle, July 31, 1880, p. 5.

\end{footnotes}
"interesting looking," "prepossessing," or "fair." It is impossible to determine what influence (if any) a plaintiff's looks actually had on the jury, however; the only indication was that older women received smaller awards than younger ones and this could have any number of causes. Older women, deprived of beauty as an advantage, instead tried to induce sympathy. An example was a seventy year old plaintiff in 1878; she wore widow's weeds and a wig in the witness box, the former in mourning for her husband, and the latter "she said, was rendered necessary by her hair having all fallen off in consequence of the defendant's heartless conduct." 18

The plaintiff's counsel had a number of advantages in making his case to the jury. First, he made the opening speech, thus getting his client's side firmly in their minds. Most of the barristers took great advantage of this opportunity, speaking up to two hours. Generally, they took one of two tacks. One was to emphasize the evil behavior of the defendant in deserting his fiancee. As Mr. Addison in Barrow v. Twist (1886) declared, "this case was about as cruel and as wicked a one as was ever brought before a jury. The unhappy woman had not only been treated by the defendant with great cruelty, but he had put forward the sham plea that he broke off the match because she had been guilty of misconduct.


18The Solicitor's Journal 22 (July 20, 1878), p. 741.
This he would endeavour to show them was a wicked fabrication."\textsuperscript{19} An alternative tack when "romance" was absent was to make a point of how prosaic the case would be; it would not afford the "usual" amusement. Mr. Gully, in an opening speech in an 1883 case in Carlisle, "said actions for breach of promise of marriage were sometimes associated with the idea of something amusing or tragic, but there would be nothing comic or tragic in this case. ... However, the circumstances, although very unromantic circumstances, were none the less worthy of consideration, whether the plaintiff was entitled to recover for the injury done her."\textsuperscript{20} This was a way to blunt the defense that the plaintiff had lost little since she did not have a romantic attachment to the defendant.

Before 1869, the plaintiff's barrister would then back up his case with the evidence of her friends and family and with any letters, gifts, or tokens she had kept. After 1869, the plaintiff herself almost always immediately took the stand to verify the story her lawyer told in his opening, and was then followed by at least one member of her family. Many plaintiffs had impressive collections of letters to submit; in Pettit \textit{v.} Tough, Louisa Pettit had 117 letters from her travelling fiance, and letters proved to be excellent documentaries of the courtship in 173 cases.\textsuperscript{21} Other common pieces of evidence were gifts of jewelry (especially rings, of course, but brooches and earrings were also common),

\textsuperscript{19}\textit{Manchester Examiner and Times}, July 17, 1886, p. 3. Case also found in ASSI 54/5.


the parents' acceptance of the man as their daughter's suitor, and the
fact that they had "walked out" together for many months. Occasionally,
women even had written promises. Jane Ashton got Samuel Scholes to sign
a paper on which she had written "Will you marry me, if I keep company
with you?" He signed it, but added, "I will if I ever marry" (since he
had married another woman by the time of the trial, he could not use this
condition as a defense). Jane even had the paper stamped in order to make
it truly official; not surprisingly, she won her case.22 Most women,
however, made do with less concrete evidence.

Plaintiffs who testified tried to elicit great sympathy and chivalry
from the all-male jury by playing up their timidity and sorrow. To
counteract this effect, defense counsels did not hesitate to severely
question plaintiffs in the hope of breaking down their stories. They were
known to keep the women on the stand for long periods of time and even to
make fun of them, usually in an effort to ridicule the entire action. Mr.
McKeand, e.g., took advantage of the fact that Jane Ashton was an older
woman (about 60) and that her courtship had been unromantic. He first
asked her "Did he [the defendant] ever give you an engagement ring or any
presents?--No, I don't think he has given his wife an engagement ring.
(Renewed laughter.) When you found he had married this other woman was
your little heart crushed?--Witness (after a pause): Yes, it was.

22Ashton v. Scholes, ASSI 54/14 and Manchester Evening Mail, December
9, 1895, p. 3. Jane got £75 damages. In Harvey v. Foard, Ann Harvey also
had a written contract from her fiance: "Norton Canes, May 16th, 1869.
I, Samuel Foard, do hereby promise you Anne Harvey that I will be your
husband if you keep from all other men and keep an honest and upright
character." He signed both his own and her names. He claimed she
released him and denied paternity of her illegitimate child, but the jury
believed her and gave her £80. ASSI 1/65 and Gloucestershire Chronicle,
April 5, 1873, p. 5.
(Renewed laugh.)"\(^{23}\) Even younger women could be subject to harsh questioning, but defense lawyers had to be careful not to overdo it. In *Penny v. Rees* (1872), the plaintiff fainted dramatically after a long cross-examination, earning a great deal of sympathy in the process. Also, some plaintiffs stood up to questioning very well indeed. In 1891, Mr. McKeand had worse luck with Hannah Pendlebury in the following exchange:

Mr. M'Keand: This engagement lasted less than three months.

The plaintiff: Yes; but he made more progress than some men would in three years. [Laughter.]

Are you speaking from personal experience? Well, yes I am.

Do you mean when you say that he made more progress that he shattered your little feelings more than other men did? The other man did not shatter my feelings. (Laughter.)

By Mr. Hamilton [her barrister]: You were really very fond of him? He made me so I could not help being very fond of him.\(^ {24}\)

Certainly Hannah got more out of her own cross-examination than the defense did.

After the plaintiff's case was closed, the defense lawyer got his turn made an opening speech. He inevitably labored the disadvantage of having to negate the plaintiff's case rather than to positively assert one of his own. Most defense speeches were comparatively short, despite the fact that in several cases, this speech was the only defense given. There were no set types of defense speeches, in contrast to those for the plaintiff, but good barristers managed to make a positive statement in spite of the difficulties. For example, Mr. Lopes argued in *Penny v. Rees* that the suit was not brought for the young woman's benefit, but for her

\(^{23}\)Ashton v. Scholes, op. cit.

\(^{24}\)Penny v. Rees, ASSI 22/32 and *The Western Times*, March 18, 1872, p. 4; whole case found on pp. 3-5. *Pendlebury v. Doody*, ASSI 54/9 and *Manchester Examiner and Times*, July 16, 1891, p. 3.
friends':

Now there was a great difference in the character of these cases [breaches of promise]. In some there could be no question that the affections and the feelings of the plaintiff had been outraged ... But there was another class of cases—a kind in which the plaintiff was not so much proceeding for the redress of a wrong, suffered by herself, but in which somebody behind the scenes was the moving party, and for whose benefit the action was brought. That was a class of cases which they would be of opinion ought not to be encouraged; and he went so far as to say that any person who resisted such an action was a public benefactor, because he showed that he would not permit the machinery of the law to be so perverted, distorted, and misapplied.25

Others simply urged that the plaintiff had lost little (if she were still young and attractive), that she had "entrapped" the defendant into an engagement, or that no two people should marry if they were not truly in love. All the same, a great many barristers spent much of their energy simply denying or ridiculing the plaintiff's story.26

The only common tactic of defense barristers was to center on the character of the defendant. If the defendant were a noble and upright man, his counsel would insist that he could not have behaved in such a dishonorable way. If he were a dirty, low-looking man, on the other hand, the lawyer would instead say that the plaintiff had lost nothing in losing him. Sir Henry Hawkins, in fact, did both in one trial. At first, he mistook his client for a "well-dressed, good-looking man of fifty or sixty," and therefore he claimed that such a noble man could never break his word to a lady. The solicitor on the case, with great embarrassment,

25The Western Times, March 19, 1872, p. 5.

26See, for instance, Richards v. Palmer, ASSI 22/40 and Taunton Courier, February 22, 1888, p. 7, for Mr. (later Lord) Coleridge's defense speech, which is primarily an attempt to cast doubt on the plaintiff's veracity.
then informed Sir Henry that he was talking about the wrong man, and pointed out the real defendant, "a vulgar, common, dirty-looking gipsy man." Hawkins immediately changed his defense, and paraded that poor specimen before the jury, showing that the plaintiff had lost very little in losing him. His change of plan worked; the jury gave only £25 damages, which, in the barrister’s words, "was very far below what we would have given before the trial to settle the case."27 A related defense was to play up how pretty and young the plaintiff was; she could, therefore, easily find another suitor. Mr. Lockwood, for instance, used the "great attraction" and "charming manners" of the plaintiff in a case in 1890 to point out her continued marriageability, saying to the jury:

"Gentlemen . . . do you really think for one moment that this young lady’s life is blighted, or that her prospects of getting married are at all injured? I don’t suppose you do. Perhaps there is not one among you who would be unwilling to form the acquaintance of so pleasant a companion. Why! look at her now, gentlemen, she is actually smiling at me, but I may at once inform her that I am not in the matrimonial market!"28

Similarly, all defense barristers felt it was their duty to give the impression that the defendant was extremely poor and could not possibly pay high damages. As Mr. (later Lord) Coleridge put it in a trial in 1893, "he had never known a defendant in a breach of promise who was not

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28The Jurist 4 (1890), p. 180. Mr. Collins, the defense barrister in Norris v. Burnett in 1872 used the same tactic: "He would ask them [the jury] to look at the young lady and afterwards at his client and then ask themselves whether they thought she had lost much in not marrying the defendant." Somerset County Gazette and Bristol Express, August 10, 1872, pp. 7-8; quote on p. 8.
a pauper at the trial."\textsuperscript{29} A number of defendants carefully dressed themselves in shabby clothing, and some even acted like idiots or invalids. The attorneys for the plaintiff seldom let this go by unchallenged, however. In \textit{Shickell v. Warren}, in 1890, James Edward Warren came into the court dressed in a thoroughly disreputable coat. Mr. Blofeld, the plaintiff's barrister, asked him sarcastically "if he had got it [the coat] off a scarecrow, and whether he had put dirt on the collar that morning." Warren replied unconvincingly that it was his "market coat." Even the judge was unimpressed; in his summing up, he said that "a defendant in a breach of promise case ought not to take a coat off a scarecrow in his garden and come into Court with it on his back (laughter). There was no doubt that the defendant had put a most extraordinary coat on, and such as was seldom seen in a Court of Justice. ... The jury would see through such a flimsy device as that of the defendant ... " In another case, Josiah Caldwell came to the trial poorly dressed, and the plaintiff's barrister brought a photograph of him in nicer clothes to show that he normally dressed much better.\textsuperscript{30} Attempts at acting insane or silly were repulsed as well. The defendant in \textit{Humphries v. Gain} in 1884 would only answer "Hee-haw" when asked his name and presented himself as deaf and in ill health. The only time he

\textsuperscript{29} "Action for Breach of Promise," \textit{The Western Times}, March 9, 1893, p. 3. The case was \textit{Burrow v. Lovell} and can be found in ASSI 22/41. Mr. Taylor, similarly, made the remark in \textit{Black v. Sparling} that "in such cases a defendant generally became wonderfully poor." ASSI 54/16; "A Liverpool Breach of Promise Case," \textit{Liverpool Daily Post}, February 16, 1898, p. 3.

spoke sensibly was in denying he had any money. The plaintiff's barrister, in disgust, demanded a doctor's report to prove these infirmities, which was not forthcoming. The jury in this case was equally dubious about such obvious shamming. Nevertheless, most defense barristers devoted at least part of their time to denying the wealth of their clients.

Like the defense speeches, the evidence called by the defendant varied much more than that of the plaintiff. First, defendants testified in their own behalf less often; they (and their counsel) assumed that they would not automatically get a sympathetic hearing the way an injured member of the "weaker sex" would. Second, they called fewer witnesses and seldom submitted tokens or letters, except in unusual cases. One such instance was when the defense was mutual exoneration; if the plaintiff had written a letter to that effect, it might be used. In Railton v. Wilcox, the defendant had even tried to force the plaintiff to sign a written release, though she had refused to do so. As for witnesses, the primary way they were used was to try to prove bad character on the part of the plaintiff. In Jones v. James, three different men accused the plaintiff, Ann Jones, of "loose" conduct in an effort to refute her claims for compensation. In this instance, the attempt backfired, since the jury did

31Humphries v. Gain, ASSI 22/39 and Hampshire Chronicle, August 9, 1884, p. 7. The jury awarded the plaintiff £125.

32In Capron v. Denning, an Exeter case in 1866, the defense counsel, Mr. Karslake actually remarked on the defendant's disabilities in this area as part of his defense, pointing out, "There was always the plaintiff's family to speak to the terms on which a defendant stood; and it was useless for the man to deny their statements." The Exeter and Plymouth Gazette, July 27, 1866, p. 6; case also found in ASSI 22/28.

33Railton v. Wilcox, Manchester Evening News, April 12, 1880, p. 3.
not believe them, but many times calling such witnesses at least gave the jury a different side to consider. In one case in 1898, even the defendant's wife gave evidence for him.  

The danger of presenting a full-blown case was in giving the plaintiff's attorney a chance to cross-examine the defendant, a chance most of those barristers relished. Baron Huddleston summed up the defendant's disabilities succinctly in a Birmingham case in 1890:

Probably his not going into the box was a good deal in consequence of the judicious suggestions of his counsel, because it was not possible to imagine anything more absurd and ridiculous and painful than the position of a defendant who got into the box, and had to submit to counsel riddling him with all sorts of questions. It was quite obvious that Mr. Harris [plaintiff's barrister] was very much disappointed that he had not the opportunity of having what was called at the Bar "a go" at the defendant (laughter).

As could also be seen from their questioning of costumes (above), plaintiff's counsel pulled no punches in attacking the stories of the defendants'; they felt free to do so, since male defendants hesitated to appear weak and womanly by fainting or protesting that they were being bullied. In the process, the clever barristers succeeded in making the defendants look extremely silly, particularly if the man had tried to

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34 Jones v. James, ASSI 75/2 and Carmarthen Journal, March 6, 1888, p. 2. The jury awarded her £250 and the judge recommended the three witnesses be tried for perjury. For the 1898 case see Williams v. Dodd, ASSI 54/16 and "A Village Courtship," Manchester Evening Mail, April 25, 1898, p. 4.

35 "A Moseley Breach of Promise Case," Birmingham Daily Gazette, March 22, 1890, p. 6. Mr. Merewether, the defendant's barrister in Dainty v. Brown in 1870, made a similar remark, when taunted by the plaintiff's barrister for not putting his client on the stand: "He should just like to ask them [the jury] what chance a silly, nervous old man would have in the box against a bright young beauty, with an O'Malley of the day to cut the defendant into ribbands, from the hat that he carried in his hand to the shoes on his feet?" Northampton Mercury, July 23, 1870, p. 7. Case also found in ASSI 32/31.
flatly deny everything in the face of irrefutable evidence (which a surprising number did do). The plaintiff's counsel slowly whittled away the defendant's story until there was very little left, and this seldom failed to make the defendant look like a liar and a cheat. This danger explains why fewer defendants were willing to brave the witness box than plaintiffs.

While no plaintiff on record ever tried to prosecute her case alone, defendants defended themselves on occasion, especially when they were lower class. For example, in Drinkwater v. Woodhead in 1864, the defendant was not represented by anyone. He half-heartedly cross-examined the plaintiff's witnesses and made a short closing speech about how poor he was. He did so little, in fact, that the judge's associate on this assize recorded in his notes that the action was "undefended." Surprisingly, the lack of counsel did not hurt Woodhead or most defendants who did without; it was as if the judge and jury pitied them or at least recognized that they could not afford high damages if they could not afford to hire a barrister. In the 13 cases in which the defendant was his own counsel, only four paid damages of over £50 and five paid £30 or less; the median damage was £35. Although these are not derisory awards, they do show a recognition of the limited means of the defendants. The only disadvantage shown by these statistics was that the plaintiffs won in each case, although sometimes the awards were very small (40s. and £1

36See Mr. Little's skillful cross in Pattison v. Heslop, ASSI 54/14 and Carlisle Express and Examiner, July 4, 1896, p. 6, and Mr. Jordan in Williams v. Dodd, above.

37Drinkwater v. Woodhead, ASSI 15/8; Nottingham and Midland Counties Daily Express, March 11, 1864, p. 3.
in two cases).

Sometimes the cases truly did go undefended. The defendant at many times did not acknowledge the court date or put in an appearance. In other instances, solicitors advised their clients to let the judgement go by default. If there was no defense at the trial, the case automatically went to the Sheriff's or Undersheriff's court where the damages would be assessed. Thus, putting in no defense was advisable, e.g., when the case had a local appeal and the jury's sympathies were almost certain to be with the woman. At least a jury in a strange city (London or Bedford, for instance) would be less likely to be swayed by sentiment. The disadvantage was that once the case had gone to the Undersheriff, the judgement automatically went to the plaintiff; the only thing decided was the amount of damages. Hence, court costs also went to her as a matter of course; the defendant knew, then, that he would be paying a substantial amount. The only defense in this situation was in mitigation of damages, and even this paltry attempt was not always made. Awards, therefore, were normally large, although in these cases they would probably have been large anyway.\(^{38}\)

The final part of the trial was the summing up of both counsels and the judge. The final summations usually simply recapitulated the trial, although the plaintiff's barrister often tried to refute whatever defense had been put in. The judges' speeches, however, were a different story. Judges for the most part had a choice of three options: give a neutral

\(^{38}\)See, e.g., Ball v. Belcher, "A Cardiff Breach of Promise," South Wales Daily News, July 14, 1893, p. 4 and Morris v. Perkin, Staffordshire Times, April 3, 1875, p. 6. In the former the award was £350, in the latter, £175.
statement of the evidence, argue for the plaintiff, or urge the defendant's side. Most of the time, judges sided with the plaintiff, particularly in cases involving seductions. Baron Huddleston, e.g., was outraged at the behavior of Evan Jones in a case in 1879, and "in the course of his observations expressed his strong disapprobation of the conduct of a man who came into court and tried to save his pocket by blasting the character of a woman whose favours he had enjoyed." (The jury responded by finding for the plaintiff for £150.) But the woman need not have been seduced to get a chivalrous response from the judge; Mr. Justice Field was just as angry at the defendant in Hancock v. Davies who had courted a servant and induced her to give up her position, despite the fact that he was already married. Field said he had never heard of such a case and hoped he never did again; the man had been "base and brutal," and had not even had the courage to testify and try to explain himself. Also, judges were furious at "light" behavior from defendants. In a case in 1892, Samuel Southern, the defendant, constantly made jokes and laughed his way through his testimony. The judge was not amused:

His Lordship said that he could not see why the plaintiff should make the subject of a joke, and why the defendant should make this promise and break it, and come into the witness box and stand there giggling and shaking with stupid laughter, because he had done an injury to this old lady. The defendant's conduct in the witness box showed a disregard of decent feelings. He had done his best to insult her, and he seemed to look upon this as the best joke in the world. He had, however, had his laugh, and the jury just now would tell

him what that laugh would cost him. 40

Judges were careful not to overdo it, though, because the jury might award too much for the defendant to pay. Mr. Justice Brett, for instance, cautioned a jury in 1880 that although the defendant was "as bad a fellow as could come into court," they should not give too heavy damages, or the plaintiff would get nothing except consideration by the Bankruptcy Court. 41

Although judges were on the whole more sympathetic to the women bringing the cases, there were some actions that elicited the opposite response from them. Any number of things brought them to sum up for the defendant: an unconvincing case by the plaintiff, the fact that neither principal seemed praiseworthy, or a plaintiff who had "chased" the defendant. In short, as in the Divorce Court, the plaintiff had to pass a character test in order to collect, regardless of whether or not the defendant could. In Lamb v. Fryer in 1881, Mr. Justice Williams refuted the plaintiff's barrister's harsh words for the defendant, since there was no doubt to him that the latter had been courted by the plaintiff: "It would be affectation to say that the lady did not make love to him, as it was as plain as daylight. She acknowledged stealing kisses from him even before the engagement. His Lordship afterwards suggested that the case

40Hancock v. Davies, ASSI 73/3 and "A Swansea Breach of Promise Case," Swansea Herald and Neath Gazette, August 7, 1889, p. 3; Clough v. Southern, ASSI 54/11 and "Amusing Breach of Promise Case," Liverpool Mercury, April 14, 1892, p. 7. For more on judges' views about breach of promise cases, see Chapter 8.

41Langley v. Trickett, ASSI 54/2 and "An Amusing Local Breach of Promise Case," Manchester Evening News, February 3, 1880, p. 4. Apparently, this case was registered twice, since there are two different entries in the minute books, the first saying the action had been withdrawn. The second records a verdict for the plaintiff of £25.
was one for reasonable damages.\textsuperscript{42} In cases of prosaic or short courtships, justices sometimes felt that the plaintiff had not lost very much. Baron Huddleston's remarks on \textit{Owens v. Williams} in 1879 were typical:

\ldots what had the plaintiff lost? True, she had lost the position of being a farmer's wife, but the man was, according to his own statements, involved over head and ears in debt. It appeared to have been simply a business affair by both the old people, and the jury must weigh the evidence on both sides and decide accordingly.\textsuperscript{43}

Most interestingly, there were cases in which the judge did not approve of the action being brought, not because of any philosophic reservations about breach of promise of marriage suits, but because neither party could hope to get anything out of it. In \textit{Parker v. Stockwell} in 1899, both the plaintiff and defendant were young factory workers. The judge admitted that there was a promise and a breach, but in his summation, he stressed that this was precisely the kind of case that should never be brought, since both parties were too poor to pay costs or damages. Only the solicitors benefitted, and "He did not think it mattered whether the jury gave the plaintiff a million pounds or a

\textsuperscript{42}"Heavy Damages Against a Curate," \textit{Liverpool Daily Post}, August 9, 1881, p. 7.

\textsuperscript{43}ASSI 59/142 and "Breach of Promise of Marriage: A Matter of Business Courtship," \textit{Carnarvon and Denbigh Herald}, July 19, 1879, p. 7. The jury in this case followed the judge's lead and found for the defendant. An example of a judge summing up for the defendant because the plaintiff's evidence was weak is \textit{Norris v. Burnett}, above, p. 8. Mr. Justice Lush, in disgust, remarked that "some people seemed to have a very morbid appetite for litigation of this kind, and he did not know that he ever had been called upon to try such a caricature--for it was nothing more or less--of legal proceedings. He was bound to say that the young woman (the plaintiff) did not look as if her feelings were very much wounded or hurt, and it was impossible to suppose that the previous engagement had taken very deep root."
shilling, for he did not suppose the girl would get a brass farthing." Mr. Justice Cave made similar remarks in a Welsh case in 1893, since the plaintiff was a servant and the defendant almost as poor: "he did not think it desirable that such cases should be brought, for they did no good, even from the girl's point of view. Defendant was a police-constable getting 26s. a week, and out of that had about 5s. or 6s. when everything was paid. What damages could he pay out of that? Besides, there were the costs of the action, and if he paid anything it would go into the solicitor's pocket. Therefore, actions like that would do no good." 44 Obviously, these judges were not "against" the plaintiff, but the end result was the same, since they recommended that the jury either find for the defendant or give only nominal damages.

After the judge had had his say, the matter was left in the hands of the jury, except in the rare cases in which both parties had agreed to have only the judge hear the case. The jury was either "common" or "special." A common jury was simply an ordinary panel of men; a special jury was "a specially qualified jury . . . obtainable at the request of one of the parties." Special juries were believed to have more than average intelligence, since they contained men of higher station. Thomas Crispe, however, insisted that by the early twentieth century, trying to get "men of higher intelligence and standard than the ordinary common juryman" was a waste of time and money for clients. "Now a common jury at the Mayor's Court is frequently far above some of the specials at

Westminster," he added. Despite Crispe's doubts, many of the litigants in breach of promise cases requested to have a special jury, and the request was almost always granted. In breach of promise cases, it was usually the defense that asked for the special jury, but plaintiffs were known to do it, too.

Juries were entirely independent in making their decision about who won the case and the amount of damages; they could follow the advice of the judge or they could ignore it completely. Most of the time, the judge's opinion strongly influenced the jury, but they could disregard him if they chose; juries took that option on occasion, especially when the judge had summed up against the plaintiff. When the judge summed up for the plaintiff, the jury agreed with him 77 percent of the time. But when the judge summed up for the defendant, the jury found as he suggested only 51 percent of the time. They particularly gave verdicts to plaintiffs based on questionable evidence if the plaintiff had been seduced. They also tended to ignore evidence that the defendant did not have enough money to pay large damages. In Lamb v. Fryer (mentioned above), the jury ignored Mr. Justice Williams' pleas for moderate damages, and awarded Kate Lamb £1000.

The average length of a breach of promise case was between two and four hours, although some were extremely brief and others lasted up to

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three or four days. Juries often took very little time to come to a decision, not even leaving the box, or taking a "short consultation." But in more complicated cases, they would have to be "locked up" until they could come to a decision. In Allit v. Bradley, the jury conferred for a few minutes, and then the foreman explained to the judge that they were divided 9 to 3. The judge ordered them into a private room for an hour until they finally found for the defendant. In some cases, the jury never agreed. In Allen v. Hutchings, the jury deliberated for two hours and could not come up with a verdict. They were eventually discharged without ever settling the issue. This was the worst possible outcome for the plaintiff, since she would now be put to double the expense, having to bring the case over again at the next assize. Such a prospect probably led some plaintiffs to drop the suit entirely, and so worked to the defendant's advantage; however, if the plaintiff persevered, the defendant's expenses also doubled. Judges did their best to avoid this result, urging the jury to keep at it until they could come to some kind of agreement, since the time and money of both parties as well as the court was at stake. In Bowen v. Tucker, the jury could not agree to the

46See, e.g., Jones v. Lloyd, ASSI 59/14 (1891), which lasted almost two hours, according to the judge's associate; in the same assize meeting, Maddocks v. Bennett lasted 6 hours and 20 minutes, while Clark v. Daintith went on for only slightly above an hour. In 1888, Williams v. Roberts, ASSI 59/9, went from 11:30 a.m. to 1:45 p.m., according to the associate's notes. Yet celebrated or hotly contested trials could last days. Day v. Roberts (1890) lasted three days and Smith v. Ferrers (1846) went on for four (see Chapter Eight for citations and details of these cases).

47Allit v. Bradley, ASSI 1/66 and ASSI 8/1 and Oxford Times, July 7, 1877, p. 2; Allen v. Hutchings, Times, March 22, 1878, p. 10. Other examples of hung juries include: the second trial of Wiedemann v. Walpole, cited in Chapter One; Hairs v. Elliot, Times, April 18, 1890, p. 3 and April 19, 1890, pp. 5-6; and Otte v. Grant, Times, November 27, 1868, p. 11.
damages, and the judge "pointed out that a minority might well give way to that matter, as if they did not agree the case would have to come over again at a terrible expense to both parties." Under his insistence, the jury deliberated another fifteen minutes and managed to agree to a sum of £100. Fortunately for jilted lovers, a hung jury was a rare thing in breach of promise cases, though they did deliberate for long periods of time on difficult cases.

The last word in the assize trial was that of the judge. He pronounced whatever judgement that the jury had decided and then certified which party would pay costs. Almost always, the party that lost the decision had to pay costs for both (including solicitor's fees), although in certain rare instances, judges had each party pay his/her own. If the jury's decision seemed completely wrong or against the evidence, the judge theoretically could set it aside and make his own decision, but in no breach of promise case on record did a judge ever do this.

However, judges could help the "wronged" side in less drastic ways. As stated above, costs were entirely up to the judge, and when he felt the verdict was incorrect he could deny them to the victor. For example, in Lewis v. Molyneux, the jury ignored the judge's opinion and gave the plaintiff £20; the judge responded by denying Margaret Lewis costs. Mr. Justice Manisty justified his decision by saying, "The plaintiff was very fortunate in finding a jury who thought that she had sustained damage to the extent of £20 by means of her not getting a husband whom she spurned and despised until he married another woman. He (the learned judge)  

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48 Bowden v. Tucker, ASSI 22/40 and Western Times, July 23, 1889, p. 5.
thought it was an improper action to have been brought." Judges could also stay execution of high awards to give the defendant a chance to appeal (Mr. Justice Williams did so in Lamb v. Fryer, the case in which a curate was expected to pay £1000). Also judges ordered payments spread out at regular intervals if the defendant could not pay the entire amount immediately. In Chilton v. Hawkes in 1889, the defendant agreed to a verdict for the plaintiff of £750, and the court ordered that it be paid in three installments of £250 for the next twelve months (one immediately, one in six months, and one in twelve months). By the same token, however, the judge at times ordered immediate execution of decisions to keep the defendant from avoiding payment. This was common particularly if the defendant did not come to the trial, since his intention of ignoring the proceedings was obvious.

The end of the trial at the assizes was not always the end of the issue. A few cases were appealed to the central courts, either on a technical point of law (as in using the Infants' Relief Act or the Evidence Amendment Act) or in arguing that the decision was against the

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49*Liverpool Mercury*, November 7, 1878, p. 8. For Lamb v. Fryer, see above. For stays of execution see *Dales v. Mcmaster*, ASSI 54/3 and *Liverpool Mercury*, May 22, 1884, p. 6; and May 23, 1884, p. 5 and p. 8; and *Theophilus v. Howard*, ASSI 75/2 and *The Cardiff Times*, August 1, 1874, p. 6. In the former, the award was for £400 and execution stayed for ten days; in the latter it was £250 and was stayed for the defendant's appeal on the grounds of excessive damages.

50Chilton v. Hawkes, ASSI 1/68 and *Shrewsbury Chronicle*, March 15, 1889, p. 6. Another example of spreading out payments is Gibson v. Moore in 1885, ASSI 59/3. In this case, the verdict was for the plaintiff by consent for £200 and costs. The damages were to be paid in four equal installments on December 25, 1885, March 25, 1886, June 24, 1886, and December 25, 1886. Additionally, if the defendant defaulted for 21 days or more or declared bankruptcy, the entire amount would become due immediately. For a case with immediate execution see *Langley v. Trickett*, above.
evidence, the damages were too high, or that the judge had misdirected the jury in his summation. If the defeated party succeeded in getting a hearing, both parties then had the expense of a second trial, in which most of the facts of the case were reiterated. And if the appeal succeeded, there would be yet another trial, since most appeals usually resulted in a new trial rather than a reversed judgement. For the most part, defendants (or plaintiffs) had little luck in appealing on anything except the technical points of law. Central court judges had great respect for the decisions of the jury; their discretion on damages, especially, was seldom gainsaid. The Exchequer Court refused to overturn an 1872 decision in favor of the plaintiff in Hickey v. Campion, despite the fact that her evidence was unconvincing, because of their belief in the sanctity of the jury. As Baron Pigot put it, "Instances are many in which I would have no hesitation in pursuing a different course, but, as a general rule, the considered verdict of a jury should be sustained, and were the evidence far stronger than it is to impeach, I should not disturb the verdict."51 The decisions on points of law, on the other hand (as seen in Chapter One), were decided on a case by case basis; the jury's discretion was not at stake in these suits since laymen were not expected to understand fine legal distinctions.

Even in cases that were not appealed, however, the actual outcome

was often still in question. The jury might award £100 or £500 to the plaintiff, but there was no guarantee that she would receive it. Time and again it was obvious during the trials that defendants began hiding assets the moment the writ was served on them. James Hamer changed the name on his pub to "James Greenhalgh" to give the impression he no longer owned it; James Wilken quickly transferred his shares in his fishing and boat business to his father; James Haythornthwaite transferred his two houses to his son even before he had been served with the writ; Henry Tucker "sold" his farm to his new father-in-law when the action commenced, acting merely as a tenant until the case was over.52 Furthermore, there was always the threat that the defendant would disappear for long enough to avoid paying even nominal damages. In 1889, Simeon Holden had tried to escape to America to forestall being served with the writ, and he made no effort to defend himself at the assizes or the Undersheriff’s court. The defendant in \textit{Drake v. Blake} planned to leave England if the jury found against him; the plaintiff’s barrister asked for immediate execution, but since the action went undefended, Blake had probably already fled.53 In most cases there is simply no way to determine if the damages a jury gave ever reached the pocket of the plaintiff, but it is clear from these examples that those awards very often did not.

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\textsuperscript{53}Cowper \textit{v. Holden}, ASSI 54/7 and \textit{Manchester Examiner and Times}, March 6, 1889, p. 3; \textit{Drake v. Blake}, ASSI 22/32 and \textit{Winchester Herald}, March 9, 1872, p. 3. Another example of a defendant who fled is George Thompson, who went to Australia at the beginning of Margaret Softley’s action against him to avoid the damages. She was awarded £500, but probably did not get it. \textit{Times}, February 19, 1883, p. 10.
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Men would go to extraordinary lengths to avoid paying anything, as two examples from the 1890s demonstrate. The humbler case was that of Eliza Kennedy, a "mantle-maker," against Thomas McCann, a boot and shoe maker in Manchester. Eliza was barely eighteen when Thomas promised to marry her in December of 1892. The couple decided to wed when Eliza turned twenty, but in December of 1894, her lover became cool to her and eventually refused to fulfill the promise. (He claimed mutual exoneration.) This was one of those rare trials without a jury, and the judge decided that there had been a definite promise. In addition, the judge remarked that there was no blemish on the character of the plaintiff, while McCann "appeared to have acted towards her in an unmanly and unfeeling way." He therefore gave a judgement for Eliza for £75, with costs, on April 18, 1895.54

By February of 1896, however, the plaintiff had yet to see a shilling of her award. Before the trial, McCann had put his business in his father's name and all his stocks in his mother's. When the court insisted he pay the damages anyway, he proceeded to run away to America, where he stayed until December of 1895. When he returned, Eliza's solicitors pressed him for the money again; McCann's response was to declare bankruptcy. At his bankruptcy hearing, he claimed assets of £50 savings, £16 in a building society, and other miscellaneous assets of about £7, out of which he had to pay her award (£75), her costs (£46), and his own solicitor's fees (£25). He offered to settle with Miss Kennedy for £20, but since this amount would not even pay for her costs, she

54ASSI 54/13 and Manchester Evening Mail, April 17, 1895, p. 3 and April 18, 1895, p. 2. Judge's remarks on the latter date and page.
indignantly refused to accept it. The Bankruptcy Court was unimpressed, particularly since he had admitted in the earlier trial to having £400 savings, but there was little they could do when they could not uncover these funds. Although the record is not complete, it is likely that Eliza had to settle for a much reduced award, all of which would go to her counsel.\footnote{Manchester Evening Mail, February 14, 1896, p. 2 has McCann's bankruptcy proceedings. Leathers v. Marshall was an 1871 case that also ended in bankruptcy, the defendant allegedly having said he "'would sooner rot in prison' than pay the damages and costs to the young woman." Evidently, Marshall succeeded in not paying, since he claimed to be of "weak intellect" and thus unable to earn. "Breach of Promise," The Lady's Own Paper, 8 (September 16, 1871), p. 187.}

A more exalted example is a celebrated case in 1890, Knowles v. Duncan.\footnote{ASSI 32/39 and Times, August 13, 1890, p. 8. Most of the details have been taken from Horace Wyndham, "Romance that Failed," Dramas of the Law (London: Hutchinson and Company, 1936), pp. 169-205.} The plaintiff in the case was the twenty year old Gladys Knowles, granddaughter of Sir Francis Knowles, third baronet. Gladys lived with her mother, a widow, in Fulham, and had few employments to occupy her time. One day in 1889, she received a free copy of The Matrimonial News, a matchmaking publication. "For fun," Gladys decided to put in an advertisement herself and soon had an invitation to meet the proprietor, Leslie Fraser Duncan, in his office. She went for the appointment and had a pleasant talk with the 70-year old editor, so pleasant, in fact, that she was invited a second time. That next visit, Gladys brought her mother, and Duncan asked permission to visit Miss Knowles; the very impressed Mrs. Knowles granted his request. Within a week, the two had become engaged.

Though the engagement had been quickly contracted, setting a wedding
date proved to be a bigger problem. Duncan spent the next several weeks promising to get a special license, but in reality merely trying to get Knowles to spend the night with him either at his estate or a hotel. Knowles was silly enough to actually go to Gray's Court (his home) unchaperoned twice; she also stayed at a hotel with her fiancé, although she sat up all night in the bathroom rather than share a room with him. Although the engagement continued for a few weeks after this episode, Knowles finally realized that her elderly suitor had no intention of fulfilling his obligations. With her mother's support, she sued for breach of promise, asking for £25,000 damages.

Leslie Duncan did not come to the trial nor did his counsel offer much defense. William Willis, the plaintiff's barrister, was able to paint the editor as a dissipated old roué out to seduce an innocent young gentlewoman, and Duncan's case was further weakened by the fact that he had threatened Knowles with exposure as well as having since married another of his clients. The jury had no hesitation in finding for the plaintiff, damages £10,000.

But Knowles' problems were beginning, not ending, with the decision of the jury. Duncan ignored the judgment and paid not one pence; when the court levied execution, his response was immediately to clear out his entire house. The court then declared him bankrupt, so Duncan fled to France, taking his business ledgers and all the cash he could muster. He ignored the receiving-order that the Bankruptcy Court levied and refused to send in his statement of assets. The Court then prosecuted him for concealing assets. At this point, Duncan realized that he had better face the proceedings, and he returned to England to stand public examination.
The Official Receiver and other examiners were severe with him; it became more and more evident that Duncan had hidden almost all of his assets. He continued to insist that the *Matrimonial News* had lost money, that his wife supported him, and that he had given away the £6000 he had won on the Stock Exchange as a gift to two young women. These excuses were obviously bogus, and the officials charged him with several violations of the Bankruptcy Act in the police courts. At his committal, the magistrate discovered that the two young women did not exist and that Duncan had instead deposited the £6000 in a safe deposit under a false name. The court therefore promptly committed Duncan to stand trial in the Central Criminal Court, and Leslie Duncan spent the next six months in prison.

Wisely, Duncan did not waste the period he was behind bars; instead, he quickly set to work appealing the judgement on the grounds of excessive damages. The appeal trial was held before two judges and the Master of the Rolls a few weeks later. Sir Edward Clarke argued for the defendant, pointing out the silly behavior of mother and daughter as well as the obvious unsuitability of Duncan as a husband. Lord Esher, Lord Justice Bowen, and Lord Justice Fry agreed to reduce the award to £6,500, but only if the entire amount were paid in one month. Though they were disgusted by Duncan’s character and actions, they also put some blame on Knowles. Before she had received anything, then, the plaintiff found that her award was £3,500 less.

The criminal trial was something of an anti-climax since most of the issues had been settled in the bankruptcy proceedings and the appeals court; Duncan was found guilty of concealing assets and sentenced to five more days in prison in addition to the six months he had already served.
He then finally paid Gladys the £6,500, two-thirds of the award she had been given by the jury over half a year before. Even afterwards, Knowles had one more scrape with the law, since she sued an English publication, Hawk, for libel in its report of the case. She lost that case completely and did not even receive an apology from the editors.

In many ways, Gladys Knowles had more trouble out of the breach of promise suit than she had benefits. Her legal expenses, at least in the short run, were quite high; in addition there was the acute embarrassment of parading her mistakes in three trials. Particularly the appeal, in which she and her mother were called "silly" by even a sympathetic judge, was gruelling. Her only consolation was that she had managed to cause at least as much trouble to the defendant; it is also difficult to pity anyone who had received £6,500 from a breach of promise case. Certainly, she came out of her ordeal much better off than Eliza Kennedy.

Both in Kennedy v. McCann and Knowles v. Duncan, the plaintiffs had to take what they could get after Bankruptcy proceedings, but their only personal loss was embarrassment. In the case of Barnard v. Marks, however, the plaintiff lost much more. The two young people in this case were Jewish; Miss Barnard’s father was an umbrella manufacturer, and Mr. Marks was a picture-frame maker. They became engaged after a short acquaintanceship and made a formal betrothal, as was customary in the Jewish community. Everything went well until Marks’ premises burned down; he had full insurance and thus came into a great deal of money. Apparently, this sudden success made Marks think he could do better than the Barnard family, and he broke the engagement. If he had not been greedy, the affair would probably have ended there. But Marks then
decided that he wanted back the presents he had given his fiancée, since these included some valuable paintings. Barnard refused to return them and Marks sued her in the police court. The police court refused jurisdiction, and Marks then tried to fight the decision in the County Court, but he lost again. Barnard, therefore, got to keep the pictures, but her family felt humiliated.

Their retaliation was a breach of promise of marriage suit to which Marks offered no defense. Barnard won the case, but Marks predictably refused to pay the damages or her costs. Rather than try to force him through the courts, the plaintiff’s brother, Frederick, decided to get back at the defendant another way. Frederick found some evidence that Marks had committed arson in order to get the insurance award that had begun the bitter family feud in the first place. He informed Marks that unless he paid the damages, he would report his findings to the insurance company. Only a few days later, the two men met on a back street, presumably to discuss the issue. But Marks had not come to make arrangements for paying; he instead brought a gun and shot Frederick three times, killing him instantly. Although he pleaded insanity at his trial, he was found guilty of murder and sentenced to be hanged, a sentence that was not commuted. Rather than receiving any of her award, Miss Barnard had to mourn two deaths--that of her faithful brother as well as that of her faithless fiancé. Certainly she could not have felt much satisfaction at the results of her breach of promise suit.57

57This story is told in Crispe, Reminiscences of a K.C., pp. 132-135. He gives no date, but his lifetime at the bar was in the late Victorian period. Serjeant Ballantine was the plaintiff’s barrister (Crispe was his junior), so it could not have been as late as the preceding two examples.
Being declared the "winner" in a legal battle, then, did not necessarily ensure happiness. Interestingly, this fact was true even when the damages were paid in full (or in the case of the defendant, when the jury decided for him). Some breach of promise cases resulted in violence even when both parties behaved well after the trial. For example, in 1883, Ada Buhrer sued her lover, a man named Holloway, for breach of promise. She won only 40s. and the judge did not give her costs; this was the same as a victory for the defendant. Yet Holloway, shortly after the proceedings, "took as much phosphorus as he though would kill him, philosophically concealed the remainder up the chimney for future use, if necessary, confessed that Ada had been the death of him, and expired."56 The publicity and worry of the trial had apparently been too much for him, and at his inquest, the jury gave a verdict of "suicide while temporarily insane." His victory in court clearly gave him no peace from his mental problems.

Nor were winning plaintiffs always pleased with their victories. Mary Hamilton brought a breach of promise case against her long-time lover in 1896. She had lived with Joseph Jacobs for ten years and had had two children with him (both of which had died). He kept promising to marry

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56Pump Court 1 (December 1883), p. 98; for a report of the action, see Times, November 8, 1883, p. 3. It is possible that Buhrer was unnerved by the image he cut during the trial, since the jury based the low award on the fact that "they thought the plaintiff had had a very lucky escape" in not marrying him. This was a particularly sad case, since Mr. Buhrer was a widower with five children who were left orphaned after his death. Another suicide was Augustus Griffith, who killed himself twelve days after being served with the writ by Catherine Austin. She persisted in the suit, despite the fact that he had left her £400 in his will. She was nonsuited by Lord Coleridge who was so horrified by her greed that his "desire to sustain that form of action had received a severe shock." Times, May 6, 1893, p. 18.
her, but after ten years she realized that he was not going to do so, and she sued him, winning and receiving damages. Yet after the trial, Mary refused to accept the award, saying "it was marriage she wanted, and not money." She only took the damages when she was forced to it by desperate poverty. She then broke into Joseph's house, intending to commit suicide there (she had carbolic acid with her and two farewell letters). She was caught before she succeeded in her purpose and committed for trial by the magistrates. Jacobs did not want to press charges; he therefore offered to pay her £1 per week for the rest of her life and her passage to her parents' home if the magistrates would let her go. The JPs were happy to agree to this plan and dismissed her into the custody of two friends who were to escort her to her parents' house.

Mary went docilely with her friends toward the station, but then asked if she could stop in a public bathing house. Her female companion agreed, and Mary went inside and was there for quite a long time. Her escort became concerned and went in after her, finding Mary sitting in one of the rooms with a bundle of old linens beside her. Mary had asked the attendant to burn the linens, but they felt so heavy that the attendant decided to look inside first. Inside the package was a dead infant, only a few days old. Mary then admitted that she had given birth to Jacob's third child while she was in the jail cell, awaiting her trial before the magistrates, and had hidden it under her skirts. The poor woman was then taken back before the magistrates on a charge of concealment of birth. During this trial, she fainted dead away, being in an advanced stage of puerperal fever. The magistrates allowed her to go to her parents,
feeling she had suffered enough.59

Certainly these examples are too few to afford many generalizations; probably most of the defendants paid the awards (or at least part of them), and most winners felt some pleasure at having convinced a judge and jury of their side of the dispute. But these cases offer cautionary lessons: an award from a jury was not the same as money in the hand, nor did winning a case give women (or men) everything that they wanted. Large damages were better than nothing, but they were not the comfort and prestige of marriage, particularly when the defendant was of a higher social station. After the extensive trouble and expense of a trial in the high court, both plaintiffs and defendants may have found themselves feeling empty, poorer, or even publicly humiliated. They may even have wondered if formal exoneration was worth the complex and expensive process of dissecting a broken relationship.

CHAPTER THREE--A "WOMAN'S SUIT":
STATISTICS, 1859-1921

In the first half of the nineteenth century, there was no regularized procedure for tabulating statistics about civil or criminal proceedings in the English courts. After that date, however, the English government compiled reports called Judicial Statistics, giving surprisingly detailed information on each year from 1859 to the present (excluding only three years of World War One). Until 1921, these returns provided the results and amounts of awards in a wide variety of legal actions. From these statistics we can discern the number of breach of promise cases brought in the late nineteenth century and map changes, providing a context in which to evaluate the judgment of contemporaries about the "epidemic" of such cases. In addition, the Judicial Statistics provide a background with which to compare the 875 breach of promise cases that comprise the data base for this study.¹

The number of breach of promise cases did go up substantially in the last few decades of the nineteenth century (see Charts One and Two). The average number of cases in the 1860s was 34; in the 1870s, 59; in the 1880s, 48; and in the 1890s, 67. In other words, the average number of actions brought had doubled in only 30 years (with a small dip in the 1880s). Most of the increase was at the assize level, though the central courts were not immune. The influence of the Evidence Amendment Act of 1869 is obvious; far more cases were brought in the 1870s than the decade

¹The first part of this chapter is based on the sixty-one volumes of Parliamentary Papers that include the Civil Judicial Statistics for England and Wales from 1859 to 1921. Exact citations of volumes and pages will be found in a note on sources at the end of the chapter.
Contemporaries' perception that more people would bring cases if they could give evidence themselves appears to be true; plaintiffs were clearly taking advantage of judges' lenient interpretation of the "material evidence" clause of that law. The other big surge was after World War One, when men returned from the front unwilling to fulfill promises made before or during the fighting. There were 95 cases in 1919, 84 in 1920, and 67 in 1921, compared to an average of 54 cases per year in the early teens. Broken relationships because of the stress of peacetime adjustments is not surprising; there was a similar rise in
Chart 2
Cases by Court, 1859-1921

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 divorces after World War One.²

As we have noted, there was strong criticism of breach of promise actions which began in the 1860s and continued through the rest of the century,³ including several attempts to abolish the action. This opposition of legal professionals and editors of newspapers appeared to have little impact on the decision of a man or woman to bring the suit. Despite elite ridicule, the members of the general populace continued to ask for monetary compensation for broken hearts. Part of the shrillness of the opponents of the action may have stemmed from frustration, since

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³For a discussion of the controversy, see Chapters 8 and 9.
### TABLE ONE

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("Dismissed" includes cases that struck out. "Juror withdrawn" includes cases where a juror was discharged. "Rest" includes cases listed as "Other" in the Judicial Statistics plus those listed as change of venue, stay, reserved, stet processus, by consent, and referred to referee.)
they apparently had little or no impact on the public at large.

Nor did they influence juries in their decisions in breach of promise cases. Between 1859 and 1921, plaintiffs won 82% of the cases that went to court, leaving aside those that were withdrawn (see Table One and Chart Three).\(^4\) Defendants won only 9% of the cases that got to trial;

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**Chart 3**

Total Results of Trials

(Other includes cases other, by consent, and referred to referee and excludes change of venue, stet processus, stays, or reserved. This chart also excludes cases remanent and pending to avoid duplication.)

if cases that were withdrawn are included (which they probably should be, since most involved paying the plaintiff to withdraw the action), defendants won only 7% of the time. There was, however, a slight decrease

\(^4\)This percentage breaks down to 84% at the assize level and 78% in the central courts.
in the winning percentage of the plaintiffs over time. In the 1860s, plaintiffs won 86% of the time; in the 1870s, 84%; in the 1880s, 80%, and in the 1890s, 80%. Defendants' winning percentage, on the other hand, went up a bit from 6% in the 1860s to over 9% in the 1890s. Apparently, as more and more people brought these actions, juries became more likely to weed out the dubious or undeserving cases. A great deal was written about the stupidity of juries in these cases, but it is clear that they were discriminating more carefully as the action became easier to bring. Nevertheless, even an 80% winning margin was impressive for the plaintiffs and underscores the advantages they had in this action.

As stated in Chapter Two, twenty-two percent of these cases were withdrawn before getting to court, and this figure in fact probably conceals large numbers of cases that were settled immediately before or during the trial. It is impossible to know how many, since they are officially recorded as wins for either the plaintiff or defendant. The percentage of cases so settled increased dramatically in the 1890s and early 1900s. An average of 12% of breach of promise actions were withdrawn between 1860 and 1889; this increased to 24% in the 1890s and 35% in the 1900s. Here perhaps is the only influence that opponents of breach of promise had: the publicity of such actions encouraged more plaintiffs to try to settle the issue before it reached the public eye. Defendants, of course, may have been encouraged to resist more vigorously, but their winning percentage was so low that they possibly preferred

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5However, one can get an idea of the proportions by looking at the cases said to be awarded "by consent to the plaintiff." Of the 86 so named by the judge's associate, 53 were settled immediately before the trial, and 10 were settled in the middle of the trial.
settling, too, in an effort to reduce their costs. The increase in withdrawals undoubtedly benefited the plaintiffs, since their winning percentage was decreasing; a settlement assured them of some financial award and lessened their expenses as well.

As can be seen in Table One, there were other outcomes besides an early withdrawal or a clear victory for one side or the other. In 32 of the cases brought, the judge nonsuited the plaintiff or dismissed the action, and in 22 of the cases, the action was struck out, usually because the plaintiff did not appear when the case was called in court. These cases, therefore, can also be considered victories for the defense, although their number is small. Information before 1869 is scarce, which makes it impossible to say if the "material evidence" rule cause an increase in dismissals and nonsuits; neither was used very much before 1869, but they were hardly overused afterwards (an average of 1.2 times a year after 1869 for all three categories).

It is important also to clarify the difference between a simple "withdrawal" (often referred to in the reports as "record withdrawn by leave of the court") and a "juror withdrawn". An effective way to end a trial was to "withdraw a juror"; the loss of one of the twelve men in the box automatically ended it. This maneuver was one of the ways to end a case in the middle of the trial. When a juror was withdrawn, then, it might mean simply that the two parties had come to terms as the trial progressed. But withdrawing a juror could also mean that the plaintiff was forced to give up. Occasionally, judges asked the plaintiff's barristers to withdraw a juror to end the trial rather than simply nonsuiting; thus, actions stopped by this device were often hidden
victories for the defense. Unfortunately, it is impossible to say how often this is true, because these case leave few records.

Various other outcomes were possible, such as a change of venue (11 times in 50 years), referral to a referee (only once in breach of promise cases, though this was common in other contract disputes), and stays of execution (24 in all). However, the only other category with significant numbers were remanents and pending cases. These increased over time, showing how the courts were slowing in the late Victorian period (part of the reason more and more actions were moved to the County Courts, including breach of promise in 1888). 6 Just as these numbers began to decline, between 1910 and 1917, the boom in litigation after the war pushed them back up again. They may very well have declined again in the twenties, but there is no way to know, since the Judicial Statistics stopped differentiating cases in 1921.

Awards in breach of promise cases were well worth the effort of bringing the suit, at least on average (see Table Two and Chart Four). The average award for plaintiffs was over £200 in the 1860s and stayed above that level until the early 20th century. Awards showed a steady rise until the 1890s, when they began to go back down. It is not surprising that the critics of breach of promise were appalled at the large sums of money that were being awarded. However, the few gigantic awards each year inflates these averages considerably. In the entire period between 1859 and 1921, almost 63% of the awards given were between £21 and £200 and another 17.5% were between £201 and £500, meaning that

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** Totals: 4 118 370 362 447 511 224 72 **

* Only central courts and 3 assize cases available
** Only assize courts available
*** Only central courts available

I computed the average awards for the years without exact information simply by using an average award for the decade in question. Of course, all such numbers are tentative, but the overall trends are not effected.
80% of breach of promise actions resulted in these middling (though hardly derisory) amounts of money. Only 122 plaintiffs (5.7%) were awarded over £500 and 296 (14%) got £20 or less. Clearly, the odds of winning substantial awards in a breach of promise action were good, though they seldom brought fabulous wealth. Not surprisingly, plaintiffs received higher awards in the High Courts in London, where celebrated cases were brought, than in the assizes, where a broader range of income groups and classes were represented.

Chart 4

Average Awards Per Decade

The "Judicial Statistics," though highly detailed in some ways, are limited. There is no way to know, for example, the sex of the plaintiffs and defendants, the amount claimed in these cases, the uses of common and special juries, where the actions were brought, or many other interesting
facts. For such conclusions, therefore, I have relied on a data base of 875 breach of promise cases found in the court records and newspapers in England. Most of these cases (838) were nineteenth century; 8 were eighteenth and 28 were twentieth (2 had no date). It is only in the 19th century that the lower court cases have been systematically studied, and most of these were in the late nineteenth century because the records before the 1870s are sketchy at best. Despite these and other limitations, the data base yields a number of conclusions worth noting.

The assumption that solicitors claimed enormous amounts for the damage of a breach of promise is supported by an analysis of this group of actions. The average claim, in fact, was £1193, though this figure is inflated because of a few gigantic claims (such as Knowles v. Duncan, at £25,000). The median claimed was much lower, at £500. In contrast, the average amount awarded was only £370, or one-fourth of the total claims; the median awarded was only £100, or one-fifth of the median amount claimed. This analysis is not exact, since there is far more information about amounts awarded than amounts claimed (638 records to 422). In only 308 cases are both amounts known; in these, there was a different variation. The average amount claimed was quite similar, at £1158, and the median amount was exactly the same at £500, but the average amount awarded was quite a bit less, only £266 (roughly one-fifth) and the median was only £75. Plaintiffs, then, could expect to get only twenty percent (or even less) of the damages they demanded when they brought the action. Though legal professionals expected to get far less than they claimed, the plaintiffs may well have found comparatively small awards disappointing.

It is impossible to determine changes over time from this sample.
At first sight, average awards appear to have been considerably higher in the eighteenth century. The average of that century was £1220 (median of £1000), while the average for the nineteenth was £273 (median £100). The amount then again goes up drastically in the twentieth, at £4410 for the average and £600 for the median. However, this increase is simply a result of the nature of the data base, since lower court cases have been analyzed only in the nineteenth century. These vast increases for the most part simply show that appellate cases (and cases written up in the *Annual Register*) tended to be the ones that involved wealthy people and resulted in large awards, although in the twentieth century, it could also reflect the inflation of the pound as the century went on.

The differences in the gender of plaintiffs was more significant. First, the perception that breach of promise of marriage was a "woman's action" was clearly based on fact. Out of the 795 records in which the sex is known, 773 plaintiffs were female while only 22 were male. In other words, 97% of these actions were brought by women, an overwhelmingly majority. Women bringing the suit won about 76% of the time (588 out of 773); men, on the other hand, won 59% of the time (57% in the nineteenth century). The winning figures for male plaintiffs seems higher than it actual was, because many times men won derisory damages, such as one farthing or forty shillings. These instances show up in the average and median awards: for female plaintiffs it was £387 for the average and £100 for the median, while the average for males it was £190 on average and a mere £20 as a median award. And men’s awards were even lower in the nineteenth century; their average was only £156 and the median was £12.50. These amounts were considerably lower than the those of the female
plaintiffs in the nineteenth century at £280 for an average and £100 median. Also, the awards male plaintiffs received did not follow the pattern found in the Judicial Statistics. Of the twelve male winners in the 19th century, only 1 got an award between £1000 and 501; 2 between £300 and 201; 2 between £200 and 51, but 7 at £20 or below. It is clear that not only did women win more often, but they won consistently higher damages than men did.

As has been noted, it was often defendants in these actions who asked for the more expensive special jury to hear the trial. Did doing so help the defense or hurt it? There are 391 records in which the type of jury was specified. In 111 of the cases, the special jury was called as opposed to 280 with common juries (28% to 72%). The plaintiffs’ winning percentage was only 63% (below the overall average) in cases with special juries, while defendants won about their average amount (9%). Common jury cases resulted in a victory for the plaintiff 81% of the time, with the defendants winning a paltry 5%. In this sense, then, defendants were wise to ask for special juries. On the other hand, cases with special juries resulted in far higher average awards, £899 (median of £300) to the £165 (median of £80) given by common juries. Part of the reason was that since special juries were more expensive, it was wealthier people who asked for them; the wealthier the defendant, the more likely the awards would be high. Poorer people stayed with common juries, and the awards were closer to the average (though still lower). Often, too, the celebrated cases in the central courts used special juries, and these cases often resulted in huge awards. Still, it seems clear that special juries were more generous than common ones. In other words, special
juries were not an unmixed blessing for the defense; if the verdict went against the defendant, s/he would quite likely pay a higher price for it.

Few cases were retried on appeal. Even though almost all of the 18th and 20th century cases are appellate, the total number of cases that went to a second trial was seventy-seven, less than one percent. (This, of course, does not include those that went to the Sheriff's or Undersheriff's court, although technically this was also a retrial.) The number could well be understated, since it is possible that plaintiffs gave up the action or compromised rather than go through the trial yet again, lessening the number of potential appeals. Appeals were successful only 10% of the time (8 cases out of 77); therefore, the expense and trouble of retrying the case was probably not worth it either to the plaintiff or the defendant.

Not surprisingly, most of the people bringing and defending breach of promise suits were young (see Charts 5 and 6). The vast majority of plaintiffs were between the ages of 21 and 30 (63%), most of these in their early 20s. Substantial numbers of plaintiffs were in their 30s as well (17%). Plaintiffs over 50 were rare indeed, although not unknown. The defendants ages were spread out more evenly on the age scale; although the highest number (39%) were in their 20s, many were also in their 30s and even 40s (both over 20%). Furthermore, almost one-fifth of defendants were over 50, a far higher sum than that of the plaintiffs. No defendants were under 21, since an infant could not be legally sued for breach of promise.

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7The reason is that records before the 1860s are scanty, and because of time constraints, I have limited my assize research to the nineteenth century.
This range of ages is not unexpected. Most of the defendants were men, and men were expected to court women younger than themselves. Furthermore, there was no reason to sue a man unless he could pay damages, and older, established men were more likely to be able to. In fact, 84% of the time, the defendants were older than the plaintiffs (271 out of 324 cases in which both ages were known). Plaintiffs were older, then, only 16% of the time, and in 6 of these 53 cases, the plaintiffs were male. Did the age of the plaintiff or defendant matter in breach of promise suits? In determining the outcome of the trials, the answer is no. Plaintiffs won the vast majority of cases whether they were younger or older. However, the awards were higher when the plaintiff was younger than the defendant by over £100 on average (£294 to £421), although the medians
Chart 6
Ages of Defendants

were the same at £100.8

Average awards varied by the ages of both plaintiffs and defendants, but particularly by the former (see Table Three). The average award went down steadily as the plaintiffs got older, except for a slight upturn in plaintiffs over 50. Clearly, the largest awards went to the very young, those under 21 or in their 20s. Plaintiffs in their 30s also did well, but the average and median awards dropped sharply in the 40s, the average even lower than the elderly. It is possible that the frail appearance of both younger and older women helped them get better awards; women of

8Since almost ten percent of the cases in my sample had awards of £100, it is frequently the median award. Although this fact does not invalidate medians, it does limit their usefulness in this context; therefore, I have always tabulated both the median and the averages.
middle age had no comparable advantage. The awards vary much less sharply with the defendants' ages. Not unexpectedly, the highest awards are against defendants in their 20s and 30s, those who were settled into

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* This average excludes the £10,000 award in Knowles v. Duncan, since that exceptional case skews the average. With Knowles, the average for defendants in this age range is £816.

steady incomes and were at an ideal age to marry by Victorian standards. All the same, awards against defendants did not drop much until they were in their 60s, showing the assumption that a man was considered a "good catch" to an older age than a woman. Elderly men paid the least of all, though the median was still £100. Ideally, then, the highest award went to a plaintiff under 21 suing a defendant in his/her 20s or 30s; the lowest went to a plaintiff in his/her 40s suing a defendant over 70.

Of course, the factor of age could be more complicated than this. Part of the equation also included age differentials, or how much older (or younger) the defendant was than the plaintiff. In the nineteenth century, there were 293 cases in which we know both ages. In 29 cases, the couple were of the same age, 22 of these couples were under 30 (the
average age was 29; it was brought up by two couples in their 40s). In 44 cases, the plaintiff was older (4 of these were males), and in 220, the defendant was older (2 of these were females). In general, if the plaintiff was older, s/he was not much older, but the defendant could be up to 50 years older (see Table Four). All but 14 of the older plaintiffs were only older by 5 years or less, but almost 48% of the older defendants (105 out of 220) were over ten years the senior. Clearly, it was considered perfectly acceptable for a man in his fifties to court a woman in her twenties, but the reverse would not have met with approval. Interestingly, there is no significant variation in awards whether it was the plaintiff who was older or the defendant. An older plaintiff got about the same award whether s/he was 1 or 10 years older; similarly, a much older man courting a young woman generally did not pay more than a man who was her own age (of course, since the number of cases is so small

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in the larger categories, the average is not meaningful). The only exceptions were women who were eleven to fifteen years older than men (the median award was much lower) and men who were over over thirty years the senior to their fiancées. In these cases, juries were apparently swayed by the age difference and made clear their disapproval. Besides these circumstances, juries showed no marked preferences for marriages in the same age group.

Contemporaries occasionally complained that breach of promise actions were brought primarily by widows. They considered this an illegitimate use of the action, since it was supposed to compensate women for loss of marriage; widows already had experienced at least one honorable union and thus had less reason to guard their reputations. These complaints also centered on the imagery of the "scheming widow" who was out for another husband at any cost. Charges that widows brought most of the actions were not true, however. Only in 46 of the 875 cases had the plaintiff been married before (in 6 of these, s/he had been married more than once before). Defendants were twice as likely to have been married before, 82 out of 875. Since many of the defendants were older men, this is not surprising; often widowers were looking for a stepmother to their children from their first marriage. Nine of these 82 had been married at least twice before. In very few cases (23), both parties had been married before; these were often matches of convenience, as two mature people tried to arrange for a comfortable old age.

Most of the people who brought breach of promise suits were lower
middle class (see Table Five).\(^9\) Upper class and upper middle class couples tried to settle the matter of broken engagements out of court; poverty-stricken workers could hardly afford the costs, nor would it pay to sue a man with little or no means. From the 493 cases in which the class of both parties are known, over half of these involved cross-class matings (53%). However, many cases involved people who at first glance would seem to be perfectly suited to one another, particularly the 153 times that

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<td>WC 3 29 80 39</td>
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both parties in the suit were lower middle class. Nonetheless, the lower middle class and working classes had the most freedom to court across class lines; the upper and middle classes kept a firmer control over their sons and, particularly, daughters.\(^{10}\) The most common mix was lower middle

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\(^9\) Class distinctions in the late nineteenth century are hard to make. I have divided my date base into four broad categories: Upper Class, which includes peers and gentry; Middle Class, including professionals, businessmen and women, and large farmers; Lower Middle Class, primarily small shopkeepers and master works who owned their own tools as well as middling farmers; and Working Class, which is any worker who labors for wages, including tenant farmers and servants.

class plaintiffs and middle class defendants, though there was also a
substantial number of working class plaintiffs with lower middle class
defendants. In general, the number of working class plaintiffs and
defendants is unexpected, since one would assume they had few resources.
Solicitors apparently were willing to take some cases "on speculation,"
hoping to win an award and costs from the defendant. Even a working class
defendant might have enough to pay £20 or so, all of which would go to the
lawyers. Such practices were frowned upon by the bar, but solicitors and
barristers engaged in them, nevertheless.¹¹ Why anyone would bring such
a suit is another question, but perhaps some plaintiffs were angry enough
not to care if they got none of the award in their desire to ruin the
defendants.

It was commonly believed that the rural communities were the hotbeds
of breach of promise actions; farmers were supposedly "addicted" to
settling broken engagements in court.¹² This particular assumption
actually had some basis in fact. In 145 of the cases (a substantial
amount of those where occupations are known) at least one of the two
participants was a farmer or the child of a farmer; in thirty-nine of

¹¹See, e.g., Thatcher v. D'Aguilar, an 1857 case recorded in
Chronicles of Breaches of Promise, pp. 137-142. The plaintiff wrote in
a letter that she and her counsel, Mr. Hutchinson, had an agreement that
"he would make me no charge for his services, but that if the verdict was
given in my favour I was to make over to him a third of the damages I
might receive" (p. 140). Mr. Sarjeant Parry called it "about as
disgraceful a compact as had ever been made between client and attorney"
(p. 141). Contingency fees like this were probably not common, but cases
taken "on spec" must have been.

¹²See, e.g., "Breach of Promise," Lady's Own Paper 9 (August 10,
1872), p. 459. The editor claims that "The farming portion of the
community seem specially prone to the bringing or defending of actions for
breach of promise of marriage. Three such actions are reported in the
daily papers, of this week, all of them connected with agriculturists."
these, both the plaintiff and defendant were rural. Why farmers were such a large percentage of the total is unclear. A farmer with land did make an attractive defendant, since he was sure to have some means, and the need to wait several years to acquire independence as a farmer may have contributed to long engagements and an eventual split. Also, the continued closeness of village life, as opposed to the city, might have encouraged suing, particularly when seduction was involved. A broken engagement alone could ruin a girl's character, much less an illegitimate child, and in a small community everyone would know. A court case was one way to clear her name, to prove that even if she fell, it was under a promise of marriage.

A final possible influence on the outcome of trials was their location. Assize towns and counties varied widely from circuit to circuit. They included large industrial areas, such as Manchester and Liverpool, but also small, almost desolate places like Appleby or Ruthin. (Some assize towns in Southern Wales had no cases at all for months on end, yet the judges had to go there and open the assize on circuit every time.) Bearing in mind that the civil assize records are incomplete,\textsuperscript{13} it is still possible to compare rural centers to urban, large cities to small towns, and region to region for a number of variations. The cases have been divided into seven regions, based on the circuit areas: Southeastern (78 cases), Midland (16 cases), Oxford (94 cases), Northern (264 cases),

\textsuperscript{13}For example, civil records are incomplete for the Oxford and North Eastern circuits and practically non-existent for the Midland and Northern Circuits. These limitations in the sources explain the peculiar weight that the Northern and Western parts of England have in my sample.
Western (136 cases), Wales (124 cases), and London (146 cases). Obviously, this sample is heavily weighted to the Northern and Western parts of England. Thirty-one percent of the sample are from Northern England (222 cases from Manchester and Liverpool alone); another thirty percent come from the Western circuit and Wales. The Southeast and Oxford circuits make up only twenty percent, although this amount is significantly higher when the London cases are included (37%). The Midlands is the most underrepresented part of the country because of the paucity of records that survive (a mere 2%).

The clearest difference is between England and Wales. Welsh cases had some peculiarities all their own, partially because they involved almost exclusively rural and relatively poor people. The average award in Wales was £118 and the median was £75, as opposed to the average English award and median, £411 and £100. Although the English average includes a number of celebrated London cases, the difference between the two averages is large enough to have significance. Welsh juries were not as generous as those in England, probably because they were dealing with poorer people. Also, it is possible that the people knew each other more

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intimately, and therefore knew each other’s means. There was, in fact, a higher percentage of cases in which the two litigants were related in Wales than in England (4% to 2%), though the numbers are too small to be definitive (13 of 734 cases in England; 5 of 124 cases in Wales).

The main distinction between the two regions relates to the age of the participants. The average age of plaintiffs in Wales was 31, two years older than English plaintiffs, and the average Welsh defendant was 43, four years older than the English variety. Thus, the litigants were slightly older; there was also a larger age differentiation, thirteen years rather than ten. It is quite possible that this age gap had no significance, that it was just a statistical peculiarity. However, it is also true that the percentage of cases involving seduction was higher in Wales than in England (28% to 25%). The difference in age may have been a result (or cause) of this higher percentage of seductions. Of course, the difference is not overwhelming; furthermore, sexual activity before marriage was not frowned upon by the lower classes as long as it was on a promise of marriage, and this belief was strongly held in Wales until quite late in the nineteenth century. All of these factors probably influenced the seduction rate together.

There are no other interesting differences between Wales and England, and because of the peculiarities of the records, other regional comparisons are limited in value (e.g., although there are many "Northern" cases, there are almost none from the far north of England, such as Yorkshire). There are some small variations, however (see Table Six). Not surprisingly, the awards in London, even without those over £1000, are higher than anywhere else; the median is twice as much or more than any
other area. Awards in the Southwest in general were higher than other regions, although the medians are similar, and Wales and the North have the smallest. Winning percentages and average ages were similar for each of the areas. The age differential is also quite similar for all of the regions except for the southeast, London, and Wales, where the defendants

<table>
<thead>
<tr>
<th>Reg</th>
<th>Avg Awds</th>
<th>Age Ptsf</th>
<th>Age Def</th>
<th>Age Diff</th>
<th>Ptsf Win</th>
<th>Def Win</th>
<th>Seduced</th>
</tr>
</thead>
<tbody>
<tr>
<td>SoEast</td>
<td>£169/£100</td>
<td>29</td>
<td>41</td>
<td>13</td>
<td>72%</td>
<td>8%</td>
<td>31%</td>
</tr>
<tr>
<td>Mid</td>
<td>£188/£97.5</td>
<td>28</td>
<td>50</td>
<td>21</td>
<td>88%</td>
<td>6%</td>
<td>6%</td>
</tr>
<tr>
<td>Oxfd</td>
<td>£151/£90</td>
<td>28</td>
<td>37</td>
<td>9</td>
<td>69%</td>
<td>11%</td>
<td>23%</td>
</tr>
<tr>
<td>No.</td>
<td>£147/£50</td>
<td>30</td>
<td>38</td>
<td>8</td>
<td>71%</td>
<td>7%</td>
<td>27%</td>
</tr>
<tr>
<td>West</td>
<td>£136/£100</td>
<td>29</td>
<td>38</td>
<td>9</td>
<td>73%</td>
<td>7%</td>
<td>18%</td>
</tr>
<tr>
<td>Wales</td>
<td>£118/£75</td>
<td>31</td>
<td>43</td>
<td>13</td>
<td>69%</td>
<td>7%</td>
<td>28%</td>
</tr>
<tr>
<td>London</td>
<td>£230/£200</td>
<td>27</td>
<td>37</td>
<td>12</td>
<td>63%</td>
<td>10%</td>
<td>19%</td>
</tr>
</tbody>
</table>

ended to be 12-13 years older than the plaintiffs. The southeastern and Welsh areas also lead in the percentage of seductions, which lends strength to the idea that the two factors are connected. This number is especially significant in the southeast; almost one-third of the cases brought involved the seduction of the plaintiff. If there were only minimal difference between regions, there were equally few between large cities and rural areas (See Table Seven). Rural areas had a higher level

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15 The plaintiffs in all were in their late twenties or early thirties, and the defendants were about ten years older.

16 London and Western England had the least percentages of seductions, not even reaching one-fifth.
of awards; this makes sense, because many of the people in Manchester and
Liverpool were working class and property-less. Also, cases in large
cities were more likely to be withdrawn; 76% went to court as opposed to
82% in the country. Besides these minor variations, there are few
noteworthy differences. Clearly, for the most part, breach of promise
cases were not greatly affected by where they were brought.

However valuable as a general background, statistical data of this

<p>| TABLE SEVEN |
| Large Cities vs. Small, 19th century |</p>
<table>
<thead>
<tr>
<th>Large*</th>
<th>Small</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ptff win</td>
<td>69%</td>
</tr>
<tr>
<td>Deft win</td>
<td>7%</td>
</tr>
<tr>
<td>Avg. awd</td>
<td>£174</td>
</tr>
<tr>
<td>Med. awd</td>
<td>£75</td>
</tr>
<tr>
<td>Ptff age</td>
<td>30</td>
</tr>
<tr>
<td>Deft age</td>
<td>39</td>
</tr>
<tr>
<td>Seduced</td>
<td>26%</td>
</tr>
</tbody>
</table>

* The five "large" cities were Manchester, Liverpool, Bristol, Leeds, and
Birmingham. London was excluded from both groups.

kind can tell us little about the social and cultural ramifications of
breach of promise suits. For the next several chapters, our focus will
shift to individual cases and the way contemporaries saw them. In many
ways, these three views--the statistical, the individual, and the
contemporary--offer dramatically different conclusions about the cause and
effect of bringing broken engagements into court.
NOTE ON SOURCES

The following is a list, year by year, of the Parliamentary Papers used in compiling these statistics. All (unless otherwise indicated) were published under the title Judicial Statistics: England and Wales, Part II, "Common Law--Equity--Civil and Canon Law," by Her Majesty's Stationery Office, and all are contained in volumes called "Accounts and Papers." The Roman numerals refer to the volume numbers for Parliamentary Papers of that year; the arabic numbers in parenthesis are the volume numbers for the "Accounts and Papers."

1860: 1861; LX (27), PP. 133, 135, 137-39.
1861: 1862; LVI (28), pp. 673, 675, 677-679.
1862: 1863; LXV (37), pp. 611, 613, 615-17.
1865: 1866; LXVII.2 (30), pp. 669, 671, 673-75.
1866: 1867; LXVI (28), pp. 707, 709, 711-713.
1875: 1876; LXXIII (38), pp. 231, 234, 237, 239-40.
1876: 1877; LXXIV (38), pp. 234-36.
1877: 1878; LXXV (34), pp. 238-40.
1878: 1879; LXXVI (35), pp. 252-54.
1879: 1880; LXXVII (38), pp. 251-18.
1880: 1881; XCV (39), pp. 207-09.
1881: 1882; LXXV (39), pp. 207-09.
1882: 1883; LXXVI (40), pp. 207-09.
1883: 1884; LXXVII (40), pp. 207-09.
1884: 1885; LXXVIII (42), pp. 207-09.
1885: 1886; LXXII (35), pp. 201-03.
1886: 1887; XC (42), pp. 209-11.
1887: 1888; CVIII (44), pp. 209-11.
1889: 1890; LXXX (40), pp. 219-21.
1891: 1892; LXXXII (42), pp. 217-19.
1893: 1894; XCV (45), pp. 69, 71.
1895: 1897; C (49), pp. 261-63, 265-66.
1898: 1900; CIII (57), pp. 319-21; 324-25.
1899: 1901; LXXXIX (53), pp. 335-38, 340-41.
1900: 1902; CXVII (63), pp. 267-70, 272-73.
1901: 1903; LXXXIII (48), pp. 275-78; 280-81.
1905: 1907; XCVIII (52), pp. 329-32, 334-35.
1906: 1908; CXXXII (62), pp. 303-06, 308-09.
1912: 1914; C (51), pp. 243-46, 248-49.
1913: 1914-16; LXXXII (45), pp. 239-42, 244-45.
1914: none
1915: none
1916: none
1917: 1919; LI (20), p. 792.
1918: 1920; L (24), p. 528.
1919: 1921; XLI (23), p. 555.
CHAPTER FOUR--"TO SOOTHE AND TO CHEER ME":
COURTSHIP AND WEDDINGS IN THE LOWER MIDDLE
AND UPPER WORKING CLASSES

Courtship in the upper and upper-middle classes of Victorian England was highly stylized and ritualized. Although parents no longer arranged marriages as in earlier centuries, they kept control of the process by making sure their children met only people of their own class at carefully approved social functions.\(^1\) Occasionally, a son or daughter would break out and marry someone unsuitable, but the chances of that happening were slim. However, the lower middle and upper working classes did not have such rigorous control. Children left the home to go to work by their teens and escaped the watchful eyes of their parents, and their new-found economic independence gave them more leverage against parental objections even when they stayed at home.\(^2\) Nor did they have as many social functions planned for them; there was no "season" for working men and women. Thus, the practice of courtship among these classes came with a distinctly different set of rules and expectations: the rituals of courtships and weddings were largely informal; the families of the couples were involved in unexpected ways; and, most importantly, courtship was a mixture of


middle class and working class mores, since these people aspired to middle class domesticity without the economic resources to secure it.

The informality of courtship was present from the very beginning; the way couples met varied widely from the carefully-arranged marriage market of the higher classes. In fact, relatively few of the couples who ended up in breach of promise suits met at social events such as balls, picnics, or church-related activities (14%). By far more knew each other through relatives, mutual friends, or from the proximity of being neighbors (42%). A further 6% met because of a landlord-tenant relationship, most often the defendant lodged with the plaintiff. The second largest group (27%) first came to know one another through work, particularly when the plaintiff worked for the defendant or the defendant was a customer of the plaintiff. Finally, a large number of couples (11%) fit into none of these categories. Strangers to each other, these people met in the street, on travels, through matchmakers, or simply by writing to introduce themselves. One finds it hard to imagine upper-middle or upper class courtships beginning so inauspiciously.

Many of those who met through friends and relatives were acquainted for many years; they had grown up together, gone to school together, and their parents were long-time friends. These cases could get particularly unpleasant because of the closeness of the parties and the inevitable sense of betrayal. For example, in Bell v. Jackson, in 1857, the couple had known each other "from childhood." Bell was a milliner, and Jackson

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3These findings match those of Leonore Davidoff and Catherine Hall in Family Fortunes: Men and Women of the English Middle Class, 1780-1850 (Chicago: University of Chicago Press, 1987), p. 219: "Within the lower middle class, spouses were found through local kinship, friendship and religious communities" as well as through business, pp. 220-222.
was a miller, and for some time they constantly visited each other and each other's families. However, after 18 months of courtship, John tried to take liberties and was repulsed so firmly by his fiancee that he broke it off, writing, "I am not the vile vilen you suposed me to bee, or at least you gave me good reasons to conclude that you considered me one, for you pitched into me efectually and unmercifuly. I tell you sufficient to cool the zeal of eny man." Bell took him to court and got £50, and her barrister regaled the audience with every letter and every line of outstandingly bad poetry that Jackson ever wrote to her.4

In over 13% of the cases, the couples were neighbors; proximity was very important in determining whom one met. Often these couples lived on adjoining lots in villages, either growing up together or meeting when one moved to the neighborhood. The importance of proximity is also pointed up in the number that were landlord (or lady) and tenants. Putting two eligible people within close quarters often resulted in amazingly quick intimacies, sometimes unfortunately close. Catherine Lewis, a widow, took in John Jenkins, an ironmonger, as a lodger in March of 1897; they had slept together by the end of May, and she had an illegitimate child in the following March. Charlotte Windeatt, the daughter of a tax collector, met her fiance, a builder named Slocombe, when he came to lodge with her family after his wife died. She, too, was seduced in a matter of months, Slocombe having promised to marry her "if anything happens." In another case, a carpenter established intimate relations while lodging with the

plaintiff, and then lived with her in a pseudo-marriage for several years.\footnote{Lewis v. Jenkins, ASSI 75/4; Swansea Herald and Herald of Wales, August 13, 1898, p. 2; Windeatt v. Slocombe, ASSI 22/32; Western Times, March 15, 1872, p. 6; Pierce v. Smith, Newgate Calendar and Divorce Court Chronicle, July 8, 1872, Issue 9, p. 140. In the latter case, the plaintiff was the daughter of a carpenter.}

Whether or not the defendant seduced the plaintiff, lodging romances were full of difficulties, since the two parties were often not of the same class and the defendant intended to move on in many cases. The landlady's peculiar position as surrogate wife (cooking meals, cleaning the home, etc.) always made the relationship problematic; sexual relations complicated things even more.\footnote{Other cases involving lodgers include Pope v. Staples, ASSI 32/31; Ipswich Express and Essex and Suffolk Mercury, March 29, 1870, p. 7; Stringer v. Oldham, ASSI 54/17; Manchester Evening Mail, July 12, 1900, p. 4; Walker v. Owen, ASSI 54/9; Liverpool Mercury, May 5, 1891, p. 7. The point about landladies has been well made in Leonore Davidoff, "The Separation of Home and Work? Landladies and Lodgers in Nineteenth and Twentieth-Century England," in Sandra Burman, ed., Fit Work for Women (London: Croom Helm, 1979), pp. 68-92. Davidoff writes that landladies had a special relationship with lodgers because they "did" for them: "Such a relationship, just as in domestic services, could include covert sexual services. There was, after all, a deeply rooted expectation that any man living with a woman would provide support, as a husband did, in return for services. The position of housekeepers very easily ran into common-law wife" (p. 76).}

Similar difficulties confronted the thirty women who met their lovers by coming to work as a servant for the defendant or the defendant's family. These plaintiffs were either domestic servants or helpers in businesses (such as barmaids) or served in more exalted positions such as nurses or governesses. As John Gillis has noted in his study of illegitimacy in London, female servants were in a peculiarly difficult position regarding courtship. Many of their close relations were with men who were either above or below them in class, frequently a recipe for
broken engagements. Despite this, he found that most of the disrupted relationships were between well-matched couples, but my sample is primarily of cross-class matings (this is hardly surprising, since women tended to sue only richer men for breach of promise). These women fell into intimate relationships with their employers (or their employer's sons) and found themselves unable to command fulfillment of marriage promises.

In over half of the servants' cases (18 of 30), the plaintiff was seduced, a far higher proportion than in the cases at large. The couple in these cases frequently consisted of a young woman involved with a much older employer/suitor. Sarah Pearce, e.g., was only 20 when she went to work as a housekeeper for a master plumber, Thomas Boardman (39), and his invalid wife in 1866. Mrs. Boardman died in March of that year, and by May Boardman had seduced Sarah. He assured her parents he would marry her, but he and Sarah quarrelled, and he married his cook instead. In *Haynes v. Haynes*, the two parties were second cousins, the plaintiff being 22 and the defendant 40 (she was the daughter of a "cab proprietor" and he was a farmer). She, too, went to work as his housekeeper and soon became pregnant. Similarly, Helen Berry and Mary Ann Swain were both barmaids who were considerably younger than the barkeepers who wooed and seduced them (Helen was 20 years younger; Mary Ann was simply said to be

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much younger). These were clearly cases of women allowing themselves to become intimate with men who were of slightly higher station, risking abandonment and the disapproval of family and friends.

Often the class difference was frankly stated to be the problem. For example, in Crosswell v. Hearn, the plaintiff taught the defendant's children music; he broke off his engagement to her specifically because his family was against the marriage, since Crosswell was socially below them and much younger than Charles Hearn (by 23 years). Elizabeth Morris went to work for Thomas Bonville's father as a domestic servant at the age of fourteen; she endured a secret engagement for over 10 years and had two illegitimate children because Thomas told her he could not marry her until his father died. Once the elder Bonville died, however, and Thomas had inherited the farm, he married someone else. In Girling v. Allsop, the 79-year old defendant, a wheelwright, refused to marry 27-year old Naomi Girling, his long-time housekeeper, because she did not receive a £6000 legacy that he thought she would. He continued to refuse even when Naomi gave birth to his child. A good number of these examples involve housekeepers, and the ambivalence of their roles as surrogate wives (like

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8Pearce v. Boardman, ASSI 22/27; Bristol Daily Post, August 16, 1867, p. 3; Haynes v. Haynes, Chronicles of Breaches of Promise, pp. 178-180; Berry v. Hurst, ASSI 54/1; Manchester Evening News, January 21, 1872, p. 2; Swain v. Brinn, Newgate Calendar and Divorce Court Chronicle, July 8, 1872, Issue 9, pp. 138-140.

9Crosswell v. Hearn, Times, November 13, 1893, p. 3; November 14, 1893, p. 13; Morris v. Bonville, ASSI 75/2; Carmarthen Weekly Reporter, July 21, 1876, p. 3; Girling v. Allsop, ASSI 32/29; Suffolk Chronicle, August 3, 1861, p. 7. Other examples include Copeland v. Hopkins, ASSI 54/13; Manchester Evening Mail, November 2, 1894, p. 2, in which a molder seduced his housekeeper and his mother broke it up, and Thomas v. Shirley, The Weekly Reporter 11 (November 15, 1862), p. 21; Times, November 6, 1862, p. 8; November 7, 1862, p. 9, in which a governess unsuccessfully sued a Major-General who had seduced her.
that of landladies) also contributed to the strain in their relations with
their employers and their families. Unless the employer drew a firm line
between them, the relationship could evolve into one of "husband" and
"wife" in everything but name. And it is not surprising that other family
members found it difficult to accept a former inferior as the new mistress
of the home.

Most of the other couples who met through work did so as customers
of each other's businesses. A great many of the women involved in breach
of promise cases earned their living as milliners, dressmakers, small
shopkeepers, and inn keepers. They thus met a number of men simply
through serving the public. Men and women also met by working for the
same people (e.g., two couples met because both worked at "the mill"), or
because they shared train carriages or omnibuses on their commutes. 10
There were also a few cases in which an actress or model met her fiancé
because he saw her at a performance; however, these cases (unsurprisingly)
do not comprise a large percentage.

Finally, a number of people began courting as almost total strangers
(30 of 371). Seven times the couple simply met in the street or road,
eight times the man wrote to the woman out of the blue introducing himself
and asking to court her, and six times the couple went through some kind
of matchmaking service. 11 Almost always, the matchmaking cases were
widowers searching for wives to be step-mothers of their children or to

10 This did not happen with great frequency, but there were a handful
of cases in which commuting figured, including Matthews v. Miller, Cornish
Telegraph, February 16, 1882, p. 3; Hancock v. Clifford, ASSI 22/39;
Bristol Mercury, February 6, 1886, p. 6; and Orman v. James, ASSI 22/43;
ASSI 28/13.

11 The other nine are miscellaneous ways.
assist in the business; these also tended to involve people of the middle or lower middle classes. In 1890, Joseph Daintith, a merchant, went looking for a fourth wife at the age of 76, employing a man named Hampson to find suitable candidates. Once Hampson presented him with the name of Emma Clarke, a fifty-year old two-time widow who owned her own muffin shop, he arranged for an interview and asked her to marry him at the first meeting. The wedding did not come off, however, since Daintith backed out at the last minute. John Owen Roberts, a builder and farmer, asked the local innkeeper (a woman) to find a wife for him in 1884; George Hyatt, a master mariner, used a "Mrs. Nelmes" to scout out possible brides in 1895. Clearly, men were more likely to take the initiative in using informal or formal matchmakers. Women, on the other hand, tended to use matrimonial advertisements, as Mary Crookshank did in 1889 or Gladys Knowles attempted in 1890. There were no seductions in these cases; relationships failed more because of lack of familiarity than from too much.

The situation was quite different for those couples who claimed to have met "in the street." These cases follow a pattern similar to that of the servants. Most of the plaintiffs were young working women who met the defendants casually as they went home from work or were out for a walk. The defendants were usually considerably older, of a higher class, and seduced the women in short order. In fact, in all but one of these

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12Clarke v. Daintith, ASII 59/14; Chester Chronicle, March 14, 1891, p. 2; Edwards v. Roberts, ASII 59/151; Carnarvon and Denbigh Herald, February 2, 1884, p. 6; Cooper v. Hyatt, ASII 22/42; Bristol Mercury and Daily Post, July 4, 1895, p. 2; Crookshank v. Farrow, ASII 54/7; Manchester Examiner and Times, February 28, 1889, p. 3. In the latter case, Crookshank was a housekeeper and shop assistant; Farrow's occupation is unknown. For Knowles v. Duncan, see Chapter 2.
cases, the plaintiff was seduced; furthermore, in two, the defendant persuaded her to live as his mistress for a period of months or years. A typical example is the case of Susannah Brown. She was accosted by William Friend, a sea captain, as she walked home from her situation as a servant one night in November of 1872. She ignored him, but the next day he called and proposed marriage. She eventually accepted him, and before he left on his next voyage, he had slept with her, assuring her that it would be all right as they would soon be man and wife. Unfortunately, Friend already had a wife; he tried to trick Susannah with a phoney death notice, but she and her mother saw through the device and took him to court. (Susannah was only 19 and William was 35.) There were indeed some cases where the couple were of the same class, but this was not the norm.13 Again, a cross-class romance proved dangerous for the woman, particularly when she risked pregnancy.

Most interesting of those who began to court as total strangers are those couples who met when the defendant wrote to introduce himself. All of the people involved in these cases, with the exception of one plaintiff, were lower middle or middle class (rather than working class). In each case, the defendant was an almost complete stranger to the plaintiff before writing and asking to call. John Harrison, an insurance collector, admitted in his 1889 letter to Emma Abbot, a milliner, that

13Brown v. Friend, ASSI 39/27; Norwich Argus, March 29, 1873, p. 7. Similar cases include Hampton v. Boalsh, Chronicles of Breaches of Promise, pp. 183-184 between an 18-year old girl of "poor but respectable family" and an army officer, and Berry v. Da Costa, 1 Law Reports, Common Pleas Division (1865-66) 331-336, and Times, January 15, 1866, p. 11 and January 26, 1866, p. 11, between the daughter of a lace-maker and a "man of property." An example of a case of the same class is Heywood v. Yeomans, ASSI 54/12; Manchester Examiner and Times, December 9, 1893, p. 5 between a servant and a mechanic.
they were strangers, but he insisted she was the perfect wife for him, and he presented his attractions to her: "I am a total abstainer and a dissenter; age, a little over 40 years, with good expectations, and my intentions are honourable." Harrison's letter was quite similar to that of William Williams, a tailor, who wrote to Sarah Roberts, a cook, in May of 1884 without even having met her:

Miss Roberts,—I trust you will not take it unkind on my part for sending you these few lines. . . . Truly I desired you the moment I saw your becoming manner. . . . Well, to break through the ice, I pray you to name an evening to meet one another, and the place, if you are not too far engaged.

Naturally, the primary emotion of the women receiving such epistles was surprise; women were far more wary of making sudden commitments than men. Sarah, for instance, declined to meet William after his first try, while Emma carefully consulted her mother before agreeing to court John Harrison.¹⁴ These were cases of men falling in love with the appearance and "manner" of women and setting out to win their hearts. While only one of these cases involved a seduction, it was exceedingly difficult for these women to release men who had so insistently courted them in the beginning.¹⁵

¹⁴ Abbot v. Harrison, Manchester Examiner and Times, July 13, 1889, p. 8; Roberts v. Williams, ASSI 59/3; Carnarvon and Denbigh Herald, "The Tailor and the Cook," July 25, 1885, p. 8. For another, more eloquent introductory letter, see Bull v. Robinson, ASSI 32/31; Cambridge Independent Press, August 6, 1870, p. 6.

¹⁵ Although these sudden proposals seem bizarre, they were apparently not unknown, since William Gladstone proposed to two women he barely knew, surprising them both. Philip Magnus, Gladstone: A Biography (London: John Murray, 1954), pp. 24-31. In the same way, his son, Stephen Gladstone, "fell in love at first sight" in 1881 with Constance West; like his father, he was doomed to disappointment on his first serious attempt at courtship. Pat Jalland, Women, Marriage, and Politics, p. 76-77. For a further discussion of the consequences of the engagement of relative strangers, see Chapter 5.
The period of time between the meeting and the actual engagement was usually quite short. In other words, it was not just people who began serious courting as strangers who did not know each other very well. In fact, the average length of courtship before a proposal was only 9 months; the median was even less, at 3 months. Of course, this figure is probably on the low side, since it was in the woman's interest to date the engagement as early as possible in breach of promise suits, and quite often only her side of the story survives. Still, many men admitted to proposing when they had only the known these women a few short weeks. Nor was this short time made up in frequent visits. Couples in this sample saw each other an average of 16 times per month, or four times a week; the median was 10 times per month, or 2.5 times per week. Though this is certainly frequent, it amounts to a median of only 30 visits before the couple made a serious commitment. In addition, many couples were separated for long periods and got to know each other primarily through letters. These couples felt fortunate to see each other four to six times a year; it was fatally easy to grow apart under such circumstances.

Though courtships were usually short, engagements were quite long. The average engagement was almost three years (34 months), while the median was a year and three months (one must keep in mind, however, that cases that went to court were probably biased toward length). Though most

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16 These figures vary slightly by class. When both people are lower middle class, the average is 11 months and the median is 4; when both are working class, the average is 17 months and the median is 3. Middle class couples make up too small a number to be significant.

17 In cases in which both parties are lower middle class, the average and median are almost identical to the overalls (17 and 10); working class couples saw each other slightly less often, an average of 8 times per month and a median of 8.
people were engaged for under three years (340 cases), a substantial number (167) stayed engaged longer. Of the latter, 67 were engaged from 3 to 5 years; 48 from 5 to 8 years; and in a surprisingly large 52 cases, the couple was engaged 8 years or more.\textsuperscript{18} In length of engagements, class made a strong difference. Middle class couples were engaged over three years in only six cases. Lower middle and working class couples, on the other hand, were spread fairly evenly across all the time periods, including 35 lower middle and 17 working class couples who were engaged for over 8 years. Clearly, long engagements were primarily a problem for those below the middle classes.

There were several reasons for long engagements in these classes. First, these were people who had to save carefully before setting up a household. Particularly lower middle class men strived to save enough so that their wives did not have to work outside the home; they were, then, the victims of their combined economic weakness and social aspirations.\textsuperscript{19} More specifically, sons had to wait to inherit land or money with which to start a farm or small business or to finish schooling or apprenticeships. Women used the time to amass as much savings as possible and to purchase necessary items for the home. Engagements could be up to ten or fifteen years standing as the couple patiently waited for the

\textsuperscript{18}Michael Anderson has also found that after 1851, "the process of courtship and entry into marriage was a much more protracted one" than before, "The Emergence of the Modern Life Cycle in Britain," p. 82.

\textsuperscript{19}In the upper-middle class, the goal was similar, although the means of achieving it were easier to find, according to Pat Jalland in Women, Marriage, and Politics, pp. 54-55: "It was assumed that a couple should marry only when the male was able to support his wife in her accustomed manner."
economic resources to marry. Second, unexpected illnesses or deaths in
the family cropped up and forced postponements. Naturally if either of
the parties were ill, a wedding ceremony was out of the question; in
addition, women were often called upon to nurse sick relatives (especially
their parents) and could not leave the home to marry at such a time.

A case that illustrates these points well is Jones v. Southworth.
Elizabeth Jones and James Southworth met and first courted in 1870 when
she was 19. They agreed to marry in 1872, but set no definite date.
Elizabeth continued to work as a weaver, while James built up his plumbing
and glazing business. In 1874, James lost money and Elizabeth became ill,
so they put the wedding off for the first time. In 1877, they set the
date a second time and Elizabeth went so far as to buy the dress, but this
time James got ill and the wedding was postponed yet again until 1878.
Finally, in March of 1878, James came to see Elizabeth with the evident

\[20\] For the problems of lower middle class families in providing for
children, see Geoffrey Crossick, "The Petite Bourgeoisie in Nineteenth-
Century Britain: The Urban and Liberal Case," in Geoffrey Crossick and
Heinz-Gerhard Haupt, eds., Shopkeepers and Master Artisans in Nineteenth-
Century Europe (London: Methuen, 1984), pp. 78-79. For the eighteenth
century, see Bridget Hill, Women, Work, and Sexual Politics in Eighteenth
engagements were frequent in the lower working-class for many of the same
reasons. A Mrs. Warburton courted her husband for nine years at the early
part of the twentieth century; though her experience was atypical,
"courting for a few years was not," Elizabeth Roberts, A Woman's Place:

\[21\] Ellen K. Rothman, in her study of American middle-class couples,
found that another reason for delay was the woman's ambivalence about
marriage itself. "Young women were caught between their desire for the
benefits of marriage and their perception of its costs. . . . when the
time came to get married, many women responded by staging a holding
action." Hands and Hearts: A History of Courtship in America (New York:
Basic Books, 1984), p. 71. Women in breach of promise cases, of course,
do not admit such feelings, but some of the defendants do claim that it
was the plaintiff who was reluctant to marry.
intention of alienating her since he was drunk and "showed familiarity."
The couple had a quarrel and she never saw him again; he married someone else soon afterward. By the time she brought the case, Elizabeth was 30 years old, and the judge's comment to the jury was "It was a very mean thing to keep a woman hanging about for ten years and then get married to somebody else." The jury agreed with him and gave Elizabeth £100 damages, not a paltry sum from a small businessman.\(^{22}\)

Courting men and women of the lower middle class and below, then, expected a long wait before they fulfilled their commitments to each other.\(^{23}\) In the meantime, they took part in fairly conventional activities together, although without the structured pleasures of the upper classes. Although most of their activities were informal, often involving their families and friends, they nevertheless also shared middle-class ideology of sentimentality and domesticity. This made for an odd mix of practical difficulties and romantic ideals, a combination that was reflected in all areas of courtships, engagements, and weddings.

Couples found any number of ways to spend time together. Sometimes they literally "walked out," taking long strolls in rural areas, though the better-off defendants also squired their lovers in carriages. They also went together to infrequent social occasions, such as church meetings

\(^{22}\) Jones v. Southworth, ASSI 54/2; Lancaster Observer and Morecambe Chronicle, January 21, 1881, p. 6. Other cases with engagements of ten years or more include Wood v. Humphreys, ASSI 1/68; Gloucester Mercury, August 11, 1883, p. 3, between a woodshop keeper and a retired grocer; Roberts v. Williams, ASSI 59/29; Chester Observer, July 30, 1898, p. 6, between a domestic and a machine clerk; and Green v. Patey, The Jurist 1 (1887), p. 324; Times, October 12, 1887), p. 7, between the daughter of a farmer and the son of a butler at an Oxford college.

\(^{23}\) For more about the difficulties of long separations and delays, see Chapter 5.
or picnics. However, by far the most common activity was for the man to call and take tea or supper with the woman's family, then to sit in the parlor or on the porch alone with her for the rest of the evening. Parents were surprisingly lenient about giving couples privacy; they seldom saw the necessity of using chaperons, unlike members of well-off families. Some parents even allowed their daughters to take overnight trips with their fiances, and on occasion, they lived to bitterly regret leaving their daughters' virtue in the hands of perspective sons-in-law.

Elizabeth Ann Rees, the daughter of a hotel proprietor, sat in her family's "private parlour" when entertaining her fiance, David Powell, a farmer, and she made it her habit to lock the door when they were alone together. Unsurprisingly, the couple slept together there six months after becoming engaged. Kate Curtis, the daughter of a farmer, got engaged to Ernest Olden, a master miller, in August of 1884; her father went on an errand a few days later and left them alone. Ernest took advantage of the absence to seduce Kate, who had his child the following April. Sarah Ellis and Lansford Johnson went one better in 1895 by having intercourse six weeks after they met—in her parents' kitchen. The mother of the plaintiff in Kerfoot v. Marsden allowed her daughter to go on a trip overnight to the circus in Liverpool, only to find herself with an illegitimate grandchild nine months later. When questioned about their judgment in allowing such freedom, parents invariably protested that they assumed they could trust the honorable intentions of their daughters'
suitors, only to be disappointed.\textsuperscript{24}

All the same, a good part of time couples had together before their wedding was not spent alone. Informal socializing with the families of both parties was a major part of courtship. As stated, the bride's family was most often the host, but it was considered obligatory for the woman to be introduced formally to the man's relatives, especially his parents. In breach of promise actions, this introduction was often used as proof that there had indeed been an engagement, while the lack of it was a telling point for the defense. The woman quite often corresponded with the female members of the defendant's family as well. It appeared to be less important to the couples that both of their families socialize together much before the wedding. Often, of course, the two families already knew each other, but even if they did not, they seldom had more than one formal meeting.

Engaged women expected gifts from their fiancés, the number and variety depending on the wealth of their choices. Better off lovers gave gifts of jewelry, handkerchiefs, or even paintings. More often, however, men gave gifts of food (e.g., a Christmas ham or turkey). Only three gifts were practically universal to all classes. First, and most obviously, men gave engagement rings, often accompanied by a "keeper" ring (and sometimes had even bought the wedding rings before breaking up) and

\textsuperscript{24}Rees v. Powell, ASSI 75/3; South Wales Daily News, March 13, 1888, p. 2; Curtis v. Olden, ASSI 22/39; Hampshire Chronicle, August 8, 1885, p. 8; Ellis v. Johnson, ASSI 54/14; Liverpool Daily Post, May 8, 1896, p. 3 (Ellis was a servant, while Johnson was a marine engineer); Kerfoot v. Marsden, 175 English Reports 1005; Times, August 25, 1860, p. 12; Kerfoot was the daughter of a farmer and Marsden was a manufacturer. See also Mallett v. Sutton, Illustrated Police News, April 1, 1871, p. 4, in which the defendant, a tenant farmer, seduced the plaintiff on the road as he was returning from chapel.
presented them to their fiancées. Possession of this ring or rings was one of the key pieces of evidence in breach of promise actions, and women were loath to return rings under even the most trying circumstances. Second, couples exchanged locks of hair; this was a gift that involved no expense and was a clear sign of intimacy. Finally, many couples exchanged photographs of each other, or had their picture taken together. This, too, was a sign of a serious relationship. If a man had presented a woman with a ring, a lock of hair, and his picture, she was perfectly justified in assuming that his intentions were honorable. Women, too, occasionally gave presents, such as watches, neckties and books, although this was far less common. Women’s gifts, instead, consisted of doing duties, such as cooking meals for their loved one or nursing members of his family who were in ill health. For example, the plaintiff in *Green v. Patey* in 1887 cooked dinner for her fiancé, Edward Patey, every evening for the ten years of their engagement. Similarly, Emma Whitaker became her fiancé’s unpaid housekeeper as soon as he proposed, staying in that position for two years. She quit in August of 1898 when Haythornethwaite, a stevedore, began carrying on with the woman he eventually married, saying she had "been on that string long enough." Two plaintiffs actually nursed the defendants through illnesses, Annie Lever once and Ann Gregory twice.25

25*Green v. Patey*, above; *Whittaker v. Haythornethwaite*, ASSI 54/17; *Manchester Guardian*, July 21, 1899, p. 3 (the plaintiff was a winder in a mill); *Lever v. Dobson*, ASSI 54/7; *Liverpool Mercury*, May 21, 1889, p. 8, between the daughter of a clothes dealer and a vet; *Gregory v. Beach*, ASSI 22/33; *Dorset County Chronicle*, March 13, 1873, p. 8 (Gregory ran a toy and fancy goods shop; her fiancé was a supervisor of excise). In *Ackerman v. Saunders*, the plaintiff, a cook, provided the defendant, a museum clerk, with port wine every evening for several months; *Law Notes* 11 (1892), p. 69 and *Times*, January 27, 1892, p. 14 and in *Taylor v. Entwistle*, ASSI 54/17; *Manchester Evening Mail*, April 24, 1899, p. 4, Harriet Taylor took lessons in cookery and in piano playing to please her
These exchanges mirrored the expectations of sex roles in a middle-class Victorian marriage: the male was the provider, while the female oversaw domestic duties and functioned as the primary care-giver. To some extent, women were "trying out" for the role of wife and mother by demonstrating their competence (or lack thereof) in their future tasks. Occasionally, men admitted that they broke the engagement because they felt their fiancées could not fulfill their domestic needs. Thomas Dommet, a supervisor of an insurance company, claimed that he decided not to marry Alice Hawkridge, a waitress, when he found that "she was unable to cook, and that she was a very poor needlewoman. That was a serious matter for him, because he was not in a position to employ servants to perform duties which, in his case, would accordingly devolve upon the wife." One man who settled his case out of court told the arbitrator much the same thing:

One night, after he had done work, he went to the place where she was staying, and took with him a pound of sausages for supper. I will not say she "made a hash" of them; but she made such a bungling mess in cooking the hungry swain's sausages, that, from that moment, he began to draw in, and to think, "If she can't cook a pound of sausages nicely, what sort of wife will she make?" and he gave her up. 26

Clearly, this role distinction foreshadowed the ultimate goal of most couples: a wife with only domestic duties.

That goal indicates that the middle class ideology of domesticity had widely influenced the lower classes by the late nineteenth-century,

although the jobs that these women were expected to do were often those that servants handled in upper-middle class households (e.g., cooking every meal, housework).\textsuperscript{27} And, of course, lower-middle class and working class women had wider roles than the separate spheres notion allowed; they were vital helps in small businesses, for example. But they definitely preferred the middle class notion of the male out in the working world and the "angel in the house." Such considerations also help explain so many men's preference for women such as servants, housekeepers, and landladies, who had already successfully "tried out" for the role of homemaker.

Couples exchanged one other thing far more often than gifts: the written word. In an age with no telephones and relatively slow transportation, letters were the primary source of communication between separated lovers. They could write and receive letters frequently because of the many mail deliveries in each day. As stated above, separations were frequent, particularly when both couples were working and changing situations. Many of the female servants changed jobs two or three times during a single relationship; many of the men travelled on business or to school. Couples in these situations wrote to each other regularly even from the very beginning of the relationship.\textsuperscript{28} In fact, in some cases, one can trace the warmth of the regard growing and then cooling through the salutations and lengths of these epistles. For example, in \textit{Roper v.}

\textsuperscript{27}However, one must also keep in mind F.M.L. Thompson's argument that each of the classes created their own respectability, rather than adopting that of the middle class, \textit{The Rise of Respectable Society: A Social History of Victorian Britain, 1830-1900} (London: Fontana Press, 1988), p. 84.

\textsuperscript{28}In 173 of this sample, the couples exchanged letters at some point in their courtship or engagement.
Hills, Samuel Hills began the correspondence saying, "Dear Miss Roper," then progressed to "Dearest Harriet," and then to signing himself "Your ever affectionate and devoted, SAM." When his love began to cool, however, Sam went from back to "Dear Harriet" to "Dear Miss Roper," and to signing simply, "Yours truly." His letters also got progressively shorter and shorter; one of the last was two short sentences: "I shall come on Sunday instead of Christmas Day, as arranged. Mother is very desirous of going to church." 29

The influence of middle-class sentimentality and romance runs through the correspondence. In the early stages of courtship, when the men were still wooing the women, the most ardent and pleading words come from them. They expressed total love and devotion and promised to be true forever and begged for letters and other signs of true affection. Charles Hunt, a farmer, wrote his lover, Jane Alderton (the daughter of a farmer) that "I never loved a girl so much as I do you, I shall never deceive you, dear, and I hope you wont me. you can believe everything that I have said, for I shall alway stick to it," and signed the letter "Ever, ever,

29Roper v. Hills, ASSI 32/32; The Suffolk Chronicle, April 1, 1871, p. 7; Times, March 31, 1871, p. 11; Roper was the daughter of a farmer and Hills was a farmer. A similar case is Bull v. Robinson, in which the clergyman defendant's letters begin with "Dear Miss Bull," then change to "My own dear Carrie," "My dearest Carrie," "My own darling," "My own most beloved," but then descend back to "My dear Carrie" and finally to simply "Dear Carrie." ASSI 32/31; Cambridge Independent Press, August 6, 1870, pp. 6-7. (Bull was the daughter of a farmer.) See also Dennis v. McKenzie, ASSI 32/32; ASSI 39/27; The Law Times, 24 (May 6, 1871), p. 363; Cambridge Independent Press, March 25, 1871, pp. 5-7, between a governess and a draper. The practice of writing love letters was not limited even to the upper working classes, although working-class couples who survived separations through correspondence were a minority, John Bennett, ed., Destiny Obscure: Autobiographies of Childhood, Education, and Family From the 1820s to the 1920s (London: Allen Lane, 1982), p. 255.
ever you own, and alway shall be." Susanna Jones had a similar profession from her lover in the early 1890s: "Don't think that I mean to alter one bit from what I have told you . . . " Such protests of unchanging affection must have seemed highly ironic to those hearing them for the first time in breach of promise actions but especially so to those who originally received them. As Jane Alderton wrote back to Charles Hunt in 1879, "I am at a loss to understand your cool treatment after all those ardent professions and promises to me."30

At least at first, the letters clearly show the sincerity of the men's protestations. They were imbued with romantic professions, while at the same time reflecting the problems of a class of people who were forced to endure separations for months at a time. Most men expressed deep frustration at not seeing their loved ones often enough and great loneliness without them. John Irving complained to Ellen Wood in 1881, after making a trip to see her and finding her gone: "I write this note on the bank beside your house, and am nearly broken-hearted at your absence from home. Do come home again as soon as you can." Henry Davies, a builder, was even blunter in his letter to Annie Hancock, a cook, saying, "Oh my dearest, my heart is burning towards you . . . I am craving to see your dear face and sparkling eyes and to strengthen you in love." Only long letters partially satisfied the intense longing. Maurice Allard thanked Elizabeth Pullock for her faithful correspondence: "Oh what pleasure there is in receiving a letter from those who are dear

30Alderton v. Hunt, ASSI 1/67; Oxford Chronicle, July 10, 1880, p. 7 (Alderton was the daughter of a farmer); Jones v. Williams, ASSI 75/3; Supplement to the Swansea and Glamorgan Herald, November 28, 1896, p. 1. In the latter case, the defendant was an office worker of some sort and the plaintiff was the daughter of a farmer.
to us. Words fail me to express the feeling of my heart on the receipt of your kind and welcome letters. They give fresh animation to my whole system and cause me to rejoice in the thought that I have some one who does really love me and that fervently." Allard and Pullock are a good example of a lower-middle class couple with an extensive correspondence (he was saddle and harness maker and she was a boardinghouse keeper), and their experience was not atypical. In addition, rows of "X's," representing kisses, almost always accompanied the body of the letters, sometimes as much as five rows of them. Barristers could never resist counting them, to the great amusement of the court.\(^{31}\)

Although most of the letters that survive are the men's (since the women use them as evidence), there are a few letters from women, and they are quite similar in tone and fervency. For example, Harriet Roper wrote her lover Sam Hills in 1867 that he might think she had forgotten him, but that was not true: "although absent you are ever present in my thoughts, and only feel my utter inability of words sufficiently impressive to express my love for you, although I have nothing fresh or very endearing to write about." Constance Lewis warmly thanked her fiance for giving her a bracelet, "which I like extremely well, extremely. I admire your choice, and assure you it will be most highly valued for the sake of the giver." She later also wrote him assure him that his income was acceptable to both her and her mother: "she said she did not see why we should not be very comfortable." Polly Wynn, the daughter of an

\(^{31}\)Wood v. Irving, ASSI 54/9; Carlisle Express and Examiner, July 11, 1891, p. 6 (Irving was a property owner, but Wood was the daughter of an innkeeper); Hancock v. Davies, ASSI 73/3; Swansea Herald and Neath Gazette, August 7, 1889, p. 3; Pullock v. Allard, ASSI 1/64; Gloucester Mercury, April 6, 1867, p. 2.
innkeeper, tried to reassure Thomas Hurst that she would not mind living with him, an engine fitter, and promised to try to promote domestic harmony: "Dear Tom I know I shall find it very different than being at home. Dear Tom I do not care for the difference so as we are happy with each other and dear Tom I no doubt I shall feel very lowly at first always being at home, but I am willing to do the best I can to please you." In one of the few cases in which a man sued a woman, the female defendant's letters began with great ardor, with such phrases as "If the engagement is broken off, it will be my death" and "When I think of the happiness that awaits me, I am quite carried away." 32

Yet the tone of the men's letters began to change once the longed-for woman was assuredly won and had accepted the man as her future husband. The balance of power shifted, and the men's letters became shorter and more perfunctory, while the women's remained long and ardent. Toward the end of the relationship, it was the women who pleaded and searched for signs of affection and devotion. Usually, the women noticed a coolness in letters or behavior and wrote to try to find out the reason. Susanna Jones' fiancé, Joshua Williams, stopped writing to her after she asked him about a rumor that he was seeing another woman, and she wrote him, greatly worried:

I am rather surprised that you neither replied to my letter, which I sent you last week, nor been up to see me. I have been anxiously expecting to see you every day, and you can easily think how I feel this conduct. ... I have always placed the fullest trust in your honourable intentions to me, and I am, my dearest Josh, very loath to believe that you are

32Roper v. Hills, above; Lewis v. Franklin, above; Wynn v. Hurst, ASSI 1/66; The Shrewsbury Chronicle, March 26, 1875, p. 7; Currie v. Currie, The Lady's Own Paper, 7 (March 4, 1871), p. 131, between a farmer and his rich cousin.
now going to throw me over after all the years we have been waiting for one another . . .

It was even more agonizing for women who had allowed sexual intercourse and now found themselves deserted. Elizabeth Jones, the daughter of a widow, was engaged to her cousin, Pryce Griffiths, who was a preacher. He urged her to come to Liverpool and stay with him, and when she finally complied, he seduced her. Afterwards, she became pregnant, and he began to cool and to deny that he had ever promised marriage. Elizabeth wrote him a letter which he ignored and so she sent a second begging one: "I went to the Post this morning and found no answer to my letter you know how i am and a dont know what to do for I am in such trubble and do right and let me no what I am to do for you no that I am in the family way to you." Most of the women were bewildered by their lovers' sudden turnarounds, wondering what they had done wrong. As Jane Alderton put it to Charles Hunt, "If there has been anything in my conduct displeasing to you, I would much like to know what it is."^{33}

The received wisdom behind breach of promise actions was that the man could not break off an engagement honorably, since it was he who had pursued and won the heart of the lady. Having induced her to love him, he could not change his mind and decide not to fulfill his promises to her. To some extent, the correspondence in breach of promise cases bears this interpretation out. Very clearly, the women were sought and ardently wooed in the beginning and their affections engaged. For a brief period, women had more power, since they decided whether or not to accept the man's addresses. In some ways, men temporarily gave up the normal gender

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power relationship in order eventually to restore it to the norm. The closer the courtship came to an actual marriage, the more the power shifted to the future husband's benefit. The reasons are not hard to see. Once a woman had decided to accept a man, she became completely devoted to him and his happiness. She also lost her freedom of action, since she became wholly dependent on the good will of her fiancé in keeping his promises, while at the same time unable to attract any other men. Working women often gave up their situations or sold their businesses, losing their precarious financial security. And women who had become pregnant were in even worse shape, since they had lost their reputations as well as their ability to earn. Although theoretically, men were similarly circumscribed, in practice they often courted other women without suffering a loss of reputation, and a broken engagement very seldom blighted their chances in life; in addition, in the late nineteenth century, men had a wider choice of spouse and were considered marriageable until an older age than women. Thomas Powell, a vet, admitted the man's advantage to Minnie Reeves, the daughter of a small farmer, when he wrote to break off the match: "I have for years, after having obtained your love and confidence, kept you chained, as it were, to myself, in the hopes of long ere this marrying you ... All these thoughts crowd upon me from time to time, and what an amount of reproach they bring you cannot imagine."34

The women's puzzlement was doubly understandable considering the (mostly original) poetry men frequently wrote to their loved ones. Even

34Reeves v. Powell, ASSI 32/34; Buckinghamshire Herald, March 15, 1873, pp. 6-7.
poorly educated men felt moved to write romantic verses as an expression of their affection which is another indication that "middle class" sentimentality was not confined to that class alone. Sometimes, men wrote specifically for the woman they loved, naming it after her, e.g., or referring to incidents known to both of them. These are usually silly or very bad poems, full of idiosyncratic spelling and meter. John Jackson, a miller, wrote poems in the place of letters to his "Miss Bell," including the following:

I wish you wood com back and stay
for I hav been quite sad ever since you went away
The loss of you I do deplore
for I never fell in with equal before.

I am going up the Town tonight
to practice for the Ball
I wish you had been here to go with me
for without you I will not enjoy it at all

These kind of poems were often very short, put on as part of the farewell, like that written by Mr. Brearly, a farmer and butcher, to Miss Elder in 1897: "I am in love, as you may see./ I love but one, and thou art she./ Read this, my dear, and then you see/ That I love you, do you love me?"

They could also be playful, as in this offering by a curate in thanking his fiancee for her gift: "Oh, Fidget, my dear,/ The socks, I declare,/ Are just my little foot's size;/ Not too large or too small,/ But, taken in all,/ An agreeable and kindly surprise." However, some were more serious and better written, and express a strong need for companionship that many men felt and were not afraid to admit in the Victorian period. William Williams, a machine clerk, expressed his great affection for his "Nellie," a servant, by creating a poem about their last meeting:

My Nellie, I am thinking
Of Monday night all week,
When you and me were happy,  
With face and cheek to cheek.  
It was you that made me happy  
By giving me your company;  
And so you are both far and near,  
Feel that you are my dear.\textsuperscript{35}

Many of the poems expressed common themes, illuminating some of the features of courtship in the lower middle and upper working classes. It is significant that the most frequently used theme in original poetry was "forget me not." Poem after poem pleaded that the recipient not forget her lover, since he would never forget her. Such verses were understandably popular, considering the long waits and frequent separations most couples had to endure before they could afford to wed. Joseph Taylor, the son of a tenant farmer, wrote one of the more distinguished versions to Ellen Hall in the early 1870s:

\begin{quote}
Remember me, my dearest Nellie,  
Oh Love, remember me,  
For till this fleeting life shall end  
I will remember Thee.

I've loved thee short, I've loved thee much,  
And till this frame shall be  
Laid in the silence of the grave,  
I will remember thee.

Forget thee! Sooner shall the waves  
Forget and leave the sea,
\end{quote}

\textsuperscript{35}Bell v. Jackson, above; Elder v. Bready, Illustrated Police News, February 20, 1897, p. 6; Lamb v. Fryer, Liverpool Daily Post, August 9, 1881, p. 7; Roberts v. Williams, ASSI 59/29; Chester Observer, July 30, 1898, p. 6. See also Roberts v. Williams, ASSI 59/3; Carnarvon and Denbigh Herald, July 25, 1885, p. 8, for this offering from a master tailor to a cook: "I will ask of thee, my darling,/ In the question soft and low,/ Which has caused me many a heartache,/ As the moments come and go;/ For I know your love is true,/ Yet the stoutest heart grows cold,/ And it's only this, my darling,/ Will you love me when I'm old." In Sutton v. Aronberg, ASSI 54/12; Manchester Examiner and Times, July 18, 1893, p. 5 and July 19, 1893, p. 5, the wealthy defendant made an anagram of the plaintiff's name (AMY SUTTON) and wrote a nine-line poem to go with it.
Sooner the stars forget to shine
    Than thou forgot shall be.

No love, my best and fondest prayer
    Ascend to Heaven for thee,
And till my lips are closed in death
    I will remember thee.

From your deeply attached JOE

Most of these poems were shorter and even less original, such as this mid-1880s effort, written by a lawyer's clerk: "If fate compels me far to roam/ Think not that thou wilt be forgot,/ Then may I ask thee in return/ That thou forget me not" or, even shorter, "The cup of life/ Would bitter be,/ If thou didst not,/ Remember me," by the son of a large property owner. These rhymes show the anxiety of men during long and painful separations and their fear that their fiancées would lose patience with the seemingly endless waiting. Considering the fate of these couples, such fears were not groundless, although the forgetting was on the other side.

A very similar theme is to express the loneliness and separation and a longing to be with the lover. One of the best original poems, "Come to Me, Darling," was on this subject:

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36 Hall v. Taylor, ASSI 1/65; Oxford Chronicle and Berks and Bucks Gazette, March 1, 1873, p. 5; Williams v. Haines, ASSI 1/66; Monmouthshire Merlin, April 2, 1875, p. 2; Wood v. Irving, ASSI 54/9; Carlisle Express, July 11, 1891, p. 6. Other examples include this poem in Jones v. Bowmphrey, Gloucester Mercury, April 11, 1863, p. 5, from a master joiner to a servant: "Forget me not!/ Let not the past fade from thy memory--/ The heart that n'er from thee can roam:/ In hearth and sickness let the motto be--/ Home, sweet home" and one in Jukes v. Lloyd, ASSI 1/67; Shrewsbury Chronicle, July 28, 1882, p. 9 (Second Sheet) by a farmer: "forget thee never while I've health can I forgetful be/ I'd sooner yield myself to death than cease to think of thee/ For ever yes for ever love my heart shall beat for thee/ And sooner may it cease to move than cease to think of thee/ Art thou not dear unto my heard/ 0 search my heart and see and from thy bosom tear the part/ That beats not true to thee/ Yes thou art dear unto my heart more dear than tongue can tell/ And if a fault is cherished there it is loveing thee to well."
When the red sun in the clear west is glowing,
And the soft wind from the sweet south is blowing;
When the days trials no longer are near me,
Come to me, darling, to soothe and to cheer me.

Thou art the sun that dispels my sad hours,
Sweeter thy breath than the odour of flowers,
Only they smile can my sombre life brighten,
Come to me, darling, my sad heart to lighten.

That poem was written by a farmer in 1877, and was one of many "passages of poetry" he set to the woman he courted. Similar sentiments were voiced by those forced to rely on letters for long periods of time. In two of the cases, the men quoted an apparently well-known poem called "I'll Write to Thee":

I'll write to thee, aye, fondly write
My every whispered sigh,
My thoughts by day, my dreams by night,
My wish that thow wert nigh.
I'll send thee vows as softly sweet
As breathings from the south;
A kiss, but no, when next we meet,
A kiss by word of mouth.\(^{37}\)

The frustrations with long-standing engagements that the men had expressed in their prose, then, were also represented in verse. It was not only the women who found the long waiting galling; men, too, saw a home of their own as proof of their independence and adulthood.

There are many other poems recorded in these cases--poems for special occasions, such as New Year's Day, poems specifically for older
couples, poems that wish future happiness, and poems of purely romantic flights of fancy. There are, however, very few instances of women writing poems to men. It was considered the man's job to woo the woman; if she sent poetry, she was stepping out of acceptable boundaries and "chasing" the man. In only two cases did the man put a woman's poetry into evidence, once because the man was the plaintiff, and once using it to try to brand the plaintiff as the aggressor in the courtship. Both women's poems expressed the same ideas as those of the men. Margaret Lewis, the daughter of a master joiner, e.g., wrote to her lover, a greengrocer, in 1878: "I must leave you, Johnny darling,/ Though the parting gives me pain,/ When the stars shine, Johnny darling,/ I will meet you here again;/ Oh, good night, Johnny; good-bye, loved one;/ Happy may you ever be,/ When you are dreaming, Johnny darling,/ Don't forget the dream of me." Here were expressed the same loneliness and frustration at parting as in many of the others. Jane Ormand, the widow of a surgeon, dealt with the familiar theme of "Remembrance" when writing to John Eden, a land surveyor: "Oh simple words, with love imbued,/ How hearts respond to thee!/ In cadence soft, through struggling fear,/ My friend, remember me." However, Margaret's efforts were different in one respect; after John Molyneux broke off with her, she wrote a furious six-stanza poem, called "Deceiver Go," telling him off in no uncertain terms:

38See, e.g., a poem starting "Pray accept this New Year's gift" in White v. Allen, ASSI 22/42; Bristol Mercury, July 4, 1896, p. 3, written by a baker. For a poem between a mature couple, from a man of independent means to his housekeeper, see Slack v. Bradley, ASSI 54/7; Manchester Examiner and Times, July 16, 1888, p. 6. Other poems in Roper v. Hills, above, written by a farmer to the daughter of one, and Norman v. Baker, ASSI 22/43; ASSI 28/13; Western Times, February 7, 1899, p. 5, from an armourer's mate on a ship to a domestic servant.
I'll admit that once I loved thee,
That I deem thee just and true,
That my heart has loved no other
   Fondly as it once loved you.
    *
    *
    *
It is vain, I cannot worship
   Aught your glittering wealth may buy;
And although my hours be lonely,
   I shall spurn thee till I die.\(^{39}\)

Men very seldom used poetry to end an engagement; in fact, only one of the
men wrote a poem in breaking off relations. John Jackson wrote a short
farewell to Miss Bell in 1856, "So from you I must part/ I make the
sacrifice from my heart/ So farewell Miss Bell alone I'll dwell."\(^{40}\)
Otherwise, not surprisingly, men left poetry to the early stages of
courtship.

Clearly, with all the visiting and writing, the couple had a chance
to develop their relationship from friendship to courtship to engagement.
Nevertheless, to some extent, the previous discussion of "courtship" and
"engagement" has put too definite a line between the two periods. For
most of the couples in these classes, the process of "walking out" or
"keeping company" shaded into engagement; exactly when a couple became
formally engaged was therefore often difficult to determine—even for the
couple. For example, Harriet Micklewright and John Bryning courted for
eight years, waiting for John to take over the family farm from his
father. John "spoke" to Harriet in 1870, saying he was not in a position
to marry, but promising to "talk about marriage" when he was able to
support her; she agreed to wait, and in the meantime, she ran a lodging

\(^{39}\text{Lewis v. Molyneux, ASSI 54/2; Liverpool Mercury, November 6, 1878, p. 8; Eden v. Ormand, ASSI 32/31; Buckinghamshire Herald, March 20, 1869, p. 3.}\)

\(^{40}\text{Bell v. Jackson, above.}\)
house. They exchanged 67 letters for the next nine years until John's father died in 1879. The two saw each other infrequently, but were "considered" engaged, according to the plaintiff. Yet John Bryning married someone else in 1881, and he claimed at the trial that they were not an engaged couple, despite exchanging locks of hair and writing love letters and even poetry. Although John's denials do not ring true, he had a point, for never at any time were he and Harriet formally engaged. It simply did not work that way in the lower middle and working classes.  

Indeed, in several cases, the defense barristers used this ambiguity to argue that the courtship period was a time to determine if the couple were compatible and that no man should be bound if the couple could not be happy together. Mr. Metcalfe, e.g., argued in an 1895 case that "people in the position of life of the parties in that case [a housemaid and the second whip of a hunt] often walked out together as a sort of trial to see if they liked each other well enough to get married eventually. That was what had happened in that case." Mr. Coleridge said much the same thing in a case in 1880 between a housemaid and a dairyman: "Defendant denied that he made any promise to marry the plaintiff. . . . They were merely on the same terms as so many people were who kept company with each other, without meaning anything serious." To these defendants, at least, the romantic activities of courtship did not necessarily lead to marriage; they had a right, upon discovering grave differences, to refuse to go through with the wedding plans. Some men did not even see engagements as binding. As one defendant wrote to his ex-fiancee in 1870:

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41Micklewright v. Bryning, ASSI 54/3; Liverpool Mercury, February 11, 1882, p. 8.
"Overcome by excitement, you ignore altogether that engagements have any probationary element in them, although it is difficult to divine for what other reason such periods exist." He went on in the same letter:

It cannot be denied that engagements are entered into with a consciousness that contingencies may happen however undesirable, or changes may occur however much to be regretted, which were never at the outset foreseen or anticipated. These are deeply to be deplored, but are nevertheless some times unavoidable, and after all they are far more disastrous when they occur too late for redress...42

Women, understandably, did not take this view. They thought that there was an engagement after the man "spoke" to them for the first time. In fact, women and their parents considered any serious courtship (and this occurred as soon as the man asked permission to "keep company") as tantamount to an engagement. They had justification for their view, since women were barred from seeing any other men as soon as they seriously courted one; if they flirted with more than one man at a time, they risked losing everything. In most cases, there was simply no way to draw the line between courtship and engagement, and this was the basis of many of the misunderstandings that ended in court. Some men admitted to "making love" to the plaintiff or being on "friendly terms" with her, but they adamantly insisted that they had never proposed. Robert Scotter, e.g., admitted to courting Maria Appleton, but explained that "having considered the matter he had arrived at the conclusion never to propose to her." William Orchard, too, claimed that although he had "gone about" with Elizabeth Spender, he had never asked her to be his wife. To the women,

42Eldridge v. Rees, ASSI 22/42; Bristol Mercury, July 1, 1895, p. 6; Barter v. Lawrence, ASSI 22/37; Western Times, January 26, 1880, pp. 3-4; Bull v. Robinson, above. For more on the arguments over contract ideology, see Chapter 8.
however, such courting and "going about" was a far more serious matter and for the most part, judges and juries were more sympathetic to the woman’s point of view. As Justice Matthew remarked in an 1888 case in which the defendant pled that he had merely been courting the plaintiff, the jury "would probably not be too much impressed by the fine distinction—the scientific frontier—which had been drawn between people keeping company and being engaged lovers."43

Despite these ambiguities, most of the couples (or at least the female half of them) had a definite goal. Courtships and engagements, no matter how protracted, eventually ended, either in marriage or permanent separation. Since no one expected the latter, the final activity of courting lovers was planning the wedding. Most of the planning fell to the women and their families, but some men also took an active interest. Like the process of getting engaged, weddings of the lower middle and upper working classes were not nearly as formal as those of the middle and upper classes. Weddings dates were set and then changed two to three times; dresses were several different colors (almost never white); people were invited haphazardly; in short, the whole affair was casual. Although women took their wedding day very seriously, they seemed unconcerned at the congenial lack of precision in the planning itself.

This is not to say that the couple did not make arrangements beforehand—they most certainly did. There were many things to attend to, as this letter from Thomas Hurst to Polly Wynn shows:

First thing let me know how many you want to go to church. [Laughter (in court).] That is in couples you know. (Renewed laughter.) I think three couples would be plenty ... I should like your father to give you away. If there is one young lady with your father we shall be very well unless you want more, but I think 2 carriages would be enough ... I should like us to have a nice breakfast. (Laughter.) You must give the order to a good confectioner for the brides cake and such like. ... Then about the ring. You must send me your size but we can buy it nearer the time when I am over there. ... Now in dressing go to some first class place--(laughter)--and dont stick to any old fashioned notions but have everything nice and good ... You will want another dress if you like beside your wedding dress to put on when we go away because it is not pleasant to travel in wedding clothes ... It destroys all pleasure. People stare so ... 44

Women spent a considerable amount of money preparing for the wedding; it was a particularly large expense for lower middle and working class women, since their wages were often not high. The biggest expense was the trosseau, or the wedding clothes. In addition to the "bride's dress," the woman needed two or three other dresses as well as underclothes. Florence Carter had "several" dresses made; Susannah Brown had "three dark dresses" in addition to her wedding dress. 45 In fact, almost all of the accounts speak of wedding "dresses" rather than a single dress. The wedding dress was not necessarily white, but it was almost always an expensive fabric, usually silk. Sarah Owens and Elizabeth Higgs had black silk dresses made; Martha Bebbington and Susannah Brown both settled for blue silk; Elizabeth Adams had grey, "though she preferred heliotrope." In fact, in the all of the four latter cases, the women claimed that their lovers had chosen the color. Many times, the men saw

44Wynn v. Hurst, above.

45Carter v. Stowe, ASSI 54/9; Liverpool Mercury, March 24, 1891, p. 7, between a shop assistant and a tailor; Brown v. Friend, above. For trosseaux in the upper-middle class, see Pat Jalland, Women, Marriage, and Politics, pp. 37-38.
the bridal clothes before the wedding in order to give their opinion. In *Windeatt v. Slocombe*, the plaintiff testified that "I had made a wedding dress, which I showed him, on which he said 'It is not a silk one?' as if he didn't think it good enough for me." Rather than wearing veils alone, the women sometimes bought "wedding bonnets" in addition to the dresses.46

Besides the *trousseau*, the bride also provided household goods, such as linens, "spoons, glasses, and ornaments." As one barrister put it, a woman gathered together the "many little things that would be required in her change of life." Some women went to even more expense by improving their property or homes. Sarah Owen claimed that she spent £50 in draining and otherwise improving her farm in preparation for the marriage, although she admitted that the defendant had never asked her to do so.47 The women were spared the expense of paying for their bridesmaids dresses, since these were purchased by the bridesmaids themselves. The groom, too, provided his own clothing, though he did not necessarily buy an entire new suit for the occasion. Attention usually centered on the "waistcoat" and

46Owen v. Williams, ASSI 59/142; Carnarvon and Denbigh Herald, July 19, 1879, p. 7 (the defendant was a farmer; the plaintiff's occupation was unknown); Higgs v. Trow, ASSI 32/33; Leicester Advertiser, March 2, 1872, p. 8, between a lodging housekeeper and a farmer/publican; Robbington v. Hitchin, ASSI 59/130; Chester Chronicle, August 9, 1873, p. 3, between a housekeeper and publican; Brown v. Friend, above; Adams v. Ireland, Cornish Telegraph, March 10, 1892, p. 2, in which the plaintiff had no job and the defendant was a farmer; Windeatt v. Slocombe, above. For bonnets, see Pryke v. Smith, above. Another example of a man's involvement with the wedding clothes is Jones v. Jeffries, ASSI 1/63; Staffordshire Sentinel, July 25, 1863, p. 7, between a barmaid and the son of a builder and joiner. James Jeffries actually picked out the pattern for Ann Jones' wedding dress and gave it to her.

47Pryke v. Smith, above; Tittle v. Hooper, ASSI 75/2; South Wales Daily News, February 14, 1883, p. 4, in which the plaintiff was the daughter of a tobacconist and the defendant was a tobacconist; Owen v. Williams, above.
ties which lent the proper formality to the groom's demeanor. 48

The bride and groom between them decided who would stand up with them; almost always at least a few of the wedding party were relatives. The number of bridesmaids and groomsmen was usually small, seldom more than three. Mary Hill, e.g., had only one bridesmaid, the defendant's sister; Susan Williams picked two of her friends; Annie Wilkinson invited her fiance's daughter to stand up with her. 49 The woman's family gave out the invitations to the wedding; if the groom had friends he wanted invited, he had to give a list to the bride's family. Many times, the invitations were completely informal, simply hand-written letters, although more formal "boxes and cards" were available if the couple could afford them. 50

Two communal rites were part of the engagement. The first, and less common, was "standing the wedding glass." Usually this coincided with the announcement of the engagement at a public gathering. The groom-to-be announced that he was to marry the woman, and the "wedding glass" was

48See Higgs v. Trow, above, in which the defendant chooses a black waistcoat, and Wynn v. Hurst, above, in which the defendant writes: "I don't know anything about what would be wanted but there will be gloves and waistcoats and neckties. . . . I have a white waistcoat that I bought for my sisters wedding. . . . I think the neckties should be the same as your dress."

49Hill v. Proctor, ASSI 32/34; Norwich Argus, August 9, 1873, p. 7, in which the defendant was a farmer (plaintiff's occupation unknown); Williams v. Thomas, ASSI 75/4; Brecon County Times, March 11, 1898, p. 8, between the daughter of a foreman on a railroad and a Baptist minister; Wilkinson v. Kelsall, ASSI 59/128; Chester Chronicle, August 17, 1872, p. 7, between the daughter of a hotelkeeper and a farmer.

50For handwritten invitations and the groom's responsibility, see Smith v. Woodfin, 140 English Reports 272-277 and Times, July 8, 1856, p. 11, in which the plaintiff was the daughter of a clerk and the defendant was a brewer; and Wade v. Rae, above. For formal invitations, see Alderton v. Hunt, above.
passed from person to person as those present wished the couple good luck. If the wedding were hastily done, the "standing" could occur afterwards. The second rite, the wedding breakfast, was almost universal; it was as obligatory as the wedding dress. It was a simple meal that took place after the wedding ceremony. There was always a wedding cake (sometimes called the "bride's cake") as well as various other refreshments. Occasionally, these affairs could be quite elaborate; Mary Hill described her breakfast as having "pheasants, partridges, bride's cake, jellies, &tc." Most of the time, however, they were humbler affairs, consisting of the cake, drinks, and light refreshment. The wedding breakfast served the same basic purpose as the modern reception, giving those close to the couple a chance to celebrate their union with them.

The groom's primary expense was in finding the place to live and furnishing it. The couple quite often went to pick out furniture together. Mary Jane Pattinson and Edward Heslop (a servant and a farmer) quickly settled on a farm to take, the possessions which would go to his mother and sister, and the furniture for the new home. Susan Williams and her fiancé, the Reverend John Thomas, divided up the furnishing chores by sex: "He selected the male portion of the furniture that was for the

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51 See Trainor v. Radcliffe, ASSI 54/14; Liverpool Mercury, November 1895, p. 6, between a nurse/housekeeper and an innkeeper; and Tamkin v. Wilson, ASSI 54/9; Carlisle Express, July 6, 1889, p. 8, between a grocery shopowner and an engineman.

52 Hill v. Proctor, above; Wynn v. Hurst, above; Robinson v. Atkinson, ASSI 54/3; Carlisle Express and Examiner, July 19, 1884, p. 6 (the defendant was a middling farmer; the plaintiff's occupation was unknown); Wilkinson v. Kelsall, above; Penny v. Reese, ASSI 22/32; Western Times, March 19, 1872, p. 4, between the daughter of a clockmaker and a "man of property." For wedding breakfasts in the middle class, see Davidoff and Hall, Family Fortunes, pp. 407-408; for a wedding breakfast in the working class, see Elizabeth Roberts, A Woman's Place, p. 77.
dining room, and she selected the drawing room suite and the fancy articles." The groom was also expected to pay for the license and the cost of the preacher (or other official). Even when he did not actually purchase the license himself, he gave the money; William Spickett, a gentleman, was away on business the week before his scheduled nuptials, so he gave Charlotte Ball £4 to procure the license. Usually, however, women expected men to handle these kinds of arrangements. The defendant in M'Leod v. Horrocks "professed warm attachment" for the plaintiff "and asked her to 'put the askings up.' This she declined to do, because she thought 'it was a man's place to do that.'"53 In general, men were more likely to want to use a license; women preferred the publicity of the banns, unless there was some urgency (e.g., if she were pregnant).54

The couples usually planned modest, casual honeymoons. Occasionally, the grooms hired carriages to bring the bride to the wedding and then take the couple away, but this expense was usually forgone. Nor did couples go far on their visits; often they visited the largest town or area near them. Charlotte Windeatt and Frank Slocombe planned to go to Exeter; Julia Burton and her fiancé, Frederick Howelett, planned to stay in

53Pattinson v. Heslop, ASSI 54/14; Carlisle Express and Examiner, July 4, 1896, p. 6; Williams v. Thomas, above; Ball v. Spickett, South Wales Daily News, July 14, 1893, p. 4 (Ball's job was unknown, but she was the sister of a milk shop owner); M'Leod v. Horrocks, Illustrated Police News, March 30, 1872, p. 3, between a servant and a plumber.

54See Brown v. Friend, above; Higgs v. Trow, above; and Jukes v. Lloyd, ASSI 1/67; Shrewsbury Chronicle (Second Sheet), July 28, 1882, p. 9, between the daughter of a farmer and a farmer. See also Eldridge v. Rees, ASSI 22/42; Bristol Mercury, July 1, 1895, p. 6, in which the defendant, a whip in a hunt, wanted to be married secretly in London by license, but the plaintiff, a housemaid, argued for being married in her home. For more on the controversy between licenses or the banns, see Joan Perkin, Women and Marriage in Nineteenth-Century England (London: Routledge, 1988), p. 21.
Llandudno, while Susan Williams and John Thomas were to go to London. Annie Allmand intended to spend even less money; she and Elijah Forrester accepted the invitation of her cousin to spend the honeymoon with her.\(^{55}\)

One final preparation was made by the woman: time after time, they gave up businesses, jobs, training, or school before marrying. Any number of examples could be given of women who happily left the world of employment in anticipation of becoming full-time wives. Many times, this action was at the defendant’s request, although the women did not express any reluctance. Sarah Graves "gave up the house in which she was earning her living as a lodging-house keeper" after her lover, Henry Cutforth, a draper, requested it. Other times, as in the case of servants, marriage automatically meant losing their situations. Elizabeth Barter was only one of many servants who left her position a few weeks before the wedding date in order to prepare. Even women working in factories were not always exceptions. Mary Ann Langley's fiance, John Trickett, a woollen printer, "said she must stay at home, and the consequence was that she left the mill, . . . 'Johnny' promising to allow the mother £1 per week for keeping her daughter until the wedding took place." Even women preparing for careers, either as governesses, schoolteachers, or musicians, halted their training, since they assumed they no longer needed it. Edith Williams was a 16-year pupil teacher, preparing for her fourth and last examination to become a teacher, when she met Edward Hughes, an accountant, in 1879. She

\(^{55}\)For carriages, see Hill v. Proctor, above, and Windeatt v. Slocombe, above. For honeymoons, see Burton v. Howlett, ASSI 32/37; Supplement to the Norwich Argus, February 18, 1882, p. 1 (Howlett was a merchant; Burton's occupation was unknown); Williams v. Thomas, above; and Allmand v. Forrester, ASSI 1/67; Shrewsbury Chronicle, February 3, 1882, p. 6, between the daughter of a farmer and a farmer.
walked out with Edward, giving up her schooling, and eventually got pregnant by him before the age of 18. With an illegitimate baby to take care of, it was doubtful that she ever completed her schooling or had a career in education.\footnote{Graves v. Cutforth, Illustrated Police News, January 25, 1896, p. 2; Barter v. Lawrence, ASSI 22/37; Western Times, January 26, 1880, p. 3-4 (Lawrence was a coal dealer and dairy keeper); Langley v. Trickett, ASSI 54/2; Manchester Evening News, February 3, 1880, p. 4; Williams v. Hughes, ASSI 59/146; Chester Chronicle, July 30, 1881, p. 6.}

All of these examples took place at the same time that upper-middle class women were beginning to push out of the home and into the public sphere. Yet these lower middle and working class women could not wait to get into their own home and out of the difficult world of making a living. Most women in classes below the middle were "behind" their sisters of higher status in their expectations. They had yet to feel stifled in the confines of the home; having faced uncertain futures of making their own way, they preferred to have a husband provide for them.\footnote{And, as Joan Perkin has pointed out, women had many other reasons for preferring marriage, even in the lowest classes: "she wanted the higher status marriage conferred in the eyes of her neighbours, a home of her own, a spouse to love and share her life, legitimate sex, children. The prospect of remaining single was harsh for a woman who (because women's wages were so low) could not usually afford to live on her own and would nearly always have to share someone else's home," Women and Marriage, p. 126.} They expressed great indignation at having lost their careers, but only because they gave up their businesses for no reason, since their fiancés did not hold up their end of the bargain. Having agreed to be the provider (and in some cases being a pseudo-husband for some time), the men were seen as particularly reprehensible; they promised to take over that role, but then left the women less able to manage than before. This was behavior exactly
opposite to that of the ideal middle-class man.

And where are the parents of the couple during all of these activities and preparations? At first glance, the relatives of the pair seem to have little say in their choice and behavior. Parents, particularly those of the bride-to-be, seldom tried to absolutely veto the courtship. Although women expected men to ask consent to court (or marry) them from the nearest relative, she assumed that the consent was automatic. Some parents did not even consider it their business to interfere with their children's choices. For instance, the plaintiff's father in \textit{White v. Aird} in 1872, replied to the defendant's letter asking his consent to the engagement that "as he had every confidence in his daughter, he could have no objection to him as her future husband." In \textit{Ibbetson v. Strickland}, in 1889, the defendant asked for the mother's consent, "and her mother said her daughter could do as she liked." Hannah Pendlebury's father, similarly, told her suitor in 1891 that "if they liked each other it was not his business to interfere."\textsuperscript{58}

Most parents were not this blase, but only a few voiced objections. In fact, in most cases, the parents' consent was taken as a given and not even mentioned; in others, it was a single sentence, such as "the mother had no objection" or "he went to her father on the 24th October and obtained that consent." Even those parents who had objections had only limited influence. Anne Blakeman's father, a farmer, disliked Eli Bowers,

\textsuperscript{58} \textit{White v. Aird}, \textit{Newgate Calendar and Divorce Court Chronicle}, Issue 3 (May 20, 1872), p. 46, in which the plaintiff was the daughter of an innkeeper and the defendant was a master tailor; \textit{Ibbetson v. Strickland}, ASSI 22/40; \textit{Western Times}, March 5, 1889, p. 3, between the daughter of a farmer and a corn factor; \textit{Pendlebury v. Doody}, ASSI 54/9; \textit{Manchester Examiner and Times}, July 16, 1891, p. 3, between a nurserymaid and a clerk.
also a farmer, thinking him a flighty young man. He refused to allow Anne to see Eli at first because she was only 17, but he relented after only a few months, though warning the young man that he must be "straightforward in his addresses." Sophia Dainty's mother pointed out to T.M. Brown the differences in their ages and religious opinions, but he overrode her objections, even refusing Sophia's offer to release him (both families were in farming). Elizabeth Rice's mother was furious that her daughter rejected a younger suitor to go with her employer, James Hall, and she and her husband "tried to prevent it, thinking that it was an ill-sorted match," but their efforts were unavailing. When Hall finally broke it off, after ruining Elizabeth's previous, more suitable courtship, Mrs. Rice upbraided him sharply, saying "he had behaved exceedingly ill ... and reminded him of what she had said before, 'that no good would come out of the engagement.'" Her case illustrates that the parents of the women could not often stop engagements, try though they might.59

All the same, this does not prove that parents had no influence. The families of the man and woman exerted enormous, if informal, influence on the course of the courtship, and, especially, on the breaking up. Though seldom successful at stopping engagements, they were quite effective at stopping weddings. Time after time, the men pleaded that

59Brown v. Barnfather, ASSI 54/4; Carlisle Express and Examiner, January 23, 1883, p. 8, in which the plaintiff's job was unknown and the defendant was a farmer; Smith v. Mitchell, ASSI 54/9; Manchester Examiner and Times, March 17, 1892, p. 7, between a mantle maker and an iron molder; Blakeman v. Bowers, ASSI 1/68; Staffordshire Advertiser, August 2, 1881, p. 6; Dainty v. Brown, ASSI 32/31; The Northampton Mercury, July 23, 1870, p. 7; Rice v. Hall, ASSI 75/2; Brecon County Times, January 31, 1880, p. 2 (Rice was the servant of Hall, an auctioneer).
they did not carry out their promises because of the disapproval of family or friends, usually because differences of class and status. Although most historians have focused on the woman’s kin, it is evident that parents (and other relatives) sought to control the choices of their sons as well as their daughters.

Indeed, there were two ways that family members went about stopping a male child from contracting an "unwise" marriage. The first was to use the power of the purse; in several cases, the defendant broke it off because of threats from a family member from whom he had "expectations." William Barnes' rich father, e.g., raised objections after Theresa Bingley's step-father, a steelworks director, had gone bankrupt, leaving her without a dowry of any sort. But it was not always parents who had control. The defendant in Scrine v. M'Kay claimed he could not marry because if he did, his sister would do nothing for him; other men were dependent on relatives outside the immediate family, such as an aunt or uncle. According to Charles Wright, a plumber, he left Annie Duke, a dressmaker, in 1885 on the influence of his first wife's mother, from whom he hoped to inherit.⁶¹

Most of the time, however, relatives took a less ham-fisted approach. Instead, they used persuasion and unpleasantness to the fiancee

⁶⁰Diana Leonard has argued that parents' "delaying tactics" have continued into the 20th century, Sex and Generation: A Study of Courtship and Weddings (London: Tavistock Publications, 1980), pp. 99-118. For parental interference in the 18th century, see Bridget Hill, Women, Work, and Sexual Politics, pp. 185-186.

⁶¹Bingley v. Barnes, ASSI 54/11; Manchester Examiner and Times, March 8, 1893, p. 7; Duke v. Wright, ASSI 32/38; Sussex Advertiser, August 9, 1886, p. 3; Scrine v. M'Kay, Illustrated Police News, February 28, 1880, p. 2. See also Rees v. Powell, ASSI 75/3; South Wales Daily News, March 13, 1888, p. 2 and Theophilus v. Howard, above.
to encourage a breach, as the following examples illustrate. Mary Powers, a dressmaker, got on the wrong side of her future mother-in-law when she visited Mrs. Battersby without a specific invitation in October of 1897. Mrs. Battersby was annoyed enough to work against the relationship from then on. She told Mary to take her letters away, since they cluttered up the house, and then used this to persuade her son, a sailor, to leave Mary. Although Richard refused at first, he eventually yielded to the pressure. A similar case was that of Shickell v. Warren, between the daughter of a farmer and a farmer. In that instance, the plaintiff alienated her future mother-in-law by remarking that "some grapes which were offered to her were mouldy, and upon that the old lady took offence and turned her back upon her. From this time on she was very disagreeable to the plaintiff..." John Humphreys, a grocer, courted Fanny Wood on the sly because he knew his mother would disapprove since she wanted him to marry money and Fanny was only an assistant in a milliner's shop. When Mrs. Humphreys discovered their engagement, she objected so strongly that Fanny went to a different town for two years and lost touch with John. George Strongitharm tried to elope with Julia Ford in 1875, since he was the son of a mayor and she was a barmaid. They disappeared into Manchester, but his father, brother, and family solicitor all found them and urged George to give her up. Although he resisted for some time, he eventually left for a visit to his aunt, and Julia never saw him again.  

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62Gee v. Entwistle, ASSI 54/2; Liverpool Mercury, July 27, 1878, p. 8; Powers v. Battersby, ASSI 54/17; Manchester Evening News, February 5, 1900, p. 4; Shickell v. Warren, ASSI 32/39; Norwich Argus, July 26, 1890, p. 4; Wood v. Humphreys, ASSI 1/68; Leicester Mercury, August 11, 1883, p. 3; Ford v. Strongitharm, ASSI 54/14; Manchester Evening Mail, March 5, 1896, p. 2.
As these examples indicate, the more subtle kind of opposition was quite effective and could be used by all members of the family. In fact, it was not only younger people who faced family opposition; several of the older couples were broken up by their children's opposition to the marriage. For example, in *Bath v. Williams*, a case involving a dressmaker and a blacksmith, the defendant testified that his grown children "said that if he married the plaintiff they would leave him." Thomas Williams was 23 years older than his young fiancee, and his children evidently feared that she would have more children and threaten their inheritance. They also may have disliked her class, since she was a housekeeper, although Williams was only a blacksmith. Evan Jones, a farmer, was influenced by his 20-year old son William who "naturally objected to having a stepmother." Evan eventually married another person, leaving his first fiancee with an illegitimate child. In two other cases, the plaintiffs agreed to postpone the wedding in order to "win over" the defendants' children; both times the delay proved to be fatal. Mary Houghton, a widow, got jilted twice for that reason and simply lost patience with John Thompson, a weaver; Mary Williams found herself displaced by another woman after the long wait. In another instance, the defendant's daughters were "very unkind" to the plaintiff, forcing her to leave their home. This began an eventually permanent separation.63

63 *Bath v. Williams*, South Wales Daily News, April 7, 1876, p. 6; Roberts v. Jones, ASSI 59/142; Carnarvon and Denbigh Herald, July 19, 1879, p. 7; Houghton v. Thompson, ASSI 54/14; Manchester Guardian, April 14, 1896, p. 9; Williams v. Harman, ASSI 75/3; Swansea and Glamorgan Herald, November 28, 1876, p. 1, between a housekeeper and an innkeeper/sawyer; Watkins v. Davies, ASSI 57/7; Carnarvon and Denbigh Herald, March 30, 1872, p. 3; Weekly Notes, Part 1 (June 22, 1872), p. 146; Times, April 20, 1872, p. 11, involving a housekeeper and a farmer.
Although the defendant's family was the catalyst the majority of the time, the problem did not always exclusively stem from their jealousy or snobbery. On occasion, the woman's family disapproved, or at least caused the trouble. In the few cases in which the man was the plaintiff, the woman's family or friends were almost always strong influences. Winnifred Harding, the daughter of a farmer, broke off her engagement with George Hole, also a farmer, because her father disapproved. She wrote him 5 months into the engagement: "Papa has this morning had a long and serious talk with me, and he still tells me it would be the very best thing for us both in every respect to break off our engagement. . . . I could not do anything very much against my dear father's wish, and would not."

Elizabeth Leigh's father, a businessman, was equally adamant; he refused to give her any money to live on if she married Arthur Morris, as she had planned. She broke her promise because she could not see how they could live on what Arthur made as a tea merchant. Interference came from others besides the immediate family as well. Jane Ormand, who had a £750 income, got engaged to a land surveyor named John Eden. Her landlady, a Mrs. Todd, talked her into breaking it off; the former was convinced that Eden was only after her friend's money.64

Far more often, however, the woman's family drove her suitor away

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64Hole v. Harding, ASSI 22/38; ASSI 28/6; Exeter and Plymouth Gazette Daily Telegram, January 30, 1882, p. 3; Morris v. Leigh, ASSI 54/11; Manchester Examiner and Times, March 2, 1893, p. 7; Eden v. Ormand, above. See also Heap v. Morris, in which the plaintiff and defendant had a secret engagement for twenty years because of her family's opposition (the plaintiff was the second master at a grammar school; the defendant was the daughter of a wealthy solicitor). Miss Morris had signed a contract agreeing to marry Heap or give him one-third of her inheritance. She settled in the middle of the trial, giving him £1000 in return for her letters. Times, March 8, 1878, p. 11.
unintentionally. The bone of contention could be anything, but money was a primary factor. Amelia Sutton's mother helped to wreck her engagement to the older and wealthier William Aronsberg by demanding a large settlement for her daughter. Aronsberg became so angry he visited their house the next week, saying "You laid the law down to me on Wednesday, and I am going to lay the law of the land down to you now." He changed the wedding date, insisted on a wedding by registrar, and refused to settle a penny on Sutton. Needless to say, Sutton and her family refused to give in to these terms. An almost identical case was that of Sarah Owens and Humphrey Williams, although this time it was Sarah's daughter who asked for a settlement. Humphrey refused to do so, and that difference was the beginning of the trouble between them. At other times, arguments between the men and members of the women's families caused estrangements. John Hughes, a farmer, had a bad argument with Elizabeth Robert's brother and would not go through with the ceremony even after Elizabeth told him she was pregnant; J.H. Staples argued with his fiancee's uncle (who was apparently against the match) and left her for good. Other times, the man simply met the woman's family and did not like them. For example, Albert Yeomans' affection for Sarah Heywood noticeably cooled after he had met her father and sister and found them incompatible.  

There were also occasions when the families of both of the principals were clearly feuding through the couple, although this happened the least often. In Smith v. Woodfine, the defendant's mother and sister

65 Sutton v. Aronsberg, above; Owens v. Williams, above; Roberts v. Hughes, ASSI 75/2; Cardiff Times, February 25, 1882, p. 2; Pope v. Staples, ASSI 32/31; Ipswich Express and Essex and Suffolk Mercury, March 29, 1870, p. 7, between a barmaid and a butcher/farmer; Heywood v. Yeomans, above.
felt that Margaret Smith's family were looking down on them and "slighting" them. For his part, Margaret's father thought Woodfine's conduct was "vaccillating" and had words with his future son-in-law about his behavior. Finally, the couple had a heated interview in which Woodfine told Smith he would only marry her if none of her family were ever allowed to visit them. Naturally, Smith refused such an offer, and the families moved their bitter fight to the courts. In other cases, mutual dislike turned into feuding about family honor. Jane Grafton's brother Henry sent her away as a governess to two different families to break up her relationship with Edward King, a clerk in chancery. He did not succeed, and the two became engaged; however, King's mother discovered the engagement and disliked it as much as Henry had. She successfully pressured her son to break it off. Henry was then insulted, despite his earlier reservations; he confronted Edward and insisted he marry Jane or face legal proceedings. Edward promised to try a reconciliation at Jane's sister's home, but then never showed up. After this, Henry not only urged Jane to sue, but he accompanied her to court and testified in her behalf. In Hart v. Clinker, the defense counsel insisted that the action was the doing to the defendant's mother and the plaintiff's father, feuding between each other. In actual fact, the defendant's entire family disliked the plaintiff, and her father reciprocated in kind.66 The

66Smith v. Woodfine, above; Grafton v. King, Chronicles of Breaches of Promise, pp. 161-63; Hart v. Clinker, Staffordshire Times and Newcastle Pioneer, March 23, 1861, p. 3, between the daughter of a wheelwright and a clerk in an ironworks. Other examples include Kennerley v. Boulton, ASSI 54/14; Liverpool Mercury, July 28, 1896, p. 6 in which her family and his sister were fighting (she was a dressmaker and he was an engineer) and Wilkinson v. Hampson, ASSI 54/5; Liverpool Daily Post, June 2, 1886, p. 3 in which "both families were very much against the marriage" (she was the daughter of a hotelkeeper and he was a farmer).
bitterness of this bickering shows the explosiveness of class and wealth
distinctions, no matter how minor. This was a social condition that was
apparently not limited to any one class or stratum in Victorian society,
although the lower-middle class may have been especially subject to it,
since they married out of their class more often. Even small degrees of
status made a difference in whether or not the two families could tolerate
a closer union.\textsuperscript{67}

Clearly, then, the influence of family and friends was great. This
conclusion is hardly unexpected; many historians have noted a return of
paternalism in the nineteenth century, if only in informal ways. As
children lost their earning power and therefore much of their leverage in
the family, parents were able to regain authority over their lives.
Furthermore, the Victorian obsession with "separate spheres" and the
difference between men's and women's roles led to a new enshrinement of
patriarchy as well as the elevation of the mother as the head of the
household.\textsuperscript{68} These ideals were clearly felt in the lower-middle and upper

\textsuperscript{67}Maud Wheeler, late in the Victorian period, wrote that even without
class and status difficulties, engagements were subject to intense
pressures because of families: "A girl's family . . . will all sit in
judgement on the man of her choice, and unless by a happy fluke he
succeeds in satisfying this formidable array of judges as to birth,
position, means, personal appearance, nationality, doctrinal opinions,
etc., they will one and all do whatever lies in their power to frustrate
the match," \textit{Whom to Marry or All About Love and Matrimony} (London: The
Roxburghe Press, 1894), p. 77. For details on lower-middle class marriage
patterns, see Chapter 5.

\textsuperscript{68}See, e.g., Lawrence Stone, \textit{The Family, Sex and Marriage in England,
1500-1800} (New York: Harper and Row, 1977), pp. 666-673; Pat Jalland,
\textit{Women, Marriage, and Politics}, pp. 46-51; and Thompson, \textit{Rise of
Respectable Society}, pp. 109-112. Ellen Rothman found that in the United
States, parents had lost control of their children's courtship by the
early national period, but saw informal influence in the late 19th
century. \textit{Hands and Hearts}, pp. 25-28, 213-23. For a discussion of
the different points of view on spouse selection, see Michael Anderson,
working classes, as they strove to achieve respectability for themselves and their children. Parents made their opinions on prospective spouses known, and they also took pains to thwart unsuitable matches. Similar strategies were used in the middle and upper classes, but since their social conventions strictly limited the marriage pool, they had less need to interfere directly in their children's love affairs.

There are two other noteworthy aspects of lower middle and upper working class relatives' roles. First, these families showed the influence of much wider kin networks than the nuclear family. Cousins, aunts, uncles, and even guardians and in-laws took an interest in the courtships of their relatives. Although parents and siblings had the most say, others were not excluded, nor did this seem to be expected. A second, more unexpected conclusion is the frequency with which male members of the family were involved. Most historians have insisted that women were primarily concerned in courtship, making the decisions, encouraging the correct romances.⁶⁹ To a certain extent, this is a true picture, but it is only accurate in successful courtships. Whenever courtships ran into trouble, fathers, brothers, even uncles and male cousins concerned themselves vitally in romantic affairs. The examples mentioned throughout this discussion demonstrate this point and could be

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⁶⁹See, e.g., F.M.L. Thompson's remarks on the middle class in The Rise of Respectable Society, p. 103: "the effective determination of marrying standards and their enforcement, were substantially women's business, with authority and influence being exercised by wives and mothers, and grandmothers. . . ." Although Leonore Davidoff and Catherine Hall do see the social roles of wide kin networks and male relatives, they do not apply these to courtship, Family Fortunes, pp. 353-356.
easily multiplied. It is male relatives who confronted errant lovers, fathers who threatened to cut their children off, and sons who opposed their father's (or mother's) remarriage. Although women still had a large voice in courtship, they were not completely dominant.

There were even a few cases in which fathers seemed to do everything. For instance, the plaintiff's father in *Nixon v. Moss* played a large role in her long and difficult courtship. The couple first knew each other in 1847, as neighbors in a small community. Nixon was a mantlemaker and Moss was a stone mason, so they were well-suited to one another. Nixon became pregnant and had a child in 1848. Her father, John Nixon, then spoke to Moss, who assured him that he would marry her as soon as he could afford to do so. After a few weeks, the father then insisted that the child be affiliated to the defendant, who agreed. After a few more weeks, even though Moss continued regular visits, John again expressed dissatisfaction and insisted that the two stop seeing one another unless Moss could marry his daughter immediately. Consequently, the two lost touch; Nixon even formed an engagement with another man. Despite all Mr. Nixon's efforts, however, his daughter still favored Moss and rejected her second fiancé for the first. John Nixon's judgement proved correct, since Moss eventually jilted his daughter for another woman. Although the plaintiff's mother, Anne Nixon, testified with her husband in the trial, she appeared to have little role in the convoluted courtship. In contrast, her husband's actions defined the course of the relationship from an early stage.\(^{70}\)

\(^{70}\) *Nixon v. Moss*, ASSI 1/63; *Staffordshire Sentinel*, July 25, 1863, p. 7.
This is not to say that women did not have a strong role in courtship, only that they had little to do with certain parts of the process. In other words, male and female members of the family had different roles in overseeing the courtships of dependents. Women sized up prospective mates and evaluated them, while encouraging suitable matches and discouraging unsuitable ones; they also did most of the planning for social occasions and (eventually) weddings. Men gave their consent or expressed disapproval at the beginning of courtships, discouraged perceived mismatches, and, especially, stepped in at times of trouble. For example, most fathers assumed a protective role when their daughters got pregnant or when they had definitely been jilted. The closest male relative had the duty of writing the jilter to demand explanations, even if he were only a distant relation or guardian.  

A case that illustrates these varying roles is that of Mary Wilkinson, a servant, and William Hampson, a butcher. The couple met in 1882 and quickly became attached. In early 1883, Mary’s mother "spoke to" William and he assured her that he intended to marry her daughter. At this time, Mrs. Wilkinson voiced her doubts about the relationship: "she told him she did not approve of him. He was not a respectable man, for he had sown a deal of wild oats in his time, and she did not want him to sow any at her door." William assured her of his honorable intentions and returned that night after church to tell Mr. Wilkinson the same thing. The courtship went on, and eventually, Mary’s mother’s fears proved well-grounded. William and Mary slept together and she had his child. Mrs.

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71John Gillis found similar, if less-defined roles in courtship in the working class. For Better, For Worse, pp. 256-258.
Wilkinson sent Mary away to keep the pregnancy from her husband, since William continued to promise marriage. However, Mr. Wilkinson had to be brought in after Mary went to live with William for three months and then was thrown out, William having decided he "preferred single life." Mary's father then took charge. He first confronted Williams over his behavior and Williams admitted his culpability. He then arranged a meeting between the couple at which he was present, though William did not show up. Mr. Wilkinson and his wife then worked together to bring the matter to court. For his part, Hampson excused himself because his sister and father were against the match, "the father of the defendant [being] especially annoyed at the manner in which he had acted with the plaintiff." Thus, both families showed the influence of male and female relatives alike, each in their ill-defined, but understood roles.\textsuperscript{72}

In three ways, lower middle class courtship in the late nineteenth century was an odd mix. First, although the most important relationship was between the man and the woman, both of the families were intimately involved. The marriage relationship was a private affair, but it invariably affected far more people than just the bride and groom, even when they were of mature ages. In this first way, the lower middle class was similar to all classes in Victorian society. However, since in these examples the courtship went wrong, the roles of wider kin and male relatives in courtship was highlighted more than is usual. Second, despite their aspirations to the domesticity of the upper-middle classes, many of the informalities of the lower class intruded, especially in courting activities and planning the wedding. For instance, compared to

\textsuperscript{72}Wilkinson \textit{v.} Hampson, above.
the strict chaperonage of upper and middle class couples, lower middle class men and women had an unusual amount of freedom to meet members of the opposite sex and privacy with them once they were on intimate terms. Moreover, the ambiguity between simple courtship and formal engagements was rare in the higher classes. Yet middle-class sensibilities intruded in their highly sentimental letters and poetry. Finally, the lower middle class aspired to the middle class standard of respectability and domesticity without the financial resources to make the process easy. The result was long engagements, frequent separations, and unfortunate pregnancies, and for a lower middle class family, an illegitimate child was a crushing blow to their social standing. Furthermore, a woman giving up her business or job to marry was left in a difficult situation if the wedding did not come off. These three circumstances help explain the intense frustration and worry that led many of the couples to a judge and jury to settle their differences, despite the seeming incompatibility of love affairs and legal proceedings.
CHAPTER FIVE—"A COLDNESS SPRANG UP":
BROKEN ENGAGEMENTS IN VICTORIAN ENGLAND AND WALES

Half the engagements that are entered into had better be broken than ratified; then a smaller percentage of marriages would turn out miserable failures. When either party realises, during the probationary term of betrothal, that he or she has made a mistake, surely the world should permit to either the privilege of rectifying that mistake . . .

So argued Beatrice Lewis at the end of the nineteenth century about the termination of engagements by breaches rather than weddings. Although most people in Victorian times assumed that success—a wedding—resulted from courtship almost automatically, possibly hundreds of courtships per year failed, far more than actually made it to court in the guise of a breach of promise suit. However, the reasons for failure were often more complex than simple realizations that "he or she has made a mistake." They fall broadly into three large areas. First, there was the vexed issue of class. Cross-class matings, unsurprisingly, faced numerous problems; intra-class courtships ran into obstacles as well because of the long delays and separations inherent in the lower middle and working classes. Second, the romanticism of courtship often conflicted with the practical needs of lower middle class families, while at the same time suffering from internal contradictions. Third, these structural obstacles were complicated and sometimes overcome by interpersonal factors, such as age, religion, and temperamentally incompatibility. Whatever the reason,

1Beatrice Lewis, "Should Men Break Engagements?" Womanhood 3 (December, 1899-May 1900), p. 90.

2In fact, Ernest Burgess and Paul Wallin found in their 1953 study that the main reason for broken engagements in England was still parental opposition, religious or cultural differences, and incompatible personalities. Burgess and Wallin, Courtship, Engagement, and Marriage (Philadelphia: J.B. Lippincott Co., 1953), pp. 213-224.

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many couples found the "probationary" period of the engagement to be a difficult and sometimes tragic period in their lives.

As already discussed, the most common factor in the break up of a couple was their relatives. Family opposition, particularly from parents, was quite effective in stopping "unsuitable" weddings, usually through indirect means. In breach of promise cases, the typical situation was for the male defendant to be persuaded by his family to drop his unacceptable fiancee, either from a feeling of family duty or under financial pressure. However, the motives behind familial interference deserve closer scrutiny, because in most of these cases the reason was differences in class, wealth, and status. And even when no parents or other relatives intervened, differences in class could derail a relationship very quickly.

The difficulties of cross-class romances are not hard to understand in a class-conscious society such as Victorian England. Although women were expected to try to marry into a slightly higher social status, they were not to leap too many social barriers. A servant marrying a small shopkeeper was acceptable; a servant marrying the leading businessman of the community was not. A common saying of the age was "Don't marry

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beneath you," and it applied to men and women both. One writer in the 1890s insisted that almost all cross-class matings were ultimately selfish:

An alliance has been made, and someone has been lifted out of his sphere or hers into one where, for lack of education or refinement, or innate adaptability, there has been trouble and humiliation and shame to the end. True love would have avoided that; true love would have seen the pain the other would have to bear, and would in quietness have taken up its cross and let the sweet dream pass with many another sweet dream which we fondly hope will be realised some day...  

Annie Swan, who for several years edited the "Love, Courtship, and Marriage" column for Woman at Home, did not feel that cross-class matings were hopeless, but she usually did advise caution: happiness or misery in such a union "depends entirely on the people and the circumstances."

She, like most advice writers, felt firmly that a marriage without love was wrong, but she also felt marriage based only on sexual attraction was a mistake as well. Love appropriate for marriage was a deep companionship or "affinity," not sexual attraction, "fancy," or "propinquity." True affinity for another person had to be based on similar outlooks, beliefs, and ways of life, which was believed to be extremely difficult.

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5 Annie Swan, "Love, Courtship, and Marriage," The Woman at Home 2 (1895), p. 472. For other examples of her advice, see p. 237. See also a story of a "sensible young actress" who broke off her engagement to a peer because "The ways of his people aren't mine. I'll marry no man who'll keep me on pins and needles when my family are about..." Ernest Bowen-Rowlands, In Court and Out of Court: Some Recollections (London: Hutchinson & Co., 1925), p. 304.

6 See Howatt, "Art and Science of Courtship," p. 112 and Michael Ryan, The Philosophy of Marriage in its Social, Moral, and Physical Relations (London: H. Bailliure, 1839), pp. 61-89. Ryan advised marriage for love, but also that the couple must have several things in common, including "age, disposition, rank, and fortune" (p. 89).
for those from widely different classes. Since marriage also had a religious meaning for most people, only the most foolhardy would go before God with someone they did not believe as a "twin soul" in every way.  

All the same, to say simply that "class" or wealth differences broke up an engagement is to oversimplify the matter. As already discussed, lower middle class men quite often married women in the working class, particularly the daughters of skilled artisans; a minor difference in class was not necessarily a sufficient reason to end a relationship. In many cases, the objection to the lower-class party was not simply that s/he was not of the same class, but that his/her occupation was not quite "respectable." Most of the cases involving peers and gentry, for example, had models, actresses, or chorus girls as the plaintiffs. In Fitzpatrick v. Curling, the defendant was a gentleman of independent means, while the plaintiff was an "artist's model." Catherine Fitzpatrick insisted that she had never sat nude for anyone; she wore "draperies," and also wore clothing under these garments. However, Curling accused her of lying to him about her occupation (he claimed she told him she only modelled her head) as well as her social position and age (she was 35 and he was 28). Moreover, Curling's barrister tried to insinuate that Catherine had immoral relations with her clients since she was left alone with them when they painted. Catherine stoutly denied this charge, and the jury believed

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7See, e.g., Beatrice de Bertouch, "Should Men Break Engagements? III," Womanhood 3 (December 1899-May 1900), p. 376: "Nothing can be more blasphemous than the union of alien souls, and the moral is obvious." Judith Rowbotham found in her study of middle-class girls' literature that "It was axiomatic in these writings that 'true' and lasting love was unlikely to flourish between two unequally matched people, let that inequality take the shape of class, temperament or religion," Good Girls Make Good Wives: Guidance for Girls in Victorian Fiction (Oxford: Basil Blackwell, 1989), p. 50.
her side of the story and awarded her £150.\(^8\) Nevertheless, the assumption was that any woman who modelled her body for a living had dubious chastity.

Actresses, both in the early and late parts of the century, had similar difficulties. Maria Foote, a celebrated actress in the early nineteenth century, lost Joseph Hayne because he was unable to face the disapproval of his friends at her way of life. In Maria's case it was not only her profession; she had lived for five years as the mistress of the son of an earl (Colonel Berkely) and had two illegitimate children by her "protector." Even though Hayne eventually decided he could accept her past, he changed his mind five times, even leaving Maria at the altar twice. He finally offered her the same relationship as she had with Berkely, which she proudly turned down. She then took him to court in 1824 and received the then gigantic award of £2500. May Gore had a similar story in the 1890s. She fell in love with Lord Sudley, the oldest son of the Earl of Arran, in 1889. He did not promise marriage at first, and she agreed to become his mistress, a relationship that continued for two and a half years. They apparently were so fond of each other that his family became alarmed and bought her off for £500. May then turned to another aristocrat for "protection." At this, Sudley became jealous and went to May and asked her to marry him. She gave him time to think it over, during which he wrote her several ardent love letters. Finally, they got engaged but then postponed the wedding several times, and his

\(^8\) Fitzpatrick v. Curling, Illustrated Police News, February 6, 1897, p. 2.
family eventually prevailed upon him to give her up.\(^9\)

Nor were stage performers the only ones whose occupations seemed unsavory. At a lower level, any woman working in a bar or hotel, particularly as a barmaid, was suspected of being a prostitute, or at best, a woman of easy virtue.\(^10\) Although formerly a dressmaker, Julia Ford was a barmaid when she met George Strongitharm, a young man from a well-to-do family (his father had been mayor of Manchester). His family hunted them down in Manchester and managed to stop their wedding; Julia's reputation was then permanently sullied, since she had lived with George as his wife. The plaintiff in *Haun v. Bradford* worked in her father's hotel where she met her fiancé, the son of a clergyman and a clerk in the

\(^9\) *Foote v. Hayne*, 171 *English Reports* 1310-1311; *Times*, December 22, 1824, pp. 1-4; December 23, 1824, p. 2; December 27, 1824, p. 3; *Gore v. Sudley*, *Cardiff Times*, June 13, 1896, p. 6. Other cases involving peers or gentlemen include *Watkins v. Marjoribanks*, *Illustrated Police News*, January 25, 1896, p. 8 and February 15, 1896, p. 3 between an actress and a gentleman, which was settled for £5000; *Gould v. Ingram*, *Woman*, March 8, 1890, between a barmaid and the godson of Lord Orford (she was awarded £190); and *Hairs v. Elliot*, *Woman*, April 26, 1890, p. 1 and *Times*, April 18, 1890, p. 3, April 19, 1890, p. 5, and April 22, 1890, p. 10, in which a singer sued an MP and knight (jury could not decide). *Finney v. Cairns*, one of the most famous cases, is discussed in detail in Chapter 7. For a discussion of the rise of the reputation of actresses, see Christopher Kent, "Image and Reality: The Actress and Society," in Martha Vicinus, ed., *A Widening Sphere: Changing Roles of Victorian Women* (Bloomington, Indiana: Indiana University Press, 1977), pp. 94-116. See also Judith Rowbotham's discussion of the ambivalence of girls' writers about women performing in public in *Good Girls Make Good Wives*, pp. 241-245.

\(^10\) Such confusion was easy, since until the Contagious Diseases Act, prostitution was a temporary job that was run by women and was not confined to red-light districts: "Prostitutes tended to reside in dwellings with two or three other women that were 'scarcely distinguishable' from 'low class lodging houses,' or sometimes in 'externally respectable establishments,' where the inmates had achieved a 'quiet' truce with the police," *Walkowitz, Prostitution and Victorian Society: Women, Class and the State* (Cambridge: Cambridge University Press, 1980), p. 24. They therefore could be found in many pubs and lodging-houses that were not explicit brothels, pp. 25-31. See also Perkin, *Women and Marriage*, pp. 158-160.
Bank of England. Bradford left her after a short courtship; his mother wrote to Miss Haun that such a relationship was foolish because of their great class differences. The case of Thomas Seymour and Lucy Gartside presented an example from the other side. Lucy was the widow of a former mayor with an independent income; although Thomas was a naval officer, his step-father's business was a pub. Lucy broke it off because she turned up her nose at such a common occupation.\footnote{Ford v. Strongitharm, ASSI 54/14; Manchester Evening Mail, March 5, 1896, p. 2; Haun v. Bradford, Times, July 29, 1872, p. 11; Seymour v. Gartside, Times, August 19, 1822, p. 3. Another example is Pullock v. Allard, ASSI 1/64; Gloucester Mercury, April 13, 1867, p. 2, in which the plaintiff was a boarding house keeper. The defendant, a saddler and harness maker, was persuaded to jilt her twice by his "friends."}

Such cases illustrate that both parties, but especially women, had to pass character tests to be considered marriageable. In other words, class respectability was gendered. The main requirement for men was that he be a good provider; the primary requirement for women was chastity, and an occupation with an unsavory reputation was enough to sully the most blameless woman. Moreover, any fall in her past life (such as an illegitimate child) or even a fall with the defendant, indicated to some men that such a woman was not due the title of "wife," no matter how long-standing their relationship. In such cases, the defendant pled that the plaintiff's lack of chastity was the reason for the breach (one of the few good defenses to a breach of promise case) and that his relationship with the plaintiff was simply an affair. Since unchastity was not a good defense if the plaintiff had fallen only with the defendant, the latter often also introduced witnesses to say that they too had "immoral relations" with the plaintiff. At other times, the defendant had settled
into a pseudo-marriage with the plaintiff for several years, even having children with her, only to marry a richer or more "suitable" woman later in life.

A good example of several of these points is *Gardner v. Thomas*. Ellen Gardner was a machinist who met Alfred Thomas, a gentleman of private means, "on the street" in 1872.\(^{12}\) The two began to live together shortly thereafter, Ellen claiming that Alfred had always promised marriage. To support her story, she produced a written contract he had made, dated April 23, 1873: "I, Alfred Thomas, do promise to marry Miss E. Gardner, if she does not run from her promise that she will have nothing to do with any other man before June next.--A. THOMAS." Despite his promise, Alfred jilted her just seven months later. Although she seemed to have a good case, Ellen's past was not pure; she had been seduced as a young woman by "a young man with whom she was keeping company" at the time. In addition, Alfred's barrister tried to paint the boarding house where she lived as a brothel with her landlady as the madam. This attempt did not succeed, but it illustrates the precarious position of a woman with a past. Another example is the case of Sarah Langford. She had had one illegitimate child before she met Joseph Tonge in the late 1860s. The two lived as husband and wife for twenty years and had five children together. Nevertheless, at the end of 1887, Joseph married the landlady of a thriving inn for her money (as he openly admitted in the trial). Sarah was left alone to care for five children.

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\(^{12}\)Apparently, Gardner's work as a "machinist" was on small machines (probably in the textile trades), since she worked in private homes, first for a Mrs. Chandler and then a Miss Fletcher. The exact nature of her work was never explained, but she was regarded as being in "a humble stage of life," ASSI 22/27; *Bristol Mercury*, August 23, 1873, p. 3.
under the age of fourteen.¹³

Even women who had perfectly blameless existences before meeting the defendants were not always treated as suitable material for marriage. Servants were particularly vulnerable to sexual overtures without hope of marriage. For example, Sarah Jane Watkins worked as a housekeeper for Edward Davies, a wealthy farmer almost twenty years her senior. After only three weeks in his service, Sarah received romantic overtures from him. Because of the strong disapproval of his two grown daughters, Sarah left his employ and eventually his thoughts because two years later Edward married a wealthy widow. Wanda Hadad was even more unfortunate. She worked as a lady’s maid for Hamilton Bruce, a retired naval officer. His daughters also objected, but Bruce stopped Wanda from leaving and ultimately seduced her. When she became ill during the pregnancy, he sent her away to London and never fulfilled his promise. Both Margaret Wilkinson and Ada Ibbetson indignantly refused offers to be their lovers’ mistresses rather than their wives. In Margaret’s case, her wealthy suitor left her when he had finally seduced her after a three-year courtship; Ada’s beau, Walter Strickland, saw their relationship as an affair from the first and paid Ada £20 after he had married someone else. Ada was the daughter of a small farmer, while Walter inherited "considerable property" from his father, a corn factor.¹⁴ Though in some

¹³Gardner v. Thomas, above; Langford v. Tonge, ASSI 54/5; Manchester Examiner and Times, January 28, 1887, p. 3.

¹⁴Watkins v. Davies, ASSI 57/7; Carnarvon and Denbigh Herald, March 30, 1872, p. 3; Times, April 20, 1872, p. 11; Weekly Notes, Pt. 1 (June 22, 1872), p. 146; Hadad v. Bruce, Cornish Telegraph, March 10, 1892, p. 2; Times Law Review 8 (1891-92), pp. 409-410; Wilkinson v. Rylands, ASSI 54/3; Liverpool Mercury, May 4, 1882, p. 8; Ibbetson v. Strickland, ASSI 22/40; Western Times, March 5, 1889, p. 3. Watkins was non-suited due to
of these cases, the men's protests that they had never promised matrimony were self-serving, in others, there was an obvious (and perhaps intentional) misunderstanding between the two parties. The men never expected to go beyond a sexual relationship, while the women obstinately hoped for a legal union.

Sometimes, class differences did not cause a problem until after serious courting had begun. Couples that at first seemed eminently suited to one another became less suitable after changes in business or reverses in fortune. On a few occasions, the plaintiff herself made the change possible. Eleanor Allen, a school teacher, became engaged to John Hutchings in 1867. Her family loaned John £140 so that he could begin his medical training, and the couple corresponded for ten years as John progressed through the various stages of medical school. Finally John became an assistant to a Dr. Colebrook, and Eleanor gave up her job and prepared for the wedding. At the last minute, John jilted her for the daughter of Dr. Colebrook, thereby ensuring his professional future. Having helped prepare him to support a wife, this defection must have been especially galling to Eleanor. Most of the time, however, the plaintiffs had no control over the whims of the business world. Annie McGrath lost her fiance, Henry De Valve after he won £800 in a chancery suit. Ellen Wood, Mary Pattinson, and Miss Vines all suffered jilting when their

lack of material evidence and her appeal failed; Hadad was given leave to sue out of jurisdiction, but no result can be found for a subsequent trial; Wilkinson received £750 by consent; Ibbetson won £200 from the jury in her trial. Similar cases include Mather v. Royston, ASSI 54/17; Liverpool Mercury, August 7, 1899, p. 7, between a servant and the son of her employer; Aggett v. Elliott, ASSI 22/33; Times, July 29, 1872, p. 11 between a dressmaker and the son of a surgeon; and McCarthy v. Rowbotham, ASSI 54/9; Manchester Examiner and Times, July 18, 1891, p. 10, between a mill operative and the mill manager.
lovers came into large amounts of property through inheritance; their relative poverty made them less attractive than before. In Jane Warwick's case, it was not so much the money John Pownall had as what he hoped to get. He was a draftsman, and in 1884, after five years of courtship, he got the opportunity to go and testify before the House of Lords' committee on harbors on his own plan for the Manchester ship canal. This experience apparently "turned his head," because he grew cool toward Jane almost immediately after visiting the capital. He broke the engagement only a few weeks later.\(^{15}\)

If the plaintiff's family suffered business reversals, this could also alter the balance. Early in the century, Amelia Wharton lost her fiancé, William Lewis, after her father and brother went bankrupt. Amelia's family had always been less prosperous than William's; in fact, her family had made it clear that she would have no dowry. William had accepted this at first, but the bankruptcy was the last straw for his father, who persuaded him to break off the match. Theresa Bingley's experience many years later was almost identical. Her fiancé left her shortly after her step-father had to liquidate. Her lover too had known that her family was not well-off, but the news of the bankruptcy still drove him away. Arthur Pemberton, a clerk of shipping merchants, became

\(^{15}\)Allen v. Hutchings, Times, March 22, 1878, p. 10; McGrath v. De Valve, ASSI 54/8; Liverpool Mercury, July 29, 1890, p. 7; Wood v. Irving, ASSI 54/9; Carlisle Express and Examiner, July 11, 1891, p. 6; Pattinson v. Heslop, ASSI 54/14; Carlisle Express and Examiner, July 4, 1896, p. 6; Vines v. Earl, Somerset County Gazette and Bristol Express, August 10, 1872, p. 5; Warwick v. Pownall, ASSI 54/3; Liverpool Mercury, May 24, 1884, p. 8; Times, May 26, 1884, p. 14. In Allen's trial the jury could not agree and was discharged without a verdict; McGrath settled for £300 in the middle of her trial; Wood received £250; Pattinson got £80; Vines agreed to take £500 in the middle of her trial; and Warwick got £100.
engaged to Violet Brice in 1892, even though she was a barmaid. However, two things happened simultaneously to change Arthur’s mind. First, Violet’s mother wrote him a letter asking him for a large loan; Arthur, taken aback, offered Mrs. Brice £10 in gold, but she refused this as not being enough. Second, Arthur came into £2000. These two incidents made him wonder: if her family were already asking for money, “God knew” how much they would want after the wedding. Thus, when the engagement was only three months old, he broke it off for good.¹⁶

For the most part, then, class differences were insurmountable in four instances: when the family strongly disapproved and had power over the defendant; when the plaintiff’s job was not "respectable" as well as being less remunerative; when the plaintiff was viewed (for whatever reason) as simply a sexual partner and not as a potential wife; and when the difference in status between the couple became noticeably wider during the courtship. Class differences were also fatal when combined with one or more other factors. If, e.g., a couple faced both class differences and some other incompatibility such as religious beliefs or age, then their chances of staying together declined markedly.

As divisive as these inter-class struggles were, there were also structural problems within the classes, particularly in those that did not enjoy financial security. The protracted nature of their courtship forced them to remain half-committed for periods that were longer than some marriages. These obstacles were doubly powerful when combined with the

¹⁶Wharton v. Lewis, 171 English Reports 1303-1304; Times, December 7, 1824, p. 2-3; Bingley v. Barnes, ASSI 54/11; Manchester Examiner and Times, March 8, 1893, p. 7 and March 9, 1893, p. 7; Brice v. Pemberton, ASSI 54/11; Manchester Examiner and Times, March 1, 1893, p. 3.
middle class romantic ideal, a value system which encouraged men and women to search for "true love." Because couples often had to wait through long separations and numerous delays, this quest for perfect mate sometimes led them away from each other rather than toward a closer union.

Indeed, in a large number of cases, the breach was the result of a long process of growing apart and declining interest due to the frequent delays and long separations. Out of the 875 cases under review, 248 of them involved either a delay, a long separation, or both. These cases were heavily weighted to the lower middle and working class couples; they outnumbered the upper classes over three to one in separations, and ten to one in delays.\textsuperscript{17} The most common reason for delaying the wedding was to wait for financial security before setting up a new household. Both the man and the woman used long engagements to build up their savings, receive long-awaited legacies, and tie up any loose ends of their former lives (e.g., seeing to the comfort of aged parents or unmarried siblings).\textsuperscript{18} Unfortunately, the long wait opened the door to changes in personality and expectations which often led to the end of originally promising relationships.

\textsuperscript{17}These numbers are based only on cases in which the parties are of the same class. In 2 cases, both were upper class; in 36 cases, both were middle class; in 153 cases, both were lower middle class; and in 39 cases, both were working class. The upper and middle classes were separated 10 times and delayed 7; the lower middle and working classes were separated 34 times and delayed 70.

For this very reason, most writers on the subject felt that long engagements were to be avoided. Several of the leading women of the day pointed out numerous objections. First, in such a situation, "a young man and a young woman [were] neither bound nor free." They therefore risked lapses of fidelity, changes in affection, and the loss of all the freshness of their love. Nor did the couple really get to know each other during long engagements, since they were under such a strain for too many years: "the position frequently involves much that is trying, and often requires the exercise of constant tact to avoid friction . . ." The ideal situation was "A long friendship and a short engagement . . . A prolonged engagement is the most trying relationship between the sexes possible to conceive . . . Many a sincere affection has been killed by the restraints and irritations of a long engagement."19 Finally, and most tellingly, they pointed out that "An engagement of undue length is apt to become a fixed and chronic condition which ends in nothing but itself." Indeed, in many breach of promise cases, the engagement had lasted so long that it seemed to be enough; it was a position the couple appeared unable to

go beyond. 20

Unfortunately, many couples had no choice but to wait if they wished to avoid living in poverty, and all of these objections to long engagements were born out in their varied experiences. Margaret Nelson met Thomas Tayforth in 1882 when he became a farm worker on an adjoining farm to her father’s. They became engaged within a short time, and Margaret had his illegitimate child in 1884. Thomas kept putting off the marriage because he could never find a farm that he wanted. In 1885, he got an appointment with a Mr. Greenwood where he assured Margaret he could save lots of money for their future, because he wanted “a really good farm when they started.” They found two excellent prospects later in that same year, but Thomas could never make up his mind to take one of them. This unsatisfactory state of affairs dragged on until 1898, when Thomas married someone else, without ever having settled on a farm at all. A similar case was that of Alice Kennerley, a dressmaker, and T.W. Boulton, an engineer. They were engaged for ten years and he saved up £70, but they had a quarrel in 1896 which was never made up. Samuel Roberts grew apart from Sarah Bird during the fourteen years during which he went to medical school and then tried to build up a practice in Port Said. Even after so many years of struggling, he insisted he was still too poor to marry her.

20Mrs. Joseph Parker, "Should Long Engagements Be Encouraged?" p. 39. See also Harry Davies, "The Courtship of Ezra," The Quiver (1900), pp. 969-975, in which the farmer hero courts his lady for twelve years (ten of them as an engaged couple) and marries her only when forced by the will of the community. Margaret Penn’s Aunt Emma had a similar experience: "Aunt Emma and Fred Rogers had been walking out together for so many years that it came as a thunderbolt to Moss Ferry when the talk got around that they were actually going to be wed at last." Penn, Manchester Fourteen Miles (Firle, Sussex: Caliban Books, 1979), p. 30. Penn’s family was upper-working class.
and broke it off in 1888. Elizabeth Redfern and Agnes Barrow both endured postponements because their fiancées wanted to wait until they had found respectable pubs to buy. In Elizabeth's case, her lover, Wilmot White, gave her up when he was unable to find a suitable business, saying there was no use in marrying without one; Agnes was even less fortunate, since William Twist took a shorter route to becoming a publican by marrying a widow who owned a pub instead of purchasing one with Agnes.²¹

At times, family interference combined with the long wait for suitable financial positions to break up the proposed match.²² Often, the couple waited for legacies or for the man's parents to pass on a business or farm. In Roper v. Bagley, the defendant's father was against the match, and he was able to break it up simply by waiting four years before retiring from his grocery and drapery business. By the time he had turned it over to his son, the young man had fallen in love with a more acceptable young woman. William Cox's family was unenthusiastic about his romance with Mary Anne Brookes. Thus, the couple were forced into a long engagement until William could become "independent of his father and

²¹Nelson v. Taylforth, ASSI 54/16; Westmorland Gazette, January 21, 1899, p. 6; Kennerley v. Boulton, ASSI 54/14; Liverpool Mercury, July 28, 1896, p. 6; Bird v. Roberts, ASSI 54/7; Liverpool Daily Post, December 12, 1888, p. 3; Redfern v. White, ASSI 1/68; Staffordshire Advertiser, August 1, 1885, p. 5; Barrow v. Twist, ASSI 54/5; Manchester Examiner and Times, July 17, 1886, p. 3. See also Hargood v. Mugford, ASSI 22/36; Hampshire Chronicle, March 9, 1878, p. 7, in which the marriage was "deferred until defendant was better off"; Davies v. Jenkins, ASSI 75/2; Swansea and Glamorgan Herald, July 31, 1878, p. 8, in which the couple waited until the defendant had qualified for the ministry; May v. Rotton, ASSI 22/36; Somerset County Gazette, April 13, 1878, p. 7, in which the plaintiff waited until the defendant's prospects were better, only to be jilted when he came into an estate worth £16,000; and Armstrong v. Gray, ASSI 1/66; ASSI 8/1, in which the couple postponed their wedding so that the defendant could "obtain a business."

²²For more on familial influence, see Chapter 4.
uncle." Ten years later, he was still dependent on his family and gave her up rather than be cut off. Occasionally, family interference was unintentional, but still fatal. Anne Allmand, daughter of a small farmer, and Elijah Forrester, son of a well-off farmer, got engaged in October of 1880. They originally decided to take a shop in Wolverhampton and to be married immediately. However, Mrs. Forrester intervened at this point, since she preferred that her son stay in the country. Using her influence, she got the couple to agree to give up the shop and take a farm instead, saying, "If you will take a farm, I will stock it for you." The wedding was then postponed, and Elijah broke off the match six weeks later to marry another woman.23

The main danger from the plaintiffs' point of view was that long delays gave the defendants a chance to change their minds, either because they did not want to marry at all, they grew apart from their fiancées, or because they met new women. In short, the desire for a "perfect" love made long term courtships dysfunctional. Couples expected to find and retain true affinity for each other, while struggling with innumerable impediments to closeness and familiarity. These problems struck the lower middle and upper working classes particularly hard, since they had middle class goals yet lacked the financial means to overcome their difficulties. Any kind of delay involved risk, including those due to illness, travelling for jobs, and recreation. Illness, in fact, was particularly perilous, since it involved cessation of almost all contact. Louisa Burgoyne was twice on the point of marrying James Oldrieve, only

to be thwarted by his bad heath, first through his "bad neck" and then "an attack of the gout." After the second affliction a "coldness sprung up" and James stopped answering her letters. W.H. Addison had made all the arrangements to marry his fiancee, a Miss Scoular, in February of 1871 when she became ill and the wedding was postponed. In the meantime, a dispute about some land arose between her family and his, and she thereafter refused to have anymore to do with him. Illness and death of relatives could also derail courtships, particularly if the women acted as nurses to their loved ones. In Ditcham v. Worrell, the plaintiff’s mother fell ill shortly before her daughter’s wedding date of June 5, 1879. Miss Ditcham dutifully nursed her mother through the illness and in the process saw very little of her fiance. Perhaps because of this perceived neglect, the couple quarrelled in May of 1879 and Worrell refused to fulfill his promise.\footnote{Burgoyne v. Oldrieve, ASSI 22/33; Western Times, March 18, 1873, p. 5; Addison v. Scoular, Norwich Argus, August 12, 1871, p. 7; Ditcham v. Worrell, 5 Law Reports, Common Pleas Division 410–423 and Times, March 12, 1880, p. 4, May 10, 1880, p. 6, and June 24, 1880, p. 6. In several other cases, the deaths of close relatives made postponements inevitable. See, e.g., Carter v. Howle, ASSI 54/9; Liverpool Mercury, March 24, 1891, p. 7, in which the couple postponed the wedding first because of the death of the defendant’s mother and later because of the death of his aunt. See also Norsan Nicholson’s story of his courtship in the early twentieth century; he became very ill and his fiancee left him for someone else who was "up and about," Wednesday Early Closing (London: Faber and Faber, 1975), pp. 195–96. Nicholson’s parents were shopkeepers.} Even those couples that did not expect to have extremely long engagements suffered from numerous separations, and the results were equally disruptive. Long and painful periods apart could strengthen the lovers’ feelings for one another, particularly by writing and receiving affectionate letters. However, quite often, rather than making the heart
grow fonder, absence led to forgetfulness. Defendants met new and closer young women or simply lost touch with their fiancées that were so far away. The most frequent reason for separations was that one or both of the couple were pulled away due to their work. For example, in Pierce v. Smith, the defendant came to live with the plaintiff’s family in 1863 in order to learn the carpentry trade. He seduced her and she had two children with him, and when his training was over, he went to a neighboring town to set up his business. She did not go with him, since he wanted to delay setting up a household until his business was on its feet; her parents apparently accepted this arrangement on the belief that it was only temporary. They thereafter only saw each other 3-4 times a year and in 1871 she became suspicious and sought him out. She discovered that he had a flourishing business and had married another woman some time before. Similarly, Alice Dods lost William Woollett when his regiment went to Hong Kong. He soon met and married another young woman there and forgot about his sweetheart in England. Servants frequently had problems because they had to live with their employers. Kate Southwood courtship went smoothly until she took a new situation in Bristol four months after she and Henry Arscott got engaged. He never answered her letters; even when she came back her village, he refused to have anything to do with her. Occasionally, both people travelled so much that they found it difficult to communicate at all. Harriett Richardson was an opera singer and James Anderson a wine and spirits merchant. They both travelled for their jobs, and because of this at one point they lost touch entirely for
two years. Other reasons for separations included pleasure trips apart and enforced separation due to parental objections.

Nevertheless, the most common problem of separation was simply that the couple did not live near each other and did not have enough money or leisure in which to visit one another with any frequency. The inevitable result was that they saw little of each other and communicated primarily through letters. Many times, the lack of proximity was crucial; the defendant invariably met and married another woman which precipitated the breach. Katherine Martin lost Bertrand Secker after an engagement of eight months because he met another woman whom he preferred in London where he worked. Katherine, who lived in Dawlish, got jilted without ever having seen her rival. Constance Lewis and Eva Hancock had similar experiences. Their fiancés also lived far away and married women who resided closer by. Constance and Robert Franklin had been engaged for two years when he met someone new; Eva and her love had courted eighteen months.

Sometimes delays and separations were symptoms of trouble rather

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26Martin v. Secker, ASSI 22/41; The Western Times, July 26, 1892, p. 7; Lewis v. Franklin, ASSI 75/2; South Wales Daily News, March 28, 1878, p. 3; Hancock v. Thomas, Newgate Calendar and Divorce Court Chronicle, Issue 3 (May 20, 1872), pp. 45-46. For an example of a separation due to a pleasure trip, see Davis v. Latham, ASSI 1/63; Times, July 13, 1863, p. 11. Davis lost touch with her fiancé because he took two long trips to Australia during their engagement. She, in fact, had heard nothing from him for two years when she discovered that he was back in England, had married someone else, and owned a successful pub.
than the causes. On occasion, it was clear that the defendant was making
excuses to keep from having to set a definite date for the wedding.
Robert Owen, a ship broker, got engaged to Sarah Jane Walker, a lodging-
house keeper, in October of 1888 after he had lodged with her for seven
months. Sarah bought a trousseau and made preparations, including giving
up her lodging house, but Robert made excuses throughout all of 1889. In
fact, the wedding was postponed twice through his requests, although he
did buy her a ring in 1890. Finally, in June of that year, the couple set
a date, but on the day of the wedding, Robert sent word that he was "too
busy" to come. Sarah then instituted legal proceedings; although Robert
offered to reconcile, Sarah drily remarked that three years of waiting for
him to make up his mind was enough for any woman. Maria Levens was
engaged to Edward Hutton for two years and he postponed the wedding twice
in 1882 alone; Edward eventually married someone else and let Maria know
by sending her a piece of the wedding cake and an announcement.
Similarly, James Wilken kept putting off his marriage to Adeline Parker
for two years, even though she had a child by him in 1884. He showed up
drunk at her door one night and the couple quarrelled, and he used this
as an excuse to never visit her again.\textsuperscript{27} Clearly in these and similar
cases, the couple (or at least the defendants) had already grown apart;

\textsuperscript{27}Walker v. Owen, ASSI 54/9; Liverpool Mercury, May 5, 1891, p. 7;
Levens v. Hutton, ASSI 54/3; Manchester Evening News, April 29, 1884, p.
3 and Manchester Evening Mail, April 29, 1884, p. 3 and April 30, 1884,
p. 3; Parkes v. Wilkins, ASSI 32/38; Norwich Argus, July 25, 1885, p. 8.
See also Barker v. Birkett, ASSI 54/4; Liverpool Daily Post, February 10,
1886, p. 7, in which the defendant postponed the first wedding date
because he said his sister was marrying the same day and then broke it off
because his family and housekeeper thought it "unwise" and Sans v.
Whalley, Times, May 6, 1880, p. 6 and May 8, 1880, p. 6 and an editorial
on May 8, 1880, p. 11 in which the defendant was too drunk to appear on
his wedding day.
the constant delays and separations were purposeful rather than coincidental. These cases were the exceptions rather than the rule, however.

Somewhat similarly, it was not unknown for couples to break up once or even more times before reaching the decision to marry or break up forever. In twenty-five cases, the couple got engaged and broke up at least twice, sometimes with quite lengthy periods in between. Most of the time, the couple had a genuine affection for each other but also had incompatible personalities, which led to numerous quarrels and reconciliations. For example, Thomas Jeeves and Margaret Adams were related by marriage and had known one another since childhood. They first became engaged in 1868, but they argued in June of 1869 and split up for five weeks. Thomas then returned and the engagement was renewed until December when he again decided to break it off. Two months later, however, he asked her to take him back yet again; this time the engagement lasted until early in 1871. Tom left for good that time, saying "I cannot bear your temper, I cannot put up with it, and I shall not come again."

Having heard this twice before, Margaret was sure he would return when he had calmed down, but he married another woman two years later and Margaret finally sued. Mr. Metcalfe, Tom's counsel, explained his vacillations as a symptom of deep love:

The defendant, he believed, dearly loved this girl, but in the course of their acquaintance he found that there was an incompatibility of temper between them that would mar their happiness if they were married. . . . Nothing but incompatibility of temper prevented their union, and defendant
finding this out dare not go to the altar of God with her.\textsuperscript{28}

This defense was not successful, but it was undoubtedly a true summary of Margaret and Tom's relationship. Although \textit{Adams v. Jeeves} is the best example, numerous others show the same kind of pattern of break-up and make-up. Robert Lloyd, for instance, married another woman after having a bitter fight with Mary Jones; after his wife's death, he wrote to Mary and asked her to marry him a second time, only to split up with her again.\textsuperscript{29}

Most of the time, the men initiated all of the breaks, while the women willingly accepted the men back as their lovers. Dora Otte, e.g., happily renewed her engagement to Charles Grant after a lapse of almost three years. Grant and she had been engaged first in 1863, but he left for India the next year and never returned her letters. He came back to England in 1867 and they again became engaged, but he returned to India later in the year and forgot her again. Only after having been jilted twice did she fight back; she seemed to have accepted his behavior of three years before with equanimity. A similar case was that of Sarah Ann Mitchell and Francis Hazeldine. The two became engaged in 1862, but Francis suddenly stopped paying any attention to her after only a few months and she did not hear from him for four years. In 1867, he wrote

\textsuperscript{28}Adams v. Jeeves, ASSI 32/34; Bedfordshire Times and Independent, July 25, 1874, pp. 6-7.

\textsuperscript{29}Jones v. Lloyd, ASSI 59/14; Chester Chronicle, March 14, 1891, p. 2. Other examples are Robinson v. Atkinson, ASSI 54/3; Carlisle Express and Examiner, July 19, 1884, in which the couple became engaged in 1877, broke up in July 1878 because of an argument, and were re-engaged in January of 1879 and James v. German, ASSI 75/3; South Wales Daily News, March 21, 1893, p. 5, in which the couple were formally engaged three different times, all but the last engagement being broken up by arguments.
her asking if he could renew the acquaintance and she agreed. They were to be married in 1869, but before the ceremony could take place, he wrote her a cold letter, breaking it off. Sarah refused to release him, and he bitterly warned her that if she insisted on marriage he would make her miserable. She stubbornly held on, and eventually he refused to go through with it.\textsuperscript{30} Mitchell was apparently quite willing to endure an unhappy marriage rather than be jilted for a second time.

Obviously, long engagements, frequent delays, and numerous separations took their tolls on relationships. Certainly, many couples survived such trials until their wedding day, but it is clear that many others did not. Despite the fact that most people in these classes assumed that they would have to wait, they did not seem to be prepared for the hardships they experienced. Nor did many of the defendants demonstrate much ability to remain true to their fiancées under trying circumstances. In 259 of the cases under study, the defendant had married someone else (or, at the least, become engaged to someone else) before the

\textsuperscript{30}Otte v. Grant, Times, November 27, 1868, p. 11; Mitchell v. Hazeldine, Lady's Own Paper, 5 (March 12, 1870), p. 146 and Times, March 4, 1870, p. 11. See also Paris v. Jackson, Times, May 7, 1879, p. 6 and May 10, 1879, p. 6 and an editorial on May 12, 1879, p. 11, in which the plaintiff wanted to marry the defendant even though he had been treated in a mental home after their first break-up; and Neir v. Costello, ASSI 54/9; Liverpool Mercury, December 7, 1891, p. 6, in which the defendant cooled after a year of courtship, but met the plaintiff at a funeral the next year and renewed his suit only to marry someone else six months later. Women occasionally were the ones to break it off in the first place, but seldom because of quarrels. For example, Eliza Wilcox broke her engagement when her fiancé tried to seduce her; Elizabeth Bullock originally released Maurice Allard when she learned his friends objected to the match; and Harriet Wade turned James Rae down because she was already engaged the first time he proposed. Wilcox v. Godfrey, ASSI 22/32; Law Times 26 (April 27, 1872), pp. 328-29 and 481-82; Taunton Courier, March 27, 1872, p. 5; Pullock v. Allard, ASSI 1/64; Gloucester Mercury, April 13, 1867, p. 2; Wade v. Rae, ASSI 32/34; ASSI 39/27; Norwich Argus, August 9, 1873, p. 7.
trial had begun. This total is artificially inflated because some 
plaintiffs mistakenly believed that they had to wait until the defendant 
marched to sue for breach of promise. Furthermore, others waited because 
such a marriage was irrefutable evidence of a breach, or because until 
the defendant married, they had not lost hope that he would return to 
them. But a substantial number still lost their fiancées to another woman 
or man who had more to offer, even though flirting with another when 
engaged was forbidden to both men and women. The desire to marry for love 
often overcame scruples about the "correct" behavior of courting couples; 
in addition, long engagements and lack of proximity made straying 
undeniably easy.

Writings on courtship were unanimous in condemning those who flirted 
with others when engaged. For instance, Catherine Pooth-Clibborn declared 
that breaking an engagement because of meeting "someone . . . who seems 
to please you better" was an illegitimate reason. Many others echoed her 
views, although most of them were preoccupied with women's behavior, 
warning them of the dangers of being thought of as "flirts" or 
"coquettes."31 Such behavior was justified grounds for a breach; any 
woman who had indulged in random flirting in all likelihood would have 
diminished her chances of finding a husband. However, a much more lenient 
standard was applied to men. It was not just during marriage that the 
sexual double standard operated, and this fact enabled men to find 
alternatives to their first fiancées without incurring too much social

31Catherine Pooth-Clibborn, Love and Courtship 2nd ed. (London: 
Marshall Brothers, 1927), p. 57. See also The Etiquette of Courtship and 
Matrimony (London: David Bogue, 1862), pp. 39-40; "The Etiquette of 
Courtship and Marriage," Bow Bells 6 (February 27, 1867), p. 114; and E.S. 
ostracism. Society might have disapproved heartily of male flirts, but these men did not seem to have any difficulty in finding someone to marry them; in fact, the opposite was true.

Unfaithfulness in a few cases resulted from money problems, i.e., poorer women (and a few men) lost out to better-off rivals. The defendant in Redhead v. Huddleston, a man of small independent means, jilted his milliner fiancee for a Miss Dodgron, a woman who "had the advantage over the plaintiff of being possessor of 100l. a year." Joseph Tonge lived for 15 years with Sarah Langford and they had 5 children together. He never married Sarah, though; instead, he married the landlady of a successful inn. Winifred Davies' fiance married "a woman with money bags," despite his reputed wealth from his sojourn in Australia as a digger; Samuel Crook married a widow rather than his pregnant fiancee, Phoebe Mather. The fact that the women had lost their lovers through poverty gave them added pathos, though they did not always get higher damages. Miss Redhead, however, got £1750, about one-sixth of the defendant's property, and the appeals court refused to lower it. Justice Blackburn reportedly "regarded it [the fact that she had been jilted for a richer woman] as a proper ingredient in the estimate of damages."32

Other times, defendants fell in love with men or women who were in closer proximity. Although housekeepers and landladies were often the victims of breaches, they could also be the causes. Robert Routledge, an

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32Redhead v. Huddleston, The Law Journal, 8 (1873), pp. 674-75; Times, August 2, 1873, p. 11; Langford v. Tonge, above; Davies v. Williams, ASI 57/6; Carnarvon and Denbigh Herald, August 3, 1857, p. 6; Mather v. Crook, ASI 54/3; Manchester Evening News, January 31, 1882, p. 3. See also Hewitt v. Mowis, Lady's Own Paper, April 6, 1867, p. 317 and Times, March 28, 1867, p. 11, in which a servant lost her wigmaker fiancee to a woman with £400 a year.
ironworks builder, jilted Elizabeth Kelley, the daughter of a foreman builder, for his landlady after an engagement of five years. Harry Humber preferred his lodging-housekeeper as well, a widow named Ethel Leslie. Alice Brewett, his former fiancée, had lived near him, but apparently not near enough. Housekeepers and landladies were not the only ones to take advantage of proximity. The plaintiff in *Chapman v. Rushman* lost her fiancé to his cousin, despite a courtship of over ten years standing and an illegitimate child born six months after Rushman's marriage. Some men apparently were swayed by the women closest to them, thereby following the path of least resistance.33

There were also numerous cases in which the woman was thrown over after having been seduced by the man; he married someone he considered more "suitable" as a wife (in other words, more chaste), even when there were no clear class divisions. For instance, Elizabeth Williams, the daughter of a farmer, was engaged to Evan Jones, a farmer, for ten years. She had been his servant and he had seduced her at the beginning of the relationship, and she did not sue for affiliation on his assurance that he would marry her after his father died. His father died in 1882, but he then married someone else. Elizabeth apparently was not suitable to Evan, since she had had another illegitimate child two years before going to work for him. Elizabeth Holt, a weaver, was jilted by James Hamer, an innkeeper, in a much shorter fashion. He proposed marriage, seduced her, and deserted her within a few months, marrying another woman only ten

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33 *Kelly v. Routledge*, Liverpool Daily Post, December 11, 1897, p. 3; *Brewett v. Humber*, ASSI 75/3; *Swansea and Glamorgan Herald and the Herald of Wales*, June 29, 1895, p. 3; *Chapman v. Rushman*, ASSI 32/29; *Times*, March 27, 1862, p. 11.
months after he had proposed to Elizabeth. Augusta Davis and her lover, a Mr. Goddard, grew up together. Augusta was the daughter of a baker and grocer, and Goddard was a farmer. They became engaged in 1875; in August of that year, Goddard invited her to his brother's farm where he seduced her. When she found that she was pregnant, he refused to see her and began courting his future wife. His brother and sister-in-law accused her of trying to "trap" Goddard, but Augusta sorrowfully replied that "it was quite clear that he had entrapped her, to her very great sorrow."34 These women had either already had illegitimate children or had so compromised themselves with the defendants that they were left in disgrace.

All the same, in the majority of cases, the defendant quite simply fell in love with someone else, without finding anything wrong with the plaintiff. For instance, Letitia Lewis and John Davis were happily engaged after he had returned from Australia, having made his fortune. Letitia suggested that before they marry, he go back to Australia and get an education. John did so, but the results were no benefit to Letitia, since he fell in love with the schoolmaster's sister and married her instead. Abraham Wright courted Ellen Lee for six years before leaving her for a Miss Primrose, despite the fact that Ellen had a fortune of £500 a year and Miss Primrose had none. He married Miss Primrose three years later in what was clearly a love match. Mary Cottam and Alice Davenport also suddenly lost their fiancés to other women from simple changes in

34Williams v. Jones, ASSI 75/2; South Wales Daily News, July 14, 1883, p. 4; Holt v. Hamer, ASSI 54/2; Manchester Evening News, July 22, 1881, p. 3; Davis v. Goddard, ASSI 22/35; Somerset County Gazette and Bristol Express, March 17, 1877, p. 6. Similar cases include Bath v. Williams, South Wales Daily News, April 7, 1876, p. 6; Davies v. Harris, ASSI 1/63; Hereford Journal, March 26, 1864, p. 3; and Duxbury v. Smith, ASSI 54/9; Manchester Examiner and Times, April 29, 1891, p. 3.
allegiance; Edwin Scott married a Miss Dawber, while Edward Bland married a Miss Orme. Since neither one of these women appeared to be better-off than the plaintiffs, the defendants must have considered them better-suited for a happy married life.\textsuperscript{35}

The defendants felt some shame for their behavior; they knew that they were not following the rules. They almost always denied heatedly that they were seeing other women (or men) until they had actually gotten married. They also often tried to force the plaintiffs to break the engagement by mutual consent rather than admit that they were interested in other women (or men). Samuel Stone, e.g., began to find fault with everything Carlile Brett did in an effort to alienate her so he could be free to marry Miss Gale. As her barrister put it, "He objected to her expressions, her tone, her enunciation, her very walk," and eventually her brother was driven to writing a letter to remonstrate him for his coolness. Even when taking responsibility for the breach, the defendants would not admit their true reasons. William Weston wrote to Sarah Chamberlain that he had simply changed his mind about marrying; in the same way, W. Hooper told Mary Tittle that he had decided not to marry anyone. Both men married other women shortly after breaking their promises to Sarah and Mary. Defendants also could be surprisingly cruel to the people they were jilting. John Farrow did not ever formally stop relations with Mary Crookshank. She noticed he had grown cool and wrote

him to find out why; his reply was to send her a wedding card and a piece of wedding cake. Maria Levens' fiance did precisely the same thing to her after a three-year engagement. After finding their "true loves" most men seemed to regard their first fiancées as embarrassments to be put off as quickly as possible. Since love conquered all, the needs of the new loves outweighed any consideration for the old; furthermore, they did not want any reminders of their own bad behavior.

In these cases, the defendants did not set out to two-time anyone; they met someone new, fell in love with them, and almost at once tried to break it off with their fiancées in order to settle down with only one woman. However, some men (no women did this in any case under study) courted two or three women at the same time purposely. Thomas Morse, e.g., courted Jane Appleton, Miss Wells, and a widow, Mrs. Sandell, at the same time, dividing his attentions between them. According to one of his employees, Morse would entertain Jane and her sister earlier in the day; when it was time for Mrs. Sandell to call, he found an excuse to hurry Jane out to the omnibus. Mrs. Sandell owned a pub; although Jane had a fortune of £1000, Thomas thought the widow had more to offer and she eventually became Mrs. Morse. This behavior may seem insensitive enough, but in most cases, the men went beyond courtship and were engaged to more than one woman at a time. Agnes Richards became engaged to Robert Palmer in 1884 and slept with him soon after. In November 1886, he married

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36 Brett v. Stone, "Chronicle," Annual Register (December, 1843), pp. 180-81; Chamberlain v. Weston, Chronicles of Breaches of Promise, pp. 159-61; Tittle v. Hooper, ASSI 75/2; South Wales Daily News, February 14, 1883, p. 4; Crookshank v. Farron, ASSI 54/7; Manchester Examiner and Times, February 28, 1889, p. 3; Levens v. Hutton, ASSI 54/3; Manchester Evening News, April 29, 1884, p. 3.
someone else, to whom he had been engaged for eighteen months. Agnes heard rumors that he was married, but he strenuously denied it when she questioned him. He did not admit the truth to her until he had been married for six months. Frederick Dunn asked Susannah Berry to marry him in the summer of 1897 and they had set a date for October 4th of that year. However, Frederick was already engaged to a Miss Blundell; when the latter fell ill in late August, Frederick went to visit her. He then decided he had to marry his first fiancee, though he continued to protest that he loved Susannah best and would never be happy without her. Such duplicity could go on for surprisingly long periods of time; Andrew Cox was engaged to both Amy Hayes and to a Miss Gardiner for six years before he finally married the latter. Similarly, the defendant in Desforges v. Hibbert courted and promised to marry Miss Desforges despite being engaged for twelve years to Dorothy Potts, whom he eventually did wed.  

All these men appeared to view courtship as a kind of "wife-shopping." They did not want a particular woman, necessarily, but the best one to fulfill the position of "wife." Certainly both sides had to take into consideration more than romantic feelings; in many ways, courtship was a sort of bargaining process in which both parties tried to find the most suitable mates (good providers for women and good housekeepers for men). Yet, most of the time, these needs did not obscure the search for someone who was also personally attractive and compatible.

37 Richards v. Palmer, ASSI 22/40; Taunton Courier, February 22, 1888, p. 7; Berry v. Dunn, Manchester Evening Mail, February 2, 1898, p. 2; Hayes v. Cox, ASSI 54/12; Liverpool Mercury, March 15, 1893, p. 7; Desforges v. Hibbert, Times, July 30, 1877, p. 11. See also Doxey v. Wallwork, ASSI 54/11; Manchester Examiner and Times, December 3, 1892, p. 7, in which the defendant was engaged to two women for two years.
On occasion practical needs overcame everything else, particularly in the lower middle and upper working classes. The need for efficient homemakers (and, for the women, adequate providers) was too important to be ignored in the more humble stations of life. More often, however, the practical and romantic needs resided in an uncomfortable union, a mixture that facilitated break-ups. What was particularly unpleasant for women was the volatile mix of the romantic ideal and the sexual double standard; men could commit to more than one woman and excuse their behavior with both by appealing to romantic love and to the popular view of men as the aggressive, sexually active gender. In such a way, they avoided incurring any real loss for their behavior.

Indeed, such dishonorable actions did not make the women angry enough to be relieved at not having to marry such men. In fact, they merely seemed deeply disappointed at not having been chosen. The only one to reply with spirit was Susannah Berry, who informed Dunn that "she would have nothing more to do with him" if he saw Miss Blundell. Despite her harsh words, however, she forgave him when he assured her that he loved her and allowed him to keep writing to her. Ruth Brown was even more forebearing. She had been engaged to John Barnfather for five years, waiting for him to get a farm. Before they could marry, John came to her and admitted that he had gotten his housekeeper pregnant and would have to take care of that problem before he could consider marrying Ruth. Instead of a furious rebuke, she only said "she hoped he was not going to
let anything come between them after their long engagement."38 These mild responses emphasize the advantages men had in courtship. Ruth still wanted to marry John even though he had betrayed her with his housekeeper; if Ruth had had intercourse with another man, however, John probably would have had nothing more to do with her (and she could not have sued successfully).

The romantic ideal of middle class ideology produced a final, a more complicated reason for failed courtships in the Victorian era. Besides suggesting marriage based on companionship, popular notions of romance and conventions of courting also encouraged couples to become engaged quickly. The simple fact was that many of these couples did not know each other well when they became engaged. Indeed, in 98 of the cases the couple had known each other only a month or less before they promised to marry one another.39 Of course, these figures are exaggerated because it was in the plaintiff's interest to date the engagement as soon as possible, particularly if she had become pregnant. But the majority of the time, either the defendant admitted to the engagement or the plaintiff provided letters or other convincing evidence to prove it, despite the surprisingly short courtships. For instance, Alice Owens was introduced to Arthur Horton by a mutual friend on August 4th, 1889. They went for a drive together on August 5th, and Arthur wrote her several letters from his army camp. On the 18th, they went for a walk, and Arthur hinted that he "was

38Berry v. Dunn, above; Brown v. Barndfather, ASSI 54/4; Carlisle Express and Examiner, January 23, 1883, p. 3. See also Tilliott v. Wrightup, ASSI 32/31; Norwich Argus, March 27, 1869, p. 1, in which the defendant got two women pregnant at the same time (they both had their babies within a week of each other) and could only marry one.

39For more on the brevity of courtships, see Chapter 4.
in a position to get married." The next Sunday, he went to see her father; without revealing what they discussed, he urged Alice as he left to "be true." On the 19th she went to visit his mother. Arthur then gave her an engagement ring and spoke to her father a second time. At that point, the two became formally engaged, only fifteen days after having met.40

Such brief courtships were not at all unusual. For example, Bertha Smith and Arthur Mitchell met on September 14, 1891 and were engaged on October 13, 1891, after having seen each other almost "daily" during that month. Annie Copeland insisted that her employer, William Hopkins, proposed to her only "three or four days" after she had gone to be his housekeeper. He denied the engagement, but the two certainly did have sexual relations shortly after she arrived, since she quickly became pregnant (and he admitted paternity). Ernest Robinson asked Clara Vaughan to marry him two or three weeks after they had met in October of 1895. She put him off at first, but he persisted in asking, so she soon agreed. Kate Sinclair met John Hackett while she was visiting her brother who was John's neighbor. According to her statement, "from the first the defendant paid the plaintiff great attention, and on several occasions he took her for drives in his dog-cart." After only a few weeks, he proposed marriage and she accepted. Jessie Elder and Emily West both received letters from men they had never seen, proposing. Jessie came to the attention of Michael Brearly by sending him a letter requesting a position for her brother. A few months later Brearly wrote her, asking her to marry him, since his wife had died eighteen months before and "I cannot

do without a wife very well." She agreed, although they did not make it official until he had visited her and her parents. Emily West was a singer and dancer, and her future fiance saw her perform and wrote to meet her. They were engaged only a month later and set the wedding to take place in three months.41

In some cases, the reason for the brevity was the nature of the union. Mature couples, interested in finding comfortable homes for their old age, quite often arranged marriages without knowing each other well. Since romantic love was not the object, such arrangements were quite sensible; here especially, the men and women were looking for certain roles rather than certain individuals. Catherine Smith, who had already been married four times, was approached by James Strickland, a three-time widower, to make a home together. He had been visiting her pub as a customer and had been impressed with her efficiency. They came to an arrangement the first night he spoke to her, but he married a younger woman a few months later. In Jacobs v. Wolfe, the defendant wrote to a friend of his asking information about his two daughters to see if one of them would suit as a step-mother to his six children. Annie, the younger sister, accepted his proposal; he changed his mind when he realized that she was the younger of the two because he felt that his children would not listen to her. He then coolly wrote to Annie, saying that he would "prefer your sister, as she is six years older and would be more respected

41 Smith v. Mitchell, ASSI 54/9; Manchester Examiner and Times, March 17, 1892, p. 7; Copeland v. Hopkins, ASSI 54/13; Manchester Evening Mail, November 2, 1894, p. 2; Vaughan v. Robinson, ASSI 54/15; Liverpool Mercury, May 19, 1897, p. 10; Sinclair v. Hackett, Illustrated Police News, June 18, 1898, p. 8; Elder v. Brearly, Illustrated Police News, February 20, 1897, p. 6; West v. Sales, ASSI 32/37; Kent Messenger and Maidstone Telegraph, July 21, 1883, p. 5.
by my children." (Annie's sister refuted this second proposal with scorn.) Although not all second marriages were this cold-blooded, several mature couples agreed to marry each other when they had barely met. Ann Edwards, Margaret Halliwell, and Elizabeth Redfern all made such arrangements with older men, only to be jilted when the wedding day neared.42

At other times, hasty engagements were due to the couple's (or the man's) desire to have sexual relations. Sarah Bath had only worked for Thomas Williams a month as his housekeeper before he "spoke" to her. Ten months later, Sarah had his illegitimate child. Apparently, Thomas and Sarah began acting out all the roles of husband and wife as soon as possible. Ellen Gardner went to live with Alfred Thomas almost immediately after he met him going home from her work as a machinist (he was a gentleman of independent means). Although she had a written promise to marry her, he saw her as more of a mistress than a wife from the very beginning, and she was unable to get him to the altar. Although few of these women claim to have been unwilling participants in the sexual immorality, almost all of them claim to have been pressured into it by the defendants. In addition, a few cases might be described as rapes. Mary Nicholson, e.g., claimed that on her second visit with David Maclachlan, he "forcibly seduced" her, and she "was not a consenting party in any way." After the attack, she felt she had to marry him since her

42Smith v. Strickland, ASSI 54/1; Liverpool Mercury, August 8, 1877, p. 8; Jacobs v. Wolfe, Times, May 7, 1880, p. 4 and an editorial May 8, 1880, p. 11; Edwards v. Roberts, ASSI 59/151; Carnarvon and Denbigh Herald, February 2, 1884, p. 6; Halliwell v. Rigby, ASSI 54/3; Manchester Evening News, February 3, 1885, p. 3; Redfern v. White, ASSI 1/68; Staffordshire Advertiser, August 1, 1885, p. 5.
reputation was ruined (she was the step-daughter of a clothier, and Maclachlan was a captain in the army); he told her he would do so if she would keep the matter quiet. She eventually had his child and they communicated for three years until he married someone else.  

In these and similar cases, the promise of marriage was something of a ruse in order to legitimize, at least in the woman’s mind, pre-marital relations. The need to reassure her helps explain the haste with which these couples became engaged.

Nevertheless, in most cases a brief courtship was dictated at least partially by the rules of society. If a man saw a woman three or four times, he was expected to state his intentions either to her or to her parents; even if the couple did not become formally engaged, the man had indicated that the courtship was serious and on the road to matrimony. This rule was meant to protect women from those who would trifle with their affections; if a man did not intend marriage, he would be asked to desist in his attentions so he would not compromise the young woman. However, such rules could backfire. Men who had become quickly attached might just as quickly change their minds, particularly over long engagements. Brice Wilkinson, a lieutenant in the 68th army regiment, spent a week in the beginning of June of 1857 courting Laura Killick. His

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regiment left for Ireland and did not return until the end of the month, when he again called to see her. At this point, after barely three weeks of courtship, Laura's father asked Brice his intentions, and Brice was obliged to either admit to wanting to marry Laura or to cease his visits. Brice assured Mr. Killick that he had marriage in mind, but he left with his regiment again and had stopped answering Laura's letters by October of the same year.44

Part of the problem was that men often were attracted by superficial qualities, especially the looks or "manner" of a woman. For instance, David Harman was "at once struck" with the "appearance" of Mary Williams, and the two were engaged only a few weeks after meeting each other. Within ten months, however, Harman had been even more powerfully attracted by another woman and had married her instead. Brief courtships and long engagements also gave men a chance to give this important decision second thoughts. The defendant in Woodward v. Clarke was an officer in the army in India. He met the plaintiff on one of his leaves and they very quickly became engaged. Once back in India, Clarke had second thoughts about uniting for life with a young woman he hardly knew. He wrote to her, explaining his change of heart:

The fact is . . . When I came home I was so excited by my long absence and so pleased with the reception I met with that I hardly knew what I was doing. I feel that I have acted most foolishly and wrongly, and am very much to blame for allowing matters to go on so long without explaining . . . 45

44Killick v. Wilkinson, Chronicles of Breaches of Promise, pp. 149-152.

Short courtships simply did not give a couple long enough to get to know one another; the engagement period (or courtship with a view to marriage) was the only time that they could discover whether or not they would be happy together. In other words, for many couples, the engagement was the beginning of formal courtship. Even in the lower middle and upper working classes, where there was often no clear line between courtship and engagements, the women expected a great deal more from serious courtship than the men did. Unfortunately, many couples found that they were not compatible after the first flush of physical attraction had worn off.

In fact, writers in the nineteenth century observed that these social conventions maneuvered men into a false position. "The Perils of Paying Attention," an article originally written for The Saturday Review, charged that the system was "reduced to a matter of numerical calculation -- that a certain number of dances, or calls, or polite speeches will justify a stern father or big brother in asking his 'intentions.'" Another writer told a story of a young man who had taken a lady to "a few theatres and dances" and had been forced to propose by social pressure. Although these writers were dealing with the middle and upper classes, the lower-middle and working classes had the same problem. Flora Thompson, a servant, claimed that most of her contemporaries conducted their several years of courtship "by letter, for they seldom met except during the girl's summer holiday . . ." Thus, the two people most involved saw each other infrequently before they made a life commitment to one another. The possibilities for misunderstandings and changed minds were therefore quite
The dangers of the conventions of courtship is best illustrated by an 1870 case, Bull v. Robinson. Caroline Bull was the daughter of a farmer and Henry Robinson was a clergyman of the Church of England. Henry had admired Caroline "from a distance" for some time, and he wrote her in February of 1864, introducing himself and explaining his interest:

Our interviews have been only occasional and short, but each one has confirmed the high opinion which I long ago formed respecting you, and has tended to excite feelings of admiration, which the voice of prudence has hitherto forbidden me to [ex]press . . .

Henry went on in the letter to explain his prospects, his family history, and any objections she may have had to him as a potential mate. He then asked if she could return his feelings. Caroline replied that she would like an interview before making up her mind. The interview was a success and the two became formally engaged, having spent barely six hours alone together. Henry then went to Cambridge and the couple corresponded for the next five years. Henry's letters became warmer and warmer until early in 1868, when his tone became noticeably cooler and his news more perfunctory. Caroline noticed his change and asked for an explanation in November of 1868. Henry then revealed to her that he had not developed the love for her that he thought essential for happiness in marriage. Indeed, he had not felt right about the relationship almost from the beginning:

I have with no little effort, made up my mind to confess that a conviction has been for a long time gaining ground in my

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mind that I acted upon a misconception when I imagined, as I did, that my admiration for your character, however great, would engender and develop [sic] those extreme feelings which should cement the closest bond of life.

Caroline was crushed, but she refused to give up hope. She insisted that his feelings had not changed until 1868 and that if they continued to correspond, he would find his love for her again. She sadly realized that if they had not had to wait so long to set up their household, they would have been married before he had changed his mind: "There might be feelings of reaction after strong excitement, but had circumstances favoured our union then, we might have been very very happy . . . ." For a few more weeks, Henry consented to continue writing her, but in March of 1869, he wrote her that he could not keep up the pretense any longer. He insisted that engagements were "probationary periods," and since he had barely known her when they began to correspond, he had a right to break it off. Carrie's brother, however, replied with a blistering letter:

With regard to an engagement being as you put it 'a time of probation,' this may be true in some cases of courtship, but when it has extended over five years, as in this case, it ceases to be such and becomes as you once said you looked upon it 'as sacred as marriage.'

Attempts at an out-of-court settlement failed, and the case went before a jury in August of 1870. Caroline received £350 from the jury, but at the age of forty, her chances of finding another fiance must have seemed bleak.47

In many ways, one can sympathize with Henry Robinson in his dilemma. Forced to make definite proposals before he was truly ready, he then found himself committed to a woman with whom he did not want to share the rest

47Bull v. Robinson, ASSI 32/31; Cambridge Independent Press, August 1, 1870, pp. 6-7.
of his life. On the other hand, Caroline had spent six years of her life in devotion to a man who now refused to marry her, and, even worse, claimed that he had never loved her as he should. The very conventions that were meant to protect women from being jilted—obliging men to state their intentions from the beginning—at times led to broken engagements. Some couples inevitably discovered incompatibilities or differences that made marriage impossible as they got to know each other after their engagement. Additionally, the murky concept of romantic love caused problems. Men "fell in love" with the "manner" or looks of a woman and tried to win her affections; this type of affection was based on sexual attraction. Yet they also recognized that they needed a deeper love, or affinity, for a woman that they would marry (in other words, companionate love). They two types of attraction did not always go together, and when there was a divergence, a broken engagement was often the result.

Contradictions within the romantic ideal, then, were as disruptive as those between and within classes. The complex interplay of economic and ideological needs, particularly when the two clashed, led to the end of many relationships. Yet structural influences did not always set the course of engagements; personal factors, such as differences of age, religious beliefs, and temperaments, also played a part. In fact, differences in age and religion, though almost never strong enough to split a couple on their own, often could function as contributing factors in ending a relationship. As already discussed, half of older defendants were more than 10 years older than the plaintiff; there were even cases in which the defendant was over 50 years the plaintiff’s senior. Clearly, few people saw anything wrong with an older man courting a young woman or
even a teenager, although the ideal was for the man to be 3-7 years older. The rationale was that women matured faster than men, and of course, a woman's fertile period was shorter. Mr. Swetenham, a barrister, said in an 1876 case that the "Plaintiff was a young woman aged twenty-six years, and the defendant was somewhere about forty-six; so that there was no disparity respecting the ages, as it was only right that the gentleman should be older than the young woman." Similarly, the barrister in Gordon v. Woolridge stated that his client "was about thirty-four or thirty-five years old, and the defendant was about fifty; so that, so far as age went, the jury would see that the parties were quite suitable to each other." More surprising is the remark by Mr. Shee about Sutton v. Aronsberg: "The parties were not ordinary people, and neither of them was very young. The lady was 27 years of age, and the defendant was 56 or 57 years old." A woman still in her 20s was evidently considered on par with a man in his 50s, and the thirty years in between was not considered a bar to a happy union.

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48Jalland, Women, Marriage and Politics, 1860-1914, p. 79: "The husband was expected to be older than the wife, ideally by three to seven years, since women were supposed to age faster than men." Ryan claimed in 1839 that the ideal age for men at marriage was 25 and for women, 21, The Philosophy of Marriage, p. 74. Many women still expected their husbands to be slightly older into the late 20th century, Diana Leonard, Sex and Generation: A Study of Courtship and Weddings (London: Tavistock Publications, 1980), p. 73.

49Roberts v. Hughes, ASSI 59/135; ASSI 57/7; Carnarvon and Denbigh Herald, March 25, 1876, p. 8; Gordon v. Woolridge, Chronicles of Breaches of Promise (London, n.d.), pp. 176-78, quote from p. 177; Sutton v. Aronsberg, ASSI 54/12; Manchester Examiner and Times, July 18, 1893, p. 5.

50In the upper middle classes, the attitude toward ages was similar; women could be as much as 25 years younger than their fiancées, but it was highly unusual for a woman to be the older party. Pat Jalland, Women, Marriage, and Politics, pp. 79-84.
However, in two instances, age differences helped lead to failed courtships. First, truly wide margins of age, even when the men were the elders, could give the parties or their families at least momentary uneasiness. Caroline Dyer and Sarah Bath both hesitated to become engaged because of age differences. Caroline's fiancé was 25 years older and persuaded her by insisting that he would be truer than a younger man, a remark he came to regret. When Sarah protested to Thomas Williams that she was "very young," he replied, "Never mind, there's plenty to keep you like a lady, and you need not go from here as long as you live." At other times, it was the men who expressed doubts. Two of the defendants, William Hurst and William Lawrence proposed by making their seniority plain. Hurst (45) said, "Would you like anyone as old as me?" and Lawrence (60) asked, "Do you think you could love an old man like me?" Both of their lovers replied fairly quickly that they could. Ellen Berry (25) told Hurst, "Yes, so be it we like one another and can be comfortable together." Esther Haines (33) hesitated a bit longer, but agreed to marry Lawrence a few days later.51

Many of the couples' relatives also pointed out age differences if they were particularly large. The woman's parents usually brought up the relative youth of their daughter, though they did not try to use age alone as a reason to stop the engagement. They instead counselled delay or gave in when the man reassured them that the age difference would not be a problem. Mary Ann Redshaw's father, for instance, pointed out the 24-year

51Dyer v. Hare, ASSI 22/41; Bristol Evening News, April 6, 1892, p. 4; Bath v. Williams, South Wales Daily News, April 7, 1876, p. 6; Berry v. Hurst, ASSI 54/1; Manchester Evening News, January 21, 1872, p. 2; Haines v. Lawrence, ASSI 1/66; ASSI 8/2; Gloucester Mercury, April 10, 1875, p. 4.
difference between his 16-year-old daughter and her would-be suitor, Stephen Wilman, aged 40. Stephen argued that "as to age, they might say Mary Ann was two or three years older than she was, and nobody would know it. He was accordingly admitted as a suitor." When T.M. Brown came to ask permission to court Sophia Dainty, Mrs. Dainty "called his attention to the disparity of their ages (plaintiff being 28) [he was 58], and the disturbance which a marriage at his time of life would make in all his arrangements," but Brown brushed this objection away. On the man's side, it was usually his grown children who objected to a young step-mother. The defendant in Blackham v. Pratt told his fiancee that his family disliked his engagement because of her youth, but that he would "please himself." He was 70 and she was 24.\footnote{Redshaw v. Wilman, Annual Register, "Chronicle," (1843), pp. 87-88; Dainty v. Brown, ASSI 32/31; Northampton Mercury, July 23, 1870, p. 7; Blackham v. Pratt, Times, March 7, 1864, p. 11. The editors of The Law Times were so disgusted with the outcome of the latter case that they published a scathing editorial, saying "The young lady, young enough to be his grandchild, sought a medicine for her hurt affections in damages of hard cash. That was to console her for what? . . . Had he pleased, he might have saved his money, married her, and made her wretched. Because he did not [do] this, a stupid jury gave her 4001. damages." Vol. 39 (1863-64), p. 217. The editors of The Law Journal also commented derisively on cases with large age differentials. Citing two recent cases reported in The Times, in which the average difference was 35 years, they wrote "Surely such instances are calculated to disgust the public with this sort of action. It cannot be pretended that a woman under thirty will suffer in her affections from losing a lover verging upon eighty, a man fully old enough to be her grandfather." Vol. 6 (1871), p. 209.}
parents strong objections, Elizabeth and James got engaged. However, a few weeks later as the two of them were out walking together, "some boys called out to the defendant 'What are you doing walking about with a good looking girl like that?' and there was also some vulgar chaff." James was furious and embarrassed and broke off the relationship then and there. When Mrs. Rice demanded an explanation, he replied that "Well, I am an old fool; and when old fools go in for that sort of thing, they are the worst of old fools." In the other cases, the defendants combined age with other reasons. Thomas Radford wrote to his fiancée, Fanny Wade, that he felt breaking it off was only right "when I came to think of the wide difference of our ages and my income so small" (he was 46 and she was 24). Wright Copping (55) broke off his relationship with Charlotte Hubbert (30) when he discovered that "she did not attend church regularly, and she was fond of theatres, and there was too much difference between their respective ages." Similarly, William Lawrence, a sixty-year old widower, explained his actions to Esther Haines, his thirty-three year-old fiancée, by saying she was "silly" to throw her "love away on an old man like him."53 Occasionally, then, exceedingly wide age differentials caused

53Rice v. Hall, ASSI 75/2; Brecon County Times, January 31, 1880, p. 2; Wade v. Radford, Chronicles of Breaches of Promise, p. 144; Hubbert v. Copping, Bristol Daily Post, August 15, 1871, p. 13; Haines v. Lawrence, above. In several other cases illness or infirmity due to old age served as the excuse for failing to perform the marriage contract. See Thomas v. Edwards, Manchester Evening Mail, April 21, 1898, p. 2; Clark v. Daintith, ASSI 59/14; Chester Chronicle, March 14, 1891, p. 2; Parnell v. Hancock, ASSI 22/42; Western Times, August 2, 1893, p. 3. Edwards and Daintith were 76 and 77 respectively; Hancock was in his sixties. See also Handley v. Smith, ASSI 1/63; Staffordshire Sentinel, March 23, 1861, p. 7 between a 21-year old daughter of a farmer and a 75-year old bachelor farmer; and Gee v. Entwistle, ASSI 54/2; Liverpool Mercury, July 27, 1878, p. 8 and July 29, 1878, p. 6 between a 23-year old daughter of a potato merchant and a 45-year old frame manufacturer. Entwistle claimed that she broke it off because she felt that he was too old for her.
problems between lovers.

The second way that age was a factor was when the woman was older than the man. This situation occurred in 40 of the 324 cases in which both ages were known, although the age disparity was seldom more than five years. Most of the time, this small difference did not influence the courtship (or the jury) very much. Only if the defendant came to see (or could make it seem) that the plaintiff was a scheming older woman, out to push him into an unhappy marriage, did it affect the relationship or the court case. For example, in the cases of both Julia Ford and Catherine Fitzpatrick, the defendants portrayed themselves as inexperienced boys menaced by women of the world. Such a defense implied that Julia (who was 30 to George Strongitharm's 22) and Catherine (who was 7 years older than Jesse Curling) were experienced in the ways of love and/or sexual intercourse. Age spans of 5-10 years, which were ideal if the elder were male, were suspect when opposite was true; for example, Hannah Pendlebury's father warned about the "great disparity" of her and David Doody's ages, even though it was only eight years (she was 35 and he was 27). Women with the most harmless backgrounds could be accused of stalking down young men if they were the older of the two. Mary Jones was only five years older than Robert Lloyd, but his counsel used the defense that she "did her level best to get the defendant but there was no promise." In other words, an older woman was seen as threatening and predatory.54 Even some judges were prejudiced by age factors. Baron

54 Fitzpatrick v. Curling, above; Ford v. Strongitharm, above; Pendlebury v. Doody, ASSI 54/9; Manchester Examiner and Times, July 16, 1891, p. 3; Jones v. Lloyd, ASSI 59/14; Chester Chronicle, March 14, 1891, p. 2. Deborah Gorham has pointed out that one of the persistent stereotypes of young women was the "husband-hunter," an image often linked
Bramwell summed up strongly in favor of the defendant in Andrews v. Huff, remarking "on the disparity which existed between the ages of the plaintiff and the defendant, and asked the jury to decide how much better off she would have been if she married than if she had not [she was 38 and the defendant was 25]." 55 Obviously, age factors by far favored men in Victorian courtship. Although the fact that women were older was never the only reason that the relationship failed, it sometimes aggravated other incompatibilities and could in all events help reduce the awards that the plaintiffs received.

Differences in religious beliefs worked much the same way. By the late nineteenth century, the intensity of religious controversy decreased, but it could still provoke family opposition or lead to critical delays. 56

55 Andrews v. Huff, Chronicles of Breaches of Promise, pp. 182-83. One must also keep in mind that Bramwell thoroughly disapproved of breach of promise cases and discouraged large awards whenever possible (for more on Bramwell, see Chapter 8). In this case, the jury granted only £5. For another case with an older plaintiff, see Hope v. Watson, Times, July 22, 1872, p. 13, in which the plaintiff was 61 and the defendant was 44.

56 For a discussion of the decline of religious fervor in modern Britain, see A.D. Gilbert, Religion and Society in Industrial England: Church, Chapel and Social Change (London: Longman, 1976), especially Chapter 7. Elizabeth Roberts found in her oral history of working-class women that there was surprisingly little religious bigotry in choosing marriage partners, although the majority married within their own denominations. Roberts, A Woman's Place: An Oral History of Working-Class Women, 1890-1940 (Oxford: Basil Blackwell, 1984), pp. 73-75. F.M.L. Thompson also found a great deal of in-marrying in middle-class dissenters and Catholics, The Rise of Respectable Society, p. 101. In the upper
Usually, religious differences were only contributing factors to the breach. Susannah Jones had problems with Joshua Williams’ family because her family was Church of England and his was Nonconformist. For this reason, his family was opposed to the match from the beginning. Susannah and Joshua were from Swansea (in Wales) where the differences between church and chapel were quite divisive into the twentieth century. The only case in which religion played the deciding role was Chamberlaine v. Cave. Edmund Cave insisted that he had broken off his engagement to Blanche Chamberlaine because she was a Roman Catholic, he was a Protestant, and he could not bring himself to sign an agreement to rear their children in the Catholic church. She was not willing to marry him unless he did so; thus, the match came to nothing.\(^{57}\)

Differences in religion and age were easily identifiable stumbling blocks; nevertheless, simple interpersonal disputes were also common. Particularly, couples split up because they had a bitter quarrel (or series of quarrels) and did not make up afterwards. Their fights did not

middle classes, “Differences in religious faith between marriage partners were frowned upon, but did not usually provide an insuperable obstacle to the match,” Jalland, Women, Marriage, and Politics, p. 87.

\(^{57}\)Jones v. Williams, ASSI 75/3; Swansea and Glamorgan Herald and the Herald of Wales, November 28, 1896, p. 1; Chamberlaine v. Cave, ASSI 32/39; ASSI 37/7. In one case, Dainty v. Brown, the plaintiff originally broke the engagement because of religious scruples, writing: “I have never been happy for one moment since I left, because I had given you to understand that I would soon return as your wife. Once more, and for the last time before God, I dare not, unless you become a decided Christian. . . . [God] knows, too, how dearly I love you, and what it is costing me to give you up." Eventually, Brown overcame her scruples only to break the engagement himself. ASSI 32/31; Northampton Mercury, July 23, 1870, p. 7. In William Lovett’s autobiography, he writes that he and his fiancee split up for a year because he was Methodist and she was Church of England. They eventually reconciled through arguing the matter out in letters and married in June of 1826. Lovett, The Life and Struggles of William Lovett (London: MacGibbon and Ree, 1967), pp. 30-31.
have any obvious structural causes; in fact, they were caused by a wide variety of things. In a few cases, the man became angry or disillusioned when the woman did not successfully fulfill her duties as wife-in-training. Arthur Horton was furious with Alice Owen because she did not join in the Christmas festivities with his family when she was invited. Alice had been suffering from neuralgia and had not even wanted to go, but she came to please Arthur. However, Arthur took her reticent behavior as a slight to his family and called it "unpardonable." He refused to make up, even after she wrote him a pleading letter. A more humorous example is Vibert v. Hampton. Richard Hampton and Ann Vibert were both of mature years and had arranged to marry in order to have a comfortable home. He postponed the wedding once because he was ill; the second time he could not get out of bed because, he claimed, the beef-steak pie she made him was far too salty. This culinary dispute kept the couple from ever making it to the altar. Jane Davies lost her fiancé, on the other hand, because she refused to hand over all of her savings (about £100) to him to stock his farm. He was so annoyed that he was never cordial to her again.58

In the majority of these cases, though, the ultimate argument showed a true incompatibility. Many times the defendants complained that the plaintiffs were cool to them and displayed no interest in continuing the relationship. These men had legitimate complaints; they believed that

58Owens v. Horton, Birmingham Daily Gazette, March 22, 1890, p. 6; Vibert v. Hampton, ASSI 22/35; Cornish Telegraph, March 13, 1877, p. 4; Davies v. Jones, ASSI 75/2; Brecon County Times, August 2, 1873, p. 7 and Times, August 2, 1873, p. 11. John Gillis reports a similar case in 1825 in which the woman, a servant, refused to give her savings of £150 to John Wave to set up his carpentry business. John then abandoned her despite her pregnancy. "Servants, Sexual Relations, and the Risks of Illegitimacy in London, 1801-1900," p. 154. Gillis notes that "Quarrels over money were common."
they could not get along with their future spouses well enough to marry them. Sarah Blinkinsop became angry enough with Herbert Chapman (he, too, had missed an appointment) that she demanded to be let out of the engagement. She then wrote him an ugly and vituperative letter threatening him when he refused to see her again. One understands his reluctance to spend the rest of his life with her. Annie Brown got angry enough at Benjamin Smith to tell him she no longer cared for him. When she accused him of jilting her, he retorted, "It is not true that I am throwing you aside. If there is any throwing aside it is you, not I."

Agnes Walker frequently showed great coolness to Edmund Boocock; in fact, she broke off her engagement to him twice, only to come crying to him, begging him to take her back each time. Not surprising, he became exasperated and finally gave up on her. These couples would not have been happy together if married; despite the hardship being jilted entailed for these women, they may very well have been better off in not becoming the wives of these defendants.

59 Blinkinsop v. Chapman, ASSI 32/37; Norwich Argus, August 11, 1883, p. 8; Brown v. Smith, ASSI 54/3; Manchester Evening Mail, January 21, 1882, p. 3 and January 23, 1882, p. 4; Walker v. Boocock, ASSI 54/14; Manchester Evening Mail, July 16, 1896, p. 3. See also Amm v. Hille, ASSI 22/42; Devon Weekly Times, February 1, 1895, p. 6, in which Mary Amm complained so much to William that he neglected her that he replied "If she shewed her temper towards him now, what a life he should lead if he married her. . . . She had spoken to him as if he had been her servant, and he would bear it no longer."

60 There were also many occasions when the arguments were symptoms of deeper problems between the couples, particularly when one of the partners became interested in someone else. See Girdwood v. Holme, ASSI 54/7; Lancaster Gazette, July 13, 1889, p. 6; Hounsell v. Parkin, ASSI 22/39; Hampshire Chronicle, February 14, 1885, p. 3; Turner v. Jackson, ASSI 54/16; Manchester Evening Mail, April 26, 1898, p. 4; and Black v. Sparling, ASSI 54/16; Liverpool Daily Post, February 16, 1898, p. 3. Similarly, in a few cases the final argument seemed trivial and unjustified, as in Blackburn v. Kershaw, Somerset County Gazette and
When "a coldness sprang up" between an engaged couple in Victorian England, any number of factors could be involved. However, the primary influences remained class and ideology. Sometimes class alone was sufficient; for instance, cross-class courtships faced daunting obstacles, particularly when the families were not supportive. At other times the companionate ideal's own internal contradictions were enough; the need to protect women from jilting by requiring early engagements often backfired when the couple came to know each other intimately. Still, most frequent were interplays between the two in the lower middle and upper working classes. Their simultaneous desire for romantic love combined with their economic inability to sustain it made for unstable courtships and broken hearts.

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_Bristol Express_, August 10, 1872, p. 5; and _Pendlebury v. Doody_, ASSI 54/9; _Manchester Examiner and Times_, July 16, 1891, p. 3. These cases were the minority, however.
CHAPTER SIX--"IMPROPER INTIMACIES" AND OTHER UNUSUAL CIRCUMSTANCES

In previous chapters, the primary focus has been on actions arising from traditional forms of courtship: young people, the man slightly better off and older than the woman, and the woman suing to recover damages. But breach of promise cases did not just deal with "normal" situations; on the contrary, many of the cases illustrated unusual courtship practices and situations. This chapter, then, deals with several types of cases that do not easily fit into the patterns of Victorian social life. First are topics that explore unexpected aspects of courtship, including premarital sexual activity in the lower-middle classes, cases that mask pseudo-marriages, and the courtship of mature couples. Second are topics that deal with unusual courtroom situations, such as male plaintiffs, male defendants who won, and women who sued more than once for breach of promise. These cases, as well as those considered more "normal," illustrate several dominant Victorian social and family values.

One quarter of the 875 breach of promise cases under study involved the seduction of the plaintiff, and the true figure is probably somewhat larger since there is little information on many cases.¹ Furthermore, numerous additional suits involved women who had been seduced in the past,

though not by the defendant. Despite the high premium that the Victorians placed on female chastity, then, a substantial number of women were not waiting until marriage, and they were not all working class women. In fact, 104 out of the 222 seduction cases involved women in the lower middle (95) and upper middle classes (8), as well as one suit involving an upper class woman.

In most of the cases, the woman had sexual intercourse only with her fiance and then lived to regret the decision. Although not acknowledged by most people outside of the working class, there was a long-held belief that sex with a fiance was acceptable, since the couple were to be married anyway. The primary shame came if the woman got pregnant and the couple did not get married as planned.² Certainly, a fall under a promise of marriage was considered much less reprehensible than one without such assurances. In cases such as this, the couples often waited several months, or even some years, before starting any sexual activity. Mary Capron, daughter of a "respectable farmer" and Richard Denning, a farmer, began courting in 1859. She did not have an illegitimate child until

1862. Emma Pryke and Edward Smith knew each other 2 years before any "improper intimacy" took place between them. They did finally sleep together when he invited her to visit his home and she stayed alone with him for several days. Joseph Rolph courted Harriet Bailey for a year before proposing marriage; they were engaged another year before beginning a sexual liaison. Harriet eventually had two children with him, one in 1873 and another in 1875, but Joseph married someone else before the birth of the second child.  

Like many women forced to go to the foundling hospital, women suing for breach of promise after a seduction were often victims of economic difficulties or class differences which interrupted the normal course of their courtship. In better situations, men would have married their pregnant fiancées before their child received the stigma of illegitimacy. However, a variety of problems led many men to wait before marrying, and this wait was often fatal to the relationship. William Hurst, e.g., put off marrying Ann Hopley for two years because of economic reasons. Hurst was the gamekeeper to the Marquis of Westminster and had lost his first wife the year before he began courting Ann. She had his daughter in March of 1861; only a month later, William wrote her that his "prospects" were too "gloomy" to consider marriage at any time soon. Ann, at the urging of her brother, sued him. Maria Levens, a milliner, was a distant cousin

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3Capron v. Denning, ASSI 22/28; Exeter and Plymouth Gazette, July 27, 1866, p. 6; Pryke v. Smith, ASSI 32/32; Norwich Argus, August 12, 1871, p. 7; Bailey v. Rolph, ASSI 32/36; Suffolk Chronicle, August 4, 1877, p. 10.

to her fiance, Edward Hutton, a timber merchant. They were engaged for three years, and Maria admitted that they had "illicit intercourse" throughout the engagement. Edward travelled a great deal in his work, so they were often separated; she lost him when he met and fell in love with someone else while they were apart. Most often, though, differences arose from family objections because of class conflict. Ellen Wood, the daughter of an innkeeper, and John Irving, a "statesman with property," were forced to wait and endure long separations because of the opposition of his father. After several years, John married someone else, having not seen Ellen for 2 years.\(^5\)

Even though they did not marry the plaintiffs, the defendants almost always tried to help them through their confinements. Richard Denning wrote out 2 formal memoranda "promising to pay the expenses of the confinement, to maintain the child, and to marry the mother." He also promised Mary Capron "to leave her £200, to be paid at his death, or to pay that sum if he married anyone else, and to allow £10 a year for the maintenance of the child." Maria MacLaren and William England came to two different agreements for monetary compensation; before the trial, he had already paid her £25. The defendant in *Sherratt v. Webster* even agreed to pay an annuity for the child, although he reneged on that promise. If the defendant did not volunteer, the plaintiff’s family often sued for affiliation, going to the local magistrates to get weekly payments from the father of the illegitimate child. Despite the Bastardy clause of the

\(^5\)Hopley v. Hurst, ASSI 57/6; Chester Chronicle, April 5, 1862, pp. 2-3; Levens v. Hutton, ASSI 54/3; Manchester Evening News, April 29, 1884, p. 3; Manchester Evening Mail, April 29, 1884, p. 3, and April 30, 1884, p. 3; Wood v. Irving, ASSI 54/9; Carlisle Express and Examiner, July 11, 1891, p. 6.
New Poor Law in 1834, there were still limited opportunities for getting support and this did not bar the woman from also suing for breach of promise. 6 Agnes Nixon's father and Elizabeth Swift's brother both insisted that the women's illegitimate children be affiliated on their fiancés; neither defendant tried to deny paternity and both paid. 7

On occasion, the "help" was less beneficial. J.E. Bamford, an insurance agent, gave his pregnant fiancée, Mary Nangle, an abortifacient, which she refused to use. In Haynes v. Haynes, the defendant was actually arrested "on a charge of administering drugs" to the plaintiff "for the purpose of procuring abortion," although the case was dismissed by the magistrate. Haynes did agree to pay 10s. a week for the child if the plaintiff kept the baby, or all the expenses if she "put her out" to nurse. Mary Wilkinson's lover, William Hampson, arranged a private adoption for their child three months before it was born. The child was virtually sold for £40 to a Mr. and Mrs. Radford. Mary insisted that she did not want to lose her child, saying she only agreed because William told her she could have it back any time she chose (i.e., when she and

6 For details on the changes in affiliation proceedings, see Chapter One, footnote 28.

7 Capron v. Denning, above; MacLaren v. England; ASSI 37/3; ASSI 34/39; Kent Messenger and Maidstone Telegraph, March 2, 1889, p. 4; Sherratt v. Webster, Law Times 8 (May 2, 1863), pp. 254-55 and The Jurist 9 (June 20, 1863), p. 629; Nixon v. Moss, ASSI 1/63; Staffordshire Sentinel, July 25, 1863, p. 7; Swift v. Rhodes, ASSI 54/2; Liverpool Mercury, August 5, 1878, p. 3. Although most men helped pay for their illegitimate offspring, some did not; in these cases, the failure to pay lead to the breach of promise suit. Stephen Wilman signed an agreement with Mary Ann Redshaw to "pay down 20l. or 30l., and engage to pay 3s. per week for the support of the child. The defendant would not stand to the agreement." Therefore, Mary Ann and her father sued him. "Chronicle," Annual Register (July, 1843), PP. 87-88. John Gillis also found that a large number of men helped their women through pregnancy in his study of London servants, "Servants, Sexual Relations, and the Risks of Illegitimacy," pp. 165-66.
William married). Justice Grantham was incensed by this arrangement, announcing after the verdict that "It was perfectly intolerable that such an agreement should be made or should be considered binding." Both he and the jury blamed William, not Mary, for the arrangement. They obviously assumed automatically that a woman had maternal instinct and in this case it had been thwarted by her selfish lover. The jury gave her £600, £100 more than she had asked for in her pleadings.  

In these cases, the defendants probably would have wed the plaintiffs had not class differences, illness, or long separations worked their toll on the relationship. In a quite large number of cases, however, the defendants seemingly never intended to marry the plaintiffs. These cases follow a similar pattern. The couple met and began courting within a few days; they slept together in only a few weeks or months. Things went along in this manner until the plaintiff became pregnant. Almost as soon as this had happened, the defendant's ardor cooled and he left her before she even had the child, claiming that he never proposed marriage. The marriage proposal was presumably a ploy in these cases to persuade the woman to allow sexual intimacy, but the man did not intend to fulfill the promise. There were two variations on this pattern. First, the courtship could be several months or even years, but the woman was still deserted almost immediately after she had intercourse with the man. Second, the man only promised to marry her "if something happens"

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and then backed out when that "something" did occur. In all of these cases, the woman was left to cope with the pregnancy alone.

Carlotta Hutley, an actress, met Sidney Master, a club owner, in August of 1893. Sidney proposed marriage a month later and they slept together soon enough that Carlotta was pregnant in January of 1894. On May 28, Sidney wrote her, "I have made up my mind never to see you again." He claimed his reason was that she was "too good" for him, but actually he was already married and had four children. Carlotta corroborated her evidence by calling Dr. Prescott, who had been hired by the defendant to attend her when she became ill with the pregnancy. Prescott claimed that Sidney told him "if plaintiff became enceinte in future he would marry her at once." He had been lying both to her and the doctor, since he knew he could not fulfill such a promise. Elizabeth Holt, a weaver, agreed to marry James Hamer, a farmer and publican, only a month after his first wife had died. They were engaged in February of 1880; he seduced her, got her pregnant, and married someone else by December of 1880. Elizabeth, too, said that he had promised again after the seduction that he would marry her "if anything happened." Joseph Bell, a hatter and clothier, courted Ann Kelly, owner of a confectioner's shop, for a few weeks and then proposed in January of 1880. Ann claimed that he made "improper suggestions" almost from the moment they met, but she resisted until he promised to marry her. After that, however, she yielded, and was pregnant by February. Only three months later, Joseph broke it off with her with
no explanation.9

In these cases, the couple did not know each other very well; one can at least understand the men's reluctance to marry hastily and acquire an immediate family. More difficult to understand are those times when the couple had courted for many months or years, only to break up as soon as the woman became pregnant. Ann Sheppard had been engaged to Henry Forder for 2 years before they had intercourse in March of 1877. Their sexual intimacy continued until March, 1878, when Ann told him she was going to have a child. Henry was "annoyed" at the news, but decided he would have to marry her. Nevertheless, he changed his mind and left her at the altar, refusing even to see her again. Eliza Heal and William Nicholls saw each other off and on for almost ten years before she slept with him in October, 1896. Yet he grew cool and would not return her letters when she told him she was pregnant, and he married another woman by mid-1897. These women particularly were agonized and felt betrayed by men who had professed great love for them many times. Frances Owen, who had known Herbert Lawley for six years and had been engaged to him for one year before she had intercourse with him, was devastated when he deserted

9Hutley v. Master, "Actress's Breach of Promise Action," Illustrated Police News, February 1, 1896, p. 7; Holt v. Hamer, ASSI 54/2; Manchester Evening News, July 22, 1881, p. 3; Kelly v. Bell, ASSI 54/2; Carlisle Express and Examiner, July 3, 1880, p. 8. Ronald Pearsall quotes a police constable in 1866, writing to a young woman who had courted an imposter, "I think you ought to be a little more ciafirm I houvering you hand and heart to A young man that you know nothing about nor never seen before. Now that the way A grate meney you womeman gets into trouble thro being to free with young men they now nothing about." Pearsall found that "The second half of the nineteenth century was a succession of field days for the young man who could persuade the working-class girl that he was single and ready to marry . . .." Though overstated, the point that many women were taken in by insincere men is certainly true. The Worm in the Bud: The World of Victorian Sexuality (London: MacMillan, 1969), p. 123.
her practically on the morning after. When she got pregnant, she wrote
him several begging letters, and her bewilderment and despair are evident:

I think this will be the fourth letter I have wrote you. You
have not answered either of them. . . . For God's sake do think
what you are driving me to before it is too late do have pity
on one you loved & have brought so low Let our child be born
in wedlock I will never ask any more from you but your name
if you wish after the child is born I will go away. . . . I
cannot live this life much longer it is more than I can bare
some days many a better girls has taken there life over the
same thing. . . . Oh God have mercy on me for I do not think
I am in my right mind. 10

What would cause men to suddenly desert their fiancées right when
these women needed them the most? In some cases, as in that of Carlotta
Hutley, the men had no intention of marriage from the first; they promised
simply to persuade their lovers to consent to sexual intercourse. Henry
Sutton admitted his motive to Susannah Mallett's brother after he had
slept with her for three years and then decamped as soon as she had a
child. Mallett angrily pointed out to Sutton that he had promised to
marry Susannah, and Henry replied that of course he had promised, but "all
men do," and he had never meant it. Maurice Royston seduced his servant,
Jessie Mather, but insisted later that any talk of marrying her had been
"in fun." Other times, however, the sexual double standard came into
play. In other words, once the plaintiff agreed to sleep with the
defendant, she had failed the crucial character test by proving herself
unchaste. A man could have an affair and still be marriageable, but a
woman who did so—even with her fiancé—was "damaged goods." John
Jennings, in fact, told Catherine Hamer that he did not want to marry her

10 Sheppard v. Forder, ASSI 22/36; Exeter and Plymouthe Gazette Daily
Telegram, July 22, 1878, p. 3; Heal v. Nicholls, ASSI 22/42; Bristol
Mercury, July 17, 1897, p. 6; Owen v. Lawley, ASSI 1/68; Shrewsbury
Chronicle, March 9, 1888, p. 7.
because of their religious differences, but also because she had slept
with him. Alternatively, the man's parents (or other relatives) would
see the woman's "fall" a strong reason not to marry her, particularly if
they had disapproved for some time.

In the majority of cases, though, the actual sexual intercourse was
not the breaking point: it was when the plaintiffs became pregnant that
the men left them. The imminent arrival of a child brought the
relationship to a crisis, since the couple could no longer make do with
vague promises of marriage "sometime" in the future. Understandably, the
woman wanted to marry before the child was born out of wedlock and branded
a bastard and she herself was disgraced. The man then had to make the
decision right away if he were going to fulfill his (often) hastily made
promise or if he were not. For a number of reasons, many men
prevaricated. Sometimes, the pregnancy came before the couple had
completed their preparations for marriage, before, e.g., the man had
acquired a comfortable living and could afford to support a wife and
family. Alternatively, if the man had promised insincerely, he found
himself tied to more responsibility that he had bargained for. Moreover,
the parents (or other relatives) of the woman got involved at this stage;
particularly, fathers took over in demanding protection for their pregnant
daughters. All these pressures came to bear on the relationship, and the
men often decided to repudiate their fiancées rather than try to marry too
soon or without real affection.

Most women were desperate at being left pregnant and unwed. The

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11Mallett v. Sutton, Illustrated Police News, April 1, 1871, p. 4;
Mather v. Royston, ASSI 54/17; Liverpool Mercury, August 7, 1899, p. 7;
Hamer v. Jennings, Liverpool Mercury, August 1, 1885, p. 3.
disgrace associated with this plight was such that they could not bear to tell their families or face their neighbors. Alice Spink begged John Lloyd to marry her; otherwise she did not see how she could face her father with the truth. John claimed he would not marry her without a more substantial dowry, and Alice assured him that her father would give them enough to live on, but John apparently did not believe her. Although Alice miscarried the child, she was still disgraced and (according to her father) became almost blind with illness after John left. Ada Bennett's parents threw her out of the house when she got pregnant; only when she became seriously ill did they take her back. Annie McGrath claimed that she, too, had broken with her family because of her "trouble" when she became pregnant with Henry De Valve's child. Nor were relatives the only considerations. Emma Searing wrote to Daniel Newton that she would have to leave her home town, Cheshunt, because "I cannot bear the remarks there will be passed your leaving off visiting me what reason can I give not any." In another letter, she mourned that she had disgraced not only her children, but also her friends: "I must tell my friends it grieves me to do so but it must be done ... you have [brought] trouble and disgrace on my Children and friends ... ." Furthermore, a woman's business was vulnerable to that type of scandal. Annie Grave wrote to Robert Mitchell that "the disgrace would fall very heavily upon her, especially in her business [a milliner's shop], where the better class of people came about." And Sarah Heywood lost her job as a servant and had to find
another situation after sleeping with Albert Yeomans. In short, an illegitimate child was such a complete disaster for a woman that very few women would have agreed to risking it without some assurances of marriage from their partners.

Such guarantees explain why most women claimed to have "yielded" to their fiancées only after the latter had tried to seduce them several times, and especially only after a distinct promise of marriage. Catherine Lewis insisted that her lodger, John Jenkins, tried to seduce her three times before he finally succeeded. The only reason she eventually gave in, she said, was that the fourth time he promised to marry her. Robert Mitchell and Annie Grave actually split up once because of his "advances," but she gave in after they reconciled, since he assured her that "if anything took place he would make it all right and marry me."

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12 Spink v Lord, ASSI 32/33; Suffolk Chronicle, August 3, 1872, p. 7; McGrath v. De Valve, ASSI 54/8; Liverpool Mercury, July 29, 1890, p. 7; Bennett v. Smith, ASSI 54/12; Manchester Evening Mail, July 24, 1894, p. 2; Searing v. Newton, ASSI 39/1, Pleadings and Correspondence, pp. 20-22 and 23-24; Grave v. Mitchell, ASSI 54/2; Supplement to the Carlisle Patriot, January 21, 1881, p. 1; Heywood v. Yeomans, ASSI 54/12; Manchester Examiner and Times, December 9, 1893, p. 5. See also Albert Leffingwell's account of an 1891 case in which a young woman committed suicide after living 2 weeks with her lover, becoming pregnant, and being deserted, Illegitimacy and the Influence of Seasons Upon Conduct 2nd ed. (London: Swan Sonnenschein & Co., 1892), pp. 141-42; and the accounts of working-class women who killed themselves or were severely chastised after becoming pregnant out of wedlock in Elizabeth Roberts, A Woman's Place: An Oral History of Working-Class Women, 1890-1940 (Oxford: Basil Blackwell, 1984), pp. 77-79.

13 This conclusion is supported by the research of various historians on illegitimacy. Ann Higginbotham found that most of the unwed mothers in London in the nineteenth century insisted that the man had promised marriage before any intimacy took place, "The Unmarried Mother and Her Child in Victorian London, 1834-1914," Unpublished Dissertation (Indiana University, 1985), p. 182. See also John Gillis, "Servants, Sexual Relations and the Risks of Illegitimacy," pp. 155-57 and Anna Clarke, Women's Silence, Men's Violence: Sexual Assault in England, 1770-1845 (London: Pandora, 1987), pp. 79-87.
Ann Kelly, owner of a confectioner's shop, told a similar story about her relationship with Joseph Bell, a hatter and clothier. He made "improper proposals" from the start which she resisted. In January of 1879, he proposed marriage, and the same night, she slept with him for the first time.14 Although some women might not have been as reluctant as they claimed, few would have taken such a serious risk without some guarantee in case of an unwanted pregnancy.

Sex before marriage was relatively infrequent. Most women reported only one or two sexual encounters before the pregnancy or other problems split up the couple. Martha Bebbington only slept with John Hitchen once, when she and he were visiting her grandfather's home after they had been engaged four months. Charlotte Windeatt mentioned specifically that Frank Slocombe had "succeeded in twice seducing her" during their two-year romance; after those two times, Charlotte got pregnant and they did not risk a second mishance. William Smith insisted that he had only slept with Elizabeth Duxbury twice after knowing her for over two years. Ellen Ferrier and Gwen Williams both also only had one "fall" with their fiancés, Ellen when she stayed overnight with Thomas Merriman and Gwen on a trip to Carlisle with John Roberts.15 Of course, there were exceptions

14 Lewis v. Jenkins, ASSI 75/4; Swansea Herald and the Herald of Wales, August 13, 1898, p. 2; Grave v. Mitchell, ASSI 54/2; Supplement to the Carlisle Patriot, January 21, 1881, p. 1; Kelly v. Bell, ASSI 54/2; Carlisle Express and Examiner, July 3, 1880, p. 8. See also Jarvis v. Cole, ASSI 1/68; Oxford Chronicle, February 16, 1889, p. 8, in which the plaintiff gave in on the third try and Heal v. Nicholls, ASSI 22/42; Bristol Mercury, July 17, 1897, p. 6, in which the defendant first pressed the plaintiff to sleep with him in 1893, but did not succeed until 1896.

15 Bebbington v. Hitchen, ASSI 59/130; Chester Chronicle, August 9, 1873, p. 3; Windeatt v. Slocombe, ASSI 22/32; Western Times, March 15, 1872, p. 6; Duxbury v. Smith, ASSI 54/9; Manchester Examiner and Times, April 29, 1891, p. 3; Ferrier v. Merriman, ASSI 75/2; Swansea Herald and
to this rule. Charlotte Ball admitted that she and her fiancee, W.H. Spickett, had continual sexual relations over their 9-month engagement; Maria Levens, too, slept with Edward Hutton throughout the three years they were engaged. Edith Williams showed initial reluctance to Edward Hughes’ urgings, but once she gave in, they had "frequent intercourse" for almost a year.\(^{16}\) These cases were not the norm, however, and stand out for that reason.

One reason pre-marital intercourse was infrequent perhaps was that the couple were rarely able to engage in the activity in their own bedrooms. Because so much of the courtship happened in the homes of the couple’s parents, privacy was at a premium. Of course, in those cases in which the couple lodged together (e.g., when the plaintiff was the defendant’s housekeeper/landlady/servant), opportunities for intimacy were easier to find. In other cases, the couple did not become intimate until they took a trip alone together, either for entertainment only or in order to make arrangements for the marriage. For instance, Annie Hooper claimed that William Stokes seduced her when she met him to look at an empty house they planned to buy (they were supposed to be choosing furniture). Similarly, Pryce Griffiths was unable to seduce his young cousin until he had talked her into visiting him at his home in Liverpool.

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\(^{16}\)Ball v. Spickett, South Wales Daily News, July 14, 1893, p. 4; Levens v. Hutton, ASSI 54/3; Manchester Evening Mail, April 29, 1884, p. 3; Williams v. Hughes, ASSI 59/146; Chester Chronicle, July 30, 1881, p. 6.
After she got pregnant, he repudiated her completely, thinking she had burned all his letters (since he had instructed her to do so). Fortunately for her, she had not obeyed him.\textsuperscript{17}

Other times the couple were more inventive. Since bedrooms were often not available, they used various other rooms in the house. Elizabeth Morris and Thomas Bonville slept together in the parlour of Bonville's home after his father had gone to bed. Ann Rees and David Powell also used the "private parlour" of her parents house, which Ann carefully locked each time they sat alone together. Sarah Ellis and Lansford Johnson used the kitchen to be intimate, although this arrangement could not have been very comfortable. At other times, couples did not try to use their parents' homes. Mary Wilkinson claimed that William Hampson seduced her in a railway carriage between Manchester and Leigh; similarly, J.R. Childs' first attempt to seduce Ann Farrow was in a closed cab between the railroad station and her house. In \textit{Mallet v. Sutton}, the couple had their first sexual intimacy by the side of a country road on which the defendant was returning from chapel. Arundel Davis and Eliza Wilcox both claimed to have been seduced on apparently innocent walks with their fiancés, and Esther Dales and Andrew McMaster used the harness room of the stables that Andrew rented from Esther's employer, a doctor.\textsuperscript{18}

\textsuperscript{17}Hoofer v. Stokes, \textit{Cornish Telegraph}, February 16, 1882, p. 3; Jones v. Griffiths, ASSI 59/144; \textit{Chester Chronicle}, July 31, 1880, p. 5.

The couple actually enjoyed the use of a bed in two situations. Most frequently, the defendant invited the plaintiff to his (or his parents') house and then used the situation to his advantage. For example, Frances Owen went to visit Hervey Lawley's mother shortly after the two became formally engaged (they had known each other 5 years). While she was under his mother's roof, Herbert managed to seduce Frances and almost immediately deserted her. Emma Pryke stayed at Edward Smith's home in order to make early preparations for their wedding; while she was there, he came into her bedroom uninvited and persuaded her to sleep with him. Less frequently, the couple had sex at the woman's home when her family happened to be out of the house. Ernest Olden seduced Kate Curtis at her father's house one afternoon when the latter happened to be gone. Agnes Barrow and William Twist resisted sleeping together until one day when both her sister and her mother were gone from her house. There were also a few cases in which the couple met at hotels or pubs, but these do not make up a significant number.19

It is difficult to say how much enjoyment the couple, and particularly the women, got from their clandestine intercourse. The women's pleasure was probably partly dimmed by their fear of pregnancy;

4; Davis v. Goddard, ASSI 22/35; Somerset County Gazette and Bristol Express, March 17, 1877, p. 6; Wilcox v. Godfrey, ASSI 22/32; Taunton Courier, March 27, 1872, p. 5 and Law Times 26 (April 27, 1872), pp. 328-29; Dales v. McMaster, ASSI 54/3; Liverpool Mercury, May 22, 1884, p. 6; May 23, 1884, pp. 5, 8.

19Owen v. Lawley, ASSI 1/68; Shrewsbury Chronicle, March 9, 1888, p. 7; Pryke v. Smith, ASSI 32/32; Norwich Argus, August 12, 1871, p. 7; Curtis v. Olden, ASSI 22/39; Hampshire Chronicle, August 8, 1885, p. 8; Barrow v. Twist, ASSI 54/5; Manchester Examiner and Times, July 17, 1886, p. 3. For an example of a couple meeting in a hotel, see Williams v. Roberts, above.
they were taking a considerable risk in allowing intimacies before
matrimony. Even without unwanted pregnancies, a woman's health was at
risk from infection. Agnes Barrow even accused William Twist of giving
her venereal disease because he "was connected with a loose woman in
Liverpool" while courting her.\textsuperscript{20} Still, there is evidence that some women
showed the initiative in the physical side of courtship or at least
displayed little reluctance. Mary Williams, the daughter of a farmer,
claimed that her fiance, Captain Matthias had seduced her at her father's
house a year after they became engaged. Nevertheless, Mary admitted under
cross-examination that she sat on Matthias' knee the very first time she
met him and that she had written him letters that invited him over to her
father's house as late as midnight. This behavior does not indicate
bashfulness, and her counsel hurriedly agreed to settle the case after
these admissions. Ellen Roberts, daughter of a farmer, met Hugh Hughes,
also a farmer, late at night when he came and tapped on her bedroom
window. They sometimes sat up all night; "he had been seen coming out of
the house at five o'clock in the morning." Elizabeth Holt, a weaver, also
courted her lover, James Hamer, late at night, usually on Saturdays and
Sundays. He owned a pub, and she blamed these late hours on his work, but
Hamer claimed she and her father got him drunk in order to trap him.\textsuperscript{21} In

\textsuperscript{20}\textit{Barrow v. Twist}, above.

\textsuperscript{21} \textit{Williams v. Matthias}, ASSI 75/3; \textit{South Wales Daily News}, June 25,
1894, p. 7; \textit{Roberts v. Hughes}, ASSI 59/135; \textit{Carnarvon and Denbigh Herald},
March 25, 1876, p. 8; \textit{Holt v. Hamer}, ASSI 54/2; \textit{Manchester Evening News},
July 22, 1881, p. 3. Gillis argues that in his evidence "there is very
little evidence of obsessive prudery or intense anxiety" from women about
sexual intercourse, although he admits that women's view are difficult to
establish, "Servants, Sexual Relations, and the Risks of Illegitimacy,"
p. 156. However, Jeffrey Weeks argues that although there was a limited
understanding of female sexuality in the 19th century, "What is strikingly
none of these situations did the woman seem shy or coy about late-night spooning.

There was, in fact, an entire group of cases in which the plaintiffs were clearly the mistresses of the men, or at least were using their sexuality to get some advantage. Breach of promise cases were too lucrative and public not to attract some women who were less than scrupulous or at least willing to angle for a proposal. A good example of this is Wiedeman v. Walpole in 1891. Valerie Wiedeman met Robert Walpole at a hotel in Constantinople in 1882 where she had a post as a governess and he was on a holiday. She claimed she had known him eight days when he proposed to her. That night, he "somehow" gained entrance to her room; she did not know how, since the door was "always" locked. He began to assault her, and she fainted, claiming not to remember anything else. He was gone in the morning, but her employer fired her when he learned where Robert had spent the night. She had to leave her hotel room, so she found Robert and stayed with him four days, during which she claimed he gave her his signet ring as a token (he claimed she stole it). He then gave her £100 and left for England. Valerie went to Cannes and badgered his mother there, insisting (to Mrs. Walpole’s horror) that they were engaged. Robert sent a man named Cook to take Valerie away from his mother and to get the ring and his letters back (she managed to keep the ring). She escaped Cook and went to Berlin; Robert ignored her from that time on. She later had his child and supported herself, periodically writing threatening and insulting letters to him and his

absent . . . is any concept of female sexuality which is independent of men's," Sex, Politics and Society, p. 42.
family. When she saw that Robert had married someone else in 1887, she sued.

The first jury apparently though her story sounded fishy and found for the defendant. She managed to get an order for a new trial (it is unclear on what grounds), but this jury could not agree. In her third trial, she won £300 after the jury deliberated an hour and a half, despite the fact that her story had changed in each trial (she was unsure, e.g., if her child were alive or dead). Walpole appealed, and the Court of Queen's Bench overturned the decision on the grounds that there was no "material evidence" of the promise. Whatever Walpole's bad behavior (he only slept with her, he explained, because he did not think she was a respectable woman), Wiedemann was no mere victim. She consciously knew how to use the courts, tenaciously holding on to the signet ring for nine years and through four trials.²²

Although Wiedemann's case was the most detailed, her story was not unique. In several cases, the women used a brief sexual liaison to try to get money for breach of promise. Madge Hirst, a widow, got £50 from Humphrey Waddington for a child that did not exist and then went on to try to sue him for breach of promise in order to get more. She had to withdraw the action because of a lack of material evidence, and Waddington's counsel warned all men of the dangers of "picking up" women. Emmeline Hairs and her mother were "adventuresses" who had to leave Paris because of their part in a scandal involving the sale of war decorations.

²²Wiedemann v. Walpole, 2 Law Reports, Queen's Bench Division 534-42; Times, June 11, 1891, p. 13; June 12, 1891, p. 4; June 13, 1891, p. 18; June 15, 1891, p. 3; June 16, 1891, p. 3; June 17, 1891, p. 3; June 18, 1891, p. 4. This case is also discussed in Chapter One.
They returned to London before the Paris police could find them (in 1887) and Emma began an "immoral relationship" with Sir George Elliot, an MP. She persuaded him to invest £3000 in her coal business and when he began to cool towards her, she sued him for breach of promise, claiming to have had a miscarriage. Elliot admitted at the trial that he had seen her only twice before having sex with her at Brown's Hotel, mourning that "It is the sorrow of my life that I fell." The couple in Wheeler v. Jones had intercourse the second night they met, in the plaintiff's bedroom above her pub. They had relations every time the defendant visited overnight and also drank a good deal together. The defense even contended that Mrs. Wheeler ran a bawdy house, although she denied that. Despite her denials, however, her suit against Jones failed.  

In other cases, the women may have expected marriage, but their sexual overtures ruined their chances as well as injuring their court cases. Sarah Anne Harrison and Henry Sherlock apparently wrote sexually explicit letters to one another during their four-year association (at least the letters were not allowed to be read in court). In addition, Henry claimed that Sarah invited him to meet her in Manchester at a hotel the day after they met; she then invited herself into his room the next morning. After he came back from a business trip, they began to sleep together regularly. Henry never intended to marry her; as his attorney said, "He asked the jury whether, when a man wished to settle down in

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23 Hirst v. Waddington, ASSI 54/7; Manchester Guardian, July 13, 1889, p. 11; Hairs v. Elliot, Woman, No. 17 (April 26, 1890), p. 1; Times, April 18, 1890, p. 3; April 19, 1890, p. 5; April 22, 1890, p. 10; Wheeler v. Jones, ASSI 57/7; Chester Chronicle, August 21, 1869, p. 7. In Hairs v. Elliot, the jury could not decide and the case was dismissed without a verdict.
life, he would choose a woman with whom he had improper relations." The 23-year old plaintiff in Thomas v. Shirley met her future employer and lover because she advertised for a job with the following:

Lady-Housekeeper.—A young lady is desirous of obtaining an engagement as housekeeper with a widower or a single gentleman. She is highly accomplished, of lady-like deportment, and young. Address Constance, care of the Lady Principal, Collegiate Institution, Newmanstreet.

Because she willingly went to live with a much older single man without any adult chaperons, and appeared to be advertising for trouble, the jury believed her to have helped initiate the sexual relations that followed, and she lost her case. Both Anne Palmer and Esther Dales had illegitimate children with men other than the defendants between their break-ups with the latter and the trial. In the case of Anne Palmer, Baron Bramwell stopped the case, calling it "about the most impudent scheme he had ever heard of." However, Justice Day felt sorry for Esther Dales, and blamed Andrew McMaster, her seducer, for her subsequent conduct: "If the defendant seduced this girl at the age of 17 . . . he had little reason to complain that after he cast her off to make her living as best she could she again proved a victim to another man. . . ." Esther actually got £400, despite her second fall, but this was an unusually generous judge and jury.24

Occasionally, too, the woman was the mistess of her lover, either because he was married or because class differences made this arrangement the most sensible one. Eileen Blum, the daughter of a dressmaker, met

George Reeve, a soldier, in the street. After three weeks, she went into new lodgings so that he could spend the night with her. She admitted to him that she was already "under the protection" of another gentleman; i.e., she was the mistress of another man before she began her sexual relations with Reeve. He eventually left the army and she lost touch with him. Reeve admitted that he had promised her marriage, but claimed that she was a professional prostitute, which she denied. She won £30, but she would probably have gotten more had she not been so sexually experienced. May Gore was for some years the mistress of Lord Sudley before he proposed to her. She also became the mistress of another man in between her liaisons with Sudley. Catherine Evans lived with Richard Jones for a year, even though he was married to someone else. He paid her £90 in support of their illegitimate child. Catherine had already had one illegitimate child and had received £100 from the father. The jury granted her only one shilling.\(^{25}\)

In many of these cases, the relationship shaded uneasily between the fairly steady position of mistress and the insecurity of a prostitute. Despite her outward respectability as the widow of an officer, Mrs. Thatcher's lover, Colonel D'Aguilar, admitted, "I looked upon Mrs. Thatcher, I won't say as a common prostitute, but I certainly did look upon her as a prostitute." Indeed, her own daughter "spoke of several gentlemen coming to see her mother, and of a Mr. Granville on one occasion stopping all night," thus effectively ending her case. The roommate of

\(^{25}\)Blum v. Reeve, Oxfordshire, Buckinghamshire and Northamptonshire Telegraph, July 16, 1873, p. 3; Gore v. Sudley, Cardiff Times, June 13, 1896, p. 6; Evans v. Jones, ASSI 59/21; Carnarvon and Denbigh Herald, June 8, 1894, p. 8.
the plaintiff in *Irvine v. Vickers* admitted that several men including the defendant "called on" the plaintiff and used to give her money. Justice Piggott, in disgust, said "he had no sympathy either with the plaintiff or defendant" in such a case. Women with respectable characters often had to fight off suggestions that their lodgings were houses of ill fame. Ellen Gardiner's landlady was strictly cross-examined about the nature of her "house," and the defense counsel's insinuations were clear, although in this case they did not succeed.26 Though sometimes the defense counsel made unfounded accusations, then, there were indications that not all Victorian lower-middle class women practiced the "passionlessness" that was expected of them, at least in premarital intercourse.27

Finally, there were situations at the opposite end of the spectrum, cases in which the plaintiffs claim that they were not willing

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participants in the sexual act. In four cases, the plaintiffs actually accused the defendants of raping them ("forcibly seducing" was the preferred term). Elizabeth Beazor, a lady's outfitter, got engaged to David Gooch, son of a jeweller and pawnbroker, in 1867. One Sunday evening in July of 1870, Elizabeth called on David and his father to have tea. David took her home at 9 p.m. No one else was awake, and the two sat alone together in the sitting room. David then, as her counsel put it, "by violence committed a serious offence, for which, . . . he might have been severely punished." Elizabeth was badly hurt and was bedridden for 11 weeks; David cried and expressed great remorse for his conduct and promised to marry her. Though this was the only sexual contact the couple had, Elizabeth became pregnant, and David eventually refused to marry her because of his father's opposition. Elizabeth's brother went to the Gooches' pawn shop and almost came to blows with the elder Gooch over the matter, but to no avail. Mary Croden and Elizabeth Mannering both claimed to have been drugged by their fiancés and seduced while unconscious. Mary's experience was in a close cab after a drink of sherry; after this incident, she and Joseph Brimble lived together and had three children. Elizabeth Mannering accused Frederick Mercer of drugging her tea when she visited his house in August of 1897 and found him alone there. Although Frederick promised to marry her at once, his passion quickly cooled and he left her.²⁸

²⁸Beazor v. Gooch, Norwich Argus, August 12, 1871, p. 7; Croden v. Brimble, ASSI 22/42; Bristol Mercury, July 4, 1896, p. 3; Mannering v. Mercer, Illustrated Police News, June 25, 1898, p. 8. Elizabeth Beazor and Mary Croden got £250 each and Elizabeth Mannering received £125. The only other clear rape case was Nicholson v. MacLachlan, discussed in Chapter 5. Her breach of promise action was nonsuited because of lack of corroboration, but the defendant agreed to pay £75 in her father's
It is an interesting commentary on the position of women in Victorian Britain that these women still wanted to marry men who had raped them; many of them felt they had no choice. Emma Stoke, a servant, was assaulted by a fellow servant, but she did not turn him away when he followed up the rape with further sexual overtures. She reasoned that a sexual union might lead to marriage; instead, she became pregnant and had to give up the baby to the foundling hospital. Occasionally, women did refuse to continue seeing men who had assaulted them, although usually these were women who had thwarted the attempted rape. Mrs. Layton, a servant, refused to continue a relationship because her fiancee tried to "overcome" her with force. She fought him off and then sent him away:

"From that moment I lost all respect for him and, in spite of all his protestations of regret and promises that it should not occur again, I told him I would never forgive him, and broke off the engagement there and then." There were also cases in which the family of the woman who had been assaulted refused to let their daughter see such a man. A tailor's assistant in Kent in 1878 raped a sixteen year old girl; afterwards, he went to her parents, saying he was sorry and that he would marry her as soon as he could. Her father threw him out of the house.29 Surprisingly

29 Emma Stoke's story from John Gillis, "Servants, Sexual Relations, and the Risk of Illegitimacy," p. 156; Mrs. Layton from Mrs. Layton, "Memories of Seventy Years," in Margaret Llewelyn Davies, ed., Life as We Have Known It by Cooperative Working Women (London: Virago, 1977), p. 33; Kent case from Carolyn A. Conley, "Rape and Justice in Victorian England," Victorian Studies 29 (1985-86), pp. 524-25. In the late eighteenth century Mary Ann Ashford, a servant, became engaged to her employer's son, who subsequently tried to take liberties with her on a walk in a deserted wood. Ashford decided "never to go walking with him" again, and
often, however, the women's loss of chastity was too serious to ignore, and they preferred to marry their attackers rather than try to overcome that stigma.

At times, seductions bordered on rape, but did not contain actual brutality or physical violence. Instead, the defendants used psychological pressure to persuade the women to yield to their wishes. They used a nineteenth-century equivalent of "If you love me, you'll let me," particularly as the date of the wedding neared. A good example is Brookfield v. Wilcock. Maria Brookfield was a dressmaker who met Joseph Wilcock, a wholesale confectioner, because they lived and worked in the same town. They had known each other some time, but only in September of 1869 did they become engaged. In December, Joseph invited Maria to his home so that she could attend an entertainment there. She shared a room with a Mrs. Crooks. The next day, early in the morning, Mrs. Crooks left the room to care for a crying child. "Without the slightest knowledge on her part,—without the slightest intention that the occurrence should take place, the defendant came into the room, the door having been left open by Mrs. Crooks, and seduced her." She was terribly upset, but Joseph persuaded her to say nothing and he promised that he would marry her soon. When Mrs. Crooks returned, she found Maria in tears, but the latter would not explain why. Maria got pregnant from this one encounter, and Joseph found numerous excuses to put off the wedding, and then finally repudiated his promise altogether. Although Maria did not formally accuse him of rape, Joseph used deception and psychological pressure to get Maria's

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eventually broke off her engagement to him, disliking his character, Bridget Hill, Women, Work and Sexual Politics, p. 178.
"consent" and to keep her quiet. He slipped unexpectedly and uninvited into her bedroom and harped on the fact that they would soon be married until he wore down her resistance. Once she had yielded to sexual intimacy, she was in his control; she needed the wedding more than he did.

Edward Preston used similar means to seduce Ethel Holmes in 1894. She went (at his invitation) to London to prepare for the marriage, and they got separate rooms at the Bridge House Hotel. "Soon after" she went to bed "the defendant forced himself into her apartment and declined to leave, and made improper proposals to her. She rejected them, but he continued his conduct, and said she would be Mrs. Preston in the morning, and eventually he succeeded in staying the night with her." The two could not afford to marry the next day after all, and only a few months later Ethel caught Edward living with another woman in London. Although Holmes was not attacked, her fiance did force himself into her room and used the inducement of a quick wedding to break down her resistance to his sexual invitation. Some seductions at the very least involved willful deceptions. John Miller invited his fiancee over to his home for a party; when she arrived, she discovered that only he and his two children were there. He seduced her that night and almost immediately left her.30

Because of the difficulties of getting rape convictions in the nineteenth century, breach of promise actions may have seemed an attractive alternative to a criminal charge, particularly if there were an illegitimate child to support. According to Carolyn Conley, in her study of Kent rape cases between 1859 and 1880, "Unless the victim’s

virtue was of enormous value to her male relative, or the violence had
been excessive, or the circumstances had created a threat to public order"
rapists were rarely convicted. Indeed, "respectable" men were almost
never convicted of rape; particularly, working women found it difficult
to prove an assault against their employers.31 Susan Edwards has
therefore suggested that breach of promise actions were used by middle-
class women as a way to repair their reputations from sexual assaults,
particularly if the men were friends or relatives. The evidence, however,
supports a slightly different interpretation. For one thing, few of the
rape victims in breach of promise actions were upper middle class (almost
all were lower middle class), and none of their attackers were "friends"
or "relatives." These cases much more closely resemble the modern crime
of "date rape." For the most part, these women were pressured or forced
into sexual relations with men they either courted or had already planned
to marry. Since it was especially difficult to get a rape conviction if
the woman was acquainted with her assailant, these circumstances
encouraged them to explore other avenues than criminal charges.
Certainly, however, Edwards is proved right that many breach of promise
actions covered "cases of rather more serious seductions, where the women
concerned had been cajoled or emotionally blackmailed into physical
subjection." In Victorian England, the only other alternatives to rape
charges were suits for seduction or prosecutions of married men who
seduced young women with the promise of marriage under the Criminal Law

31Carolyn Conley, "Rape and Justice," pp. 519-36; quote from p. 536.
In Kent, only 21 percent of accused rapists were tried for rape and a mere
40 percent were convicted, compared to 85 percent for other felonies.
Furthermore, their sentences were light, sometimes consisting of only a
few pounds fine.
Amendment Act of 1885. Both of these alternatives were limited, the first because only a parent could sue for seduction and s/he had to prove "loss of service." The second, obviously, was limited to married men and very young women.

Nevertheless, the use of breach of promise actions for rapes or other assaults was also limited, because the victim had to try at least to prove a promise of marriage. A rape by a stranger or even a friend, no matter how reprehensible, did not automatically qualify a woman to sue. There had to be inklings of a romantic relationship, some kind of courtship and plans to marry. Moreover, even if the man promised after the assault, the woman had to have some "material evidence" to prove a definite promise. Justice Day nonsuited Mary Nicholson because he decided that she had no corroboration, despite having several letters; the judge insisted, "I see nothing in those letters which suggests a promise to marry," only a promise to help support the child. Judges and juries were known to be quite lenient about evidence for these cases, but they would not accept just anyone as a believable future husband for any plaintiff.


33Nicholson v. MacLachlan, above.
In the vast majority of cases that involved seduction, the plaintiffs had more than one motive in bringing the suit. They did want to clear their names, to prove that they had fallen under promises of marriage and not simply from promiscuity. However, many women also sued to receive support for their illegitimate child or children. In over three-fourths of the seduction cases (172 out of 222 or 77.4%), the woman had a child after the sexual contact. The average award for a case in which the plaintiff had a child (without awards of £1000 or above) was £149; the average without a child or children was £139 (the median award for both was £100). In addition, despite Victorian disapproval of feminine impurity, the awards for seduced plaintiffs were higher on average than those who were not seduced (£482 to £329), although when the awards of over £1000 are not included, they are substantially the same (£148 and £145). The median is exactly the same between these two groups, again at £100. Certainly, juries did not automatically punish "fallen" women with lower awards, but they did not give extra amounts for the child or children involved either. The damage was the seduction, the loss of marriageability, more than the increased mouths to feed. Seduction got larger awards only in the cases with very high damages; these cases primarily consisted of seductions that were aggravated by some other action of the defendant, such as cruelty, fraud, slander, or the

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34 Diana Leonard argues that breach of promise continued to serve that purpose until late in the 20th century, "In recent years many breach of promise actions were the means to get more money for a pregnant woman than she would have got from an affiliation order alone," Sex and Generation: A Study of Courtship and Weddings (London: Tavistock, 1980), pp. 17-18, quote from p. 17.
unsuccessful defense of unchastity.\textsuperscript{35} If a defendant compounded his ravishment of his fiancee with further base actions, and he was wealthy, he would pay a far higher award than if he had not seduced her at all. But in the average cases, there was little difference between actions that involved seductions and those that did not.

Most of the premarital sexual intercourse illustrated by these cases was the result of "ordinary" courtship. However, there were several breach of promise suits that more clearly resembled divorce settlements. In these cases, the couple had lived together as man and wife for several years but had never actually gone through a marriage ceremony. After some years, the man deserted the woman, who was usually left with a child or children to care for. The woman then sued for breach of promise to recover some kind of support for her and her children—in other words, a rough sort of alimony and child support.\textsuperscript{36}

\textsuperscript{35}For example, in two cases, Daniel v. Bowles, Times, December 19, 1826, p. 3 and Berry v. Da Costa 1 Law Reports, Common Pleas Division 331-36 (1866) and Times, January 15, 1866, p. 11, the defendants were much wealthier and older than their fiancees and took them from their families when they were still under 21. Daniel received £1500, and Berry got £2300. In Haworth v. Taylor, ASSI 54/4; Manchester Examiner and Times, February 4, 1886, p. 8, the defendant lived with and physically abused the plaintiff for five years and then unsuccessfully accused her of unchastity in the trial; Haworth was awarded £1600. Dav v. Roberts, Woman, March 29, 1890, p. 1 and Birmingham Daily Gazette, March 25, 1890, p. 6; March 26, 1890, p. 3; and March 27, 1890, p. 6, was a similar case, in which a woman married fraudulently was beaten, slandered, and then deserted by her pseudo-husband. It is discussed in detail in Chapter Seven.

\textsuperscript{36}By the late nineteenth century, common law wives had much less claim on benefits such as maintenance, insurance, and charitable bequests than before. In lower courts, they may have been accorded consideration by magistrates who understood the needs of working-class life, but it was by no means certain. See Joan Perkin, Women and Marriage, pp. 161-62. For the actions of the police courts, see Jennifer Davis, "A Poor Man’s System of Justice: The London Police Courts in the Second Half of the Nineteenth Century," Historical Journal 27 (1984), pp. 309-335, especially pp. 322-323. Stephen Parker has claimed, in a recent study, that the "unmarried
Cohabitation, or "living tally," was not uncommon among the working classes, even in the late 19th century. Both men and women had reasons to prefer it to marriage, although the penalties of illegitimacy had risen so high for women that it was less common than in the first part of the century. However, not all of the women involved in these kinds of relationships were working class. Maria Harworth was the daughter of a butcher and was studying to be a schoolteacher in her own right when she met Albert Taylor, a cotton spinner who owned part of a mill, in 1880. Right before she was to go away and take her first job, Albert seduced her and persuaded her to go away with him. They lived together as husband and wife for several years at "various watering places," and had two children, both of whom were registered as if they were legitimate. Albert was a good husband as long as he was sober, but he beat Maria when he was drunk. He left her in 1884; she brought an action against him in order to get something for the two children, but Albert returned and she withdrew it. He left the final time on May 18, 1885, and she once more sued. He visited her twice to try to talk her out of it, but she persevered. The resulting trial was much like a divorce hearing; Albert's defense was that he had left her only after she had been unfaithful to him. The jury


believed Maria and showed their disgust for Albert by giving her £1600. Maria’s case was not unique. Jane Tamkin, who lived with Lowther Wilson for several years and had his son, was the owner of a grocery shop (Wilson was an engine man who had some property). Neither of these women were upper middle class, but they were not working class either.  

Often, middle class women were induced into the pseudo-marriage by fraud or deception by the defendant. Hannah Maddocks, twice widowed (her last husband had been a cook and she had a small business), met Benjamin Bennett, a butcher and cattle dealer and an ex-councillor from Flint, on a carriage ride to the markets one day in 1888. They became acquainted and he eventually induced her to give up her lodgings and come to Flint with him as one of his tenants. She lived in a house he owned and went under the name of Mrs. Phillips, because, he said, he did not want people to know he had remarried so soon after his wife’s death. They visited the solicitor’s office one day shortly after and then took tea with a Mrs. Morris. Mrs. Morris recognized Bennett as a man who had a wife and children and called him on it. Hannah, horrified, demanded an explanation, and Benjamin admitted the truth, adding "I have done wrong, but I will make you every recompense in my power." Hannah retorted, "Nothing will recompense me for my character." She first tried to poison herself, but later settled for getting £275 at the trial. Frances Jennie Day, daughter of a postal inspector, went through two phony marriage ceremonies with Morris Roberts, a hotel proprietor, before he kicked her out of their home. She did not discover his first wife was still living.

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38 Haworth v. Taylor, above; Tamkin v. Wilson, ASSI 54/7; Carlisle Express and Examiner, July 6, 1889, p. 8.
until she was denied maintenance after their separation.³⁹

Nevertheless, most of these cases involved working-class women, usually involved with men who were better off. These cases divide into two groups. First are couples who chose to live together rather than marry (for whatever reason); when they broke up, the women sued the men in order to support their children. These relationships could go on for quite some time before the man left or married someone else. Jane Elliot met James Stranger when she went to work on his farm as a dairy woman. He proposed to her after a few months and she had his child; they continued to live together until 1875, Jane acting as his housekeeper instead of working on the farm. James, meanwhile, gave her £100 in support of the child. In 1875, James met another woman he preferred and he turned Jane and her child out of the house and stopped paying any maintenance. When he married his new love in 1877, Jane sued him, although she only got £25. The couple in Dixon v. Brearley knew each other for 30 years and had several children together before Brearley jilted Dixon for someone else. (She was his servant and he was a farmer.) The defendant in Hampton v. Boalsh, an army officer, met the plaintiff, described as "poor but respectable," in the street and persuaded her to run away with him to his lodgings in the Strand. She lived with him nine years and he gave her a bond promising to give her £1 a week for the rest of her life. He later persuaded her to rescind the bond in return for £20. He then deserted her, and she went back to her widowed mother in

³⁹Maddocks v. Bennett, ASSI 59/14; Chester Chronicle, March 14, 1891, p. 2; Day v. Roberts, above.
These women clearly had no legal claim on their pseudo-husbands, despite several years of cohabitation. They could have sued in the magistrates court and had the men affiliated (and some may have also done this). But there were many restrictions on affiliation proceedings, and the amounts received from successful suits were quite small. The action of breach of promise gave women another option, a way to get sometimes substantial amounts of cash fairly soon. In this way, breach of promise acted as a kind of rough divorce court (or, in a 20th century alternative, a palimony suit). Sympathetic juries accepted the woman's word that she had only lived with a man for several years because he had promised marriage and awarded damages to help keep her off of the poor rates.

The second kind of pseudo-marriage case was very similar to the

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40Elliot v. Stranger, Bristol Mercury and Daily Post, April 15, 1878, p. 3; Dixon v. Brearley, Times, July 30, 1877, p. 11; Hampton v. Boalsh, Chronicles of Breaches of Promise, pp. 183-84. Dixon got £250, and Hampton received £100. See also Longford v. Tonge, ASSI 54/5; Manchester Examiner and Times, January 28, 1887, p. 3, in which a mill hand lived with an innkeeper for several years and had five children with him only to see him marry a rich widow in 1886 (the jury awarded her £200); and the curious action of Mighell v. The Sultan of Juhore, Law Times 70 (March 10, 1894), pp. 64-68, in which the plaintiff claimed to have lived for several years with the Sultan under his assumed name of "Albert Baker," and he had since refused to marry her. Her case was dismissed because no sovereign could be sued in a British court without his/her consent.

41The father had to be named within a year of the child's birth; he paid only thirteen weeks of arrears, no matter how long he had not paid his support; and he paid nothing once the child reached thirteen. Furthermore, the mother had to sue, since the parish no longer directly did so. Amounts were only £1 for a baby and £2s. 6d. a week for a child, not enough to support a family headed by a single mother. See Mary Lyndon Shanley, Feminism, Marriage, and the Law in Victorian England, 1850-1895 (Princeton: Princeton University Press, 1989), p. 91; and Pamela Horn, The Rise and Fall of the Victorian Servant (New York: St. Martin's Press, 1975), p. 138.
first. The difference was that the couple did not actually live together. Though their relationship spanned several years and included the birth of children, both parties continued to live independently and the women to support themselves with occasional help from the men. In all of these cases, there were class differences as well as family opposition to the marriage; probably for these reasons, the couple chose not to cohabit openly. For example, Ellen McCarthy, a mill operative, had a long relationship with Alfred Ramsbottom, the mill manager. They became intimate when she first went to the mill at the age of sixteen and she had two children with him (in 1885 and 1887), which he supported. In 1890 he married someone else; he admitted that his mother had always been against his engagement with Ellen and his new spouse was more acceptable. In Dean v. Hollins, the defendant also seduced the plaintiff when she was sixteen; this time, they met because they were neighboring farmers. They had five children over the next fourteen years (at the time of the trial, the eldest was thirteen and the youngest was eighteen months). Yet both of them owned their own property and remained where they were, waiting for a good time to marry. In other cases, the couple had social considerations as well as economic differences that led them to conceal their irregular unions. Thomas Speakerman was a minister and May Hope was a Sunday School teacher; despite a thirteen-year relationship (and two children), the two never lived together for obvious reasons. The same reason applied to George Thompson, a tax-collector and Sunday school teacher, who had four children with Margaret Softley but never lived with
her. Although these pseudo-marriages worked well as long as both of the couple were content, they turned into grave hardships for the women whenever the men chose to marry someone else.

The high number of sexual unions was only one surprising aspect of courtship that breach of promise cases exposed. Another was the large number of older or even elderly people involved in courtship in the 19th century. In fact, in 47 of the cases under study both of the participants were 40 or above. Courtship among more mature couples was different than that of younger people. Typically, at least one of the two people (and often both of them) had been married before; they knew what to expect from marriage and had a clear idea of what they wanted in a spouse. They had already had a marriage and children, sometimes several of both. Kate Taylor, for instance, had nine children when she became engaged to a Mr. Hardman, who was the father of eight. Catherine Smith had been married four times and had seven children; her fiance, James Strickland, had been married three times. With such histories, many of these couples had been through courtship before, and they often did not feel the need to fulfill all of its rituals. The men, particularly, preferred to make short work of second courtships. James Horrocks angered Jane McCleod when "He told her that three months was long enough for a man at his time of life to

42McCarthy v. Rowbotham, ASSI 54/9; Manchester Examiner and Times, July 18, 1891, p. 10; Dean v. Hollins, ASSI 1/64; Staffordshire Sentinel and Commercial and General Advertiser, March 18, 1865, p. 8; Hope v. Speakerman, ASSI 54/3; Illustrated Police News, January 31, 1885, p. 3; Softley v. Thompson, Times, February 19, 1883, p. 10. The juries awarded Ellen £200, Dean £400, May £130, and Margaret £500. See also Potter v. Fox, ASSI 54/4; Manchester Examiner and Times, July 17, 1885, p. 3, in which two farming people had two children over a five year period; and Pierce v. Smith, Newgate Calendar and Divorce Court Chronicle Issue 9 (July 8, 1872), p. 140.
court . . . " The defendant in Wheeler v. Jones tried to rush his fiancee along as well, saying "there was no necessity for a long courtship as with young people--a very short time would do for us." 43

Both people at this stage of life were primarily looking for roles rather than personalities. Naturally, they still hoped to find someone who was compatible, but the main requirement was a suitable provider or skillful homemaker for a comfortable old age. The men quite frankly expected the women to show they could cope with domestic arrangements. James Horrocks, in breaking off with Jane, complained that, among other things, she had refused to mend his trousers, which were "always out at the knees." He felt this was unreasonable, since "all my t'other wives had done it." Samuel Southern at first tried to get Hannah Clough to be his housekeeper, then his landlady. Only when she had refused both these offers, did he decide to propose marriage. Catherine Evans and Jane Elliot both acted as housekeepers for their fiancés after becoming engaged, but before the wedding. Both were seduced at that time and then later thrown over. Men were also attracted to women who displayed sound business sense. James Strickland proposed to Catherine Smith after watching the efficient way she ran the Bridge Inn. Catherine's previous four husbands had been publicans, obviously having valued the same characteristic in her, but on her fifth try, she agreed only on the proviso that she be able to give up the pub. He agreed at first, but soon changed his mind and married a younger woman, not surprisingly, since her

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43Taylor v. Hardman, ASSI 54/5; Manchester Examiner and Times, January 31, 1887, p. 3; Smith v. Strickland, ASSI 54/1; Liverpool Mercury, August 8, 1877, p. 8; McLeod v. Horrocks, Illustrated Police News, March 30, 1872, p. 3; Wheeler v. Jones, above.
business had attracted him in the first place.\textsuperscript{44}

But the men were not alone in stressing practical needs in second marriages. Women made a point of determining what their future husbands intended to settle on them before they committed to a marriage at a mature age. The plaintiff in Wheeler v. Jones, e.g., questioned the defendant closely before they set the wedding date. As she put it, "I told him that leaving my house would be a serious thing for me, and said that if anything should happen, where should I be then? He promised in reply to make me comfortable for life." Sarah Owen and Humphrey Williams never made it to the altar, because Sarah's daughter insisted that Humphrey make a settlement on her mother, which Humphrey steadfastly refused to do. Sarah gave up the idea, but the couple were never happy with each other afterwards. The couple in Thomas v. Edwards discussed money matters thoroughly during their courtship. Miss Thomas agreed to give up her business upon marriage, while Edwards "said he would not make any marriage settlement on her, but that he would make a will in her favour which she could have in her own custody."\textsuperscript{45} Neither of the couple saw anything wrong with this pragmatic approach to matrimony. The men had every reason to want an efficient housekeeper or why marry again at all? And the women certainly needed some assurance of security when marrying relatively old men while at the same time giving up lucrative businesses. Settling such

\textsuperscript{44}McLeod v. Horrocks, above; Clough v. Southern, ASSI 54/11; Liverpool Mercury, April 14, 1892, p. 7; Evans v. Jones, ASSI 59/21; Carnarvon and Denbigh Herald, June 8, 1894, p. 8; Elliot v. Stranger, above; Smith v. Strickland, above.

\textsuperscript{45}Wheeler v. Jones, above; Owen v. Williams, ASSI 59/142; Carnarvon and Denbigh Herald, July 19, 1879, p. 7; Thomas v. Edwards, Manchester Evening Mail, April 21, 1898, p. 2.
issues before the wedding presumably avoided incompatibilities after the
ceremony.

Mature couples found each other in one of two ways. Several of the
couples had known each other for many years, either as friends or
neighbors, and decided to marry after having survived their first spouses.
The plaintiff and defendant in Lacy v. Frankeiss had known each other for
50 years; Lacy, in fact, had been a long time companion to Frankeiss’
sister when they had both been married to other people. They met again
at the ages of 69 and 71 and agreed to spend their old age together,
although Frankeiss changed his mind at the last minute. Jane Ashton had
known Samuel Scholes for a long time and intimately for ten years. They
had a loose understanding to marry, but he jilted her for his young
housekeeper. Sometimes the couples had been "courting" for twenty years
or more, waiting for the appropriate time to marry. Mary Owen waited
twenty-five years for John Jones, thinking he would marry her after his
father died and give their illegitimate son a legal father. Instead,
Jones married a servant girl. Similarly, Jane Davis waited fourteen years
to marry her employer, Giles Jones (she was his housekeeper) only to see
him jilt her for a younger woman.46

The second way mature couples found each other was to meet as almost
total strangers and to decide to marry on outward attributes. Older
courtiers frequently met through marriage brokers or well-meaning friends
and relatives. Joseph Daintith used a man named Hampson to find a

46Lacy v. Frankeiss, ASSI 22/36; Winchester Observer and County News,
July 6, 1878, p. 8; Ashton v. Scholes, ASSI 54/14; Manchester Evening
Mail, December 9, 1895, p. 3; Owen v. Jones, ASSI 59/23; Carnarvon and
Denbigh Herald, June 14, 1895, p. 7; Davies v. Jones, ASSI 75/2; Brecon
County Times, August 2, 1873, p. 4; Times, August 2, 1873, p. 11.
suitable woman to be his fourth wife. Margaret Halliwell and Phillip Rigby met because Margaret's daughter overheard Phillip saying he wanted a wife in a local shop. The daughter arranged for the two to meet, and they might have made the match had Phillip's brother not intruded and talked him out of it. Mrs. Wheeler, who owned a hotel, claimed that her fiance simply walked in one night, stayed for a drink of whiskey, and said "I believe you are a widow--do you want a husband?" These are the clearest cases of marriages for convenience, since the two could hardly have known each other well before they decided to marry.

Only a handful of these cases involved a seduction of the plaintiff by the defendant. In those cases in which the couple did anticipate marriage, judges and juries expressed much less sympathy for the woman since she should have been experienced in the ways of the world. Catherine Smith slept with James Strickland quite soon after they met; in fact, James insisted that they had never been engaged, but only had a brief affair. The judge called Catherine a "nasty old creature" (she was 58) and expressed great disgust at these two old people "toying" with each other. Mrs. Wheeler, who was about 50 years old, slept with her fiance from the beginning of their acquaintance, and the jury believed the defense's contention that she was a woman of "ill-fame" and found for the defendant. Catherine Evans received only one shilling damages, because the jury believed that she knew Richard Jones was married when she slept with him. Justice Vaughan Williams complained that "The circumstances of the case were such that both parties ought to be heartily ashamed of

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47 Clark v. Daintith, ASSI 59/14; Chester Chronicle, March 14, 1891, p. 2; Halliwell v. Rigby, ASSI 54/3; Manchester Evening News, February 3, 1885, p. 3; Wheeler v. Jones, above.
themselves." Only if a women were a spinster and had fallen with the 
defendant did she still get a chivalrous response. Mary Owen, who had 
waited twenty years to marry the father of her illegitimate son, got £60, 
despite John Jones' contention that he never intended to marry her.\footnote{Smith v. Strickland, above; Wheeler v. Jones, above; Evans v. Jones, above; Owen v. Jones, above.}

One reason mature courtship seemed peculiar was because courtship 
routines assumed youth on the part of the couple. For an older couple, 
there was no need for a formal wedding, since the bride had already been 
given away once before, or her parents had long been dead and she had been 
supporting herself for many years. These couples were not newly entering 
society; second marriages were not the big step that first marriages were. 
Although they wanted to skip many of the ceremonies, however, these cases 
also showed the popularity of marriage with most adults. Both men and 
women willingly took three or even four spouses in one lifetime, 
preferring the security of conjugal life to independence. Women wanted the 
increased income they were sure to have; men wanted someone to look after 
them and any children they had from previous unions. Nor should the urge 
for companionship be discounted. James Horrocks insisted on his next wife 
being "agreeable"; one reason he broke up with Jane was her less than 
enthusiastic reception of him. And though Miss Thomas recognized that she 
would have to act as a nursemaid to her elderly suitor, she argued that 
"he was all right. He was for me, because he would have been a companion 
for me."\footnote{McLeod v. Horrocks, above; Thomas v. Edwards, above.}

The three types of cases already discussed stood out because they
illustrated unexpected facets of courtship in the 19th century--the amount of sexual nonconformity, the use of breach of promise as irregular divorce proceedings, and the courtship of those who were no longer young. Other types of cases stand out because of their peculiarities as law suits, namely those with male plaintiffs, those cases in which male defendants won, and the few instances that women brought more than one breach of promise case. As noted in Chapter Three, breach of promise was "a woman's suit," and 97% of the cases studied were brought by women. Nevertheless, twenty-two cases of the 875 had male plaintiffs. Male plaintiffs were highly unusual at any time, but they became even more so as the century went on; fourteen of the twenty-two were brought before 1870, nine of these before 1850. Of the remaining eight, six occurred in the 1870s, one in 1882, and one in 1893. There were none at all in the 20th century (although the sample is admittedly limited in that century).  

Almost all of the cases with male plaintiffs came court because of class differences. In Townsend v. Bennett, the man was the tenant of the defendant, who owned a farm and had a large income. The defendant in Currie v. Currie had a fortune of over £6000, and her young cousin, who was not so well off, was deeply disappointed when she married a Spanish adventurer instead of him. Ellen Paton's family descended from an honored and long-standing lower gentry family; she jilted her first fiance, G.K. Stanton, a clothier, for a clergyman in the Church of England. Often the

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50There was also a case brought in Chester in 1892 in which a young male farmer sued his rich ex-fiancée, winning £50. It was reported in Woman's Herald 7 (August 6, 1892), p. 4 and Woman, No. 136 (August 3, 1892), p. 1. Since I did not find this case in the minute books or pleadings, I do not have a name and cannot find enough of the details to analyze it; it is, therefore, not a formal part of the Data Base.
differences went beyond wealth to small degrees of status. Lucy Gartside jilted Thomas Seymour because his step-father's business was a pub. Lucy was the widow of a Major Gartside and enjoyed an income of £600 a year; although Thomas was an officer in the navy, his family connections were enough to damn him in her eyes. At other times, women simply married men who were of a higher class or income than the plaintiffs. Mr. Corbett was a clerk to a canal company; he lost his fiancee to a Mr. Palmer, a corn factor who was reportedly much richer than his rival. In the 1850s, the former Miss Darcy chose to marry a coal merchant rather than Mr. Hazeldine, a small farmer and butcher.\(^{51}\)

Women were especially subject to family pressure when they became engaged to men of inferior status. In most of these cases, the fathers, brothers, or "friends" of the defendant did their best to obstruct the match and helped to precipitate the breach. Elizabeth Leigh's father insisted that she and her fiance, Arthur Morris, wait at least a year after their scheduled nuptials to marry so that Arthur could earn a decent living. (Both Elizabeth's father and Arthur were businessmen.) Arthur was infuriated by this delay (it was one of several) and sued rather than wait any longer. Winnifred Harding broke off her engagement to George Hole on the advice of her "papa," explaining that "I wish to be a dutiful child as long as I live." Early in the century, Miss Mellish, the heiress to a large fortune, had her romance abruptly cut off by her two older

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brothers. They considered her lover, Mr. Foster, to be an upstart, since he was just an apothecary while they were "gentlemen of the greatest respectability." Although the disapproval of family and friends was often motivated by class differences, it was not invariably so. The couple in Cherry v. Thompson were both in the upper class, but the defendant's father objected to the match for personal reasons, so she wrote that she must end the relationship at once. 52

Very few men got high damages out of breach of promise cases. Seven of the twelve cases that went to the jury resulted in damages of £20 or less; judges and juries had little sympathy with men who tried to sue for wounded affection. Judges, particularly, used their influence against the plaintiffs. In Townsend v. Bennett, Justice Brett explained why breach of promise was suitable only for the female sex:

If a woman happened to be jilted, people were apt to consider before they determined to be a second suitor. But did this apply to a man? ... Again, when women get towards middle life it happened that they did not readily get married; but a middle-aged man had much less difficulty in getting a wife than a woman had a husband. ... When a woman became engaged she looked forward to a comfortable home, where she would be worked for; and that prospect she would lose by the engagement being broken off. A man, however, after the breach of such an engagement, would have the same power of working for himself as before ...

Justice Crompton, in Corbett v. Palmer and Chief Justice Coleridge in Hole v. Harding both gave similar sentiments in their summations. The judge in Hazeldine v. Hampton and wife (unnamed) went so far as to say "he

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52 Morris v. Leigh, ASSI 54/11; Manchester Examiner and Times, March 2, 1893, p. 7; Hole v. Harding, ASSI 22/38; ASSI 28/6; Exeter and Plymouth Gazette Daily Telegram, January 30, 1882, p. 3; Foster v. Mellish, "Chronicle," Annual Register, 44 (1802), p. 371; Cherry v. Thompson, 7 Law Reports, Queen's Bench Division 573-79; Times, April 17, 1872, p. 11 and May 29, 1872, p. 11.
should not be disappointed if the jury did not find a verdict for the plaintiff at all; or if so, for more than the lowest coin of the realm." If their verdicts are any indication, the juries agreed with the opinions of their legal betters. 53

Why, then, did six of the male plaintiffs win large awards, one an award of £1000? In three instances, the men had actually suffered large pecuniary losses due to their engagements. In the latter case, the woman settled during the trial for that large amount to keep her letters from being read. Also, she had signed an agreement with the plaintiff to marry him or give him an annuity of £20 and one-third of her estate as compensation. In comparison to that sum, £1000 did not seem all that much. In two other cases, the plaintiffs had put out a great deal of money on the defendants' behalf, and the juries compensated them. David Thomas built a meeting house for the Anabaptists at the instigation of his (then) fiancee, Hannah Jones; he also made repairs on his home of £250. The jury gave him £100 to help make up his large outlay. In Currie v. Currie, the plaintiff claimed to have "spent about 400L in preparing an eligible residence for his expected bride." (The jury was also probably influenced by the flighty behavior of the defendant, who jilted her gentleman cousin for a penniless Spaniard.) 54

Of the remaining three cases, two were before 1805. Schreiber v. Frazer, in 1788, was a case between two people of the gentry in which the


lady simply changed her mind. In the 18th century, men brought breach of promise cases to success far more often, and Mr. Schriber received £600 from the jury. *Mellish v. Foster* was in 1802 and still basically followed the 18th century pattern. In this instance, the young heiress jilted the apothecary on the advice of her brothers and after having received an anonymous letter denouncing Mr. Foster. Foster got £200 for his injury. The remaining case was *Eden v. Ormand*, heard in 1869. John Eden was a widower of 60 years who was a land surveyor and general agent with an income of about £200 per year. Jane Ormand was the widow of a surgeon, 45 years old, and had one daughter. She had an income of £750 a year. The two met at a regatta and courted for six weeks; John then proposed and Jane accepted him. But in October of 1868, after several months, Jane broke off the engagement, apparently under the influence of her best friend and landlady, a Mrs. Todd. Mrs. Todd felt that John was only marrying her friend for her money, and had spent considerable time and effort breaking up the match. The plaintiff’s counsel made a great deal out of the evil influence of Mrs. Todd, painting her as an "overly possessive" landlady who did her best to balk her friend’s future happiness. The jury, in consequence, gave John Eden £300 for his loss of marriage. The only explanation for this unusual outcome was the behavior of Mrs. Todd; the jury apparently viewed her influence as "unnatural" and sympathized with Eden in having a promising relationship derailed by a meddling woman. They might also have considered Jane Ormand, at 45, a
mature woman who should have known her own mind.\textsuperscript{55} \textit{Eden v. Ormand} must be viewed as something of an exception to the rules of breach of promise suits, since male plaintiffs usually did not get enough to make the process worthwhile.

Women plaintiffs had a number of advantages in breach of promise suits, yet they did not always win; moreover, sometimes they, like male plaintiffs, received derisory damages and so gained little from their victories. What led the juries to find against a woman plaintiff? Of course, in almost every case, any number of factors influenced the jury in its decision. However, the main reason that women lost breach of promise actions was through sexual nonconformity; this reason explained a quarter of lost actions (15 out of 60). Most of the time, the plaintiff "fell" with the defendant alone, but the jury felt that there was no promise of marriage, that the couple simply had an "immoral union." John Woolridge, a chemist, successfully defended himself against Anne Gordon by having his assistant testify that Anne "told him [the assistant] that there had been an improper connection between herself and the defendant, and she said she had permitted it because she could make nothing of the defendant without, and she thought that by consenting she should have the 'pull' on him." Juries particularly expected older, experienced women to know what they were doing. Ann Farrow got little sympathy in her story of seduction since she was a widow who had borne eighteen children. In other cases, the defendant used the defense of unchastity

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\textsuperscript{55}Schreiber v. Frazer, "Chronicle," Annual Register 23 (July, 1780), pp. 218-19; Mellish v. Foster, above. For more on 18th-century cases, see Chapter One. Eden v. Ormand, ASSI 32/31; Buckinghamshire Herald, March 20, 1869, p. 3.
and was able to prove it. William Twist convinced his jury that he only broke up with Agnes Barrow after he had heard of her "misconduct" with a man named Lively in a cab and she had admitted it to him, trying to excuse herself by saying she was drunk at the time. Twist had also already settled a maintenance action with Agnes for £30; the jury probably felt he had paid enough in any case. Even a fall in the distant past disqualified a woman from marriage if she were not honest about it with her fiancé. Ann Bench lost John Merrick when he discovered that she had had an illegitimate child ten years earlier (the child had been stillborn). She tried to prove that she had always been honest with him about it, but the jury gave her only nominal damages (£10).56

Juries also found for the defendant if they felt that the relationship had simply been courtship with no promise of marriage. Sarah Chedzoy and Harry Woodbery knew each other less than four months in total, becoming engaged after only six weeks. Although she had some letters in which he promised that she would never be alone, the jury felt that these did not amount to a promise of marriage and found for the defendant. Mr. Justice Lush had influenced them in this, since he had called the action a "caricature . . . of legal proceedings." Rebecca Booth had gone to Frederick Pearce for business advice and had gone to work for him a few months later after he had proposed (she claimed). She said he threw her out when she rejected his advances; he then also had her arrested on stealing charges, which he subsequently had to drop. She had no evidence

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56Fordon v. Woolridge, Chronicles of Breaches of Promise, pp. 176-178; Farrow v. Child, ASSI 32/36; Norwich Argus, March 31, 1877, p. 7; Barrow v. Twist, ASSI 54/5; Manchester Examiner and Times, July 17, 1886, p. 3; Bench v. Merrick, 174 English Reports 893-95; Times, July 18, 1844, p. 7.
of a marriage proposal, but the jury did give her £150 for malicious prosecution. Moreover, even if there had been a proposal, the woman could not sue if she had agreed to release her lover. Both Alice Hanson and Jeanie Black lost their cases for that reason. Annie and Samuel Lord had an argument and she told him not to visit her again; Jeanie wrote to Charles Baucalare and said if he wanted to break things off she would not force him to stay. If a woman had given her word to that effect, she was not allowed to change her mind, and the defendant was free to marry someone else.\textsuperscript{57}

A final reason that defendants won was if they could prove fraud or that the plaintiff had hatched some kind of plot to get money from him. The best example of the defense of fraud was the case of Naomi Girling and James Allsop. James insisted that he had only agreed to marry Naomi when he thought she was an heiress to £6000; when he discovered that she was not, he refused to go through with the match. His counsel accused her of lying purposely in order to induce James to propose to her. In two other cases, the women apparently were trying to avoid paying their rent. The plaintiff in Haycox v. Bishton had rented from the defendant for twelve years; when she ran out of the money to pay him, she threatened to sue him for breach of promise with her sister's collusion. Jane Jenkins had apparently never paid rent anywhere that she had lived since she had been a widow. In addition, she had tried to steal the defendant's cow and had originally sued for illegal distraint (she withdrew it). Evan Edwards had

\textsuperscript{57}Chedzoy v. Woodbery, ASSI 22/33; Somerset County Gazette and Bristol Express, August 10, 1872, pp. 7-8; Booth v. Pearce, ASSI 75/2; South Wales Daily News, March 18, 1874, p. 3 and March 19, 1874, p. 3; Hanson v. Lad, ASSI 54/7; Manchester Examiner and Times, July 14, 1888, p. 7; Black v. Baucalare, ASSI 22/42; Cornish Telegraph, June 25, 1896, p. 5.
little difficulty proving that she had fabricated most of her evidence (it also did not help her case that she had an illegitimate child of eight). Robert Crathorne accused Hannah Nelson of trying to trap him sexually. She had his child and urged him to marry her; when he refused, she threatened him with the suit. This would not have looked so bad, except that Hannah had brought another breach of promise action several years before in which she had also been seduced and which she had won. The jury felt she was using the action for immoral gain and found for the defendant after 30 minutes of deliberation.\footnote{Girling v. Allsop, ASSI 32/29; Suffolk Chronicle, August 3, 1861, p. 7; Jenkins v. Edwards, ASSI 1/68; ASSI 8/2; Shropshire Guardian and Shrewsbury Herald, July 12, 1884, p. 8; Haycox v. Bishton, ASSI 1/65; Staffordshire Sentinel and Commercial and General Advertiser, March 19, 1870, p. 8; Nelson v. Crathorne, ASSI 28/12; Bristol Evening News, July 17, 1897, p. 3.}

The only other way that plaintiffs lost cases were when they were disqualified by judges on one of several legal points. Five of these instances came after the 1869 Evidence Amendment Act, and the judges dismissed them because of lack of material evidence. For instance, the judge in Potter v. Fox nonsuited Olive Potter, despite her claim to have had two children with the defendant under promise of marriage, because she had nothing but her own word to prove it. Even before the Evidence Amendment Act, judges sometimes stopped cases if they felt there was not enough evidence to support the accusation. Eglar Parker, a cook, tried to prove a contract of marriage to Edward Jackson by saying that his behavior was a de facto promise of marriage even if he never spoke the words. The judge promptly nonsuited her even though the case was brought in 1863. As already discussed, judges also never allowed an action to
stand after the death of either of the parties, since breach of promise was a personal action (this was not changed until 1934). Finally, judges occasionally spoke out against cases in which both the plaintiff and defendant were too poor to be able to make any gains. Gertrude Parker lost her case against Robert Stockwell because of the judge's scathing summation. Both people were factory workers, and "He did not think it mattered whether the jury gave the plaintiff a million pounds damages or a shilling, for he did not suppose the girl would get a brass farthing."

The jury agreed and gave the verdict to the defendant, the foreman explaining that they felt that the case should never have been brought to court.59

Nevertheless, except in these (relatively) few cases, the plaintiffs prevailed. A woman had an excellent chance to win her case as long as she stayed sexually pure and had at least one witness to back up her version. In fact, the advantages were so overwhelming that many people feared that women would make a habit of suing, or threatening to sue, any man they happened to know for breach of promise.60 In actual fact, however, there

59Potter v. Fox, ASSI 54/4; Manchester Evening News, July 17, 1885, p. 3; Parker v. Jackson, ASSI 22/28; ASSI 28/3; Supplement to the Hampshire Chronicle, July 20, 1867, p. 2; Parker v. Stockwell, ASSI 54/17; Manchester Guardian, April 26, 1899, p. 10. For another case nonsuited for lack of evidence before 1869, see Jones v. Boumphrey, Gloucester Mercury, April 11, 1863, p. 5.

60See, e.g., The Lady's Own Paper 7 (April 1, 1870), p. 194, in which the editors claim that "the danger which unmarried men are placed in now that ladies are allowed to get into the witness-box and swear to promises made only in the presence of themselves and the moon, is really very serious . . . " See also Pumph Court 3 (March, 1886), p. 113, in which the editors declare, "there is no rule so true as that a woman of decent up-bringing, who has lost her virtue, may safely be expected to lie . . . about everything and everybody where her delinquency is under discussion," and The Law Times 40 (February 25, 1865), p. 194, in which the editors complain "Many a cunning woman is tempted to entrap a man, in a weak
were very few women who sued for breach of promise more than one time (of course, it is impossible to know how many threatened the action more than once). Only eight women out of 875 sued two different men. In half of these cases, the fact that the woman had sued before hurt her second action. For instance, Emma Read got £200 the first time she sued for breach of promise against the father of her first illegitimate child. Several years later she sued Ralph Bennion, a farmer, who had also got her with child. Ralph's counsel made a great deal of her past legal action, saying, "It might have so happened that the then defendant was a person in a good position, and rather than have his character exposed was glad to get rid of the plaintiff on any terms." The jury gave her only £20 on her second try. Catherine Evans had also made a claim on another man years before her second case and the matter had been settled for £100. The jury in her trial against Richard Jones believed that she and Richard simply had a sexual union and gave her only one shilling. Fanny Davis brought an action against a Mr. Skinner in 1857 (after five years of courting) and received £54 from him; in 1860, she sued Thomas Bomford after fifteen months of courtship. In the latter case, however, the jury found for the defendant, believing that she had exonerated him. Since Fanny's purity was unblemished, the only negative aspect of her case was her former suit, and it clearly influenced the jury. The fourth case was Nelson v. Crathorne, discussed above, in which Harriet Nelson's history

moment, into a promise of marriage, by the hope, which this action encourages, that she will be enabled to pick his pocket."
of suing after seductions certainly hurt her case.61

On the other hand, there were four cases in which the plaintiffs did not experience any trouble because of previous actions. The plaintiff in Langley v. Rose, in 1852, was only 24 when she sued for the second time (the first had been in 1849). The first time she got £400 and the second time she received £325. In other words, within three years, Miss Langley was awarded £725 from breach of promise suits. Charlotte Hubbert threatened her suitor, a Mr. Moxon, with a suit in February of 1870, although she did not carry this threat out. In August of 1871, her suit against Wright Copping went to trial. Copping's lawyer made a great deal of her past to the jury: "a lady who . . . threatened an action for breach of promise against another gentleman, was not the sort of person who could ask for damages at their hands." Yet the jury believed Charlotte had suffered real damage and awarded her £200. Even a shady past did not always doom a woman in suing more than once. Miss Miller lived for three or four years with a gentleman and had his child before she realized that he did not intend to make an honest woman of her. In 1872, she sued him for breach of promise, and he settled with her for £1,500. In 1881, after she had set herself up as a perfumer and hairdresser, she met Mr. Joy, a retired builder and a widower with ten children. The two became engaged, and Miss Miller told him about her previous misfortune. He said he did not care about her past, but only one month later, in July, he broke off the engagement, and in August he married someone else. Miss Miller sued, and the jury gave her £2,500,

61Read v. Bennion, ASSI 59/113; ASSI 57/6; Chester Record, April 8, 1865, p. 5; Evans v. Jones, above; Davis v. Bomford, 158 English Reports 101-103; Times, July 19, 1860, p. 11; Nelson v. Crathorne, above.
primarily because Joy had tried to use the defense of unchastity (and failed) and Miss Miller claimed that he broke off with her because she refused to "anticipate marriage" with him. The defendant appealed the verdict, but neither the Divisional Court nor the central courts would overturn the jury's decision. 62

The final (and best) example of a woman who brought more than one suit was Harriet Roper. Harriet was the daughter of a farmer at Nettlestead in Suffolk. In 1865, when she was 24 years old, she met Samuel Hills, a farmer of about 240 acres who lived nearby. The two courted for four years, exchanging letters and some amateurish poetry. In December of 1869, however, Samuel picked a fight with Harriet's father by demanding a large dowry for her, which her father could not provide. The reason was, apparently, his mother's influence, and Sam decided to have her keep his house rather than Harriet. Harriet sued him, and both sides had presented their cases when Samuel offered to settle the matter for £100, and Harriet agreed to accept it. There ended Harriet's first romance.

Three years later, in 1874, Harriet met a Mr. Bagley, the son of a grocer. They became engaged, but waited to be married until Bagley's father had given up the business to his son. The elder Bagley disapproved of the match, and he waited four years until his son had developed an interest in another woman to retire from the business. Harriet noticed her fiance's coolness and rebuked him with the following blistering letter:

I have once before had the misfortune of being engaged to one of those men whose chief aim is to gain a woman's affections and then to blight them forever. I think you ought to be made an example of to prevent others from being deceived as I have been. I intend to keep your presents as a memento of your unfaithfulness, and they may be of use to me, and you may have a lesson to learn which may make you a wiser young man.

Despite the fact that she was 40 and the defendant was 28, and despite her past problems, Harriet again impressed the jury, and they gave her £80, only £20 less than she had taken in her previous action ten years earlier.63

Clearly, very few women used breach of promise cynically, trying to make a career of threatening hapless men with expensive lawsuits. Only a handful of women sued more than once, and in half of these cases, they received small damages after their first try. But juries showed common sense in not automatically rejecting second cases as phony or unneeded. Although rare, there were cases in which a woman suffered a breach more than once, and under the law had a right to some compensation for both injuries. Indeed, in Harriet Roper’s case, her second disappointment was worse, since it left her without a husband or dowry and (for Victorian times) middle-aged. These cases were exceptions, but juries found ways to accommodate them, and their decisions were rarely gainsaid by judges during the trials or on appeal.

Breach of promise cases reveal a wide variety of couples, courtship practices, and sexual and class relationships. Yet even the atypical cases often come back to the sexual double standard and an obsession with class and status. If nothing else, breach of promise cases support those

63Roper v. Hills, ASSI 32/32; Suffolk Chronicle, April 1, 1871, p. 7 and Times, March 31, 1871, p. 11; Roper v. Bagley, ASSI 32/36; Times, August 2, 1880, p. 11.
historians who emphasize the stringent classification of class and gender in the 19th century. Women lost cases because of sexual nonconformity; men and women frequently lost fiancées for class reasons. The only surprising aspect of these types of cases is the amount of premarital sexual intercourse, although most of it was under a promise of marriage. All the same, it, too, reveals a great deal about gender and class differences, since women, not men, were permanently degraded by premarital sexuality, and lower-class women were likely to be seen as sex partners rather than potential wives. Though revealing, categorization into "types" sometimes masks the individual tragedies and comedies that so many of these cases also illustrate. In order to see these couples in more detail, one must concentrate on the few well-documented breach of promise cases. Though not in any way typical, they offer enough evidence to see both sides of the complicated process of courtship and break-up in the nineteenth century.
CHAPTER SEVEN—"BRAINLESS BOOBIES OF POSITION" AND "FORTUNE-TELLING PAINTED HARLOTS": FIVE CASE STUDIES, 1846-1916

The five case studies explored in this chapter are in no way typical actions. Selected, frankly, because they are unusually well-documented, they are about people in the higher reaches of society or deal with legal issues that led to long and protracted trials. Despite their peculiarities, however, they illustrate several of the typical themes of breach of promise actions, especially the importance of parental consent and the pervasiveness of class and status considerations. In every case, the couple came from different classes and one or both sets of parents set up difficulties in the courtship. Moreover, the cases demonstrate the many different outcomes of these trials, including victories for both the plaintiff and the defendant, and successful and unsuccessful appeals to the higher courts. The five cases range widely in time: one before 1850, one each from the 1870s, 1880s, and 1890s, and one in the early 20th century. They offer a chance to see breach of promise cases in detail, an opportunity not often available despite the wide press coverage of these actions.

On February 14, 1846, the case of Smith v. Earl Ferrers came to trial in the Queen's Bench Division in London at Westminster Hall under Justice Wightman. The plaintiff was Mary Elizabeth Smith, just turned 21, who was the daughter of a small farmer in Austrey, Staffordshire. The defendant was Washington Sewallis Shirley, Earl Ferrers, 24, the son and heir of an old noble family who owned manors in both Staffordshire and Leicestershire. In many ways, this case was highly peculiar. First, the defendant was of the upper class, and noblemen usually chose to settle
such matters out of court. Second, it was a highly publicized case, yet it happened earlier in the century than the actual "boom" in breach of promise actions. Third, the outcome was unusual, and because of the contradictory nature of the evidence, it is difficult to determine the justice of this result.¹

Mary Smith's story was as follows. She first met Ferrers in 1839 when she was only fourteen and he was seventeen; he was living with his tutor, a Mr. Echalaz, so he resided close enough for the two of them to see each other often. They fell in love, but the differences in their station made both of their families uneasy. Ferrers' parents sent him abroad from 1840 to 1842, while Mary's sent her to finishing school in London and France for two years. In 1842, they both returned to Austrey and began to court again, writing to each other frequently. They eventually set the date for May of 1844, although they postponed it twice, first to July and then August. In the meantime, Mary bought several items for herself, including some books and clothing, all of which she claimed that Ferrers had given her as a gift; he told her to send the bills to him when they came. He never paid the bills, though, claiming he was unable to because of a £5000 loss, and Mary's father and grandfather were forced to foot the bills. Nor did Ferrers agree to meet Mary's parents, despite

¹Most of this story comes from a 400-page transcript of the trial, Proceedings Upon the Trial of the Action Brought by Mary Elizabeth Smith Against the Right Hon. Washington Sewallis Shirley Earl Ferrers for Breach of Promise of Marriage (London: William Pickering, 1846). A shorter version of the case can be found in "Trials, Law Cases, Etc," Annual Register (1846), pp. 349–363 and in the Times, February 16, 1846, pp. 7–8; February 17, 1846, p. 8; February 18, 1846, pp. 7–8; and February 19, 1846, pp. 7–8. Miss Smith also wrote a 66-page pamphlet defending herself after the trial, Statement of Facts Respecting the Cause of Smith v. Earl Ferrers (London: John Ollivier, 1846).
coming to her home on a few occasions. In July of 1844, as the wedding date approached, Mary got two letters from Ferrers' brother, warning her that Washington was seriously ill. He was perfectly well, however, and married Augusta Annabella Chichester a few days later. Mary heard about the wedding by reading the announcement in the newspaper. She was deeply hurt, and her father and grandfather urged her to sue.

Mary's primary evidence consisted of twelve letters supposedly written to her by the earl, a few townspeople who saw the two of them together (although never very close together), friends who posted letters and gifts to the earl on her behalf, and a ring she claimed he gave her as a token (he denied this). Since neither of the parties were allowed to testify in breach of promise cases before 1869, the burden of testimony for the plaintiff rested on her mother and sister. Mrs. Smith stoutly insisted that all that her daughter claimed was true, although she admitted that she had never met Earl Ferrers and that her daughter kept running up bills with local tradespeople which the earl never paid. Mrs. Smith also testified that the twelve letters her daughter submitted as evidence were not in Mary's handwriting (and therefore they were not forgeries), but she did identify four mysterious letters submitted by the defense counsel as being in the hand of her daughter. Mary's sister Ann, thirteen, claimed to have seen Washington at her parents' house twice during 1843; despite a long cross-examination, her testimony was not shaken. Mary's case ended with the reading of the twelve letters that Washington had sent to her in 1843 and 1844.

Earl Ferrers told an entirely different story. He claimed to have hardly known Mary Smith and never to have courted her in any way. His
counsel was Frederick Thesiger, the future Attorney General, and Thesiger insisted that the entire action was a plot from the beginning to the end. Mary conceived a hero worship for the earl at an impressionable age and wrote letters to herself to try to prove it; she also bought all kinds of clothing and books for herself, claiming that Ferrers would pay for the items. Of course he never did so since he had scarcely heard of her. The lies started out small, but built over time, until Mary could not deny the relationship without admitting her bad behavior to her parents. Thesiger pointed out the weakness of much of the evidence: the letters had no postage on them (she claimed they were delivered by servants); Mary’s parents had never even met her fiancé; none of the townspeople had seen them in any intimate contact; and she had bought every "present" from him for herself.

Ferrers’ main defense, however, centered on their correspondence, since the twelve letters that he supposedly sent to Mary were totally ridiculous. They contained people that did not exist, discussed political issues on the wrong dates, put Ferrers in places that he could prove he had not been, called pets and friends by the wrong names, and were generally nonsensical. The plaintiff’s counsel had tried to explain the peculiarities of these epistles by saying that Ferrers had a "strangely wild imagination" and an "imperfect" education.² Mary insisted later that Ferrers wrote so much foolishness because he wanted to protect himself in the event of a trial and because he wanted to enhance "his own importance

²Proceedings, p. 9.
in my eyes."\(^3\) The most logical explanation, though, was that they were written by someone who knew nothing about the real events of the earl’s life, and this explanation fit in perfectly with Thesiger’s theory. William Devereaux Shirley, Ferrers’ brother, also testified for him; he denied ever meeting or writing to Mary, and he could prove it, since the times he supposedly met and wrote her he was in Scotland with his regiment. His sister and cousins also testified, though their denials were so clearly partisan (they blankly denied everything) that they had less effect.

The climax of the case came on the third day, when Thesiger played his trump card. He admitted that he had still not explained why so many of Mary’s friends testified to sending letters to Ferrers from Mary. The explanation, he insisted, was that Mary had been sending Ferrers anonymous letters for years. The earl had burned most of them, but he still had four, and these four were the mysterious letters that Mrs. Smith had identified as her daughter’s handwriting. The letters very clearly came from someone who admired Ferrers but did not know him well at all. A typical passage from one dated March 3, 1844 was as follows:

It is, I am aware, unmaidenly thus to write: but you know not the writer, and it is to that one a solace and comfort to tell you how much she loves you—how devotedly she is yours. Would that I could shake off the dream, for where will it end—with my life ... Oh that we might meet— that you could love me even as I you; but we dwell far apart ...\(^4\)

Mary, in a pamphlet written after the trial, admitted to writing the four letters (she insisted that there were never more than four), claiming that


\(^4\)Times, February 18, 1846, p. 8.
she wrote them "as a mere girlish frolic" to try to induce Ferrers to come to a ball and later to ascertain if he were interested in anyone else.\textsuperscript{5} Presented with this new evidence, the plaintiff's counsel withdrew from the case, and Mary had no choice but to elect to be nonsuited. The trial thus ended with an unequivocal victory for the defendant.

At first sight, the case against Mary seems airtight. However, there are several unexplained aspects of both parties' evidence. First, if Mary barely knew Ferrers, how did she acquire a sample of his handwriting with which to forge the letters? They were good enough forgeries to fool five different witnesses who testified to their authenticity, including an old army friend of Ferrers who testified under protest. And, if she did forge them, why invent people and places at all? Why not write only of love and keep the times and places as vague as possible? Furthermore, if she were plotting to "trap" Ferrers, why didn't she post at least one letter from the local post office so that it would appear to come from him? Surely someone clever enough to concoct this elaborate plot would have thought of such an obvious ploy. Also, were the townspeople who witnessed the two of them walking together to be completely discounted? What possible motive could they have to lie? Most of them barely knew Mary Smith, and they had a great deal more to gain by keeping on the right side of the local peer. And why did neither side call the main intermediary between the two, a servant named Joseph Adkins? Surely he could say whether or not he delivered letters between them. Mary claimed she did not call him because he received a pension from Ferrers and would have lied to keep it, but the defendant gave no

\textsuperscript{5}\textit{Statement of Facts}, pp. 20-23, quote from p. 22.
Finally, could a fourteen-year-old girl really start to plot to "trap" a nobleman and continue consistently with this plot for six years? Thesiger explained away this difficulty by claiming that Mrs. Smith was a party to the "plot," but since she did not know about large parts of her daughter's actions (especially the purchases of clothing), this was at best an unproved assertion.

Probably neither side was being entirely truthful. It was quite possible that in 1839, when both parties were very young, Mary and Washington had a brief courtship (or friendship). Perhaps also during that time, Mary obtained samples of Ferrers' handwriting, or he may even have written a few of the non-sensical letters himself, in fun. The two were then separated for two years, and Ferrers forgot all about his childish love, while Mary continued to nurture her feelings for him. When they met again in 1842, he was no longer interested in romance, while she wanted to take up where they left off. Possibly, the townspeople saw them together during that time because Mary tried to initiate contact with her old friend on various occasions. It was most likely at this point, when she was seventeen, that Mary began to fabricate her romance with the earl, writing colorful letters to herself (or bringing out the old letters he had composed), sending the anonymous letters to try to pique his interest again, and running up expensive bills at the local stores. She may have so convinced herself of the truth of her fantasy that she was genuinely shocked and hurt when Ferrers married someone else. And having committed herself thus far, she could not draw back when her male relatives insisted that she vindicate her honor. Although this interpretation does not

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6 *Statement of Facts*, p. 11.
explain everything, it does clear up most of the puzzling aspects of the
evidence. Certainly, Mary was less than truthful, but Ferrers was also
probably lying in insisting that he did not know her at all; she must have
known something of him or she could never have forged his handwriting.

Whatever the truth of the matter, Smith v. Earl Ferrers became
something of a byword among legal writers as an example of the abuses of
breach of promise by scheming women. It confirmed every fear these men
had of empowering a sex that could not be trusted where matters of
marriage were concerned. Contemporaries wasted no time in condemning Mary
Smith as a woman without honor. In his beginning address, Mr. Thesiger
compared her to a spider, weaving "that intricate web, in which, but for
the most extraordinary circumstances, Lord Ferrers must have been
entangled."7 Mary published a pamphlet in 1846, defending herself, which
was so harshly reviewed by Britainia magazine that she sued the editors
for libel. The jury in this case did not sympathize with her plight
either and awarded her only a farthing in damages; the judge then "refused
to certify that the libel was wilful and malicious; the consequence of
which is, that each side pays its own costs."8

The case lived on past the contemporaries, however; people later
used Smith v. Ferrers to argue against breach of promise cases

7"Law Cases," Annual Register, p. 361. Susan Edwards, commenting on
Thesiger's characterization of Mary, states, "One might have thought that
the Attorney General was describing the everyday life of a spider. In
addition, during the course of the trial certain references were made to
the menstruating woman and the imbalances accompanying this reproductive
phase; emphasis was also placed on the female proclivity for lying,"
Female Sexuality and the Law: A Study of Constructs of Female Sexuality
as They Inform Statute and Legal Procedure (Oxford: Martin Robertson,

specifically and women in court in general. Lord Chelmsford, in the arguments over the Evidence Amendment Act of 1869, insisted that female plaintiffs could not be trusted not to commit perjury, backing this assertion up with an undisguised reference to Mary's Smith's case:

He had known cases of this kind where letters in support of the promise were forged; and where, of course, if the party had been a witness, she would not have scrupled to support her forgery by perjury. If the plaintiff's evidence--generally a woman--is admitted, and it establishes a promise, the denial of the defendant will stand little chance of a favourable reception, when all the sympathies of a jury will be sure to be with the weaker sex...\(^9\)

The editors of the Law Journal refuted his reasoning, though hardly in terms complimentary to the plaintiff: "There [in Smith v. Earl Ferrers] the case for the plaintiff was a tissue of lies and forgeries, and the discovery of them would have, in all probability, been accelerated by the cross-examination of the lady under the skilful treatment of the counsel for the defendant." The unanimous condemnation continued into the 20th century. J.B. Atlay, writing in 1906, called her case a "tissue of absurdities and mis-statements" and wondered at her "most extraordinary ingenuity." As late as 1962, a legal writer commented that "In 1846, both judge and jury realized that girls on the verge of womanhood often do get up to some odd behaviour" (clearly a reference to the beginnings of menstruation).\(^10\) Most men (and probably women as well until recently) wanted to believe the worst about Mary Smith, to see her as a scheming villainess, without excuse for her evil behavior. Once she was nonsuited,

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\(^9\)Hansard's Parliamentary Debates 198 (July-August, 1869), p. 676.

no one even considered that her side of the story could have possibly contain a grain of truth, nor did anyone involved spare her any sympathy. Frederick Thesiger considered it one of his great accomplishments, concluding "I believe I may venture to say that I never did anything better than this while I was at the Bar."\(^{11}\) In many ways, Smith v. Ferrers confirmed any number of sexual stereotypes in England—women as habitual liars, as man-chasers, as Eve’s daughters, as creatures controlled by their reproductive organs, in short, as threats to men. Mary’s aggressiveness and her apparent untruthfulness disqualified her from any chivalry; she was no longer assumed to have moral goodness, but to be a "magdalen" rather than a "madonna."\(^{12}\)

This case reveals more than the sexism inherent in the English legal system, however. It also shows (again) the importance of class differences in Victorian society, even before 1850. One of the reasons that commentators deplored Miss Smith’s behavior may well have been the fact that she was lower-born than the man she pursued. Moreover, both sets of parents wanted to separate the two young people when they discovered that they were seeing one another; the entire association made Mr. and Mrs. Smith, in particular, uneasy. They feared that their daughter would be the victim of a trifler. And, in fact, Ferrers did not

\(^{11}\) Atlay, Victorian Chancellors, 2:105.

\(^{12}\) For a thorough discussion of this distinction, see Eric Tudgill, Madonnas and Magdalens: The Origins and Development of Victorian Sexual Attitudes (New York: Holmes & Meier, 1976). Susan Atkins and Brenda Hogett have argued that there is an inherent bias of the legal system where sexual crimes are involved, insisting that "The real reason" for the strict rules on evidence is "the inherent unreliability of women, 'the danger that fantasy may supplant or supplement genuine recollection,' as it may with children," Women and the Law (Oxford: Basil Blackwell, 1984), pp. 74-75; quote from p. 75.
take the relationship seriously, but instead married the daughter of Lord Edward Chichester, a more suitable partner. The case also illustrates the importance in Victorian courtship of the couple meeting each other’s families. One of the weakest parts of Mary’s case was the fact that though she claimed that Ferrers had been to her home, her parents had never even seen the man, much less talked to him about the coming wedding. It was simply not credible that a man who was over 21, whose parents were dead, would not come out in the open with his engagement and meet the young woman’s parents without more ado, especially in the last few weeks before the ceremony.

The case also shows the surprising freedom that Mary Smith apparently enjoyed in her family. Her father was a middling farmer, but he was bedridden much of the time due to a lingering illness. Her mother must have made few demands on her eldest daughter, since Mary had enough time to take part in (partly) imaginary trysts, to write numerous anonymous letters, to shop for books, clothing, and jewelry, and (eventually) to plan a wedding that never took place. Nor did her parents question her long absences when she claimed to be meeting her fiancé. At the same time, both of them, and her grandfather, stepped in whenever there was trouble. They paid off Mary’s many bills, her mother helped her with the wedding preparations, and her male relatives insisted that she sue Ferrers when they believed he had trifled with her. In many ways, they behaved the way families usually did in dealing with courtship, but in ways more typical of the lower middle class than the middle class. It was not until later in the century that the middle class regulated the social circle of their children rigidly. In this case, parental
supervision came too late to keep Mary Smith from becoming notoriously unrespectable.

Smith v. Ferrers was a cause celebre because of the high-born defendant and the dramatic conclusion to the trial. Frost v. Knight received publicity because it brought up an important legal issue about breach of contract. The case was widely reported in newspapers, legal journals, and women's magazines, and its coverage crossed the Atlantic. The story of the case did not initially seem unusual. Polly Frost was the daughter of a gamekeeper in the service of Sir Thomas Boughey in Staffordshire. She had been well-educated despite her humble circumstances, and she went in December of 1861 to work as an assistant to a Mrs. Knight, who lived with her husband and son at Milwich Hall. Josiah Knight, the son, soon fell in love with his pretty servant, and declared his love in June of 1863. The two decided to get married, although Polly was somewhat dubious, since Knight's father was sure to disapprove. Josiah assured her, however, that he would marry her as soon as his father had died and he had inherited the property. A year later, Josiah left the house for his training in the yeomanry, but this absence did not dim his affection for Polly; in fact, he manifested a great deal of jealousy over any men friends she had. In 1865, Mrs. Knight died, and Polly became the housekeeper; Mr. Knight had an accident the same year and was infirm, and the couple were able to court with greater ease. Surprisingly, there was no sexual intercourse between the two, despite the fact that their engagement lasted until July of 1869. In that month, Josiah went on a trip to Rhyl where he met his attractive cousin and fell in love with her. When he returned, he was indifferent to Polly. She
noticed his change in behavior and questioned him about it; Josiah then
plainly told her that he was repudiating his contract because he wished
to marry someone else.\textsuperscript{13}

Polly was only 23 years old in 1869 and probably could have found
someone else before it was too late, particularly since she had not slept
with her employer. But she had lost a secure financial future as well as
a man who had professed great love for her for over three years. She
decided to sue for breach of promise, and the case was heard by Baron
Martin in the Court of Exchequer assizes in March of 1870. Martin heard
the first part of the story and almost immediately saw the flaw in Polly's
case: Josiah had only promised her conditionally—on the death of his
father—and the elder Mr. Knight was still very much alive. Realizing
that this could be a matter for a great deal of legal wrangling, the judge
tried to persuade the two sides to come to an agreement during the trial,
but to no avail. He then allowed the jury to hear the rest of the
evidence and those men decided to award Polly £200 damages. Baron Martin
chose not to nonsuit Polly on the issue, but he did give leave for the
defense to appeal on the grounds that the conditions set for the
fulfillment of the promise had not been met at the time of the retraction.
The defendant and his counsel proceeded to so appeal at the earliest
possible date.\textsuperscript{14}

The Exchequer Court heard the appeal in February of 1871; it
consisted of Barons Kelly, Channel, and Martin. The primary arguments in

\textsuperscript{13}\textit{Frost v. Knight}, 7 \textit{Law Reports, Exchequer Cases} 111-118;

\textsuperscript{14}\textit{Frost v. Knight}, above.
the case centered on Hochster v. De La Tour, a contract case that the plaintiff's counsel insisted could be used as a precedent for her action. In Hochster, the plaintiff had been hired as a courier by the defendant to begin on the first of June and to continue for three months. Before June, the defendant told Hochster that he would not honor the contract; the plaintiff then brought an action for damages on May 21st. The defendant pled that there could be no breach of contract before June 1, but the court ruled that the defendant had definitively ended the contract when he informed the plaintiff of his intentions, and that thus there was a clear breach of contract. In other words, it did not matter that the contract had been conditional; De la Tour broke his word as soon as he announced that he would not to fulfill his side of the bargain.\footnote{Law Times 50 (1870-71), p. 113.}

Polly Frost's counsel relied on Hochster in the appeal, arguing that the situations were similar because Josiah had made it quite clear that he did not intend to marry her before or after his father's death. The defense, however, raised a more general question about the nature of the marriage contract. They argued that a breach of promise of marriage case was quite different from an ordinary contract action; thus Hochster was not a suitable precedent:

They distinguished the cases relied on by the plaintiff, by pointing out that in all of them a particular day was fixed for the performance of the contract, and expensive preparations were necessary before that day arrived; whereas in the present case not only was the time for the marriage quite uncertain, but it might never arrive, as one or both of the parties to the contract might die before the defendant's father; and they also contended that it was impossible for any
jury to estimate the damages in such a case as this.\textsuperscript{16}

To the surprise of most legal observers, the court agreed with the defense, although Baron Martin dissented from the opinion. Chief Baron Kelly delivered the judgment whose main thrust was that Hochster, and other mercantile contract cases, did not extend to "a contract of a totally different character, and peculiar to itself . . . a contract to marry." Having brought up a contentious issue, however, Baron Kelly tiptoed back from explaining why a marriage contract was special, contenting himself with saying that this idea was a well-founded one that had already been expressed by Frederick Pollock in \textit{Hall v. Wright} (1860).\textsuperscript{17} The court merely seconded the defense in the distinctions between Frost's case and Hochster's:

\begin{quote}
Whereas, when the time should have arrived at which, according to the contract really entered into, the plaintiff would be entitled to the performance of it, the plaintiff might be sixty and the defendant seventy years of age. The plaintiff might have lost her health or her character, and the defendant might have lost, besides his health, his fortune and his rank in life, and the whole circumstances of the parties might be such as that no jury could justly give more than nominal
\end{quote}

\begin{footnotes}
\item[16]\textit{Albany Law Journal} 3 (February 4, 1871), p. 134.

\item[17]120 \textit{English Reports} 695-706. In this case, Pollock argued, in dissent of the majority report, that the serious illness of the defendant was a good defense to a breach of promise to marry, because the "continuance of life is an implied condition" of a marriage contract. He concluded with the remark that "a view of the law which puts a contract of marriage on the same footing as a bargain for a horse, or a bale of goods, is not in accordance with the general feelings of mankind, and is supported by no authority," p. 706. It is interesting that the judges refused to go further in their verdict. They may have felt their views were "obvious," but since much of the arguing about the action centered on this issue (see Chapter Eight), this is unlikely. More probably, they wanted to avoid difficult questions and stick to more prosaic reasoning.
\end{footnotes}
damages for the breach of contract.\textsuperscript{18}

In other words, the condition was too open-ended; anything could happen before Knight's father actually died. Judgement was for the defendant, arresting the verdict from the earlier trial.

Although Kelly tried to discriminate between Frost and Hochster, legal observers felt that the decision had overturned the earlier case; as The Law Times said, Hochster "has been virtually declared bad law . . ." The editors went on to point out the many flaws in the reasoning of the court's decision, particularly as regards the position of the plaintiff. Was she to wait indefinitely to sue the defendant, even if his father did not die for another ten years? What if she married in that time; or was she supposed to stay on the shelf for several more years to be able to sue? Was this not compounding her injury? Knight had told Polly bluntly that he did not intend to marry her; this ended the contract then and there, if Hochster was to be followed. As to the question of damages, the jury could simply consider the same thing they always had, particularly the fact that Polly Frost had lost an establishment which was certainly above her present station, as well as suffering a more personal loss. The editors concluded that "the judgement of the Court of Exchequer in that case cannot be relied on as giving a correct statement of the law."\textsuperscript{19}

The editors of The Law Times were correct. Polly appealed the judgement to the Exchequer Chamber and the court decided the case in

\textsuperscript{18}Albany Law Journal 3 (February 4, 1871), pp. 134 and 136; entire case found on pp. 133-137.

\textsuperscript{19}Law Times 50 (1870-71), pp. 113-114.
February of 1872. The Chamber unanimously reversed the decision of the lower court, finding no significant difference between mercantile contracts and contracts of marriage. Lord Chief Justice Cockburn argued instead that

The contract having been thus broken by the promisor, and treated as broken by the promisee, performance at the appointed time becomes excluded, and the breach by reason of the future non-performance becomes virtually involved in the action as one of the consequences of the repudiation of the contract; and the eventual non-performance may therefore, by anticipation, be treated as a cause of action . . .

Furthermore, the court rejected the idea that somehow a woman's loss of marriage was not as difficult for her as a loss of business. Instead, Cockburn insisted that the loss of marriage was far worse than a mere business loss, especially for the weaker sex:

To the woman, more especially, it is all-important that the relation shall not be put an end to. Independently of the mental pain occasioned by the abrupt termination of such an engagement, the fact of its existence, if followed by such a termination, must necessarily operate to her serious disadvantage. During its continuance others will naturally be deterred from approaching her with matrimonial intentions; nor could she admit of such approaches, if made; while the breaking off of the engagement is too apt to cause a slur upon one who has been thus treated. . . . 207

After two years of legal battles, then, Polly Frost finally received her £200.

A chorus of approval greeted the decision when it was announced. The Law Times patted itself on the back for having insisted correctly that the earlier decision should go, ending by predicting "the law on this important subject in not likely to be again unsettled." The Solicitor's Journal also approved of the new decision, arguing "If such a contract [of

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marriage] is once recognised as of a pecuniary value, no reason can be
given why it should be placed in any different position from other
contracts in respect of its breach," and adding that "the distinction
supposed to be found between a contract for marriage and other kinds of
contracts is merely superficial." Some women’s advocates also agreed with
the decision. Kenningale Cook, of Woman, called the earlier decision "a
striking example of base subtlety," but happily congratulated the
Exchequer Chamber on its better judgment. She concluded, "This will tend
to the better protection of women, and the new turn given to the action
of the law is a move in the right direction, being a recognition of what
is due to the living spirit of a bargain, over and above what is accorded
to its mere legal letter." 21 In fact, the only negative note about the
case came much later, in 1889, when John Popplestone published a satirical
poem based on the case for the humorous American legal magazine, Green
Bag. The poem was full of amusing verses, such as:

"He took my love, nor recked the cost;
My heart was warm to him, my Knight.
He took away the warmth and light,
And left me an unchanging Frost.
**    **
"I know him now. I never knew
Till now how false his suit could be
He says he ne'er will wed with me,
And shall I not for vengeance sue?
**    **
"Love did the wrong the law redressed,
I take the gold the jury gave;
No more the love he vowed I crave,
The gold I have, methinks, is best.

21 Law Times 52 (February 17, 1872), p. 287; Solicitor’s Journal and
Reporter 16 (February 17, 1872), p. 280; Kenningale Cook, "A Point of
Law," Woman 1 (February 17, 1872), pp. 75-76; first quote from p. 75,
second from p. 76. The argument over the nature of marriage had always
been a part of breach of promise suits and continued to be until its
abolition. This controversy is analyzed in Chapter 8.
**   **
"This truth the student shall recall,
Who reads of Angelina Frost:
'Tis Better to have loved and lost
Than never to have loved at all."22

Except for this half-serious ditty, however, the court's decision was
greeted with enthusiastic approval.

_Frost v. Knight_ illustrates one of the central paradoxes of breach
of promise actions. In order to bring this action, women had to assume
(and hope that the courts did as well) that the marriage contract could
be treated in a similar manner to all other contracts. They were, in
fact, arguing that it did not differ significantly from commercial
bargains, and that women had a pecuniary loss when they were unable to
marry their fiancés. The men, on the other hand, tried to convince the
courts (and lawmakers) that the marriage contract was different from
others, that it was a bond based on affection, religion, and one that
would last for a lifetime. They therefore did not see the breaking of a
marriage promise as similar to the flouting of a business contract. Such
a difference was based partly on the legal needs of both sides, but it
mirrored the different approach to marriage that men and women sometimes
had. Women, because of their lack of economic opportunities in Victorian
Britain, had to look upon marriage as their best opportunity for material,
as well as social and intellectual, fulfillment in life. A man had his
work, but a woman's life centered on her home. And because of the power
of the husband in the marriage bond, a woman had to be practical in her

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22 John Popplestone, "Frost v. Knight," _Green Bag_ 1 (1889), pp. 161-
62; calling Polly "Angelina" in the last stanza is a reference to Gilbert
and Sullivan's heroine in _Trial by Jury_, an operetta about a breach of
promise suit. For more on _Trial by Jury_, see Chapter Ten.
choice of a life partner. Women, therefore, were looking for the best possible bargain; although men wanted good housekeepers, they had more scope for trying to marry for love and affection. Only heiresses and some widows found such freedom in the female sex. It is not surprising, then, that most men supported a view of marriage as simply a romantic relationship, while most women saw it as a great deal more than that. Considering their hardships, it is difficult to not to agree that in some cases, gold was better than love, and women would have been foolhardy not to consider the material side of matrimony.²³

Polly Frost's experience showed that even a woman of humble station could win a complicated lawsuit. The third case study is also an example of a cross-class courtship, this time involving a peer and an actress.²⁴

Emily May Finney had been born into a middle class family; her father was a businessman in the City. Early in his daughter's life, however, Mr. Finney ran into business difficulties, and Emily had to decide on a career of her own. She chose to go on the stage, and she made her debut in Gilbert and Sullivan's Patience in 1881. She was not an immediate star,

²³See also John Gillis, For Better, For Worse: British Marriages, 1600 to the Present (Oxford: Oxford University Press, 1985), pp. 286-92 where he makes the same point about working-class couples. "Though supposedly the more romantic sex, the female actually had the more practical view of marriage," p. 287. This was, in fact, one of the main criticisms of marriage in the late Victorian and Edwardian period. For instance, Cicily Hamilton, in 1909, insisted that women had a "double motive" in marriage, both love and survival. Only men could marry solely for love, since they did not have to marry at all, Marriage as a Trade (London: The Woman's Press, 1981), pp. 28-29. For more on women's arguments on the action, see Chapter 9.

but she performed well and went on to make quite a good living out of the
stage. In the summer of 1882, she was performing as Celia in the operetta
Jolanthe, and there she caught the eye of a great Gilbert and Sullivan
fan, Viscount Garmoyle, eldest son of Lord Cairns (a man who had twice
served as Lord Chancellor of England). Garmoyle was pursuing a career in
the army (with less than exemplary energy) and spent most of his time at
the theatre. For the next few weeks, he tried to meet Emily, finally
succeeding at the house of a mutual friend.

The two found an immediate rapport and spent a great deal of time
together from then on. At the end of the summer, Garmoyle asked Miss
Finney to marry him, and she agreed, but insisted that he get the approval
of his parents first. Surprisingly, his parents expressed few objections.
Lady Cairns, in fact, wrote a charming letter to her future daughter-in-
law, saying, "I think I have no greater hope than that you and my beloved
son will be really happy, and there is a kindly desire to further his and
your interests on the part of every member of his family."25 Lord Cairns
was less enthusiastic, but he did not have serious objections. The couple
began planning for a wedding in July of 1883, but at this point,
Garmoyle’s parents at last expressed some doubts. They did not object to
Emily herself, but to her profession, which Lord Cairns had always
regarded as "frivolous, ungodly, and profane."26 Miss Finney,
understanding their objections, volunteered to leave the stage immediately
in order to please her future in-laws; her sister, who was preparing to
go on the stage as well, also pledged not to enter the acting profession.

25Wyndham, Blotted 'Scrutcheons, p. 132.

26Wyndham, Blotted 'Scrutcheons, p. 133.
Lord and Lady Cairns expressed themselves as quite pleased with her decision and invited Emily to stay with the family in Scotland.

However, Garmoyle's parents then began to admit to doubts about their son rather than their son's fiancée. Lord Cairns urged Garmoyle to finish his army training before he embarked on matrimony. This meant a long delay, since the young man had barely begun his studies. Nevertheless, Emily gamely agreed to the suggestion, since she did not want to damage her lover's prospects in the world, and Garmoyle went back to his regiment. He found time to go to London and see her fairly often and made several gifts to her. Emily worried that he spent too much money on her, and wrote him, asking that he not buy her any more trinkets because she wanted their association to work. Her reasons also showed that she knew their relationship to be unusual:

We are bound to make it a great success for each, so that every man and woman in perhaps somewhat similar positions may say, 'These two took their lives into their own keeping, and gave up many things for the sake of each other. They have made it a success, and so we will try also.' It seems to me that it is rather a good thing in life to have been able to help other people to be strong, brave, and happy, doing what is right. Remember what you have told me—that I am the only woman who ever wanted you to do that..."\(^{27}\)

Their relationship continued smoothly until December of 1883. Lord and Lady Cairns had invited Emily to spend Christmas with them, and she was on her way when Garmoyle stopped her, saying that his parents were ill. Emily then decided to go to Brighton instead, and her lover joined her there. After a few weeks together they parted, and shortly afterwards, Garmoyle wrote to her, breaking off the engagement.

Garmoyle gave as his reasons that she would never be accepted by his

\(^{27}\) Wyndham, Blotted 'Scrutcheon', p. 135.
family and at court; his parents may very well have been putting renewed pressure on him to end the engagement, but they were not prepared to forbid the marriage altogether, so this explanation was not convincing. Emily demanded a complete accounting, but Garmoyle avoided her by leaving the country for an extended tour of Europe. Miss Finney then sued him for breach of promise, citing damages of £30,000. She also returned to the stage since she again had to earn her own living. Garmoyle's attorneys admitted the promise, but left the amount of damages to be settled by the jury. In the meantime, Lord Cairns began to try to settle the matter out of court, first for £2000 and then for £4000. Emily would have none of it, writing to her ex-lover that she was "not simply a pretty brainless doll."28 She instead insisted that her honor be vindicated before a jury in a court of law.

The case garnered a great deal of publicity across the Atlantic, although the British press was somewhat restrained. American journalists, not intimidated by fears of alienating the social hierarchy, had a field day, printing numerous "interviews" with everyone involved. Some of their insights from these conversations included the following:

"How was Miss Fortescue received by the earl and countess?" demanded our special representative.

"Warmly. The house was full of nobles and notables, who all made much of her." . . .

"Did his lordship appear sorry that the engagement was off?"

"Yes, he wrote that his heart was broken."

"Beyond repair?"

"I don't think so, because he managed to carry the

pieces to Connie Gilchrist's birthday-party."\textsuperscript{29}

People in society found the matter diverting as well. Mrs. Hardman, wife of Sir W. Hardman, wrote in her diary, "the Prime Minister and the Lord Chancellor [Lord Cairns] having got into such scrapes as they have, nothing remains now but for the Queen to elope with the Archbishop of Canterbury."\textsuperscript{30} The case did not get a trial date until November of 1884, and the courtroom was overflowing with members of both the theatrical set and the members of society when it finally came to trial.

The editor of \textit{Pump Court}, a legal journal, predicted that the case would not be treated as an ordinary action, saying "In cases like this, a defendant sometimes cheats the ghouls of society by allowing judgement to go by default, and the damages are then assessed in the Sheriffs' Court."\textsuperscript{31} Lord Garmoyle did not decide to go that route, but he did substantially settle matters before the jury trial. He instructed his legal counsel to read a letter to the jury from him, absolving Emily Finney of any blame in the break-up of the relationship, and consenting to a verdict of £10,000 against himself. All Emily's barrister, Charles Russell, had to do was present her side of the case in his opening speech; Henry James, for the defense, then read the letter, stressing that "during the whole period of his engagement to this lady, there was nothing in her conduct in any way unbecoming a high-minded English gentlewoman." Although the large gallery was disappointed, Emily was apparently

\textsuperscript{29}Wyndham, \textit{Blotted 'Scrutcheons}, p. 139.


\textsuperscript{31}\textit{Pump Court} 2 (April, 1884), p. 161.
satisfied; she brought a novel to the trial and periodically read it. The jury, following Justice Manisty's short summation, promptly found for the plaintiff for £10,000.32

Most of the public sympathy after the trial was with Emily Finney, although the reaction of the daily press was mixed. Not surprisingly, the theatrical journals had little good to say about Garmoyle. One referred to his conduct as "coarse" and "shameful," behavior that "admits of no possible excuse." Another described the unfortunate nobleman as "clearly a simpleton, and a very weak-minded young gentleman, notwithstanding that in course of time he will become one of our hereditary legislators ..." The World drew larger conclusions, predicting that "The exemplary damages which, by mutual consent, were awarded to the plaintiff will operate as a peremptory admonition to brainless boobies of position not to philander after their inferiors, and especially after actresses."33 Non-theatrical publications had different reasons for disapproving. One working class journal criticized the action from an entirely different point of view, seeing such awards as a criminal waste of money in a nation of poor people:

This [the £10,000] represents the wages of one hundred skilled artisans in full employment for one year, of one hundred unskilled labourers in full employment for two years, and of one hundred agricultural labourers in full work for three years. Just fancy; all that hard toil has to be gone through in order that a pretty actress should be paid for being jilted by a 'masher.'34

Though outnumbered, there were those who took a more tolerant view. One

32 Wyndham, Blotted 'Scutcheons, pp. 141-44.

33 Wyndham, Blotted 'Scutcheons, p. 146.

34 Justice: The Organ of Social Democracy (November 29, 1884), p. 5.
theatrical journal argued that "Lord Garmoyle behaved just like a perfect gentleman." The Times also expressed appreciation for the way that the matter was handled during the trial. If there had to be breach of promise cases, let them all be done in this "honourable" way, without all the salacious revelations and attempts to destroy each other's reputations.\textsuperscript{35} Interestingly, the reactions of the press in Finney were the opposite of their opinions in Smith. In Emily's case, they sympathized with her, despite the fact that she wanted to marry out of her "station." The difference was between the "correct" behavior of Emily and the way that her ex-lover chose to react to her suit.

A few months after the trial, Lord Garmoyle got engaged to woman who fit in more suitably with his noble relations. In all probability, it was this new woman in his life that prompted him to jilt Emily Finney, and not the pressure of his family.\textsuperscript{36} Nevertheless, one should not discount the effectiveness of his parents' subtle delaying campaign. Lord and Lady Cairns wisely did not oppose the match outright and were exceedingly kind to their son's fiancee. Yet they put up enough barriers to a quick wedding that their son eventually married a more suitable woman. Their actions are perfect examples of the influence that parents had in the late nineteenth century: they could not stop the engagement, but they were highly effective at stopping the wedding. Such parental reaction, then, was not confined to one class or the other; all classes tried subtle means rather than outright refusals. Still, they could not have succeeded

\textsuperscript{35}Wyndham, \textit{Blotted 'Scrutcheons}, p. 147; Times, November 21, 1884, p. 9.

\textsuperscript{36}Wyndham, \textit{Blotted 'Scrutcheons}, pp. 147-48.
unless their son had made the decision on his own to marry someone else. Parents had great influence, but it only went so far.  

*Finney v. Garmoyle* also illustrates how breach of promise actions could be used to exonerate a woman’s (or man’s) reputation. Garmoyle did feel that he owed Emily something for the wrong he had inflicted upon her. Yet, he could not simply give her a large amount of money without the public putting the worst possible construction on his actions. Since Miss Finney had always behaved with perfect propriety, this would have damaged her more than the broken engagement itself. This was one reason that she refused to accept Lord Cairns’ two offers at a settlement before the trial; she insisted that a jury hear her side of the story. Even after the arrangement with Garmoyle was concluded, she wanted the matter discussed in court before she took the award. Breach of promise served as an honorable way for a man to compensate his fiancee for jilting her without bringing any disrepute on her.  

*Finney v. Garmoyle* is also a good example of the way the upper classes dealt with troublesome situations. Though the action eventually did go to trial, the aristocratic family involved took as many steps as possible to lesson the damage. When the attempts to settle out of court failed, Lord Cairns employed Sir Henry James as his son’s counsel, and James did his best to put as good a face on matters as possible to the jury and (by extension) to the press. For example, before the trial, Lord Garmoyle paid forty shillings into court; so that his action would not be

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37 There were times that upper class parents flatly vetoed potential mates, but most of these instances were early in the century. Joan Perkin, *Women and Marriage in Nineteenth-Century England* (London: Routledge, 1989), pp. 60-64.
misunderstood, he also attached the following notice:

Take notice that the defendant admits the promise and breach as alleged in the statement of claim, and that he defends this action only so far as is necessary for the ascertainment of damages, and that the above-mentioned sum of forty shillings is stated pro forma only, and not as in any other manner the measure of any damages to which the plaintiff may be entitled.38

And, of course, when it came to actual determination of the damages, the earl’s son offered a highly generous settlement, the highest award of a breach of promise action to that time. He knew enough not to be tight-fisted at that point. He thus came out of the scandal somewhat redeemed at having paid for his mistake in jilting Miss Finney, and she had a tidy sum to help her survive the uncertainties of a theatrical career.

Finally, Emily Finney’s case demonstrates the improved social status of actresses in Victorian society. In the last half of the 19th century, more and more actors and actresses appeared in "society," as their profession stopped being regarded automatically as only a step from beggars and thieves. The Times, in an editorial on the case, gave its approval of the social rise of the theatrical profession:

It is not the first time by any means that the sons of peers have engaged themselves to actresses. A study of the peerage would show that this was no very rare incident. But the case with which it is now taken for granted that such alliances are natural is somewhat novel. The actor and the actress, if fairly successful in their art, are no longer social ciphers.

Although Garmoyle’s parents had been reluctant to accept an actress as a daughter-in-law, they and their son willingly exonerated her from any blame in a public trial. Furthermore, most of the press and public had

38Wyndham, Blotted 'Scrutcheons, p. 140.
more sympathy for her than for her noble-born fiancé. Although she had undoubtedly lost a chance at an enjoyable future, Emily May Finney was one of the few women who sued for breach of promise whose loss was not devastating to her life; Finney v. Garmoyle may have been the only truly "victimless" breach of promise case.

The fourth case study, on the other hand, was a clear case of victimization and demonstrated the difficulties of women under the law in Victorian society. Frances Jennie Day was the daughter of a postal inspector in Birmingham; her family was highly respectable and well-known in the local society. Her parents had her educated, and Frances showed a great aptitude for music; by the time she had reached her early twenties, she had received several scholarships from the London Academy of Music. In 1878, when she was 23, she seemed to have a bright future, and she lived at home and tended to her invalid mother. Morris Roberts was a neighbor; his business, the Sherbourne Hotel, was near to the Days' home, and he was a frequent visitor. Frances and Morris began to see each other secretly, because both knew that her father would never have approved of Morris as a suitor, due to his lower social standing and his much older age (he was 48 years old then). Furthermore, Roberts had a criminal record; when he came to Birmingham, he had just been released from prison on a perjury charge (he served twelve months), and many years


40 Day v. Roberts, Woman (March 29, 1890), p. 1; Birmingham Daily Gazette, March 25, 1890, p. 6; March 26, 1890, p. 3; March 27, 1890, p. 6.
before he had served eleven months for passing "base coin." It is unclear why Frances was attracted to Morris Roberts, but perhaps she saw him as a way to escape the confines of her parents home; she probably had to serve as mistress of the household, since her mother was bedridden.

For two years, the couple kept up their clandestine relationship, until Morris talked Frances into eloping with him. Once she had agreed, the two of them went through a marriage ceremony at the Hotel on March 16, 1880. The man officiating posed as a "registrar," and he read the marriage services, while Morris produced a ring and purchased a phony certificate from the "registrar." They then had a lavish wedding breakfast (including champagne), and Morris invited all of Frances' former servants in order to make her new status as a married woman clear from the first. The newlyweds set up housekeeping in Birmingham, near Roberts’ Hotel; several people saw the wedding certificate that the new bride carefully kept among her things. Morris' business partner, however, was a man named George Tibbets who just happened to be Roberts' brother-in-law. George disliked the deception that his partner had practiced on his young bride, and in 1881, he admitted to Frances that Morris had married his sister Elizabeth (nicknamed Fannie) twenty years before and that Fannie was still very much alive. He ended ominously that "Morris Roberts will serve you as he had served the rest."

Understandably, Frances found this news distressing. She hurried to her "husband," and questioned him about it; although Morris denied it at first, accusing George of being drunk, he finally broke down and admitted that he had married her bigamously. He then blamed Fannie for the break-up, saying she had run away from him soon after the marriage,
and he claimed that his bad conduct was motivated by his great love for Frances, saying, "I wanted you, and I dared not be married at the registrar's or in church." He tried to comfort Frances by insisting that since his wife had deserted him over seven years before, he could legally marry again without a divorce, a common, but erroneous belief among the lower classes in England.41 Frances was not satisfied, but there was little that she could do, compromised as she was by having lived with a married man.

In May of 1881, George Tibbits visited with the welcome news that his sister had since died. Morris was delighted, saying, "That will make our marriage legal, for she was dead at the time I went through the form of marriage with you." But he soon realized that he was wrong; he had known his wife to be alive when he "married" Frances. He suddenly became afraid that he could be prosecuted for bigamy and he demanded the certificate back from his "wife." Frances, realizing that the certificate was her only trump card, refused to give it up. She told Morris that he could have it back as soon as he had married her "properly." Morris, infuriated, replied by striking her, but Frances did not become intimidated. The certificate, she repeated, was her "hostage" until they got married for real.

Thus out-maneuvered, Morris made arrangements to marry his second wife a second time. On May 30, 1881, he went to the Registrar of Marriages and filled out the forms to declare himself a widower. He and Frances moved in December of that same year to Brixton, London, presumably for the privacy, since they would hardly want it known that they were

having to repeat their marriage. \footnote{Similar needs for privacy motivated numerous couples, even those of lower social standing, John Gillis, \textit{For Better, For Worse}, pp. 192-96, though it was more common in the early part of the century.} May 23, 1882, they married at the Lambeth Registry Office, Morris declaring himself as a bachelor on the forms. He then finally succeeded in getting the first certificate from his "wife," and destroyed it immediately. The next year the two returned to Birmingham and to Roberts' hotel; they lived in the hotel for the rest of their married life.

The next few years were miserable ones for Frances. Morris was unfaithful numerous times with the servants in the hotel; when she complained about this (or anything else), he beat her. More than once, she had a miscarriage due to his ill-treatment. Yet, she did not leave him, despite her more refined upbringing and the fact that she had plenty of evidence for a divorce (both adultery and physical cruelty). She stayed with him, she claimed, "because she believed she was his lawful wife." In April, 1887, the climax to the violence came. Morris assaulted her twice, once at seven in the evening, and again at ten p.m. that same night. Although she was pregnant, he "caught her in the passage by the hair of her head and punished her with his right hand, and also kicked her" in the stomach. When she threatened to call the police, he replied, "You ----, you can do your worst and do your best. If you took a summons out against me you should never live to appear. You are not my wife." Finally, he locked her out of the house completely. One of the guests eventually let her back in, and she spent the night in the scullery. Only one good thing came of her terrible ordeal: "She had now come to the conclusion that she could remain with this man no longer." She went where
any other middle class woman would go in the 19th century— to her parents' home in Bromegrove.

Frances had no money at all by the time she left her "husband," so she set about trying to get some kind of allowance from him. On one of her trips to her solicitor, she became very ill at the railway station and collapsed. Although she was rushed to a doctor, she had another miscarriage, probably because of the last two beatings she had received from the child's father. Apparently, her family would not or could not support her, for she eventually went to the Selly Oak Workhouse for support. The governors there tried to force her husband to pay maintenance; at this point, Morris made good his threat to bring up his first wife, and he refused to contribute to Frances' future because he was not legally her husband. He eventually gave her £20, out of which he deducted £1. 6s. that she had taken with her when she left; she paid £8 to her legal counsel. This left her with only £10 on which to rebuild her life.

Frances decided at this point to go on the offensive. She met with a solicitor and began to formulate her court case; eventually, she would sue Morris Roberts for breach of promise, assault, slander and fraud. She also began to try to support herself by canvassing for an insurance company. Morris, in defense of himself, tried to cover his tracks. First he began to institute divorce proceedings against Elizabeth Tibbits, who was indeed still alive in 1889. He also began a clever campaign of intimidation against his former "wife." For example, he sent her a valentine with a picture of a fat old woman, weeping, (who was clearly meant to represent her) with the inscription:
You see what a brandy-drinking, thieving, lying, fortune-
telling painted harlot and crying hag I have become. Like
Lucifer, I have fallen never to rise. Well, it serves me
right! Where are my friends, rag-tag and bob-tailed lot. I
robbed my best friend.

He also sent her a purse with a envelope containing more insults in it,
among other items. He sent his last missive to her workplace, addressed
to her with an obscene name, with a naked threat: "I have found you out
pretending to get your living by your book, and walking the street. Your
fate will be like the Whitechapel tragedy if you dare to go to London."
This was clearly a reference to the murders of Jack the Ripper and was a
threat to do the same to her.43

Frances Day bore up under this new campaign surprisingly well. She
persevered in her legal actions. First, she tried to have Morris
convicted of bigamy; to keep this from happening, Morris compromised with
her through solicitors, offering her £20. She decided not to accept it,
though, realizing that she could get nothing from him if he were
imprisoned. Instead, she instituted civil proceedings, having writs
served for assault, breach of promise, fraud, and slander. These charges
were heard together in the Spring Assizes at Birmingham from March 24 to
26, 1890 before Baron Huddleston. Day's barrister was Mr. C.J. Darling,
a queen's counsel and member of Parliament, assisted by Mr. J. S.
Pritchett and Mr. J. Morrison.44 Roberts retained Mr. Alfred Young and

43Using the legend of Jack the Ripper to control women was a common
phenomenon, according to Judith Walkowitz, "Jack the Ripper and the Myth
of Male Violence," Feminist Studies 8 (Fall, 1982), pp. 558-566; entire
article on pp. 542-574.

44Since Day was apparently penniless, her counsel must have taken her
case "on spec," assuming that the defendant would end up paying the costs
of the action or that her award would be high enough to cover her
expenses. Since Morris was fairly well-off, and Day had an emotionally-
Mr. Stubbins for the defense. The entire first day was taken up with the plaintiff's story and cross-examination; the second day, various witnesses supported her statement, although, interestingly, no one in her family came to support her. Mr. Stubbins then began the case for the defense that lasted into the next day. The judge summed up after the break for "luncheon," and the jury deliberated for twenty minutes before reaching a verdict. All in all, Day v. Roberts took almost a full three days to be heard.

Frances' testimony followed the story outlined above--the runaway marriage, her husband's deception, the second phony wedding, the beatings, her final humiliation. Morris' defense centered on two lines: he painted Frances as an unchaste woman before he met her, and denied any evidence of physical violence. Morris contended that he truly believed his first wife to be dead by the early 1880s. Frances, he claimed, wanted to run away with him, and did not press him to marry her until much later. In fact, she had given birth to twins before she had even met him, and she carried on "immoral intercourse" with him well before they ran away together. She forced Morris to go through the first phony ceremony so she could fool her father with the certificate. He only went through the second ceremony because she "pestered" him about it and he truly believed Elizabeth had died; he even went so far as to accuse Frances of lying to him by saying that she had proof that Elizabeth was dead.

Moreover, he claimed that he was the miserable one in the marriage. Frances drank all of the time; he was finally driven to pushing her out of his room one night because she was making a scene in the bar. He charged case, the gamble was a reasonable one.
denied ever kicking or beating her, though, and insisted that she ran away on her own. He had given her £20, which was supposed to settle all claims she had against him. Carefully questioned, he admitted that he had sent the ugly valentine and the other letters to her, though he tried to excuse this behavior by saying that she sent similar things to him (but he could not produced any such items). Various witnesses testified to the immoral conduct of the couple and to deny any injury to Frances after Morris' last beating.

Darling had something of a field day cross-examining the defendant. He made a great deal of Roberts' previous convictions, particularly the one for perjury. He strengthened his contention that Morris was a liar by bringing up an old barmaid of Roberts', named Elizabeth Francis. Roberts had accused Elizabeth of theft, and she had replied by suing him for malicious prosecution and winning £150. Morris insisted he was innocent of "planting" the goods in Elizabeth's boxes, but she was able to convince the jury that her story was true. Ironically, Darling was the junior counsel for Miss Francis and neither he nor Roberts had forgotten the previous meeting, much to the amusement of Baron Huddleston and the court. Morris was very evasive during all of his questioning; he said "I don't remember" several times, even to innocuous questions like "when did your brother die?" Huddleston was driven to comment on these unhelpful replies:

The Judge: "I don't recollect" is the refuge which witnesses take when they want to avoid being committed for perjury.
Mr. Darling: Especially when they have been convicted, my lord—(laughter).
Witness: I can't swear. I have had so much trouble during this last nine months that I can't recollect things.
Mr. Darling: You have been giving evidence for an hour—
Witness [Roberts]: I have been doing the best in my power. I am 60 years of age, you know.
The Judge: So am I; I'm 75.45

Not surprisingly, the jury did not believe Morris' side of the story in the least. After a masterful final speech by Darling, and Huddleston's summation, which was firmly for the plaintiff, the jury returned with a verdict for the plaintiff on all of the charges. The damages were assessed as follows: £700 for the breach of promise, £1000 for fraud, £700 for assault, and £100 for slander, making a total of £2500. Huddleston also gave her costs, and "the announcement of the verdict was received by applause from the crowded court, a number of the spectators clapping their hands heartily."

Day v. Roberts is a classic example of the protection breach of promise gave to women who had been married fraudulently. Even if Frances had not been assaulted or sent threatening letters, she could have sued Morris Roberts for failing to keep his word. In this way, it was quite similar to the 20th century case, Shaw v. Shaw, discussed previously.46 After seven years living with Roberts, Frances Jennie Day had lost her health, her reputation, and any hope of a musical career. She probably would never marry again after having lived with another man without benefit of clergy. Apparently, she had also lost the support of her family, since they not only allowed her to go to the workhouse, but did not come to testify on her behalf at the trial either. Her mother was an invalid,

45Besides showing the obvious bias of the judge for the plaintiff, this exchange illustrates the scope that nineteenth-century judges had in their courtrooms. Such a display would be unacceptable in modern-day courts.

46See Chapter One.
which explains her absence, but her father also did not appear. Perhaps, after having endured a horrible scandal despite his hard-earned respectability, Mr. Day found his daughter's elopement impossible to forgive, particularly since he had warned her against Roberts. Whatever the reason, Day had lost almost everything important to her by 1887, and breach of promise gave her a way to strike back.

Like many divorce proceedings, the case shows the toll that the Victorian views of marriage and pre-marital chastity took on women. Frances felt she had no choice but to remain with Morris through thick and thin once she had slept with him. When questioned why she went on living with him when she knew he was still married, she replied, "What was I to do?" As long as there was a chance that he would make an honest woman of her, she felt she had to stay with him. Once they were "married," she put up with infidelities, threats, and beatings, as well as repeated miscarriages, because she "believed she was his lawful wife." She did not try to separate from him until he had kicked her out. Nothing could speak plainer about women's lack of power within the marriage bond because of sexual and economic imbalances. 47 And ultimately, Day's ability to overcome her powerlessness resulted from the fact that she was actually single, not married. Rather than relying on the pittance he could provide as alimony, she was able to sue him for large damages, and she did not have to worry that he would disappear without paying his alimony at some

47 A. James Hammerton has fruitfully explored the ambiguities of Victorian marriage in his unpublished paper "The Limits of Companionate Marriage," 1990. See also Carol Dyhouse, Feminism and the Family in England, 1880-1939 (Oxford: Basil Blackwell, 1989), in which she characterizes women's experience with home and family as one of "ambivalence" (p. 13).
future date. He might have tried to get out of paying the award, but during the trial he had admitted to property worth £20,000 and an income of £500 a year, so he would have difficulty hiding those assets. Furthermore, Frances had humiliated him in court; she was the victim, while he was a blackguard and a liar who earned the disgust of the judge, jury, and spectators. Nor did she have to go through the cumbersome Divorce Court in order to be free of him. Day’s case certainly made single life seem far more attractive than marriage to such an unmitigated brute.

At the best, Frances’ story was a cautionary tale to young women about the importance of choosing very, very carefully the men to whom they would give their lives. Most women wanted to marry in 19th century England; at least until late in the century, the spinster was a figure of ridicule and spite and there were only a few poorly-paid jobs with which a woman could support herself. But women also saw the danger of the power that men had within marriage and the difficulties of women in getting a divorce and in surviving afterwards.48 Day v. Roberts showed the ambivalence of marriage as an institution for women; many received great fulfillment from it, but others were its victims. Thus parents probably also saw it as a cautionary tale. Day’s experience probably confirmed parents in their right to choose the social partners of their children.

48This is why, e.g., so many women worked to reform the law of marriage in Victorian England, although their efforts were limited by their liberal bias, Mary Lyndon Shanley, Feminism, Marriage, and the Law in Victorian England, 1850-1895 (Princeton, New Jersey: Princeton University Press, 1989), see especially Chapters 1 and 2 and the Epilogue. See also the compromises that political wives made in Pat Jalland, Women, Marriage, and Politics, 1860-1914 (Oxford: Clarendon Press, 1986), pp. 221-249; and Joan Perkin’s discussion of the “gilded cage of bourgeois marriage” in Women and Marriage in Nineteenth-Century England, pp. 233-316.
carefully, although it also showed the weakness of parental pressure. Mr. Day could not stop his daughter from her crucial mistake; perhaps that is why he apparently never forgave her for it.

The last case study involved a relationship that spanned even more years, from the end of the Victorian era to the beginning of World War I. Minnie Magdalene Quirk was the daughter of a man in the shipping business; she was 24 years old in 1897. Her father had died, and Minnie still lived with her mother when she met Arthur William Thomas in that year. Thomas was a businessman (his business was never specified), and he was almost certainly much better off than his lover; his age was 42. The two saw each other for six months and soon became engaged. Arthur, however, insisted that they keep the engagement secret because his mother would not approve since Minnie was a Roman Catholic. After the engagement, in September of 1897, Arthur seduced Minnie "in her rooms at Swansea," and they had a sexual relationship for the next four years, during which they were still engaged. Arthur gave Minnie an engagement ring in December of 1897, which she wore until 1901.

In 1900, however, Arthur's mother and brother became aware of the extent of his attachment to Minnie, and they urged him to give her up. Arthur, claiming to be afraid of being cut off, began to see Minnie much less often. After a few months of this unsatisfactory state of affairs, the couple agreed mutually to break up, and in 1901, they went their separate ways. Both apparently saw the break as final, and Minnie

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49Quirk v. Thomas 1 Law Reports, King's Bench Division (1915), 516-41; Times, February 4, 1915, p. 5; February 6, 1915, p. 5; February 9, 1915, p. 3; February 10, 1916, p. 3; February 16, 1915, p. 3; March 20, 1915, p. 3.
returned the engagement ring at that time. She spent the next several years putting her life back on an even keel. A few months after the break-up, she went to London and established herself in a millinery. Arthur, too, was living in London, although she did not know that. In fact, the two of them did not see each other again until 1908; in that year, Minnie caught sight of her former fiance. She wrote to him on May 8th, trying to renew the acquaintance, though Arthur was less keen on the idea. Still, he felt some lingering affection or sense of responsibility, because he sent her £10 when she became ill and could not work, though he did not visit her.

In 1909, the two began to see each other again, and they eventually resumed their sexual relationship. Arthur again promised to marry her, and Minnie gave up her millinery business in 1910, at his request. She then spent all of her time with him, although she did not enjoy renewing the position of mistress rather than wife. In fact, she later admitted that the two of them met in unsavory places for their illicit intercourse. In the spring of 1911, she met Arthur for the last time in a "dubious place"; the experience was evidently so unpleasant that the couple had an argument. At any rate, Minnie never saw him again. In 1912, she wrote to him, pleading with him to make an honest woman of her, and absolutely refusing to go back to their old arrangement. She pointed out that she was no longer Roman Catholic so he could not use that excuse any longer; furthermore, at his age, he could not claim to be worried about his inheritance. She ended by pointing out to him that since she had given him her virtue, she could never marry anyone else. Arthur's reply was to offer her £90, which she indignantly refused.
Minnie's position was indeed serious at this point. She was now 40 years old and had neither her business nor her lover to support her. To rectify this situation, she turned to the law courts, and in 1913, she instituted proceedings for breach of promise of marriage. But Minnie had waited too long to take this step, because early in that year, Arthur died at the age of 58. Breach of promise actions automatically died with either the plaintiff or defendant, unless "special damages" could be proved (such as loss of business, financial outlay for the marriage, etc). At first, Minnie tried to appeal to the executors of the estate. She wrote them a begging letter on August 25, 1913, explaining her difficulties, and adding, "It is apparent to the most casual observer that my life has been spoilt by broken promises." The executors, knowing they owed her nothing at law, declined to help her. Minnie decided not to abandon her suit; instead, she sued the estate, and the court gave her leave to amend her claim to try to prove "special damages." She claimed that she had lost her business, having given it up in order to marry the defendant, and she deserved some compensation for this loss, since the business had been turning a profit.

In the assize trial, the jury awarded her £350, but the judge determined that she had not proved "special damage," because she divested herself of the business before Arthur's last promise (the only one for which she had corroboration). Minnie appealed, but the King's Bench agreed with Justice Lush, using even broader arguments. Lord Justice Swinfen Eady, e.g., declared

The action is really an action for a breach arising from personal conduct of the defendant and affecting the personality of the plaintiff... It is difficult to see how, in such a case, there can be a "special damage" properly
so called. The sounder view appears to be that the action will not lie in any case after the death of the promisor.\textsuperscript{50}

Justice Lush and Justice Pickford agreed with the verdict. Lush thought that "special damage" might be successful in some cases, but not in this one; Pickford, on the other hand, agreed with the Lord Justice that breach of promise cases could not survive the death of either party. Although breach of promise was a contract case, it was treated as a tort on the issue of the premature death of either of the parties until its abolition, because of the personal nature of the injury. Even when the law was amended in 1934, it only allowed for recovery of actual pecuniary loss, not punitive damages.\textsuperscript{51}

Minnie's story is a sad one in a number of ways; her experience was one of the few times that a breach of promise suit failed to protect a woman from sexual exploitation. Though the jury firmly believed her to be in the right, she gained nothing from her lawsuits except high legal fees, since she was denied the costs of the action. She never felt that she could be with any man other than Arthur, because she had had a sexual relationship with him, and at 42, even if she had been willing to marry someone else, her chances of finding another man were slim. Minnie was the woman with whom Arthur had his most enduring relationship; he had been with her, off and on, for eighteen years. But because she did not have the position of a widow, Minnie received nothing at his death. Her

\textsuperscript{50} Law Reports, King's Bench Division (1916), p. 527.

\textsuperscript{51} Law Reform (Miscellaneous Provisions) Act of 1934. For details, see Chapter One. This issue is a clear example of the mixture of contract and tort found in breach of promise; although brought as a breach of contract, the damages were for "wounded feelings" and "blighted hopes." Such a mixture was one reason for its unpopularity with some members of the legal elite (see Chapter Eight).
situation was similar to those women who lived with soldiers during World War I, but were refused the benefits the government gave to dependents of the soldiers because they could not produce marriage certificates. Relief workers told them "you went into this with your eyes open. You will just have to suffer." Minnie, too, suffered a lack of support just as she entered a difficult age at which to earn money.

Minnie Quirk embodied the ambiguities of breach of promise by her own actions. At the court trial, the defense counsel cross-examined her on her motives, asking her how she could forgive the cruelty of Arthur in using her the way he did. How could she be so long-suffering? Minnie's reply was "A woman always has to forgive." She thus summed up the weakness of a woman's position in the late Victorian age, particularly once she had slept with a man. And yet, Minnie did not remain a helpless victim forever. She, in fact, did not "always" forgive; by 1912, she had decided to take matters into her own hands and sued her ex-lover in the civil courts. She would likely have won, too, except for the unfortunate death of Arthur Thomas. Breach of promise cases may have shown the powerlessness of women in many romantic situations, but they also show a canny use of the law whenever possible, an aggressiveness, and a willingness to step out of the private domain. Minnie did not walk away from the trials with any monetary awards, but she did have the satisfaction of having asserted herself; she did not take rejection passively, as women were expected to do. Because of this, she and women like her were a challenge to Victorian culture, and they raised a debate about breach of promise that went on for over a century.

52Quoted from John Gillis, For Better, For Worse, p. 237.
CHAPTER EIGHT—"MERCENARY" WOMEN VS. "TREACHEROUS" MEN:
THE ARGUMENT OVER BREACH OF PROMISE OF MARRIAGE

On May 6, 1879, Mr. Farrer Herschell introduced a resolution in the House of Commons to abolish the action of breach of promise of marriage except in cases of pecuniary loss. His action gave the debate over the class of suit a national forum, but he was not the first to argue against it. In fact, breach of promise had been parodied as early as 1836 in Dickens' *The Pickwick Papers*, and by the 1850s, a growing number of MPs, legal scholars, and popular writers began to question the action's value. On the other hand, many people in the legal profession and Parliament, including many judges and almost all jurors, defended breach of promise vigorously. The debate centered on the nature of marriage, the roles of men and women in the family and society, and the definition of contracts and promises in the courts. Although never as divisive as larger arguments (such as those over divorce reform or the Married Women's Property Acts), the controversy over breach of promise illustrated tensions in Victorian values and judicial philosophy, both between and within society and the legal profession.

In a large measure, those who opposed breach of promise actions did so because they saw them as a threat to domesticity values in several ways. First, the class of suit violated the middle class ideal of marriage, since it put an economic valuation on something many people saw as personal, social, and religious. In other words, the contract of marriage was not the same as a commercial contract, despite the rulings of the courts over the preceding 200 years. The editor of the *Law Times* insisted in 1868 that "There is something very repulsive in the view of
marriage as a matter of business instead of affection, and in appraising the value of the settlement to which affairs of the heart legitimately lead." Herschell argued in the opening statement for his resolution that there was no "real similarity between the contract between persons who engaged to marry and any other kind of contract, inasmuch as the former alone bound the parties to an indissoluble union . . ." (Herschell was either ignoring the Divorce Act of 1857 here or recognizing its very limited scope.) A writer in the Journal of Jurisprudence pointed out that breach of promise actions adopted the old-fashioned view of marriage as a convenience, a position that Victorian Britain should have abandoned: "The best secular morality, too, has repudiated as emphatically as has Christianity that doctrine that marriage is an alliance of custom or convenience, to be lightly entered into or lightly broken, and has clearly recognised that upon marriage, and upon those family relations which spring from marriage, the whole stability of the State and of society depend." Charles MacColla, a barrister who wrote an entire book about breach of promise (published in 1879), insisted that by allowing this action, the law did not acknowledge the uniqueness of marriage, thereby undermining it and, consequently, society. "The welfare of the community can only be attained by elevating men's views of the marriage bond," he wrote, "and making it absolutely free from any coercion or avoidable restriction." His remarks contained an implicit assumption about what was a "higher" and a "lower" view of marriage, with the romantic ideal far
above a union based on monetary considerations.¹

More specifically, breach of promise threatened the axiom that companionate love was the only valid reason to marry and the primary guarantee of a successful marriage. Mr. Rodwell, an MP, argued forcefully in the 1879 debate:

The contract with which the Resolution dealt was not analogous to other contracts. The first foundation of an engagement of this kind was in "reciprocity." There should be mutual return of affection; and his argument was that the moment that affection ceased on one side or the other, it was for the good of both parties that the engagement should cease, and that there should be an end to a state of things which, instead of leading to comfort, would lead to discomfort, and to misery instead of happiness.

Breach of promise encouraged men and women to take part in marriages without love; such unions could not succeed and led to even greater evils—family violence, divorce, desertion, overly-long engagements. Herschell saw it as not only a problem for the couple but also for their children, for "how could they be properly brought up if there were not only a want of harmony but actual hostility between parents?" MacColla speculated that fear of a lawsuit could be one of the reasons there was a "shortage" of husbands for English gentlewomen; men avoided all appearances of courtship so they would not be forced into loveless matches. In light of this, it was absurd to punish "the man who refuses to make two lives miserable." James Bryce, a barrister, seconded that point. Even when not leading to actual divorce, he maintained, the threat of breach brought about something much worse: "the mischief of compelling or inducing a

person to enter unwillingly into the marriage state is far greater under our English law [as opposed to European practice], since it does not permit divorce except for very grave causes." In other words, two incompatible people could be stuck together for life. The only way to stop this evil was to make engagements a trial period rather than a binding contract: "there should be, and there should be recognized to be, a 'place for repentance' up to the very moment when the knot is tied," wrote J. Dundas White in 1894.2

A second way that breach of promise cases offended the Victorian domestic ideal was its use by women. Breach of promise was vulnerable to this type of criticism since it was almost always brought by women, though theoretically open to both sexes. Women were expected to be modest, chaste, passive, and morally superior to men; their "natural" role was as repositories of virtue and examples to the male sex. Simply by bringing the case in the first place, women violated these norms. Reformers, then, consistently portrayed the plaintiffs as "unladylike," insisting that no "decent" woman would accept pecuniary compensation for a broken heart, act so aggressively, or expose herself so shamelessly in an open courtroom. Their attitude is best exemplified by the reaction of the Law Times in 1868:

The really injured woman never seeks pecuniary damages for wounded affections. The very fact that a woman will go into a court and permit her heart's secrets to be exposed to public gaze, and her love's passages made the jest of counsel and the

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provocation to "shouts of laughter," is of itself proof that she is not a woman whom any man ought to be compelled to marry. The action, in fact, answers itself. "Your presence here's proof positive that you have no true womanly feelings to be outraged and therefore you have incurred no damages."\(^3\)

Most other opponents of the action agreed with this writer. Female plaintiffs were described by a series of unflattering terms: "clever and cunning," "designing," "unscrupulous," and "perverse."\(^4\) The editor of Pump Court stated in 1883 that "the class of women really intended to be protected from scoundrelism by the law seldom or never seek redress in court . . . those who do are pretty well able to protect themselves, and their feelings are not so sensitive as to be made the subject of sentimental damages, unrestrained by dry calculations of actual loss." Even those who in general supported the action admitted that "the woman who comes into court to sue . . . is not the most delicate of her sex, and is frequently not without blame in the matter."\(^5\)

The fact that women resorted to this action so frequently was, in

\(^3\)"The Action for Breach of Promise of Marriage," Law Times 45 (September 5, 1868), p. 340. This argument is essentially circular, much like the arguments against rape charges: no true lady would go to court to describe a rape because that fact that she could describe what took place meant that she was not a lady, and only a lady could be raped. In both cases, the arguments were used to shield men from the consequences of their actions.


\(^5\)"The Action for Breach," Pump Court 1 (December, 1883), p. 100; "The Action for Breach of Promise of Marriage," The Solicitor's Journal 25 (August 20, 1881), p. 791. See also Law 1 (November, 1874-April, 1875), pp. 58-59: "the mere fact that the lady insists upon having the law should make us consider whether she is entitled to recover more than what may be given by the strict law of contracts, without sentiment."
part, what damned it in the eyes of many men. In other words, the women were too successful; they not only went to court often, but they won most of the time and occasionally received quite substantial awards. The critics concluded, then, that women had an unfair advantage and must somehow be "cheating." One of MacColla's main complaints about breach of promise was that "The right of the action is frequently most scandalously abused," and most other reformers wholeheartedly agreed with him. Law journals were quick to print stories about cases which seemed ridiculous or unfair. For example, in 1886, Law Notes printed a story about a case in which both the plaintiff and defendant had married other people since breaking off with each other (the case was settled out of court). The Law Times published a scathing account of Haycocks v. Bishton, in which Eliza Haycocks apparently sued her landlord in order to get out of paying her rent. The editors concluded: "Fortunately for the defendant, the plaintiff was neither young nor pretty, and therefore did not . . . excite the sympathy of soft-hearted and soft-headed jurors." The Times newspaper, too, gave added space to suits that appeared wrong-headed. In May of 1880, the editors wrote a leading article on two actions, Sans v. Whalley and Jacobs v. Wolfe, characterizing both as "unaccountable." In the former, the Times portrayed the plaintiff as having tried her best to railroad the drunken defendant into a quick marriage; in the latter, the editors insisted that Mr. Wolfe had been tricked by his fiancee, who was younger and more avaricious than he thought. In Sans, the Times may have been correct; the couple did not know each other well, and Whalley was indeed too drunk to marry on their wedding day. But, on the other hand, there was no reason automatically to believe the defendant's side. In
Jacobs, the Times was clearly biased to the defendant, a man who engaged himself to a young woman to be a stepmother to his children and then decided she was too young and instead offered to marry her older sister. Nor did the editors see the significance of the awards in these two cases—the juries gave the first plaintiff only £25 and Jacobs only one farthing in damages. Surely this moderation showed that the action was working correctly, not being "abused," yet the Times ended the leader by demanding that "some process of discrimination" be applied to the action to stop such "extraordinary" suits.⁶

Furthermore, it did not escape the notice of the critics of the action that 25 percent of the cases involved the seduction of the plaintiff. In arguments that sounded much like the critics of the Old Poor Law, the reformers contended that breach of promise was rewarding women who had "fallen" by fining the men who had seduced them. Women were supposed to be morally and spiritually superior to men, but this class of suit was encouraging them to lose their virtue in order to catch a husband or make money. The editors of the Law Times declared:

Not only does it inflict injustice, but it encourages immorality. Many a cunning woman is tempted to entrap a man, in a weak moment, into a promise of marriage, by the hope, which this action encourages, that she will be enabled to pick his pocket. It offers a direct reward to mercenary parents

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as well as to scheming daughters. 7

Mr. Herschell urged the abolition of the suit in part because it would force women (though, of course, not men) to be "more careful and more robust in regard to their virtue." The Saturday Review went even further, demanding that all actions for seduction and breach of promise be eliminated in order to shore up the virtue of the female sex:

As to seduction, we believe that, strictly speaking, it is a very rare thing... But without seeking to apportion the guilt, we think that the weaker vessel might attain more moral strength, and farmers' daughters might receive a useful lesson, if... an unsuccessful action reminded them that they must look to other than legal safeguards of their honour; and they might shortly discover that the safest way to win a husband was not by speculating upon the chances of "its being all right some day." 8

Instead of encouraging vice, then, reformers wanted to force women to be virtuous or bear all of the consequences of their "fall." These arguments show a fear of female sexuality and power, despite their reference to women as the "weaker vessel." 9

These criticisms show an upper middle class bias and a complete misunderstanding of the nature of courtship in the lower middle and upper working classes. MacColla, in fact, stated bluntly, "The middle and lower middle classes of society alone can claim the honour of having in their

7Law Times 40 (February 25, 1865), p. 194.

8Hansard's Parliamentary Debates 245 (May 6, 1879), p. 1874; Saturday Review I-II (August 2, 1856), pp. 314-15; quote from p. 315. See also Pump Court 3 (March, 1886), p. 113: "It is well known that every single woman, of whatever grade, who has transgressed, endeavours to make out that she did so under promise of marriage, which is probably true about once in ten."

9This argument was very similar to that used to justify the bastardy clause of the New Poor Law, Ann Rowell Higginbotham, "The Unmarried Mother and Her Child in Victorian London, 1834-1914," Unpublished Dissertation (Indiana University, 1985), pp. 10-12.
circle persons who are not ashamed to apply love wholly and solely as an article of commerce and a mercenary snare—the action of breach of promise being practically unknown amongst the upper and lower ranks of society."10 The lower middle and upper working classes did not have the economic security of the middle and upper classes, nor the assured penury of the lower class. They had, therefore, only the most tenuous hold on hard-earned respectability. MacColla, and others like him, failed to see that awards in breach of promise cases meant the difference between eking out a respectable living and descending into unrespectability, as well as giving some measure of redemption to women who had "fallen" under a promise of marriage. Yet legal commentators insisted on seeing their actions as simple grabs for money. The Law Times pronounced in 1865 that any woman brazen enough to bring the action proved that "her objects were purely mercenary" and in 1868 that "As a matter of fact, nine-tenths of the actions for breach of promise of marriage are purely mercenary. The woman has first deliberately set a trap for the man, and caught him . . . and it is a matter of calculation that the victim must be bled somehow." J. Dundas White, too, characterized most of the considerations in these actions as "mercenary."11 None of these men seemed to understand the desperate plight of many of the plaintiffs or acknowledge any wrongdoing on the part of the defendants.

All through these comments on women and the lower middle and working classes, the writers used criminal imagery. Women were "mercenary," out

10MacColla, Breach of Promise, p. 57.

to "pick men's pockets," and they "trapped" their "victims." Most often, the men who opposed the action felt that breach of promise was little more than a legal form of blackmail. Herschell "regarded it as a perpetual fount of extortion and blackmail," and it was that conviction that prompted him to try to have it eliminated from the common law. These men did not regard the awards as justifiable in any sense; such money, in fact, was little better than stolen goods, since it was earned through "threats." Furthermore, many legal writers felt that breach of promise actions actively encouraged perjury and fraud (although they failed to object to any other actions, such as negligence suits, that also encouraged such crimes). The Law Times declared in 1870 that allowing the plaintiff and defendant to testify in breach of promise cases "would offer irresistible temptation to perjury" and that the class of suit "is made the instrument for extortion by knaves from fools." By "criminalizing" the women's behavior in bringing such suits, the critics portrayed men as victimized by the actions.

Finally, the opposition to breach of promise also reflected domestic values in its disgust with the public nature of the suit; this seemed to show a growing sense that the home and the family were private and should be separated from the public world. These men defended domesticity not so much against an intrusive "state" as against the press and nosy neighbors. Their fears of exposure were related to their accusations that plaintiffs in breach of promise suits were "blackmailers." Over the nineteenth century, the perception of blackmail changed from the threat

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of physical violence to a threat of exposure. This change was related to 
the Victorian need for "respectability" and "purity" in domestic life; 
such a value system left those who cherished their reputations all the 
more open to the threat of exposure and subsequent humiliation in the 
local and national press. Opponents of the action made their disgust 
with the press and public very clear. Colonel Makins, an MP, argued that 
the persons who would suffer most from abolition were attorneys and 
"proprietors of newspapers... the public also would be benefitted by 
the loss of much exciting and unwholesome reading." The editors of the 
Solicitor's Journal in 1881 ironically pointed out that abolition "would, 
in many small towns, really be almost a death blow to the assizes regarded 
from the dramatic point of view as a public entertainment." And, as 
mentioned before, the publicity of the class of suit was one reason these 
writers assumed that no "true" lady would bring it. Herschell, in fact, 
brought up the case of Heap v. Morris, in which the female defendant paid 
the plaintiff £1000 rather than have her love letters read in public as 
an example of the action's abuses. Similarly, the Law Journal quoted an 
American legal journal, deploring the public gloating over scandalous

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13 For a discussion of the change in the perception of blackmail, see 
W.H.D. Winder, "The Development of Blackmail," Modern Law Review (July, 
1941), pp. 21-50. Threats against reputations became more and more 
actionable in the early twentieth century, as judges insisted that 
"private and confidential" relationships be protected with secrecy. See 
Mike Hepworth, Blackmail: Publicity and Secrecy in Everyday Life (London: 
Routledge and Kegan Paul, 1975), pp. 32-45. Elaine Showalter found that 
the Victorian sensational press played on this fear of exposure by 
producing "novels-with-a-secret," works that implied that even the most 
respectable families harbored terrible skeletons in their closets; they 
also used the stereotype of women as the "dangerous sex." Showalter, 
"Family Secrets and Domestic Subversion: Rebellion in the Novels of the 
1860s," in Anthony S. Wohl, ed., The Victorian Family: Structure and 
article on pp. 101-116.
litigation, and concluding

There are a great many things that ought to be worse than death to a virtuous and sensitive woman; and among them should be a prosecution for breach of promise of marriage, with the unwinking sun of legal inquiry glaring upon the most secret and sacred passages of her life, and the Court-room's coarse curiosity, and its brutal ridicule of her holiest impulses.\textsuperscript{14}

These upper middle class professionals were frankly horrified at the privacy of the home being violated, no matter what the cause.

Opponents of breach of promise were defending "the family" as they understood it. As Herschell summed up in his opening statement: "If passed it [the resolution] would elevate men's views about the marriage bond; it would check much that was evil; and his firm conviction was that it would add to the well-being of the community."\textsuperscript{15} Domesticity was more important even than contract and individual responsibility. It is here that opponents like Herschell came into conflict with those who supported breach of promise suits. The latter were equally convinced of the importance of the marriage bond, but saw this as all the more reason to ensure that it was scrupulously enforced. They tended to argue for the rule of law, even in "private life," and from a protective and old-fashioned attitude toward women.

The betrothal promise, insisted the defenders of the action, though

\textsuperscript{14}Hansard's Parliamentary Debates 245 (May 6, 1879), p. 1867; "Sexual Litigation," Law Journal 12 (January 13, 1877), pp. 29-30; quote from p. 30. The American journal quoted from was the Albany Law Journal. Heap v. Morris is discussed in Chapter Six. See also Tom Fleming, Love and Courtship (Malton: Robert Russell, 1890), p. 12, where he calls breach of promise actions "extraordinary" and deplores that they "amuse the gaping readers of the newspapers."

\textsuperscript{15}Hansard's Parliamentary Debates 245 (May 6, 1879), p. 1867.
a very special one, was still a contract and had to be enforced. Otherwise, the validity of all other contracts could be called into question. Sir Hardinge Gifford, the Solicitor General, complained in 1879 that abolition was "a complete inversion of our jurisprudence; a breach of any contract, according to our ordinary rules of law, gave a right of action." These men assumed that to disappoint a woman in marriage was a particularly blatant injury because she lost her main opportunity in life, perhaps forever. True justice demanded that a jilted woman find redress; The Law Times insisted in 1868, "the law is bound to take cognisance of any willful injury inflicted by one person or another, and what injury is more willful than that of engaging the affections of a woman, exciting her expectations and hopes, and then disappointing them?" And besides the punitive damages, a woman would have lost the money she spent on the wedding and her trousseau, as well as (usually) having given up her job. Although these losses were not the main concern, they should be taken into account. A barrister, writing in reply to a Times editorial supporting abolition averred that a few silly or abused cases "are not sufficient reason for leaving one of the most practical and important of business

16 The contract to marry was not exactly the same as the contract of marriage, but the former was considered a binding contract. See, e.g., J.J.S. Wharton, An Exposition of the Laws Relating to the Women of England Showing Their Rights, Remedies, and Responsibilities in Every Position of Life (London: Longman, Brown, Green, and Longmans, 1853), pp. 212-13; and Barbara L.S. Bodichon, A Brief Summary, In Plain Language, of the Most Important Laws of England Concerning Women. Together with a Few Observations Thereon 3rd ed. (London: Trubner and Co., 1869), p. 8: "An agreement to marry . . . is a contract of betrothment, and either party can bring an action, upon a refusal to complete the contract, in a superior court of Common Law." Susan Staves has argued that the contract ideology of marriage developed strongly in the eighteenth century, but then declined again when its effects were "socially intolerable," Married Women’s Separate Property in England, 1660-1833 (Cambridge, Massachusetts: Harvard University Press, 1990), especially pp. 116-130; 164-170.
contracts without legal sanction . . . the proposed Bill would leave a
large number of industrious people without any security for the money
losses which they now incur on the faith of marriage contracts."\(^\text{17}\)

Far from undermining marriage, the threat of a lawsuit "makes an
engagement what it ought to be, a serious affair... Young men can not be
too deeply impressed with the serious nature of the step they take in
making a marriage engagement; and anything which would induce greater
levity in such matters would be a danger to public morals," the editors
of the *Law Times* insisted. *Chambers' Journal* agreed, stating, "but still
even this mercenary feeling may sometimes help to teach foolish flirts of
either sex that promises of wedlock are too sacred and serious a subject
to be trifled with." Of course, loveless marriages should not be
condoned; however, the action did not force matrimony, but merely
compensated the wounded party for the breach, as Mr. Morgan Lloyd pointed
out in the debate.\(^\text{18}\)

The advocates of this class of suit also retained a chivalric view
of women; the action was necessary to protect them in a society where men
had obvious advantages. Of course, a chivalric regard for women was also
part of the domestic ideal, but only if the woman remained in her "proper"

\(^{17}\)Hansard's Parliamentary Debates 245 (May 6, 1879), p. 1884; "Breach
of Promise Actions," *Law Times* 45 (August 15, 1868), p. 299; *Times*,
February 14, 1878, p. 10.

"Cupid at Law," *Chambers' Journal* (June 23, 1883), pp. 399-400; quote from
p. 400; Hansard's Parliamentary Debates 245 (May 6, 1879), p. 1879. Those
who supported breach of promise seemed to accept the contradictory notion
of marriage as both sacramental and contractual. This contradiction has
been explored by Steven Mintz in *A Prison of Expectations: The Family in
Victorian Culture* (New York: New York University Press, 1983), see
especially pp. 133-146.
role. The defenders of breach of promise, on the other hand, felt that all women—even those who were not "ladies"—deserved the law's attention. To their minds, women were far more likely to be the victims of male perfidy than scheming gold-diggers. The Solicitor's Journal wrote in 1881, "There are a great many men of a selfish and sentimental order of mind, but without much manly sense of responsibility and fidelity. This sort of people exist among the lower grades of society, where to jilt a woman would not be to incur much social stigma." In other words, the men were the ones who were not fulfilling their roles correctly when they reneged on their protective responsibilities. B.L. Mosely, a barrister, wrote several letters to The Law Times defending the action vigorously; in 1878, he wrote, "the abolition of actions for breach of promise of marriage will place the weaker sex at the mercy of capricious, vacillating, and treacherous men." Several of the MPs agreed with this verdict, including Sir Eardley Wilmot, Mr. Cole, and Mr. Morgan Lloyd. Lloyd, in fact, argued that it was the men who were the mercenary sex: "there were also many cases in which a man wished to sacrifice the feelings not only of the lady to whom he was engaged, but his own affection for her, so as to marry another woman for money." In other words, as the Law Times succinctly put it in 1884, "The men who find themselves at the mercy of unscrupulous women are not always over-deserving objects for the law's protection."19

The supporters of breach of promise did not deny that some women abused the law or were less than "ladylike" in their actions, but they did not think this was the point. As Morgan Lloyd stated in the debate of 1879:

The argument that high-minded women would not resort to the law in cases of breach of promise had no value whatever, as the same might be said of all rights of action. The Courts were open to all, and it was the option of parties to have recourse to them. Besides, Parliament did not legislate for high-minded or low-minded people. It legislated on the justice of the case.\(^\text{20}\)

In other words, the many "abuses" of the action should not mean that it should be done away with. Indeed, the "abuse" was in treating this action differently from so many others. The Solicitor's Journal pointed out that there were many other actions that asked for damages for "wounded feelings or pain or distress of mind," although admittedly these were in tort. Still, "Why should a promise of marriage be excepted from the general law that makes legal contracts enforcible?" The Earl of Birkenhead argued that to dislike the action because of impure motivations was foolish; "that such an action may be brought from improper motives is a comment which may be made on practically all causes of action." The Law Journal, in fact, recognized in 1879 that the basis for many of the objections to breach of promise was the gender of the plaintiffs. The House of Commons was usually very careful about limiting the rights of English citizens to have their wrongs redressed; the resolution in 1879 seemed to be a glaring exception. "Can the explanation," the editors demanded, "lie in the fact that in such actions the jury have to listen to a tale of her, not his,

wrongs?"21

At any rate, the cases that got to court were not nearly as important as the many that did not; the value of the class of suit was as a deterrent to rash or deceitful promises. The editors of the Solicitor's Journal in 1881 argued that "It is all very well to say that it is better to break the promise than to keep it in such cases. We say that it is better not to make the promise in such cases, and our suggestion is that the existence of the action causes fewer promises to be made which it is afterwards better to break." G.R. Dodd, a solicitor, gave a speech about the controversy at the Incorporated Law Society meeting in Nottingham in October of 1890 in which he seconded that point. "Undoubtedly to some extent the fear of such actions acts as a deterrent to men who might otherwise be disposed to trifle with the affections of women," he insisted. An anonymous writer to the Times virtually echoed Dodd: "Not a hundredth part of the cases that possess every requisite find their way into the law courts; but we may believe that the small per cent [sic] which do act as a wholesome deterrent to the many."22

What is interesting about this argument is the clear recognition of the economic weakness of most women; men, they insisted, lost much less than women with the break-up of an engagement. Therefore, the engagement


contract was automatically not a contract between equals, but instead one in which the male half was clearly advantaged. Abolishing breach of promise would, therefore, leave women helpless in the face of stronger, more economically secure, men. B.L. Mosely saw this distinction the most clearly, complaining, "Mr. Herschell would wish to make an exception [to the rule that there is no wrong without a remedy] in the very instance where the protection of the law is most needed, namely, to shelter the weak against the strong—-to guard defenceless women against unscrupulous men." In another letter, he defined women as "those . . . who have to fight the world thus heavily handicapped." The Law Times was even blunter, saying "It is not only that marriage is a woman's chief, perhaps only, opening in life—-that an abortive 'engagement' robs her of the chance of marriage through a longer or shorter period of the best years of her life, and leaves her permanently depreciated (to put the matter in the most practical shape) in the matrimonial market."23 As frank as that was, a petition (authors unknown) presented to the House of Commons in 1890 against abolition went even further, declaring that

... marriage was a profession in which women earned their livelihood by the discharge of social, conjugal, and domestic duties which appertained to matrimony, that the entrance to the profession came through an offer of marriage, and that the breach of such promise hindered a woman from obtaining her proper station in life, inasmuch as a woman who gave her affections to one man could not transfer them to another

without grievous loss.\textsuperscript{24}

Few MPs went this far, but many clearly believed that women were in a special position because of their restricted life expectations. Sir Eardley Wilmot insisted that "it was impossible for any jury to assess in a satisfactory way what actual pecuniary loss had been incurred by the lady," because her entire future had been compromised in the process.\textsuperscript{25}

In short, these men were arguing in favor of a strict definition of contract while at the same time insisting that the contract was not between equals. Usually, as in the case of employment contracts, the argument that contracts were not made between equals was a reason not to uphold them. This was why, e.g., P.S. Atiyah argues that English courts stopped rigidly enforcing contracts after the 1870s; people had come to realize that a contract between a rich industrialist and a poor worker was not a fair bargain.\textsuperscript{26} But the process was quite the opposite in breach of promise actions. The courts were being asked to hold men to their bargains strictly, because men had far more economic and political power than women. This, then, is another way that breach of promise contracts were an anomaly. Possibly, the rash of actions in the late nineteenth century was due to the transitional nature of the Victorian period, which fell between early modern community- and church-enforced marriages and

\textsuperscript{24}Quoted by G.R. Dodd in "Breach of Promise," \textit{Pump Court} 10 (October 18, 1890), p. 464.

\textsuperscript{25}\textit{Hansard's Parliamentary Debates} 245 (May 6, 1879), p. 1876. Such views treat breach of promise as a tort rather than a contract, at least as far as damages were concerned. The action's peculiar mix of contract and tort did not bother those who supported it, although it did disturb the reformers. For more on this, see below.

modern egalitarian marriages. The need to enforce a protective and compensatory contract in the interests of the unfree party was the result.

The defenders of breach of promise had a much better understanding the difficulties of lower middle class and upper working class courtship and the hardships women suffered because of long, fruitless engagements. They also seemed to understand that although many people found these actions humorous, they were not a joke to most of the people involved. One writer in 1884 stated, "Actions for breaches of promise, with their reams of ridiculous correspondence, and their exposure of the secrets of both parties, are generally considered amusing reading; and yet the subject has its melancholy side; and we cannot envy the feelings of the plaintiff when exposed to a severe and protracted cross-examination." Lord Birkenhead firmly agreed: "It is desirable that breach of promise actions should be treated seriously, for they are in the nature of tragedies, not comedies."27

Nevertheless, though these men are sympathetic, they ultimately took a paternalistic, traditional stance about women. In this instance, the "protective" instinct worked in women's favor, but it did not always. As Albie Sachs has pointed out, judges in nineteenth-century Britain often spoke of "protecting" and "respecting" women, shielding them "from the harsh vicissitudes of public life." This attitude often worked against women, because it was used to bar them from their rights as citizens.

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(e.g., suffrage) or to enter the professions.  

Breach of promise, in fact, was one of the few instances in which this viewpoint turned out to be an advantage.

The controversy over breach of promise—the tension between companionate marriage and individualism—is all the more intriguing considering that much of the debate occurred within the tight legal community of Victorian Britain. On the whole, judges tended to be defenders of the action, while barristers and solicitors argued for its abolition or at least for some reform (this is puzzling, since judges had first spent many years as barristers). But even these categories were not absolute. Some judges, most notably Baron Bramwell, objected to the action, while some lawyers defended it. The only major law journal that consistently supported the action was the Solicitor’s Journal and Reporter; though the others wavered with changes in editors, for the most part they demanded reform.

One of the reasons for this split was the peculiarity of breach of promise as a part of contract law. The action had always been set apart to some extent, subject to numerous exceptions and unique provisions. It was one of only two executory contracts that was stringently enforced before the 19th century.  

It was one of the few contract actions that did not require written proof, although implied contracts became more common in the mid-19th century. It was exempted from numerous reforms by name, including the 1851 Evidence Amendment Act, the 1933 Juries Act, and


29Atiyah, Rise and Fall of Freedom of Contract, p. 204.
the 1949 Legal Aid Act, and it was one of the few cases where the evidence of the plaintiff had to have independent "material evidence" to back it up (according to the Evidence Amendment Act of 1869). It was artificially exempted from the Statute of Frauds almost immediately after that law’s passage. In fact, one reason that opponents of the action disliked it so much was its anomalous nature. Particularly, legal critics focused on two aspects: damages for "wounded feelings" in a contract action, and the fact that marriage promises did not require written proof.

Almost all of the men who argued against breach of promise were willing to retain the action if the damages were limited to "pecuniary loss," such as the loss of a business or the cost of the wedding. The editors of Law argued that "the most important reform would undoubtedly consist in reducing the measure of damages to the ordinary scope in cases of breach of contract, and confining the question to the simple issue of pecuniary and prospective loss, omitting the injured feelings." Most legal writers pointed out that such a reform would bring English law into line with that of all the continental countries; the only major nation that had a law like England was the United States, whose law had been inherited from England. Otherwise, the case was blending the two separate classes of actions, namely tort and contract. It called for the keeping of a promise, and yet allowed damages for "wounded feelings" and "loss of marriage."30 Less often, critics demanded that the law enforce marriage promises only when they were in writing. As the Law Times argued in 1865, "If it is deemed necessary for the security of a contract for a few pounds

worth of goods that the terms of it should be in writing, surely much more
necessary is it that the same security should be shown about a contract
involving the happiness of a man's whole life as well as his fortune."
Legal writers urged that marriage contracts be "put under the protection"
of the Statute of Frauds, thus requiring a written contract in any suit
for breach.31

These complaints underline the oddness of breach of promise as an
action under contract law in the 19th century; it was the only major
exception to the emphasis on "business and consumer transactions."32 So
why make such an exception? P.S. Atiyah has argued that breach of promise
showed the triumph of individualism and "the market" even in social
relations; he sees its decline (and eventual abolition) as the result of
the decline of contracts and individualism after 1870.33 However, since
breach of promise contracts had been enforced long before the "triumph"
of contract in the 19th century, and continued to be enforced (and even
expanded) in the 20th century, his explanation is not complex enough. If
Atiyah were correct, judges and juries would have limited the success of
many of the cases, but quite the opposite was true. Breach of promise
actions demonstrated instead that judges brought social values to bear on
contract issues, rather than relying on mere formalism. They may very

31Law Times 40 (February 25, 1865), p. 194; see also Law Times 37
(August 23, 1862), p. 539-40; and 44 (April 25, 1868), p. 484. See also
Frank P. Sutthery's letter to the Law Times 64 (February 16, 1878), p.
287, in which he advocated only enforcing marriage promises made in
writing before two witnesses.

and the Enforceability of Informal Agreements," Oxford Journal of Legal
Studies 5 (1985), p. 402, see also ft. 59.

well have masked their aims in the language of "finding the facts," but they imposed the judgements for moral or social reasons. When supporting breach of promise, they upheld the institution of marriage and offered patriarchal protection to the female sex; conversely, if they disliked it, they "elevated" marriage by removing it from the commercial realm of contracts. Either way, they used a contract action to defend "the family" as they knew it.

Such actions led to confusion and ambiguity among the legal profession and helped explain the intra-legal argument over the action. The best example of these confused tendencies is Baron Bramwell. Bramwell "opposed virtually every proposed interference with freedom of contract" during his long tenure in the Exchequer Court and as Lord Justice of Appeal. In fact, Atiyah uses him as an example of the extreme individualist, as "something of a fanatic" on issues of individualism and contract. And yet, Bramwell was the most consistent critic of breach of promise actions during the 19th century. He made frequent remarks both in and outside the courtroom about the action, and his words were widely reported in legal journals. The Law Times quoted him from 1865: "I cannot help thinking ... that these are actions which ought not to be encouraged. If people change their minds, it is better that they should do so before marriage than when it is too late." In 1874, he was reported to have told a jury:

... he thought this was a class of actions really almost in one sense dishonest, for if the parties were asked, when the engagement began, whether they intended that it should be enforced by law, they would say 'Oh, dear, no, certainly not;'

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and yet, when it was broken, the wounded party went to law for damages...surely if either of the parties found that there was not so much affection as was supposed, it was better that the engagement should be put a stop to.

He even denied that a woman could claim monetary losses, because "though she had lost the money, she had also got rid of him; and it did not appear that he much cared for her, so in one sense her loss was a gain." Bramwell was known to question plaintiffs on why they wanted to marry men who did not "like" them; he also announced in court that "it would be a good thing" if the action were abolished.\(^{35}\)

Nor was Bramwell uninfluential in the trials and appeals. In six of the nine cases in the data base in which he was the trial judge, the jury found for the defendant or gave only nominal damages. Though he was not the only influence, his summations played some part in the process. In Andrews v. Huff in 1859, he summed up by pointing out all the aspects to be considered in mitigation of damages:

[Bramwell] remarked on the disparity which existed between the ages of the plaintiff and defendant, and asked the jury to decide how much better off she would have been if she married than if she had not. If she had had a father or a brother alive he would have probably given her Punch's advice to marry—"Don't." (Laughter.) He never knew anything more cold than the correspondence between the parties, and though no doubt the defendant had acted very foolishly, he would have acted much more dishonestly if he had married a woman whom he did not care for.\(^{36}\)

The jury followed his advice, and gave the plaintiff only £5. In Vineall v. Veness, he urged the jury to find for the defendant because the breach had evidently been mutual and "a man was not to be bound forever" by an


old promise. In that case, the jury gave only £20. In four different cases from 1862 to 1880, he urged the jury to consider the alleged "bad" sexual behavior of the plaintiffs, and in each instance, the jury found for the defendant.\textsuperscript{37} And in two of the three cases in which the plaintiff won, it was in spite of Bramwell's summation. In fact, in one, he consciously threw doubt on the truth of the plaintiff's version of the courtship:

He said that the case was an extraordinary one, for defendant had never been introduced to plaintiff's parents, nor had she been introduced to defendant's brother or mother. . . . He thought that the conduct of the mother in allowing her daughter to go out with defendant so frequently without insisting upon his coming to the house was highly censurable.

In this case, the jury ignored the judge's injunctions and found for the plaintiff for £600. The plaintiff later had to accept £400 after the defendant appealed for a new trial on the basis of excessive damages, but she still won an impressive amount.\textsuperscript{38}

Bramwell's reasons for disliking the action are especially noteworthy. He did not argue that breach of promise was not a "contract" or that it violated legal doctrines. Instead, he argued that it damaged

\textsuperscript{37} Vineall v. Veness 176 English Reports 593–594, quote from p. 594. The four cases involving sexual nonconformity were Thomas v. Shirley, Weekly Reporter 11 (November 15, 1862), p. 21 and Times, November 6, 1862, p. 8 and November 7, 1862, p. 9, in which the plaintiff advertised for a position with a single man, thereby "inviting" the sexual contact; Farrow v. Child, ASSI 23/36; Norwich Argus, March 31, 1877, p. 7, in which the 42-year-old plaintiff, mother of eight, tried to plead seduction; Palmer v. Wootton, Illustrated Police News, February 7, 1880, p. 2, in which the plaintiff had an illegitimate child with another man before the trial; and Wilkinson v. Bainbridge, ASSI 54/2; Lancaster Gazette, July 7, 1880, p. 2-3, in which the jury believed the defense's contention that the plaintiff saw several other men.

\textsuperscript{38} Wilcox v. Godfrey, ASSI 22/32; Taunton Courier, March 27, 1872, p. 5; Law Times 26 (April 27, 1872), pp. 328–29; 26 (May 25, 1872), pp. 481–82; quote from the Taunton Courier.
marriage, and that people should not marry unless they cared for one another. In the appeal of *Nightingale v. Perry*, Bramwell openly expressed his contempt for the plaintiff because of the lack of forethought she had shown in her choice of a husband: "It was as if she had put her hand into a bag and pulled out the defendant's name. . . . It was fortunate the bargain was not concluded, as the woman wished to enter into a solemn engagement with as little precaution as she would use in taking a week's lodgings." The judge felt that both parties should think long and hard about whom they planned to marry, and breach of promise actions penalized men for doing just that. In another case, he recorded his agreement that the law led to bad marriages, since "Men are goaded into marrying women whom they don't like, and then there are unhappy marriages.”39 In short, despite his insistence that men be kept to commercial bargains and their promises in the economic sphere, Bramwell had an entirely different set of assumptions about marriage contracts. In his case, the tension was more than simply the conflict of domesticity and individualism; Bramwell was trying to inculcate different morals in different situations. He wanted the courts to tell the business world that they would force people to keep their word. But to the domestic scene, he wanted the message to be that the courts would promote companionate love and strong marriages and families. In other words, Bramwell supported the middle class ideal of "separate spheres," and he felt firmly that the private sphere did not belong in the courtroom.

Of course, the vast majority of Victorian justices wanted to support

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strong marriages, but they disagreed with Bramwell on the best way to do so. Most of them felt that the best way to honor marriage was to enforce the promise to marry. Lord Coleridge, for instance, was widely reported in law journals in 1881 as saying, "It was too much forgotten that these actions were often extremely useful in keeping people within the bounds of duty, which, if there were not such laws, they would avoid." In 1889, he went further in defending the action, saying:

\[\ldots\] he did not agree with eminent men who had been of opinion that the action for breach of promise of marriage should be abolished. No doubt very refined people would shrink from a display of their wrongs in a Court of justice, but the law was not for such very refined people alone, and persons who had suffered from such wrongs had a right to come into Court for compensation. And the very existence of such an action had a great deterrent influence, and tended to deter men from wrongdoing women in this way; and many marriages, fairly happy, took place in consequence. This was the result of his experience at the Bar and on the Bench.\[^{40}\]

Coleridge, apparently, had a different expectation of marriage, at least for those in the lower middle and working classes, than Bramwell. In his eyes, a "good" marriage could result just as easily from a match based on convenience as from one based on affection. He continued to defend the action into the 1890s, declaring, "Such actions were often the only legitimate means of bringing a scoundrel to book." Moreover, although he felt that the Infant's Relief Act of 1874 did apply to breach of promise actions, he was willing to be very lenient about what constituted a "new"

promise after the defendant turned 21.\textsuperscript{41}

Again, Coleridge's reasons were not strictly legal; he particularly stressed "deterrence" of bad behavior from men and "protection" of women as reasons to keep the class of suit. And, in fact, Coleridge did not support high damages for women who had only been engaged a short time and had not seemingly lost a great deal, although he felt they should get the judgement. And he was horrified at the plaintiff in \textit{Austin v. Harding}, who sued the estate of her ex-fiance even though he had left her £400 in his will and had committed suicide after she had threatened him with the suit. Coleridge commented that "though he felt that an action for breach of promise of marriage was frequently a very proper remedy for a plaintiff to adopt, on this occasion his desire to sustain that form of action had received a severe shock."\textsuperscript{42} Even more interestingly, Coleridge did not support the right of a man to sue a woman for breach of promise. In \textit{Hole v. Harding}, he urged the jury to find against the male plaintiff since "the circumstances were different" between men and women. He went carefully over all the details of the case, putting them in the best possible light for the defendant and making a number of jokes at the plaintiff's expense. Not surprisingly, the jury gave Hole only one

\textsuperscript{41}Quote from \textit{Smith v. Mitchell}, ASSI 54/9; \textit{Manchester Examiner and Times}, March 17, 1892, p. 7; for Infant's Relief Act, see \textit{Ditcham v. Worrall}, 5 Law Reports, Common Pleas Division 410-423; Coleridge's remarks, pp. 417-23. For an explanation of the Infant's Relief Act and its effect on breach of promise, see Chapter One.

farthing in damages, and Coleridge refused to grant him costs.\footnote{Hole v. Harding, ASSI 22/38; ASSI 28/6; Exeter and Plymouth Gazette, January 30, 1882, p. 3.}

Coleridge was with the majority of his colleagues on the bench on that point; breach of promise was clearly seen as an action that protected women, but not men, because of their different economic and social position. Judges frequently justified their support of the action in terms familiar to those actively involved in the dispute, insisting that women had more stake in marriage than men, and that their whole futures were compromised by broken engagements. In \textit{Berry v. Da Costa} in 1866, Justice Willes upheld a large jury award (£2500) by arguing, "we can not shut our eyes to the fact that not only has the plaintiff lost the opportunity of marrying a gentleman in a position of life far superior to her own, and been deprived of the loss of her virtue of the opportunity of contracting a happy marriage with another man, but by the course taken at the trial imputations upon her character were unsparingly showered on her." Willes’ opinion is significant, since he was threatened with a breach of promise suit himself right after his appointment to the bench; fearing a scandal would destroy his career before it began, he married Miss Jennings, had an unhappy marriage, and eventually committed suicide.\footnote{Berry v. Da Costa, 1 Law Reports, Common Pleas Division 334; J.R. Lewis, The Victorian Bar (London: Robert Hale, 1982), p. 50. For his opinions, see also Smith v. Woodfine, 140 English Reports 275-277 and Hawkins v. Toogood, Bristol Daily Post, August 15, 1871, p. 13.} Despite his own misery, Willes believed that the action was an effective protection for women and should be maintained.

When the controversy began to rage, other justices spoke out during trials, usually in favor of keeping the action.
in 1870, pronounced, "after a long experience, in his opinion, great mischief would arise if it [breach of promise] were done away with." At the conclusion of a case in 1875, Justice Brett treated the jury to a long discussion on why women were particularly vulnerable to jilting and thus deserved the protection of the law while men did not. He ended the peroration with these remarks:

There were some persons—judges among them—who thought that no action of this nature should be permitted to be brought, but others thought that in such a case a woman might well be allowed to sue. . . . A man was a more robust creature than a woman; he had enjoyed her society for years, and simply enjoyed it no more, but still he could work for himself as well as he did before. As to 'wounded feelings,' they would ask themselves whether a man could bring such an action except for a money loss.

Justice Grantham made similar remarks at the end of Wilkinson v. Hampson in 1886: "The case was one which confirmed the views he had always held—that it was desirable that actions for breach of promise should be maintained, so that it might be within the power of a girl to bring an action against a man when he had treated her in the way in which the present defendant had treated the plaintiff." Many other judges, including Justices Field and Matthew, made remarks supporting the action and its protection to women, although they did not refer to the controversy itself.45

The only Victorian justice who was an outspoken critic in the action

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45For Burchell's remarks, see Mitchell v. Hazeldine, Times, March 18, 1870, p. 11; Brett's summation in Townsend v. Bennett, Solicitor's Journal and Reporter 19 (February 13, 1875), p. 276; Grantham's in Wilkinson v. Hampson, Liverpool Daily Post, June 2, 1886, p. 3. Justice Field strongly supported a young woman tricked and jilted by a married man in Hancock v. Davies, ASSI 73/3; Swansea Herald and Neath Gazette, August 7, 1889, p. 3; Justice Matthew scoffed at a defense that there was a difference between "keeping company" and being engaged in Benson v. Durrant, The Jurist 2 (1888), p. 180.
was Baron Bramwell, but others argued against seeing marriage as a commercial bargain. Sir Frederic Pollock, in *Hall v. Wright*, protested a judgment for the plaintiff by saying, "I think that a view of the law which puts a contract of marriage on the same footing as a bargain for a horse, or a bale of goods, is not in accordance with the general feelings of mankind, and is supported by no authority." Early in the 20th century, Justice McCardie announced his opposition to breach of promise actions at the end of a trial, but 19th-century justices usually confined themselves to limiting the scope of the action. Justice Manisty and Baron Huddleston for instance, could be quite strict on plaintiffs in breach of promise cases, if they felt that their motives for bringing the action were not sufficient. Manisty refused to grant costs to Margaret Lewis, since he considered that her engagement was mutually broken, and he disapproved of *Pain v. M'Ewin*, since he felt the defendant was far too poor to afford even a small judgment. In his summation in *Owens v. Horton*, Baron Huddleston, hinted that he disapproved of the action by saying, "the law recognised breach of promise to marry just the same as any other breach—just as if it referred to breach of contract in regard to butcher's meat, baker's bread or goods sold by a fishmonger—(laughter)." By comparing a marriage contract to those of a butcher or

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fishmonger, he seemed to be ridiculing it. Most of the time, however, if a justice supported a defendant it was apparently due to the peculiarities of the case and not to a philosophic disapproval of the action itself.

What I am arguing here is similar to what Stephen Hedley has argued in other contexts. Victorian judges ostensibly made decisions solely based on interpretation of law, but many other factors, moral and social, came into their decision-making, and their decisions depended on all of these factors. That is why sometimes their judgements seemed to be contradictory. In the instance of breach of promise, judges often bent over backwards to find for women plaintiffs. They invoked the Evidence Amendment Act sparingly, gave a wide interpretation of "new" promises in the Infant's Relief Act, seldom lessened the awards that juries gave, and allowed women to sue men in other countries under English common law. Male plaintiffs, on the other hand, did not receive the same consideration. This different treatment was based on the values that the judges had, particularly their paternalistic and protective regard for women.

also Owen v. Williams, Carnarvon and Denbigh Herald, July 19, 1879, p. 7, in which the judge felt that the mature couple had simply had a business arrangement that had broken off by mutual consent. All the same, Huddleston was not dogmatic, since he summed up in favor of the plaintiff in another case heard the very same day, Roberts v. Jones (see citation immediately above) and was clearly biased for the female plaintiff in Day v. Roberts, discussed in Chapter 7. Still, his record as a barrister, in which he most often represented the defendants (See Chapter 2) indicates that he was at least ambivalent about the action. See also Arthur Tilley, "Is Marriage a Contract?" Law Magazine and Review, 4th series, 5 (1879-80), pp. 26-42, in which he insists it is not a contract in the traditional sense.

For example, "Where Anson Went Wrong (and Why We All Followed Him)," Unpublished paper, 1986; and "'No Stranger to Myself'? The Judge as Unemployed Barrister," Unpublished paper, 1989.
Comparing two international cases brought in the Victorian period illustrates this point. In 1872, an officer in the Indian Army, named Cherry, brought an action against his fiancé, named Thompson, who was also a British subject. The two met and became engaged in Homburg, Germany where he was stationed. After he had gone back to England, she wrote to him, breaking off the engagement because of the disapproval of her father. Cherry sued under the provisions of the Common Law Procedure Act of 1852, which allowed British subjects to sue in the British courts, even if they were residing "out of the jurisdiction of the said superior courts," as long as the cause of action occurred in Britain. Thompson refused to appear, and argued that the "cause of action" had occurred in Germany, and if she did not appear voluntarily, then the action could not be pursued in British courts. Justices Cockburn, Blackburn, Lush, and Quain heard the arguments in the Court of Queen's Bench, and found for the defendant. Blackburn wrote the opinion for the court, basing the decision on a strict interpretation of the 1852 act. Blackburn insisted that the "whole cause of action" had occurred in Germany, not Britain; the letter that Thompson had sent to Cherry was simply "evidence" that she had renounced him: "Had his letters followed him to Ireland he would have received the evidence in Ireland. But the act which he had the option to treat as a breach took place in Germany, and in Germany alone." Thus, Cherry was unable to sue Thompson under English law; he might have been able to sue her in the German courts, but German law allowed reimbursement of only pecuniary loss in breach of promise cases, so that option was not inviting.

48Cherry v. Thompson, 7 Law Reports, Queen's Bench Division 573-79, quote from p. 579; Times, April 17, 1872, p. 11 and May 29, 1872, p. 11.
In 1900, a similar case occurred, although in South Africa rather than in Germany. The plaintiff and defendant had met and become engaged in South Africa; the latter had promised that he would marry Miss Franklyn when the two returned to England. Chaplin later changed his mind, and Franklyn sued him in the English courts. His barristers tried to stop the writ from being served, arguing that the plaintiff should not be allowed to serve the writ out of jurisdiction, since she produced no material evidence to back up her accusation and "it was settled law that an action for breach of promise of marriage could not be maintained unless the plaintiff produced some corroborative evidence of the promise beyond her own word." At the lower court level, Justice Day ignored this argument and allowed her to issue the writ, and he was upheld by the Court of Appeal. The Court insisted that "it could not be held as a matter of law that this was necessary in order to entitle the plaintiff to obtain leave for service out of the jurisdiction. He thought that the question whether an order should be made was one for the discretion of the learned Judge, and that there was no reason why leave should be given to appeal."\textsuperscript{50}

Although there were several differences between Cherry and Franklyn (e.g., South Africa was part of the Empire, while the issues involved were not identical), the primary difference was the sex of the plaintiff. In Cherry, the justices seemed to be looking for a reason to dismiss the appeal, while in Franklyn, though they had a reason to do so, they refused to use it. And, in fact, justices were often also generous to foreign women who hoped to sue men technically out of the jurisdiction of the

\textsuperscript{50} Franklyn v. Chaplin, Times Law Reports 17 (November 26, 1900), p. 84; Times, November 27, 1900, p. 14.
British courts. Clearly gender bias influenced breach of promise cases, even though the judges used legal language to legitimate their findings.

Of course, justices were not alone in speaking out about breach of promise, although their opinions had the most influence. Many lawyers, including Herschell and MacColla, disliked the action heartily. Sir Henry Hawkins called such cases "sorry specimens of advocacy," which were to lawyers "monotonous exhibitions of human weakness." Moreover, after Herschell gave up the fight, Mr. Lockwood and Sir Roper Lethbridge introduced bills to have the action abolished, though without success. Despite the fact that Herschell's 1879 resolution had passed, no bill to abolish the action ever got to a second reading. Possibly the reason for the failure was that the ministries had far too much to do to spend time on such a minor reform. Also, Gladstone's attitude might have influenced the turn of events, since he came out against the change in 1880, saying, "I have much confidence in Mr. Herschell's legal proficiency, and I should be loath to speak strongly without further study; but I own to being unwilling to part with the imperfect check upon misconduct supplied by the present law until I shall see that better ones have been provided." For whatever reason, breach of promise remained actionable until late in


\[52\text{Richard Harris, ed., The Reminiscences of Sir Henry Hawkins (London: Edward Arnold, 1904), II:90. For the efforts of Lockwood and Lethbridge, see Law Journal 25 (April 5, 1890), p. 204; 26 (October 17, 1891), p. 635; 28 (1893), p. 96.}\]

\[53\text{Law Journal 15 (1880), p. 83. For more on the attempts to abolish the action, see Chapter One.}\]
the 20th century.

The arguments over the class of suit were not confined to the legal community. The opinions of the general public also split on definite lines, but in this case, the difference was class-based. Those of the upper and middle classes heartily disliked the class of suit, while those of the lower middle and lower classes supported it. Most newspapers, particularly the Times, found the action "disgusting," although none of them hesitated to print the most salacious details possible whenever the opportunity arose. The Gloucester Mercury, e.g., proclaimed (after giving the details of a case) that "In all the immorality of the day there is nothing so immoral as the business-like estimate of what a hand is worth, when there was or is no heart to be given along with it." The editors went on to castigate the plaintiffs involved as "traffickers in affection" who "bring their dirty linen out and wash it publicly." The Birmingham Gazette called the action "absurd," while also protesting at the publicity of these cases as "a very ugly unroofing of English homes."\textsuperscript{54} The irony of juxtaposing such sentiments with their own reports of breach of promise cases was apparently lost on newspaper editors. Only the Daily Telegraph took the opposite view, arguing that the action was of value to women and pointing out the potential good side of publicity: "Above all, the girl has the opportunity of publicly proving beyond slander that she is not in fault. Of course, this necessity of obtaining public redress is painful. But it is also painful for a woman to give evidence that may convict a ruffian of an assault; yet does anybody affirm that a woman should shrink

\textsuperscript{54}Both opinions quoted in Supplement to the Gloucester Mercury, April 11, 1863, p. 1.
from bringing such an offender to justice."\(^{55}\)

Other literate sections of society also found the action distasteful, although most of the commentators on women and the law in England ignored single women almost completely because of the glaring disabilities of married women. The only articles that dealt with the class of suit were those written about marriage in general. Radical critics of nineteenth-century marriage, who found its contractual basis and indissolubility offensive, also disliked breach of promise as part of the entire "archaic" system. Frederic Harrison, in 1892, advocated a system of one-year trial marriages; one of its advantages was that "the absurd agreement to agree, promise to promise, now called an engagement, would probably disappear, and with it the even more anomalous action for breach of promise." Other critics of marriage agreed, at least insofar as they thought that only mutual affection should be a basis of marriage. Clementina Black, though she did not mention breach of promise, wrote in 1890, "surely, at the worst, the broken courtship will cause less pain than the unhappy marriage."\(^{56}\)

Despite the bias to abolition in the law journals, newspapers, and magazines, the general public appeared to give breach of promise actions

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\(^{55}\)Quoted from *Englishwoman's Review* 1 (January, 1870), pp. 68-69, quote from p. 69.

strong support. At the very least, the constant criticism from the elite sections of society had little practical effect on the outcome of the many cases brought in the late Victorian period. Although at the beginning of the 1890s breach of promise actions appeared to be dying down, and several law journals crowed with pleasure at this development, in actual fact, the 1890s were one of the busiest decades for breach of promise actions.\footnote{See, e.g., "The Decline of Breach of Promise,"\textit{Journal of Jurisprudence} 34 (1890), p. 62 and \textit{Pump Court}, January 15, 1890, p. 94. For exact statistics of breach of promise actions, see Chapter 3.} Moreover, juries continued to find for the plaintiffs and give large awards far more often than they found for the defendants. As the \textit{Law Times} admitted in 1884, "In spite of ridicule, and in spite of argument, juries, common and special, persist in treating breach of promise as a substantial wrong, and, what is more, the great British public gives no sign of dissenting from the views of its representatives in the jury-box."\footnote{"Breach of Promise of Marriage," \textit{Law Times} 78 (November 29, 1884), p. 77. According to Diana Leonard, this split continued into the 20th century, \textit{Sex and Generation: A Study of Courtship and Weddings} (London: Tavistock, 1980), pp. 18–19. She comments, "One might wonder whether juries were not perhaps more alive to the real situations of men and women than were lawyers," p. 18.} There is, in fact, no reason to suppose, as Rosemary J. Coombe has about Canadian suits, that the action was unpopular with the average person; on the contrary, the lower middle class men who sat on the juries consistently demonstrated their support by their verdicts. Only the upper classes, offended by the action's assault on Victorian domesticity, objected strenuously to breach of promise; some of them recognized the class difference, but few understood the reason for the division. Only one writer, in 1893, pointed out the difficulties of lower middle class
women in finding husbands and upholding their respectability when an engagement fell through:

... it prevents whole classes of very decent young women from being victimised by men who make an amusement of love-making, and who would but for the law, delight in a succession of "engagements," after each of which the girl would be deserted, often with circumstances of insult, and always with a distinct injury to her social position and her chance of a pleasant settlement in life. The women in the class we speak of are enormously in the majority, quite a third of the men emigrating, or, in their eagerness to get on, postponing marriage till late in life. The men can practically pick and choose, and they prefer, like everybody else, girls younger than themselves...  

The tension between domesticity and individualism was thus complicated by a difference between the classes. This does not necessarily mean that the lower classes were more individualistic than their betters; more probably, the lower orders were not as wedded to the companionate ideal in marriage as the upper middle class was. As already discussed, they often looked for roles rather than personalities when they tried to find spouses. They did want to find a companion, but they did not place as much importance on it as the upper classes. And, in fact, some of the advocates of keeping breach of promise pointed out that the companionate ideal was not sacrosanct. Like Coleridge, they felt that a marriage of convenience could work, even without the deep affinity and affection that the middle class championed. The Spectator's editor insisted that "Most men and women, once seriously attracted by each other,

can love one another if they please, and break off engagements not so much from distaste as in hope of still greater satisfaction from a new venture." The Solicitor's Journal and Reporter likewise agreed, saying that "people to a great extent embrace willingly, and in the end are tolerably satisfied with, a thing which is of binding legal obligation when they would have perhaps changed their mind and rejected it had it been purely voluntary."60 Particularly for women, marriage involved a great deal more than simply a romantic relationship, but there were few upper class people who saw this clearly. Such considerations may have influenced jurors, however, who were closer in social standing to the women bringing these suits. Many of these men, when younger, would not have hesitated to jilt a young woman; yet, when older, they used their position in the jury box to force good behavior on young men. They appeared to think that "there but for the grace of God goes my sister, cousin, or daughter," and to act accordingly.

Breach of promise cases illustrated the popularity of English justice, since the juries had their way, despite the complaints of the bulk of the legal establishment. Even disapproving judges never overruled the verdicts of the juries, and higher courts hesitated to change the awards, even when they seemed excessive. And, for the most part, judges and juries agreed in their sympathy for the plaintiffs in these cases, against the feelings of the barristers and solicitors. The action was an illustration of the way that "old paternalism" blended into new class and gender assertiveness. Judges banded with the lower middle class jurymen

to protect women; both groups of men accepted the brazenness of women coming into court for redress, since the latter were appealing to male chivalry and protection.  

The argument over breach of promise illustrated a division within the Victorian elite as well as between the elite and the lower classes. The ideals of romantic love conflicted with the continuing desire to shore up individual responsibility, while the upper class view of marriage did not comprehend the needs of the lower classes. The argument did not promote simple dichotomies, either, since the elite divided against itself; even the tight legal community was not in agreement about the advisability of maintaining the class of suit. A similar problem existed among the Victorian women who wrestled with the question of abolishing breach of promise. They, too, argued among themselves about the correct view of the controversy, and their arguments were just as revealing about Victorian feminism as the men's were about Victorian values.

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61 For more on the active role of women in breach of promise and the contradictions of male/female roles it revealed, see Chapter Nine.
CHAPTER NINE--"MORE THAN WE BARGAINED FOR": WOMEN'S VIEWS OF BREACH OF PROMISE

In June, 1879, the editors of the Women's Suffrage Journal began a short editorial with the remark that "There is much difference of opinion among women themselves to the expediency of abolishing the action for breach of promise of marriage." And, indeed, the editors were quite correct; liberal or conservative, feminist or anti-feminist, Victorian women found themselves divided over what to do about the class of suit. The nascent English woman's movement of the late nineteenth century particularly faced a dilemma when confronted by the contradictions of an action that violated the very notion of women's equality and yet also offered valuable protection to many poorer women. Despite a few tentative suggestions, a solution to the dilemma evaded Victorian women, but their arguments illuminated important differences within nineteenth-century feminism and between economic classes of women.

A wide variety of women's publications addressed breach of promise cases. Some, such as the Lady's Own Paper and Woman gave reports of breach of promise cases as well as making editorial statements about them. Others, including the Englishwoman's Review, the Woman's Penny Paper (later the Woman's Herald), and the Woman's Suffrage Journal gave the voice of the organized feminist movement. Middle class domestic journals also addressed issues of courtship and marriage, particularly in The Woman at Home, Young Woman, and Englishwoman's Domestic Magazine. Nor were working class voices ignored, since Work and Leisure, a working woman's

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¹Woman's Suffrage Journal 10 (June 2, 1879), p. 100.
journal, also commented on the controversy. Although breach of promise was never as contentious as such issues as the Married Women's Property Acts or Divorce Reform, it still garnered a substantial amount of attention.

As with the men, the women basically broke into two groups, those who agreed with abolition and those that did not. Those who wanted to be rid of breach of promise did so for a variety of reasons. One strand of the feminist movement felt strongly that women should be working for complete legal equality. Breach of promise cases were based on the premise that women's only lot in life was in marriage, and that women should, therefore, be compensated when deprived of a partner for life. Therefore, the class of suit offended these women's ideals of equality between the sexes. The editors of the Englishwoman's Review came out in

2The major feminist journals, the Englishwoman's Review and the Woman's Suffrage Journal, had the most coverage. The primary feminist newspaper, Women's Penny Paper, confined itself to reporting cases. E.g., see October 5, 1889, p. 7, or (under the new name, The Woman's Herald) 7 (February 11, 1893), p. 5. Other feminist publications included Woman, Journal of the National Vigilance Association, Woman's Opinion, and the publication for working women, Work and Leisure (for the classification of the Journal of the National Vigilance Association as feminist, see footnote 18). Lady's Own Paper, Young Woman, The Woman at Home, Womanhood, The Lady's Realm, and The Englishwoman's Domestic Magazine were upper middle class domestic publications with little or no feminist content.

3See, e.g., Josephine Butler's remarks in "Introduction," Josephine Butler, ed., Women's Work and Woman's Culture: A Series of Essays (London: MacMillen, 1869): "What dignity can there be in the attitude of women in general, and toward men in particular, when marriage is held (and often necessarily so, being the sole means of maintenance) to be the one end of a woman's life, when it is degraded to the level of a feminine profession, when those who are soliciting a place in the profession resemble flaccid Brazilian creepers which can not exist without support, and which sprawl out their limp tendrils in every direction to find something--no matter what--to hang upon, when the insipidity or the material necessities of so many women's lives make them ready to accept almost any man who may offer himself?" (p. xxxi). See also Cicely
favor of abolishing the action, giving the following reason:

It [breach of promise] has been maintained in the same spirit of "protection" which dictated the Factory Acts of last year, which goes upon the theory that a woman is not competent to act or judge for herself, that she is in a degree a "perpetual infant," or at best a weak, confiding, half-witted creature, who must have trustees to look after her property and laws to enforce that she does not work too many hours at a time, and lawyers to see that her feelings are not injured by being deprived of a husband and protector.  

The reference to the 1878 Factory Act is especially noteworthy, because the issue involved was similar. In both instances, feminists protested the practice of putting women in a special category, which protected them to some extent, but ultimately blocked them from exercising the full rights of English subjects.  

Another reason for some women's distaste for the action was that it undermined the view of marriage that they hoped to promote. Many of these women worked for equality and mutuality within marriage (e.g., in the Married Women's Property Acts), an ideal that could only be achieved in


marriages based on affection and companionship.\textsuperscript{6} Other women, even though they did not work for women's rights, still believed firmly in domesticity, including companionate marriage. Rather than punishing an errant lover, many women felt that a woman should be glad he did not marry her if he could not love her as a husband should. Annie Swan, who for many years edited the "Love, Courtship, and Marriage" column for \textit{Woman at Home}, felt that breach of promise cases were "pitiful reading," since "it has always been to me a source of wonder that the jilted ones had room for any feeling but that of gratitude for their escape from the misery of a loveless marriage." A letter to the editor of the \textit{Lady's Own Paper} made a similar point in 1870, saying, "To enter a marriage with apprehension and perhaps dislike . . . is at once a blunder and a crime." The editors of \textit{Woman's Opinion} agreed, disapproving strongly of an 1874 case in which the plaintiff had received £275 in damages. They felt that the punishment was "harsh," because "the lady once convinced her swain was fickle, had better let him go--it ought to have been sufficient."\textsuperscript{7} Without love,


\textsuperscript{7}Annie S. Swan, "Should Long Engagements Be Encouraged?" \textit{The Woman at Home} 2 (1895), pp. 38-39, quote from p. 39; "Inconstancy and Breach of Promise," \textit{Lady's Own Paper} 6 (August 13, 1870), p. 102; \textit{Woman's Opinion} 1 (March 14-21, 1874), p. 52. See also \textit{Woman's Opinion} 1 (February 14, 1874), p. 29, where the editors report disapprovingly on the a "delicate" case that was "hushed up" for £2000: "a handsome sum for outraged
these marriages would prove disastrous, and no one deserved heavy compensation for having been saved from such a fate.

Much of the non-feminist women's publications blamed the woman whenever the engagement was broken; as Judith Rowbotham has noted in her study of middle-class girls' literature, "a woman is always seen at fault in the case of a marriage being cancelled: if the man was a rogue or she had mistaken her heart, or his, she had failed in her womanly responsibilities to judge well before accepting any offer." Nevertheless, most of the women's journals and magazines insisted that breaking the engagement was better than marrying without love. In two separate articles in The Young Woman, girls were cautioned to be absolutely sure of their feelings before they entered matrimony. Rev. H. R. Hawes insisted that "The girl who has the presence of mind to say 'no' in time, after she has either conscientiously, deliberately, or hastily said 'yes,' has my respect; for I believe that in so doing she is consulting her own and her lover's best interests, as well as the welfare and morality of the social circle in which she moves." The editors also cautioned in 1893, "Better be disappointed before marriage than after. Better a broken engagement than an unhappy union."

Ladies' domestic journals also supported this view, reflecting the beliefs of their largely upper-middle class readership. Evelyn Lang, in

affection!"


The Lady's Realm, stated flatly, "It is better to break off an engagement than to be miserable for life." In early 1900, the journal Womanhood published a series of six articles asking the question "Should Men Break Engagements?" Each one was written by a woman, and every one supported men's rights to break engagements, although two of the women felt it was right only in certain circumstances (e.g., if there were physical or mental deficiencies in either partner). Most of the ladies also insisted that the man give the woman the right to break off the engagement first rather than ruin her reputation.\textsuperscript{10} Marriage, to these women, was far too important and serious an affair to take lightly; if breach of promise threatened the institution, then it should not be supported.

All the same, two of these women did support breach of promise in exceptional situations. Beatrice Lewis, who wrote the leading article in Womanhood's series, supported the action when it was used against men "who, taking a fleeting fancy to some girl, would become engaged to her, with the sole object of obtaining a lover's privileges, and with neither wish nor intention of marriage." She also felt that cases where "actual financial harm" could be proved should be allowed, but emphatically not when the motive was simply "salve for wounded feelings." Mabel J. J. Blott, in her article, declared that "no pure-minded woman would submit herself to such indignities, but would rather starve than drag her woes into a court of law, even if she has suffered pecuniarily as well as mentally by the falseness of her lover." Blott, therefore, felt the

\textsuperscript{10}Evelyn M. Lang, "The Desirability of Long or Short Engagements," The Lady's Realm (May, 1899), p. 450; "Should Men Break Engagements?" Womanhood 3 (December 1899-May 1900), pp. 89-91; 224-25; 302; 376; and 452; 4 (June-November 1900), p. 63.
action could be valuable only if the proceedings were made private (i.e., not reported in newspapers). Occasionally, too, Annie Swan, in her "Love, Courtship, and Marriage" column would hear of cases so hard that she angrily wrote, "It is cases like these which would seem to justify the bringing of a breach of promise action." Except in these exceptional circumstances, domestic women writers disapproved of the action entirely, feeling that monetary rewards were not suitable to affairs of the heart. They believed, as The Young Woman did in 1897:

If ever there is need for a big brother, then let the big brother act,—vigorously, too, if required,—but love among the lawyers, ugh! let it not be once named among you, as becometh noble, self-respecting women. Damages? What has been damaged? Your heart? Will a gold pill mend that? . . . Bless thee, fair friend, if thou hast a heart at all thou hast cause to be thankful that the scamp showed himself to be a scamp before thou wert wedded to him, rather than afterwards.\[11\]

Breach of promise might suit in some terrible circumstances, but on the whole, broken engagements were preferable to bad marriages.

Moreover, to these women, breach of promise gave publicity and success to the least appealing members of their sex. The editors of the Englishwoman's Review disliked the dependency that the class of suit bred into women, and insisted that "The abolition of breach of promise damages will, as far as it goes, foster a healthier feeling of independence in women, it will make them more determined to secure by their own exertions an honourable status independently of marriage." Even worse, the

unscrupulous, brazen women were the ones who dared to go to court for redress. A writer on the "Woman Question" for the Examiner insisted that "the women who bring such actions are mercenary adventurers, who seek revenge for baffled intrigues, and find it pays them better to lose a husband than to get one." 12 Most leading women hoped to raise the status of the female sex and to promote the view of women as gentle, morally superior, and worthy of respect. Breach of promise plaintiffs were the opposite of this ideal. In this regard, feminists agreed with many upper-middle class women who did not support equal rights. The Lady’s Own Paper was not a feminist publication, yet the editor’s view was similar:

A woman whose love is true not only shrinks from publicity into the closed reticence, but she is incapable of even a just resentment. Nay, more—betrayed, abandoned, insulted, she loves the traitor still, as only a woman can love—as only a mother doating on a miscreant son, a wife worshipping a tyrant husband, a maiden cherishing a worthless memory, like Ariadne pining on the callous rock, can feel. 13

The plaintiffs in breach of promise cases hardly exercised the kind of self-sacrifice that the cult of domesticity demanded of the "angel in the house." In other words, women who brought breach of promise cases were criticized by feminists for being too dependent and by non-feminists by being too independent, all at the same time. In 1871, the non-feminist Lady’s Own Paper complained that "the whole sex" was suffering "to a certain extent from the action of a few of its least amiable or really

12 Englishwoman’s Review, above; The Woman Question: Papers Reprinted from the "Examiner" (London: R.H. Lapham, 1872); reprinted in Women’s Suffrage Pamphlets, 1869-1872, pp. 51-63, quote from p. 58. It is interesting that women’s publications, as well as men’s, used the word "mercenary" in describing female plaintiffs in breach of promise actions; apparently, the criminal imagery had as much to do with class as with gender.

representative members." Feminists, on the other hand, feared that the female plaintiffs hurt the woman's movement as examples of how women, given power, would abuse their privileges. *Woman*, e.g., reported an 1893 case in which a man was forced to pay £125 in damages to a woman he jilted, despite the fact that he had caught her kissing another man. The editors commented gloomily, "This should be good news for flirts."

The women who opposed the class of suit found pleasure in only one type of breach of promise case—those in which a man sued a woman. To feminists, this showed a true equality between the sexes; to other women, it was a lesson on what equality would bring should women achieve it. In 1892, a young male farmer brought a successful action against his rich ex-fiancée, winning £50. The daily press trumpeted such remarks as, "Sauce for the Gander" and "Aha for the women's righters!", but many of the latter were not at all dismayed. The *Woman's Herald* replied stoutly:

> For why should a man not have as much justice meted out to him as a woman? To wish the contrary would be to want to fling England back into the barbaric ages, of which ages justice to women mostly smacks . . . Let a man get the idea of equal justice between man and woman into his head, and thence into his judgements, and all things will be possible unto him, yea, even the capsizing and pulverizing of the legal idol precedent.

If the action could not be done away with, the next best thing was to apply it equally between the sexes, giving both groups compensation for their losses.

However, unlike most of the male commentators, women writing on this subject were not dogmatic. Even those publications that in general

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15 *Woman's Herald* 7 (August 6, 1892), p. 4.
disapproved of the class of suit recognized that there might be unpleasant consequences for women should it be abolished outright. The Lady's Own Paper, a consistent foe of the action, nevertheless admitted that "there is . . . another side to this question. The law is bound to take cognisance of any wilful injury inflicted by one person on another . . . " The editors went on to say that breach of promise cases did at least instill in young men a respect for the seriousness of promises to marry, and that "anything which would induce greater levity in such matters would be a danger to the public morals." The editors of Woman's Opinion also waffled on the question, criticizing the use of money to soothe broken hearts, but also realizing that monetary compensation was a practical way to help jilted women: "£200 are £200, and when men throw up a woman merely for caprice, the pocket is perhaps the best thing to make them feel it . . . " Even the Englishwomen's Review cautioned that abolishing breach of promise should "only be looked upon as a step towards the assertion of the complete social equality of men and women." The editors urged Parliament to not only remove the protections of women, but to equip women to make their own way in the world, including granting them suffrage.16

If even those opposing the action recognized its value, it was not surprising that other women felt it should be maintained. These women also included feminists, but this strand of feminists realized that to do away with breach of promise was to deprive women, particularly those with little income, of valuable protection. They saw that women who had been left "on the shelf" for years, or who had been seduced and deserted, would

be left with no redress if the action were abolished. The leaders on this side of the debate were the editors of the *Woman's Suffrage Journal*, who consistently opposed the numerous attempts to abolish the class of suit in the late nineteenth century. In 1881, they gave their primary objection to abolition:

The Bill [to abolish breach of promise actions] if passed would deprive women of such protection as the law can give against a very cruel wrong. It is too common for men to pursue a girl with attention, engage her affections, induce her, under promise of marriage, to leave some occupation whereby she was earning a livelihood, and having obtained all they wanted to cast her off with blighted affections and ruined prospects in life.

The class of suit, in fact, had proved its worth in protecting the interests of the female sex. The editors realized that the action was gender-biased, but the reason for that was "obvious and natural": "Men are not supposed to marry for a maintenance, while marriage is regarded as the normal profession through which women obtain a maintenance in consideration of the performance of the duties of a wife." As long as these economic differences remained, women needed some recourse when they were unfairly jilted. As a writer in *Work and Leisure* put it, "There is no doubt that its abolition would be the cause of much practical injustice."17

Those women who supported the action particularly resented the fact that the all-male Parliament with its all-male constituency was trying to abolish an action with peculiarly female plaintiffs. The *Woman's Suffrage Journal* complained bitterly in 1878 that "The removal of this safeguard

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would deprive that section of the people who are excluded from representation in the House of Commons of a protection they now enjoy against the wrongful acts of those who belong to the represented half of the nation..." They pointed out the inconsistency of refusing to give women suffrage, and yet abolishing breach of promise because of its supposed inequality:

The alacrity with which the House of Commons assented on its first introduction to a proposal to abridge the rights of women by depriving them of a remedy in constant use for their protection against wrong sustained at the hands of men, forms a striking contrast to the slowness and difficulty they exhibit when they are asked to entertain any proposition for extending the rights or improving the legal status of women.

The editors of The Journal of the Vigilance Association, not always in agreement with feminist leaders, emphatically concurred on that point, saying: "This is one of the questions that might in common decency be postponed until women have a voice in making the laws."18

Nor did it escape the notice of these feminists that laws protecting men from injuries were accepted without a murmur. In 1879, the Suffrage

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18Women's Suffrage Journal 9 (February 1, 1878), p. 20; 10 (June 2, 1879), p. 99; Journal of the Vigilance Association 4 (March 15, 1884), p. 24. Judith Walkowitz has shown the anti-feminist tendencies of the Vigilance Association in Prostitution and Victorian Society: Women, Class, and the State (Cambridge: Cambridge University Press, 1980) and more pointedly in "Male Vice and Feminist Virtue: Feminism and the Politics of Prostitution in Nineteenth-Century Britain," History Workshop Journal 13 (Spring, 1982), pp. 79-93. However, Sheila Jeffreys has identified feminist content in much of Ellice Hopkins' organization in The Spinster and Her Enemies: Feminism and Sexuality, 1880-1930 (London: Pandora, 1985), and on the issue of breach of promise (particularly the linking of it with suffrage), the Vigilance Association proved to be moderately feminist. Some men who supported breach of promise anticipated this argument about suffrage: "We can imagine the supporters of female suffrage pointing with triumph to Mr. Herschell's majority as showing the necessity for the reform they demand; and, indeed, it may be questioned whether that gentleman could have been so bold had he known that he had an enraged female constituency to face," "Breach of Promise of Marriage," Law Journal 14 (August 16, 1879), pp. 509-10, quote from p. 509.
Journal pointed out that "There is an action for damages in the Divorce Court, in cases where there is no presumption that pecuniary loss has been sustained, but through which men seek and receive pecuniary compensation not only for wounded feelings, but also for wounded honour." The Journal of the Vigilance Association was even blunter, stating, "We do not understand the fine feelings of the four men who back the Bill, which are not ruffled by the continued existence of the action by which a father or a husband may recover damages for the seduction of his daughter or wife. In these cases the damages go into the pockets of a man; in this case they go in the very great majority of instances into the pockets of a woman."19 Rather than seeing breach of promise as unfairly biased, they insisted instead that the movement to abolish it showed the true sexual discrimination; men were using their exclusive political power to help their own sex against the other.

Although admitting that the women who brought breach of promises suits were not the most refined of their sex, these feminists had more sympathy with poorer women's economic weakness. Many of them faced the class issue squarely, realizing that the upper-middle class leaders of the feminist movement did not always understand the needs of their less well-off sisters. As one editorial put it, "We may . . . safely assume that those women who desire the abolition are precisely those who would not bring the action themselves, and who are, therefore, not personally involved in the matter." The article went on to point out that women in the higher reaches of life had the protection of their family and adequate

19Woman's Suffrage Journal 10 (June 2, 1879), pp. 99-100, quote from p. 100; Journal of the Vigilance Association, above.
support for life whether or not they chose to marry. Many others, however, were not so blessed:

But it would be the height of injustice to withdraw from women not so fortunate, not so sheltered, even if we admit that they are not so refined in feeling, compensation for a wrong to which they are infinitely more exposed than the former class, and which is continually being accorded to them by the authorised tribunals of the realm.

*Work and Leisure*, a journal for working women, also saw this class bias and appealed to a sense of fair play: "Girls in the lower ranks of life are often put to much expense in preparing for their marriage, and often have to give up situations in which they have a comfortable maintenance ... it is but common fairness that some pecuniary compensation should be allowed them."\(^{20}\)

Unlike the feminists who desired immediate legal equality, the more cautious strand felt that men bringing breach of promise suits were scoundrels. *Woman*, a newspaper whose motto was "Forward! but not too fast," reported on the same 1892 Chester case as *Woman's Opinion*, but with the opposite reaction.\(^{21}\) The editors entitled the article "More than we Bargained for," and, though admitting that strict equality demanded that the man win his £50, they also felt that many women would "complain that the law has presented them with the husks and has reserved the corn for


\(^{21}\) This journal, edited by Amelia Lewis, ran from 1890 to 1912 and was founded to express the "moderate" feminist viewpoint (thus the motto that appeared on every title page). It later deteriorated into a ladies' fashion magazine, but in 1892 it was still dealing with women's issues. David Doughan and Denise Sanchez, *Feminist Periodicals, 1855-1984: An Annotated Critical Bibliography of British, Irish, Commonwealth and International Titles* (Brighton, Sussex: Harvester Press, 1987), pp. 13-14.
itself." Shortly thereafter, the editors of Woman hired a barrister to inform their readers of the law of breach of promise so that they could be informed of their rights and liabilities. In short, these women saw breach of promise as a way to protect their sex until the economic and political situation in Victorian England was less weighted against women's independence; men did not need this protection, so their suits were wrong-headed.22

An article that summed up all the ambiguities and difficulties of women in dealing with this question was published in the Examiner in 1871 as part of a series of articles on the "Woman's Question" and was later reprinted in the Women's Suffrage Pamphlets. The anonymous author expressed in no uncertain terms his/her disgust with the action as it was then tried, including the "type" of woman who usually brought it. The writer disapproved of courts dealing in love affairs even if the women plaintiffs were without fault, but felt sure that only the most undeserving actually resorted to the courts of law. Furthermore, s/he insisted that the juries that were so sympathetic were actually expressing male solidarity rather than helping women:

The lover might go,—but the settlement! We expect the jury is, after all not so much concerned about the daughter; their hearts bleed for the father, who is mortified by the loss of an expected son-in-law. They picture to themselves the disconsolate father, who, although he would be ashamed to confess it, would not be sorry to see his daughter maintained at some other person's expense; they remember the anguish with which he must count the loss of precious opportunities; they know that every hour of courtship diminishes the chance of other arrangements; and, accordingly, they give compensation.

22Woman, No. 136 (August 3, 1892), p. 1; "Actions for Breach of Promise," No. 141 (September 7, 1892), p. 4; see also Woman's support for the plaintiff in Frost v. Knight in Kenningale Cook, "A Point of Law," Woman 1 (February 17, 1872), pp. 75-76.
Yet, almost uniquely among opponents of the action, this writer understood the economic necessity that compelled poorer women to sue. They may wish not to go through a public humiliation like an open trial, but they had no choice in the matter:

But though the honour of women forbids their going through the disgusting ordeal of a trial for breach of promise, their interests almost require them to do it. The generality of women are, we were going to say trained for marriage, but, to be safe, let us say, destined for it. Without property, with no breadwinning knowledge or art, they can choose only between marriage and dependence on their relations, if they have any. The position is deplorable, but it is not of their seeking; it is prescribed by custom and must be recognized by law.

Therefore, even when the man no longer loved the woman, she remained eager to marry him, for otherwise she was destitute. The preference that judges and juries showed for women was fully justified, since society placed only women in the position of absolutely requiring matrimony to survive. The author further realized that simply abolishing the action was not the answer, because "A simple repeal of the law would not affect the real evil... The disgraceful thing is, not that the law should give a pecuniary solatium to a woman for the loss of a husband, but that the circumstances in which society places her should allow, nay compel, her to demand it."23

The writer placed the dilemma of women squarely at the center of the article: without economic and political equality, legal equality in this instance, and many others, was meaningless.

Herein lay the chief difficulty for Victorian feminists, and all of these arguments touched on the ambiguities of women's roles in breach of promise suits. The female plaintiffs in these actions appealed to a

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paternalistic court system to protect them from the loss of marriage. As previously discussed, many of the justifications of the action centered on the weakness of women in comparison to men, and the continued responsibility of men to "protect" the "weaker sex." Much of the ire of feminists, indeed, centered on this aspect of the trials. Yet neither side of the debate seemed to see that the women who were actually taking charge of their lives were the plaintiffs, not women who bravely suffered in silence after having been jilted. The plaintiffs in breach of promise cases chose to go beyond being victims and to take action against those who had wronged them. In their own way, they proved to be stronger feminists than women who believed in formal equality but refused to sue their errant lovers.24

Any number of examples from the previous pages could be brought to support this contention. Women like Frances Day and Minnie Quirk spent years being victimized by the men in their lives, Day by her alcoholic pseudo-husband, and Quirk by her unfaithful lover. Breach of promise offered such women the opportunity to take the initiative and empower themselves rather than remain passively on the sidelines, letting their future be decided by others. They were, in fact, using the patriarchal courts to their own advantage, using the stereotypes about Victorian women as the "weaker sex" to gain monetary compensation. They, in a sense, forced men to draw the logical conclusions from their own insistence that women were not equal; therefore, in this instance, the idea that women

were inferior did not work in men's favor.

In other words, the women who brought these cases asked the male judges and juries to react with chivalry to their difficult plights. They put themselves forward as weak, passive, modest creatures, used (and often seduced) by cruel, active, powerful men. Yet by their very presence in the courtroom, these women belied the stereotypical view of the "ideal" woman. They were active, strong, and willing to divulge their most heartfelt secrets to the glare of publicity. Many of them admitted to "falling" with the defendants, violating the most sacred taboo of Victorian womanhood, chastity. They denied not only the opinion of other women as to they way women should behave, but also of the men from whom they asked justice. Furthermore, a large number of female plaintiffs were independent women in the sense that they owned their own businesses or at least had steady employment. Admittedly, women earned precious little even in the respectable professions, but many of these plaintiffs (particularly those who were not seduced) could and did provide for themselves. Yet they continued to present themselves as requiring male assistance to survive. Moreover, they were immensely successful, winning close to 65 percent of the cases brought between 1859 and 1921. Most men in the juries were forced by their own conservative ideals to support breach of promise plaintiffs, even though they were thereby penalizing their own sex. Women may possibly be able to support themselves, but in a perfect world, they should not do so.

Some of the male opponents of the class of suit did recognize this difficulty and used potentially feminist arguments against the action in response. They were incensed, for instance, that men got only derisory
awards and public ridicule when they sued. The editor of Law complained, "it is a new doctrine that men do not love as strongly and feel as deeply as women, and if a recompense in money is any good to the one, so is it to the other... a man or a woman plaintiff is the same in the eyes of the law; it would do no harm if that were always remembered." Charles MacColla argued that since women had (by 1879) advanced economically even into the professions, the greater protection given to them was less and less necessary.25 Such arguments were self-serving, however, since none of these men were willing to go all the way with "equality before the law" for women and grant them suffrage or equal rights to the professions. And, thus, their high moral statements about equality failed to convince enough of the public to do away with the class of suit. They, too, faced a dilemma: if women were truly equal, then they should be able to vote; if not, then breach of promise should remain as a protection against strong men.

Feminists, caught in similar difficulties, recognized the usefulness of the action, but they offered few concrete solutions to the problems it presented. The writer to the Examiner, e.g., gave only vague proposals that women be made "independent of wedlock" through economic gains, insisting that "If a woman were in business, or had a profession, nothing more could, with decency, be heard of breaches of promise." The Women's Suffrage Journal, predictably, called that women be given the vote before any other reform attempts were made. Woman came up with an even more impractical scheme in 1891:

Although it is ridiculous to suppose that a wounded heart can be healed by the balm of a cheque for damages, it is desirable that men who have trifled with the affections of a woman, and have failed to carry out an engagement without good reason for doing so, should be liable to a fine in reasonable proportion to their means—ranging, say, from £5 to £500—and that in no case should more of the sum recovered be paid to the plaintiff herself—in addition to her costs of action allowed on a liberal scale—than would suffice to recompense her for the trouble and risk of her legal proceedings [emphasis in original].

The editors went on to say that only promises supported by written evidence should be brought to court. They did not specify how women were to get such evidence, how a jury would decide what a "good reason" for jilting was, or who would determine a "reasonable proportion" of a man's means. 26

Only non-feminists came up with more specific ideas on how to keep the best parts of the action while jettisoning the distasteful aspects of it. The editors of the Englishwoman's Domestic Magazine suggested as early as 1869 that men be asked to put down "earnest money" according to their position and means whenever they made an offer of marriage. If the man later reneged on his promise, he automatically lost his "deposit," and his ex-fiancée would have the sum on which to start over without resorting to an ugly public trial. "If we are asked," the editors proclaimed, "whether we would destroy such illusions in the bud by making every betrothed accept addresses over a deposited bundle of bank notes, we

26 "The Law of Breach of Promise," p. 62; Woman's Suffrage Journal 9 (February 1, 1878), p. 20; "Breach of Promise of Marriage," Woman, No. 70 (April 29, 1891), p. 3. American feminist Charlotte Perkins Gilman similarly insisted that "The economical independence of woman is the first condition of free marriage," but offered few workable ideas on how to achieve such independence; her suggestion was communal housekeeping. Quote from David Rubenstein, Before the Suffragettes, p. 38; Gilman's views on household economy and their influence in England in Carol Dyhouse, Feminism and the Family, pp. 114-117.
should reply that it was a consideration for the civil law." People were
going to flirt, and this system would induce them see the serious side of
matrimony from the start.27

A similar scheme was devised by yet another non-feminist almost 25
years later. In 1893, an article in The Spectator suggested that all men
sign written and stamped proposals of marriage before being accepted as
serious suitors. "If it once became an understood thing that the ardent
lover should offer such a proof of his good faith then a girl would know
well what to expect form a lover who withheld it." Such a guarantee (or
lack thereof) would also alert parents to the intentions of any beaux of
their daughters. Like the editors of the Englishwoman's Domestic
Magazine, the author defended his/her idea against the charge that such
a scenario violated all the romantic ideals of love and marriage: "Such
trials [breach of promise cases] are infinitely more injurious to the
romance of courtship and marriage than would be the introduction of
stamped paper into an engagement," s/he insisted.28

Such schemes did away with the necessity of ugly public trials, but
they were no more realistic than those of the feminists. Lower middle and
working class women were hardly in a position to demand guarantees from
their lovers, nor would they think it necessary at the time that they were
most likely to receive them. There was a fine line between "walking out"
together and actually being engaged; in fact, the confusion between these
two states was one of the central problems for juries in breach of promise

27"Matrimony As it Was--As It Is," Englishwoman's Domestic Magazine
7 (September 1, 1869), pp. 119-121, quote from p. 121.

28"The Law and Lovers' Vows," The Spectator 71 (November 18, 1893),
pp. 712-14, quote from p. 713.
cases. Lower class courtship was simply too informal to adapt easily to written promises or "earnest-money" deposits. Nor did parents have the control over their children's courtship that upper middle class people assumed. For better or worse, breach of promise was a single woman's primary recourse when jilted, seduced, or abused.

The action continued to be a source of difficulty for women into the 20th century, although the improved legal and economic conditions of women made it easier to support abolition. Helena Normanton, in 1932, urged that men's actions be as acceptable as women's, since "the progressive changes in the relative economic positions of men and women" had made it unlikely that men were the only fortune-hunters. Erna Reiss, also in the thirties, felt that "to claim damages for injured feelings and disappointed hopes is inconsistent with the changed position of women, inconsistent with the principle proclaimed for so long and to-day generally accepted that marriage is not a form of livelihood but a personal relationship between man and woman." Florence Earengrey, a legal writer in the fifties, declared bluntly, "It seems that, possibly apart from special damages actions for breach of promise should be abolished. They are one of the few instances where the scales are weighted in favour of women." The fact that Earengrey assumed that a law weighted for women was wrong showed how far the desire for legal equality had come by the mid-twentieth century.29

And, indeed, when the action was finally abolished in 1970, there was very little complaint from the female constituency or the women in Parliament. At the most, women MPs commented unfavorably on the fact that the committee that wrote the law abolishing the action was made up entirely of men. Mrs. Renee Short remarked drily:

It always surprises me that when in the House we do a great deal of work on the condition of women, if I may use that expression in the broadest sense, we do not think that it is necessary even to have just one statutory woman on the Committee so that the women's point of view might be heard.\(^{30}\)

Short's protest, however, was limited to arguing about the ownership of the engagement ring rather than in saving the class of suit from abolition. The Law Reform (Miscellaneous Provisions) Act was passed easily through both houses in Parliament, since by the late 20th century such an action seemed anachronistic. As Julias Silverman said in introducing the bill:

[The action] tends to give marriage the character of a commercial bargain, and this hardly accords with the modern view of marriage or the equality of the sexes. It was based upon social assumptions which are no longer valid.\(^{31}\)

In 1970, apparently, most women agreed.

After a few years without breach of promise, however, some women expressed doubts about the wisdom of doing away with its protection. Diana Leonard pointed out in 1980 that although being jilted was not as important now as in the past, a woman still spent large amounts of money on her wedding. She may also have lost all chances at marriage to someone else. Furthermore, "the girl is left holding the baby, or is at least no


longer a virgin; and marriage remains of great economic importance to women—most women’s work is still menial and low paid, and this is justified on the basis that most women are married." Leonard’s point corresponds with those women who have realized the potential hazards of women’s legal "equality" with men, even in the late twentieth century. As Julia Brophy and Carol Smart wrote in 1982, "The problem for feminist politics with a concept of rights is that it leaves untouched structural inequalities and makes demands at the level of formal equality. Although the concept of equal rights has traditionally been adopted by the powerless or disadvantaged, it can equally be appropriated by more powerful sectors of society. There is nothing inherently progressive in this concept. . . ."32 Thus, the arguments of the Victorian period were still being repeated, even after the suit had been abolished. Women continued to wrestle with the dilemma of demanding equal rights in a society that had moved only slowly toward correcting the economic handicaps women faced in Modern England. Breach of promise was an imperfect tool, but it did offer Victorian women a chance to take the initiative in their lives, an opportunity that came far too seldom overall.

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CHAPTER TEN—"CHOPS AND TOMATA SAUCE!":  
BREACH OF PROMISE CASES IN FICTION

Fictional cases of breach of promise of marriage were more entertaining, and far less tragic, than those in real life. With the exception of stories of seduction under promise of marriage, which have been explored by numerous scholars, breach of promise received minimal, if memorable, treatment. Victorian writers portrayed the action from a middle class point of view, seeing the potentially humorous aspects far more clearly than the potentially heartbreaking ones, and recognizing its challenge to companionate marriage more clearly than its protection for women. In fact, none of the writers had any sympathy for the female plaintiffs in breach of promise trials, reserving that emotion for the defendants. Ultimately, fictional accounts justified the abolition of the action, since they did not recognize any situation in which a breach of promise suit was legitimate. They set up an image of plaintiffs, defendants, and trials that were far more influential than the true picture.

Probably the most well-known depiction of a breach of promise case was done by Charles Dickens. In 1836, he published The Pickwick Papers, in which one of the most amusing breach of promise cases ever recorded

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took place.² The defendant in the case was Samuel Pickwick, hero of the book, and the plaintiff was his landlady, Mrs. Martha Bardell, a widow with a small boy. Pickwick had lodged with Bardell for two years when he approached her about hiring a manservant. However, he went about it in such a roundabout way, saying, "Do you think it's a much greater expense to keep two people than to keep one?" and how nice it would be for her young son to have a companion, that she got the entirely wrong impression. Thinking he was proposing, she threw herself in his arms, and before he could disentangle himself, she fainted. Three of his friends entered the room at that moment and witnessed the awkward embrace, which Pickwick tried to explain away without notable success.³

Pickwick went on to hire Sam Weller as his manservant, but he never corrected his landlady's mistaken impression. Bardell soon realized that he had no intention of fulfilling his promise, so she went to a firm of solicitors, Dodson and Fogg, whom she hired "on spec" to sue Pickwick for breach of promise of marriage, asking £1500 damages. Pickwick was astounded at the suit, blaming it on the "grasping attorneys," whom he tried to intimidate into withdrawing the suit.⁴ Much to his chagrin, the suit eventually went to trial. His barrister was the inept Sargeant Snubbin, but Dodson and Fogg had retained the renowned Sargeant Buzfuz for


³Pickwick Papers, pp. 170-175, quote from p. 170.

⁴Pickwick Papers, p. 268.
their client. Buzfuz knew every trick in the book: he had the widow enter, weeping, with her child at her feet; he masterfully dealt with his mostly reluctant witnesses; and he made a great deal of the tiny bits of correspondence that Mrs. Bardell could offer as evidence:

Two letters have passed between these parties... They are covert, sly, underhanded communications... Let me read the first: 'Garraway's, twelve o'clock.--Dear Mrs. B--Chops and Tomata sauce. Yours, PICKWICK.' Gentlemen, what does this mean? Chops and Tomata sauce! Gentlemen, is the happiness of a sensitive and confiding female to be trifled away, but such shallow artifices as these? The next has no date whatever, which is in itself suspicious.--'Dear Mrs. B., I shall not be at home till tomorrow. Slow coach.' And then follows this very remarkable expression--'Don't trouble yourself about the warming-pan.' The warming-pan! Why, gentlemen, who does trouble himself about a warming pan? ... Why is Mrs. Bardell so earnestly entreated not to agitate herself about this warming pan, unless (as is no doubt the case) it is a mere cover for hidden fire—a mere substitute for some endearing word or promise, agreably to a preconcerted system of correspondence, artfully contrived by Pickwick with a view to his contemplated desertion, and which I am not in a condition to explain?

Pickwick's barrister, on the other hand, confined himself to an inadequate speech, and the Judge, Justice Stareleigh, slept through most of the trial and therefore only confused everyone when he summed up. Not

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5Buzfuz was believed to have been based on an actual barrister, Serjeant Bompas, K.C., who was called to the bar in 1815 and died in 1844 at the age of 53. Percy Fitzgerald, ed., Bardell v. Pickwick (London: Eliot Stock, 1902), pp. 41-43.

6Pickwick Papers, pp. 520-521. These letters may have been based on the similarly innocuous letters used in the notorious 1836 trial Norton v. Melbourne, Percy Fitzgerald, The History of Pickwick (London: Chapman and Hall, 1891), pp. 144-146.

7Stareleigh, too, was based on an actual judge, Sir Stephen Gaselee: "Serjeant Gaselee was once well known in the prosecutions directed against Radicals and so-called Reformers, but Pickwick has given him a greater reputation. The baiting he received from patriotic advocates may have inflamed his temper," Fitzgerald, Bardell v. Pickwick, p. 32.
surprisingly, the jury deliberated only fifteen minutes before bringing in a verdict for the plaintiff, damages £750.

Already this scenario was a highly amusing parody of the class of suit and the legal process. But Dickens did not leave the story there. Pickwick refused to pay the award or the costs of the action, and he was thrown into the Fleet Prison for debt. Eventually, Dodson and Fogg grew impatient of getting their fees. Martha Bardell had signed a cognovit to the effect that if Pickwick did not pay, she would make good their money. Unfortunately, she did not have enough to pay them, and she, too, was thrown into the Fleet Prison. After several of Pickwick's friends appealed to him on her behalf, he agreed to pay the lawyers out of chivalry to a lady in distress, and both of them emerged from debtors' prison. Ms. Bardell, in return, agreed to waive her damages, and the ludicrous case came to an end.

"Bardell v. Pickwick" was a clever and biting satire on breach of promise cases, especially because it was accurate in a number of ways. The plaintiff was the landlady of the defendant, and this was often true in actual cases; that is, she sued a man who was better off than she. And her tragic demeanor in entering the court was a common ploy of mature plaintiffs, trying to gain every ounce of sympathy. Dickens also had a keen eye for legal shenanigans. Particularly, he showed how easily a well-trained barrister could turn even the most innocuous of communications into passionate love letters. Furthermore, he demonstrated the danger of not allowing the plaintiff and defendant to testify in

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Fitzgerald estimated that the costs would have amounted to around £220; since Pickwick had asked for a special jury, his expenses were greater. *Bardell v. Pickwick*, p. 107.
breach of promise cases; Pickwick would have been his own best witness, because he could have at least offered an explanation for his words with his landlady. It was also often the case that the defendant asked for a special jury, realizing that he was at a disadvantage because he was forced to rely primarily on cross-examination and an often inadequate closing speech.\(^9\)

Ultimately, Pickwick does not make either of the principals in the law suit the villain. Bardell honestly believed that Pickwick proposed to her and jilted her; otherwise, she would never have brought the suit. Pickwick, of course, was the victim of a peculiar set of circumstances and his own poor choice of words. The villains in this story were the lawyers, especially Dodson and Fogg, and the British legal system. Mrs. Bardell's solicitors cared nothing at all about their client, and cheerfully threw her into prison when she could not pay their fees. In the end, in fact, they were the only ones who came out ahead. Taking cases "on spec" and asking clients to sign a cognovit were unethical practices in the Victorian legal profession, although both were probably going on all the time; there is no other way to explain how so many working class women could afford to sue in the high courts. Dodson and Fogg were the worst type of lawyers for indulging in these practices.\(^10\)

\(^9\)Frank Lockwood, however, argued that Pickwick never could have stood up to severe cross-examination because of questionable actions in his past. The Law and Lawyers of Pickwick (London: The Roxburghe Press, 1894), pp. 82-85.

\(^10\)E.B.V. Christian, in 1909, wrote an article defending the solicitors, but admitted that most readers felt that "having undertaken the plaintiff's case 'on speculation,' and made an agreement not to charge her for their services unless successful, they were guilty of unprofessional conduct akin to offences of maintenance and common barratry, "Dodson and Fogg, Gentlemen," Leaves of the Lower Branch: The
Furthermore, the legal system was to blame, first for having no safeguards to mistakes of this sort (Dickens had no great regard for the jury system), and second, for throwing debtors into prison at all. Much of the trial was played for laughs, but the scenes in the Fleet were not all humorous. And, in fact, Dickens portrayal of that prison helped to get it closed a few years later.

Pickwick's ill-fated trip to the High Court was enormously popular with Victorian audiences; at least two plays were written solely on Chapter 34 of the *Pickwick Papers* in the years after its publication, and a longer play based on the entire book included a dramatization of the trial. As Percy Fitzgerald wrote in 1902, "There are few things more familiar or more interesting to the public than this cause celebre," and he went on to detail several productions based on the trial, including a French version. A London preacher, a few years after the publication of the work, referred to the trial to illustrate the need for prayer, saying, "In fact, as Sergeant Buzfuz said to Sam Weller, in the trial of Bardell v. Pickwick, there is little to do, and plenty to get." An early version of the *Oxford English Dictionary* even used Mrs. Bardell's *cognovit* as an example of its meaning.11

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Having made such a large impression on the general public, the parody went on to have an even bigger influence on legal writers and practitioners. Two legal volumes used "Bardell v. Pickwick" as examples in discussions of the law of hearsay. Barristers sometimes brought up the fictional case in the middle of real ones. Mr. Cole, in *Gregory v. Beach* in 1873, began his closing speech by saying:

In the report of "Bardell v. Pickwick," in the great book which he supposed they had all read, he thought that, so far as Sergeant Buzfuz was concerned, his learned friend had emulated him, for he (Mr. Cole) felt convinced his unhappy client never felt how much she was injured until she was told by her counsel.

Especially when a widow brought a case, barristers enjoyed bringing up Sam Weller's father's advice, "Samuel, beware of vidders." Cole did so, and so did Mr. Morgan Lloyd in a case in 1879. Newspaper court reporters occasionally also added Dickensian touches to their reports. The report of *Jones v. Chapman* in 1889 contained the subheading, "Just What Sergeant Snubbin Did," when the defense barrister confined himself to a closing speech.¹²

In fact, "Bardell v. Pickwick" came to symbolize most of the abuses that lawyers and legal commentators saw in breach of promise suits. Ignoring the real villains of the book (other lawyers), these men instead

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¹²For the use of Dickens in law books, see Fitzgerald, *Bardell v. Pickwick* p. 63; *Gregory v. Beach* ASSI 22/33; *Dorset County Chronicle* (March 13, 1873), p. 8; *Owen v. Williams* ASSI 59/142; *Carnarvon and Denbigh Herald* (July 19, 1879), p. 7; *Jones v. Chapman* ASSI 22/40; *Cornish Telegraph* (March 7, 1889), p. 6.
concentrated on the fact that the action led to innocent men being milked for damages. Often, when critics of the action reported a case they disliked, they compared it to the trial in *Pickwick*. The *Law Times*, in reporting *Haycocks v. Bishton*, expounded on the lack of evidence for the plaintiff, concluding that "It was quite the case of *Bardell v. Pickwick*." The editors also inveighed against *Jones v. Heasman* in 1868, because the correspondence between the couple was almost nil. After printing the one short letter Heasman had written the plaintiff, the editors sniffed, "This rivals the famous letter in *Pickwick*: 'Dear Mrs. B.,--Chops and tomato sauce;' and this was the evidence admitted by twelve men of common sense as proof of the most solemn contract with two persons can enter into."

Twenty-five years later, the editors of *Law Notes* made the same point about a case of which they disapproved, writing, "*Ackerman v. Saunders* would furnish a not unworthy companion to *Bardell v. Pickwick*." The parody was so influential that even supporters of the action recognized the appeal of Dickens' characterization of breach of promise actions. The *Solicitor's Journal* argued in 1881 that "*Bardell v. Pickwick*" was a favorite of people the same way newspaper reports of actual cases were poured over by the public:

> The immense popularity of the trial scene drawn by the hand of one of our greatest humorists--viz., that in which the immortal Pickwick falls a victim in a court of law to the wiles of that most dangerous of widows Mrs. Bardell--depends, to a very great extent, upon the nature of the cause of action selected by the author, than whom none better appreciated the tastes of the British public.\(^\text{13}\)

\(^{13}\text{Law Times 48 (March 26, 1870), p. 407; 44 (April 25, 1868), p. 484; Law Notes 11 (1892), p. 69; Solicitor's Journal and Reporter 25 (August 20, 1881), p. 791. It is interesting that the legal elite managed to turn Mrs. Bardell into a "dangerous widow," despite her honest mistake. Even though Dickens did not see her as necessarily culpable, commentators put\)
Furthermore, any number of people who wrote or spoke about breach of promise brought up the case even into the twentieth century. Charles McColla, in his history of breach of promise, did not fail to discuss the "case," using it as a clear example of the abuses of the class of suit. William Blake Odgers, in his book on law reform in 1901, mentioned "Bardell v. Pickwick" to illustrate the need for the Evidence Amendment Act in 1869. When Frank Lockwood was asked to give a lecture at the Moreley Hall in Hackney in 1893, he chose to speak on law and lawyers in Pickwick Papers, and spent a great deal of the speech on Pickwick's ill-fated trip to the Common Pleas. Judge Edward A. Parry also referred to it in his book on women and the laws of England, published in 1916; F.W. Ashley, who served as a clerk to Mr. Justice Avory for over fifty years, could not resist mentioning "Bardell v. Pickwick" in his memoirs in 1936, even though Avory primarily dealt with criminal law. Indeed, the popularity of that fictional trial lasted until the suit was abolished. As late as 1956, G.D. Nokes was still using the pseudo-case to explain the law of evidence. And Julius Silverman, in his opening speech to introduce the Law Reform (Miscellaneous Provisions) Act in 1970, began with the almost indisputable statement: "Many hon. Members will be familiar with the case of 'Bardell v. Pickwick', in which Charles Dickens lampooned the breach of promise action."\(^{14}\)

In short, this fictional case had far more impact on people's perceptions of breach of promise suits than any single real case did. Frank Lockwood went so far as to argue that Buzfuz's speech was "the best-known speech ever delivered at the Bar."^15 Dickens may have intended the incident to have wider implications, but what most readers remembered was that the case was wrongfully brought, the jury brought in an unjust verdict, and the entire episode was exceedingly humorous. Dickens had the courtroom antics so perfectly on target (though exaggerated) that the less typical aspects of the action were not apparent. For example, Mrs. Bardell was not seduced, nor did she suffer much emotionally or financially (at least not at Pickwick's hands). Indeed, the "engagement" with her boarder was so short as to be non-existent; she was not left "on the shelf" for many years. Moreover, although there were some older, widowed women as plaintiffs in the nineteenth century, they hardly made a majority. Dickens' picture of breach of promise, in the end, gave opponents of the action another weapon against it rather than giving a realistic portrait of broken engagements in the courtroom.

Interestingly, "Bardell v. Pickwick" was not the first dramatization of a breach of promise case. In 1832, "Breach of Promise; or Second Thoughts are Best" debuted on the London stage.^16 The two-act play was

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^15Lockwood, Law and Lawyers of Pickwick, p. 85.

^16J.B. Buckstone, "Breach of Promise; Or Second Thoughts Are Best," (New York: O.A. Roebach, Jr., 1832). The play was revived in New York in 1853 and 1855. The fact that two works on breach of promise appeared in the 1830s indicates that the action was familiar to the British public before the Victorian period. This was certainly possible, considering its long history in the ecclesiastical courts and slow evolution in the civil
written by J.B. Buckstone, a hack playwright who wrote dozens of light
plays during his long career. The play was a farcical piece, centering
on a widow, Mrs. Trapper, and her three silly daughters. Her friend, Mr.
Sudden, was a confirmed bachelor, but he also had trouble with his ward,
Mary, since he could not force her to marry for wealth; she stubbornly
insisted on marrying for love. Mr. Sudden decided on the spur of the
moment to ask Mrs. Trapper to marry him the very next day, thinking that
a wife could handle his domestic problems. At first, Mrs. Trapper
demurred, so to prove his sincerity, Sudden wrote out the promise on a
piece of paper. Eventually, the widow accepted, and crowded over her
single daughters in triumph.

Sudden went back home only to change his mind when he heard a rumor
that Trapper had poisoned her first husband in America. He hurried back
to his fiancée's home, interrupting her in the middle of wedding
preparations, and told her that the next day's wedding was off. Her
reaction was rage: "I'm not to be deceived, sir; I'm not to be turned
round your finger. I've had too much experience, sir, and I dare you to
trifle with me ..." When Sudden stuck to his guns, she brought out the
written promise, threatening, "there's a law to be had--and you shall not
make me look little in the eyes of my girls, without dearly paying for it
..." Sudden realized then that he was going to be dragged to the courts
for a breach of promise of marriage suit.17

In the second act, the breach of promise trial took place off-stage.
Sudden brooded on the day of the trial:

17"Breach of Promise," p. 22.
... bless me, how I shall tremble when I take up the paper to-morrow—"Trapper versus Sudden. This was an action for breach of promise." I have one consolation, I have written no letters; there will be no amatory epistles for the court and the young barristers to grin at—no "darling ducks" and "dearest and loveliest of women," to be brought against me.\textsuperscript{18}

His gossipy friend Jabber arrived then with the news that he had lost his breach of promise case and now owed Trapper £2000 in damages. Sudden at first decided to pay it at once, but then changed his mind and decided to fight her: "I'll resort to every legal shift to avoid paying—I'll harass her, tease her, kill her, if I can!" After his lawyer's bill came, he resolved not to pay him either and to leave the country.\textsuperscript{19} Jabber went at once to Mrs. Trapper's home and warned her; she proceeded to get a judge's warrant and to have Mr. Sudden arrested. Just as he was about to be taken away, however, his new tenant, Mr. Hudson, arrived. Hudson, miraculously, turned out to be the long-lost husband of Mrs. Trapper, who had pretended to be dead to get away from her bad temper. He had repented of leaving her and had searched for her but had not found her until that moment. The couple was reunited, and Sudden realized he had done the right thing to go with his "second thoughts" about marrying her. The play ended happily for all concerned.

Like \textit{Pickwick}, only more so, this play used humor to deal with a potentially tragic situation. The breach was not a serious problem for Mrs. Trapper (although she was not well-off), since her "engagement" to Mr. Sudden was of less than 24 hours standing when it was called off. She certainly had no great love for him; she was frankly marrying him for his

\textsuperscript{18}"Breach of Promise," p. 23.

\textsuperscript{19}"Breach of Promise," p. 25.
money. Indeed, her only reason for bringing the suit was her fury at being "made little" of in front of her three daughters. Again, atypically, the couple involved was of mature age, and the woman was a supposed widow rather than a spinster. Her damages were rather high as well, although her case was strengthened by Sudden's non-appearance in court. Probably the most realistic thing about the dramatization was Sudden's attempt to escape paying the damages; most likely, any number of defendants reacted just as defiantly.

Besides making light of the hardships of many plaintiffs, the play's ultimate message also undermined the purpose of breach of promise suits. The insistence that "second thoughts are best" supported men (and women) who had second thoughts about marrying and chose to break of an engagement rather than to honor their promises. In the end, it was a very good thing that Mrs. Trapper did not remarry, since her first husband was not really dead. Engagements were probationary and for excellent reasons. Although Buckstone did not argue full-out for domesticity, he did argue for seriousness in making life-changing decisions. Furthermore, although neither of the principals were presented in a flattering way, Mrs. Trapper (significantly, her name had a mercenary connotation, even as early as 1832) came off the worst. Her first husband left her because of her temper; she had brought up three extremely foolish daughters; she saw nothing wrong with marrying for money; and she went after Mr. Sudden with vindictive vigor. The author pointed up what kind of woman brought breach of promise cases--cold, calculating, bad-tempered. Finally, Buckstone made fun of the cases themselves by having Sudden rejoice that he had "written no letters." His imitation of the sloppy love letters often used
in evidence was accurate, if exaggerated, and obliquely criticized exposing such personal correspondence to public eye. Although dealing with the class of suit in an amusing way, Buckstone still presented it in a highly unflattering light.

The next important treatment of breach of promise came in 1845, when an anonymous author published a book called *The Breach of Promise.*²⁰ Despite the name, most of the book did not concern a breach of promise case. The heroine of the novel was Lucilla Temple, a young middle class woman who fell in love with a penniless artist. Her parents wished her to marry Frank Stanley, a wealthy and honorable gentleman, but she insisted on marrying the man she loved even if it meant being poor. In the end, the two men were revealed to be one and the same person; Frank had pretended to be poor so that he would be sure that Miss Temple loved him for himself alone. Thus, as a reward for her true love, Lucilla was able to marry the man she adored, please her parents, and enjoy great wealth all at the same time.

The breach of promise case was a subplot, a counterpoise to the excellent behavior of the heroine. The villainess was also named Lucilla, but her last name, significantly, was Undermine. Miss Undermine was also in love with a poor man, an Irish ne'er-do-well named Rory O'Brien, but she was not satisfied with living on love. She and her lover concocted a plot to sue the wealthy Sir Felix Archer for breach of promise and to use the money to live in luxury. Sir Felix had shown an interest in Lucilla Temple, and Miss Undermine used this to her advantage. She

²⁰All citations from *The Breach of Promise* 3 vols. (London: T.C. Newby, 1845).
pretended to be a go-between for the "lovers," and instead kept all the love letters, poetry, and tokens for herself. She carefully arranged to meet Sir Felix on numerous occasions; for example, she made sure that her maid saw him kissing her hand on the day that they sealed the bargain that she would act as an intermediary. She also told him to pretend to flirt with her at one of his parties in an effort to make Temple jealous. Finally, she convinced her cousin, who truly loved Archer, that the engagement was a fact. In a surprisingly short time, she had built up an impressive array of circumstantial evidence.

After this careful preparation, Undermine brought the case, using her oily brother as her solicitor and O'Brien as her barrister. Before the case came to trial, she played on the sympathies of the public by pretending to be deeply ill and by letting it be known that she had been forced into bringing the action by her parents. The author gave only a brief account of her wiles in the courtroom:

Sir Felix's luckless verses went sadly against him, and the plaintiff, robed almost in widow's weeds, and white from watching and fear of detection, won the jury's heart by the vivid contrast her counsel drew of what she had been and what she was. The witness of the maid who had peeped in when Sir Felix was kissing the plaintiff's hand--of Renard, who detected the ring on her finger--of the guests who noted his devotion to her at his own party . . . but above all, Sir Felix's character for flirtation, and an adroit and complimentary appeal of O'Brien's to the jury, all middle-aged, on the power of men past forty over young girl's hearts; this . . . decided the verdict and damages.21

Not surprisingly, Miss Undermine won her case and damages of £20,000. However, she did not long enjoy her ill-gotten gains. She married O'Brien, but a marriage based on treachery and deceit was doomed. Her no-

21 The Breach of Promise, p. 376.
good husband promptly gambled and drank the money away, and left her practically a beggar as the book closed. The author intoned in closing that she came to rue the day that she sued for breach of promise.

Clearly, the breach of promise case was presented here as an object lesson for the female readers. The good Lucilla wanted only true love and ended up with both love and wealth; the bad Lucilla was greedy and deceitful and ended up with neither love nor wealth. The conclusion was simple: the only road to a successful life and complete happiness was marriage for love, and money should have nothing to do with it. Earlier in the novel, in fact, the subject of the class of suit came up, and "All laughed, and scorned the idea of suing [sic] for money the man who should have disdained their love."²² Although one of the women present (Undermine) did not actually believe what she said, the author obviously supported that viewpoint with the rest of the plot.

The breach of promise trial in The Breach of Promise may have been influenced by the famous case of Smith v. Ferrers.²³ Smith did not come to trial until early 1846, but the early stages of the action had begun in the autumn of 1844. The author of the novel, then, could have been inspired by the allegedly fraudulent action brought by Mary Smith against the Earl of Ferrers, although Smith was not exposed until after the novel's publication. At any rate, Breach of Promise made the process of accusing a man of breach of promise seem simple indeed. Lucilla Undermine was clever, but she needed only a few short months and a little luck to build a strong case. This novel fed men's fears of female power; it

²²The Breach of Promise, p. 184.

²³See Chapter Seven for the details of this case.
demonstrated that given an action for protection, women would abuse it, accusing innocent men and making a mockery of the justice system. Furthermore, only the most depraved women would use such a remedy; Lucilla Temple, had she been jilted, would never have resorted to a public trial. And to make the point doubly obvious, the author put in the character of Miss Trueblue, a woman who had been jilted by Sir Felix but suffered in noble silence rather than parade her sorrow in front of a jury. The writer stressed, similarly to Buckstone, that the women who benefitted from the action were the Undermines and Mary Smiths of the world, not the Temples and Trueblues (and these metaphoric names were clearly not accidental either).

Furthermore, the trial in The Breach of Promise played on class fears and ancient English prejudices. Lucilla Undermine was not of the same class as her victim; she was middle class while he was a knight. In this sense it was similar to Pickwick, since a better-off man was wrongfully sued by a poorer woman. This was yet another, more oblique way, of insisting that the plaintiffs in breach of promise cases were only suing for money, and that men of higher classes and accomplishments were sitting ducks for lower class schemers. It may also have been pointing up the need for middle class parents to keep a closer eye on the behavior of their daughters. Also, Rory O'Brien played to the English prejudice against hard drinking, vagabond Irishmen. By involving him in the bogus trial, the author discredited it (and Undermine) further in the eyes of the readers.

Needless to say, the trial in this novel was far less accurate than Dickens'. Only a small proportion of breach of promise cases involved
high-born defendants; nor is there much evidence that many cases were trumped up or fraudulent (although this is a calculation that is impossible to make absolutely). Again, the plaintiff in the action was not seduced, nor did the fake "engagement" last for any length of time. There was no real damage to Lucilla Undermine, even if she had been engaged to Sir Felix, except to her feelings. Finally, the award in the case was well in excess of the average award in the nineteenth century. The largest award before 1845 was £3,500 in 1835; awards did not top £10,000 until the twentieth century. Lucilla Undermine's jury was astoundingly generous; had she received such an exorbitant amount in reality, Sir Felix would certainly have appealed rather than simply paying up, as he does in the book.

The breach of promise trial in this novel, like the case of "Bardell v. Pickwick" and "Trapper v. Sudden" supported the viewpoint of those who opposed the action. In fact, it went further than Dickens or Buckstone did, since the plaintiff in the book was a clearcut villainess; she worked long and hard to bilk Sir Felix for all he had. The author did make one concession, however: since Sir Felix was not an injured innocent, readers would not waste too much sympathy on him. He had brutally jilted Miss Trueblue a few years before and had a general reputation as a flirt. Indeed, as the author wrote in the description of the trial, his bad

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24 The 1835 case was Wood v. Hurd, 132 English Reports 65–66 and 326; Times, May 7, 1835, p. 6; May 12, 1835, p. 6; June 17, 1835, p. 3. The defendant, the son of a solicitor, appealed the verdict as excessive, but the court dismissed the appeal. Two plaintiffs in the late Victorian period received £10,000. In Finney v. Garmoyle, in 1884, the defendant agreed to grant the large award to his ex-fiancée (see Chapter Seven for details). In Knowles v. Duncan, in 1890, the defendant appealed and Gladys Knowles eventually received only £6,500 (see Chapter Two for details).
reputation came back to haunt him when he was finally brought into court for breaking his word. It was an intended irony that Archer was convicted of jilting the one time that he was not, in fact, guilty of it. But besides that one aspect, the novel presented breach of promise actions in a firmly negative way.

Trials for breach of promise did not received extended treatment again until 1875. In that year, Gilbert and Sullivan's Trial by Jury was first produced at the Royalty Theatre.\(^{25}\) Trial by Jury was one of the shortest of the duo's collaborations, but it contained the strongest indictment of breach of promise actions to that date. The story was a simple one. The curtain rose on the jury, having just been sworn to hear a breach of promise case. The defendant, Edwin, came in first, then the judge, and finally Angelina, the plaintiff. The defendant admitted to having proposed and then abandoned his ex-fiancée for another woman, using as his defense only that he should not marry anyone unless he loved them truly. Angelina, appealing to the chivalry of the men on the jury (and to the lasciviousness of the judge), rested her case on her continuing love for her errant flame. Edwin finally offered to marry both women, which the judge at first felt was an excellent idea. When her counsel objected, however, the judge came up with a better one and offered to marry Angelina himself. The plaintiff cheerfully agreed, and the operetta ended with everyone satisfied.

Naturally, this version of a breach of promise case was the furtherest from the strict accuracy of the four; this was certainly

intentional, since the authors were exaggerating the silly aspects in order to parody them. Justices had plenty of latitude in the courtroom in the nineteenth century, but none went so far as to propose to one of the plaintiffs. Angelina came into court wearing her wedding dress and her witnesses were her bridesmaids, also decked out in full wedding regalia; some of the plaintiffs in breach of promise cases did indeed wear the dresses they planned to wear for their weddings to the trial, but they were more solemn affairs of black or blue silk. Furthermore, the plaintiff openly flirted with the jury and the judge, although she masked the behavior through crying fits and faints; such behavior would have done most breach of promise plaintiffs no good at all.

Gilbert and Sullivan's version of a breach of promise case, in fact, presented everyone except the defendant as the grossest of hypocrites. The jurymen, on hearing Edwin's story, responded:

Oh, I was like that when a lad!  
A shocking young scamp of a rover,  
I behaved like a regular cad;  
But that sort of thing is over.  
I'm now a respectable chap  
And shine with a virtue resplendent  
And, therefore, I haven't a scrap  
Of sympathy with the defendant!26

The authors were even more pointed about the judge. He cheerfully related that he got his start at the bar by becoming engaged to an attorney's "elderly, ugly daughter." As soon as he got on his feet, however, he reneged on his side of the deal:

At length I became as rich as the Gurneys--  
An incubus then I thought her,  
So I threw over that rich attorney's  
Elderly, ugly daughter.

26"Trial by Jury," p. 46.
The rich attorney my character high
Tried vainly to disparage--
And now, if you please, I'm ready to try
This Breach of Promise of Marriage! 27

Nor did Angelina appear to have faultless motives. She used her beauty
to captivate all the men in the courtroom, fainting on the foreman of the
jury and then on the judge (at his invitation). And she did her best to
get the amount of damages as high as possible:

I love him--I love him—with fervour unceasing
I worship and madly adore;
My blind adoration is always increasing,
My loss I shall ever deplore.
Oh, see what a blessing, what love and caressing
I've lost, and remember it, pray,
When you I'm addressing, are busy assessing
The damages Edwin will pay! 28

Minutes after that passionate profession of love, she happily agreed to
marry the judge instead. She was clearly a representative of the
"mercenary" women that opponents insisted were the main people to bring
this action.

Edwin, on the other hand, was a marked contrast to the rest of the
characters. He had his faults, but he admitted them; he was no hypocrite.
He offered one of the best arguments against the case: that people
changed their minds about love, and the law should accommodate them, since
marriages would fail unless they were based on true affection. Would he
have been a better person had he married Angelina without retaining his
affection? He argued this point twice, first when he entered the stage
and later when he gave his defense. He first explained the nature of his
relationship with the plaintiff:


28"Trial By Jury," pp. 53-54.
When first my old, old love I knew,
My bosom welled with joy;
My riches at her feet I threw--
I was a love-sick boy! ... 
But joy incessant pall the sense;
And love, unchanged, will cloy,
And she became a bore intense
Unto her love-sick boy! 29

Edwin turned to a new love, and he later argued that such behavior was "natural": "Though I own my heart has been ranging;/ Of nature the laws I obey,/ For nature is constantly changing." 30 The only time he seemed insincere was when he argued with Angelina over the amount of damages, insisting, as many defendants actually did, that he was not much of a catch, since he drank and would have beaten and kicked her when under the influence. Such statements never did defendants much good, and they probably would not have helped Edwin had the judge not stepped in and solved the problem. Despite this one moment, however, Edwin was by far the most likeable of the characters in the drama.

Like Mrs. Bardell, Mrs. Trapper, and Lucilla Undermine, Angelina appeared to have lost very little when she was jilted. She was not poor (evidenced by the fancy wedding clothes), and her feelings were clearly not badly hurt, since she was only too eager to mate with the wealthy judge as a substitute. Indeed, the fact that she immediately attracted another suitor showed that her youth and beauty were unimpaired by her first disappointment. Nor did she seem fazed about becoming engaged to a man who had already jilted one fiancee before her. She had not lost her chastity; the only thing she did lose was the money for the wedding

29"Trial By Jury," p. 43.

30"Trial By Jury," p. 53.
preparations. In short, her main interest in the case was monetary; she saw a chance at high damages and took it. The entire process of breach of promise seemed ludicrous at the able hands of Gilbert and Sullivan; "Angelina v. Edwin" seemed even less justified than "Bardell v. Pickwick."

Like Dickens, the authors parodied the legal profession: the judge and jury were grossly biased in favor of the plaintiff; her barrister mistook "bigamy" for "Burglaree"; Edwin did not even retain legal counsel and did just as well without it. Indeed, in none of these depictions of breach of promise cases did the jury system emerge with dignity intact. The various writers distrusted the judgement of the "twelve men and true," despite the well-known virtues of the system. In Pickwick and Breach of Promise, the juries came to completely wrong conclusions; in "Trial By Jury," they were saved by doing so by the amorous judge. What all three seemed to say was that the court was not the place to settle private matters; when judges and lawyers got involved in courtship, they were bound to make mistakes and possibly ruin lives. And the country bumpkins in the jury were certainly not going to be able to overcome these difficulties to find any true "justice." "Trial By Jury" was yet another fictional breach of promise case that argued that the action be abolished. Julius Silverman, MP, called it "a somewhat savage lampooning of the court proceedings . . . extremely enjoyable, but having all the ferocity of Gilbert at his best."31

A fifth fictional account of a breach of promise trial was an odd pamphlet published anonymously in the early 1890s.\textsuperscript{32} "A Strange Case of Breach of Promise of Marriage" largely concerned a young man's efforts to extricate himself from an unsuitable engagement. It was told from the point of view of the man's old bachelor uncle. The writer's nephew became engaged to a young woman who proved to be very demanding; her crime was that she had "that assumption of a kind of proprietorship, that exacting from a mild male 'slave' the performance of petty and often entirely unnecessary attentions . . ."\textsuperscript{33} She also showed her lover her temper and sulked when she did not get her way. The nephew advised her to stop the objectionable behavior, but when she failed to improve, he fell out of love with her. He told her that his feelings had changed but that he would remain engaged to her if she insisted. She wrote him back, the author wrote, and "answered as I should say any young lady with an atom of womanly feeling would answer under such circumstances--said she could not accept a husband in this way and in effect declined marriage on this understanding." Much relieved, the writer's nephew burned all his correspondence with her (a normal practice), including her letter of release in the pyre.

The next year, he met and became engaged to a woman who was more compatible, and the happy couple made ready to announce their intentions. However, as soon as his first fiancée got wind of his actions, she wrote him to hold him to the original engagement. Since he had destroyed her

\textsuperscript{32}"A Strange Case of Breach of Promise of Marriage" (Wenbridge: E. Cocks, 1890?).

\textsuperscript{33}"A Strange Breach of Promise," p. 4.
letter of release, he was open to a breach of promise suit; he wrote to his second fiancee at once, explaining his difficulties and considered what next to do. Rather than giving in, he concocted an elaborate plan to avoid the expense of a court suit and the threat of heavy damages. He wrote to his former lover, fixing the date and the place of the wedding and peremptorily ordering her to be there. She wrote back saying it was her prerogative to set the date, "but she did not say that she would not, or could not be at the place and upon the date fixed by him."

He therefore made arrangements with the parish clerk to publish the banns, bought a ring, and hired a clergyman, making sure she was aware of the arrangements, and warning her that if she went through with the forced marriage, she would find herself a widow as soon as she became a wife.

The young woman in question did not reply to any of his subsequent communications. On the day of the wedding, he went to the church, decked out for a wedding. The couple were called, but the bride did not appear. All of this went into the records; if there were any breach, it appeared that she had committed it, and not the "bridegroom." Having thus given himself a perfect alibi, the nephew had only to wait a decent interval to marry the woman who loved him truly and live happily ever after.

"A Strange Case of Breach of Promise," was an even harsher view of breach of promise than "Trial By Jury." Like Mrs. Trapper, the woman who threatened the suit was set forth as a bitter and bad-tempered; she was obviously harassing her ex-fiance out of spite. The obvious message was that any woman who got herself jilted and then refused to release the man had moral failings. Again, as in the first four examples, the plaintiff

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had lost little through the jilting: she was well-off; she was not seduced; furthermore, she had been consulted and had voluntarily released her lover. Like Lucilla Undermine, she was not a character to inspire any sympathy, despite the fact that unlike Lucilla, she had actually lost her fiance. The author admitted at the beginning that he hoped the story was an object lesson to young women, rather than a "how-to" for young men:

Now I hope all young ladies will believe me when I say that my wish in telling this tale is rather to point a moral for their information (and perhaps benefit) then to suggest "ways and means" of a new kind to young gentlemen?35

The first fiancee lost her beau because she was not a proper companion; rightfully, then, she failed to benefit from her mean-spirited breach of promise case. In contrast, the defendant was an honorable gentleman whose only failure was to burn the important letter. As usual, the defendant in a fictional breach of promise case was the true victim, having done nothing to deserve his day in court.

Indeed, the steadily growing bitterness of these accounts seems to indicate that male fears of women's power in using breach of promise became greater and greater as the century went on. The reason may be the greater number of cases brought, as well as the publicity they began to receive. It may also have been related to male fears of women in general, since the organized women's movement asserted itself more and more in the late nineteenth century. Whatever the reason, men appeared to assume that any legal advantage women had they would abuse and subvert. The women who brought fictional cases were at best wrong-headed and at worst perverse; the men, on the other hand, were gentlemanly, reasonable, and portrayed

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as victims (all except, perhaps, Mr. Sudden). Readers of most of these stories would be rooting for the men, not for the women.

These first five examples showed two basic approaches to breach of promise suits. First, authors often used humor in dealing with this subject, since the juxtaposition of love letters and court trials automatically seemed silly. Second, most of them preached the value of companionate marriage and romantic love and assumed that losing a fiance was preferable to an unhappy union. Naturally, innumerable pieces of Victorian fiction dealt with broken engagements, misunderstandings, and star-crossed lovers, even though few dealt with actual trials. Stories that referred to broken engagements continued to emphasize those two traits: humor and the middle class marital ideal. Neither approach was calculated to support the action, and, in fact, did just the opposite.

Dickens and Gilbert and Sullivan were not unique in finding the action of breach of promise ridiculous. Making fun of the class of suit was common in the nineteenth century. Most of the men in the legal community made jokes at its (and its participants') expense, considering the entire process an opportunity to display their wit and sharp senses of humor. In barristers' memoirs, stories about the action almost always appeared in "humor" sections, or as examples of the lawyer's cleverness.

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Sir Harold Morris, K.C., told this story about his colleague, C.F. Vachell:

C.F. Vachell, K.C., has a great sense of the ridiculous which he cannot resist, sometimes even at the expense of his own case. One day, Vachell was leading him [an elderly junior] in an action for damages for breach of promise: Vachell was waxing eloquent on behalf of the defendant. "Gentlemen of the Jury," he said, "Love!—Love is an overwhelming passion, it's an overmastering passion, it grips a man, it holds him—" and then his eye caught the serious face and long upper lip of his elderly junior, "Doesn't it, Mr. Spokes?"

Often the stories ridiculed the principals in the trial rather than the counsel. Robert Walton found it highly amusing how the father of a seduced plaintiff in a breach of promise case explained that he discovered his daughter's condition: "That going down to his shop to take stock, he met his daughter, and suspecting from her appearance something wrong, he questioned her, and found she was in the family way."37 Any number of examples could be given from law journals, reporting "amusing" cases or making snide comments on the plaintiffs and juries.38 It is not surprising, then, to find the general public also treating the action with less than serious intent. The Times, for example, wrote up an American


38 For example, see Law Notes 3 (1884), pp. 36-37 for reports of an "amusing" Scottish case; 5 (1886), p. 163, for a case in which both parties had married other people; 15 (1896), p. 259, for a report on an American case in which the promise was implied; Law Times 47 (1869), p. 311, for a satiric poem and remarks about the juries; Jurist: A Journal for Law Students and the Profession 1 (1887), pp. 163-64, for the editors amused observation of young law students' exact knowledge of the law of breach of promise; and Pump Court 7 (1888), p. 117, for less-than-sympathetic account of Holmes v. Brierly.
case in which the judge let the defendant off because the man's excuse was his dislike of his future mother-in-law; the editors (and probably their readers) found the case hilarious. *Punch*, too had at least one joking reference to the class of suit, although less than might have been expected during the controversy.39

Writers like Dickens, of course, used the peculiarities of the action to good effect, but they had serious purposes behind the laughter. Not surprisingly, many authors lacked Dickens' genius, and the stories that resulted had no purpose except treating the action as frivolously as the lawyers often did. This approach can be appreciated through two short stories in the 1860s. An anonymous story in *Chambers Journal* in 1860, called "A Breach of Promise" told the tale of a young man who was "engaged" to a pretty seven-year old named Polly Smith.40 He won her heart by helping her with her sums and repairing her doll. They then became engaged; the hero even asked her father for her hand, getting the following reply: "'Take her, you dog!'... I'll settle five thousand pounds upon her. Bless you, my children. Be happy". Despite initial success, the engagement ended shortly thereafter when Polly decided that she loved another, a young man much closer to her own age. The author ended by brooding over his loss and the harmful rumors that had been spread about him because of her breach of promise. Obviously, the story was told in fun and not meant to be a serious indictment of the action.

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39*Times*, April 9, 1874, p. 11; "Law For Ladies," *Punch* 71 (September 23, 1876), p. 123.

itself, although its light tone may have belittled the real suffering behind many actual cases.

Another story entitled "A Breach of Promise," appeared in Bow Bells in 1867 (again anonymously).\textsuperscript{41} This piece told the story of an imaginary breach of promise of marriage case among a Native American tribe in Illinois. A squaw was jilted by a young chief and brought her suit before a grand council of old warriors. The Indian maiden's case was a rather labored parody of those brought by English women:

It consisted of statements of frequent visits of the young warrior to the wigwam; of his smoking a large quantity of her father's tobacco, and eating their venison when he could get it; those attentions to himself being connected with frequent attentions to the lady, the statements being corroborated by several bunches of feathers, yards of Welsh flannel, three fox-tails, and a scalp.\textsuperscript{42}

The defendant merely denied that his visits had matrimonial significance. The elderly leader of the tribe gave the council's decision, awarding the squaw "a yellow feather, a brooch that was then dangling from his [the defendant's] nose, and a dozen beaver-skins." As soon as she received her award, the maiden jumped up and cried out that, "Now I am ready to court again!" This story was too short to be very harsh on the class of suit, but it is clear that the author considered the case an easy target for ridicule. The plaintiff, indeed, was so little hurt that she was ready for a new lover as soon as she got money from her old one. Also, placing the case in an "uncivilized" society most likely was meant to show how barbarous the supposedly "civilized" English legal system was; in other

\textsuperscript{41} "A Breach of Promise," \textit{Bow Bells} 6 (May 29, 1867), p. 428-429.

\textsuperscript{42} Ibid.
words, breach of promise was as at home in "primitive" culture as in a supposedly advanced nation.

Nevertheless, flulpy stories about silly engagements were not serious threats to breach of promise. The emphasis on romantic love was a more serious criticism, and it was more common in Victorian writers. Authors urged their readers that breach of promise suits were unnecessary, since all marriages should be based on true love. Even a lifetime of sorrow was preferable to marriage to a flighty or unloving spouse. Indeed, the fact of having jilted someone was its own punishment; monetary penalties did not come close to the agony of mind and social stigma that jilters received. Of course, authors did not have to deal with actual jilting to make the point about marrying for love; that theme was echoed all through Victorian literature by consummated rather than unconsummated unions. Still, some of them did make direct statements about dealing with unfaithful suitors.

An early example was a short story published anonymously in 1863 called "Our Engagement."43 The protagonist of the story was a young man, writing in the first person, who fell madly in love with a girl who was a ward of the court. He was warned by friends that his new love was not reliable and had the reputation as a coquette, but he refused to listen. The couple planned to be married as soon as she came into her own property, a wait of a few years. The hero stayed completely true to his love, and for a long while his fiancee managed to curb her tendencies to flirtation and return his loyalty. Eventually, however, her flighty nature returned. Three months before they could be married, she threw him

over for another man, breaking his heart so badly that he never married. In the end, the hero tried to be philosophical about his loss and his fiancée’s bad behavior:

The old habit of "falling in love" was, I suppose, at last too strong for resolution; and as broken hearts are gone out of fashion, and as it is only ladies who bring actions for breach of promise, there was nothing for it but to turn down the page, and forget the entire business as speedily as might be.  

Despite these brave words, he was never able to "forget the entire business" enough to risk love again.

The author of this story had great sympathy for the person who was jilted--interestingly, this time, a man--but implied nevertheless that he was better off without a flirtatious and uncontrollable wife. In addition, it reinforced the already prevalent notion that it was primarily women who needed to be warned against flirting and teasing, rather their courters. And it upheld the beauty of true love; the hero never married because he never again found a woman he could love. In all these ways, the author denied the validity of breach of promise suits. But s/he went even further and overtly criticized the action for not showing equal consideration for male plaintiffs: men had as much pain as women on being jilted and deserved similar treatment.

The importance of true love was even more graphically detailed in "A Breach of Promise," a short story published in 1881 in All the Year Round. As the story opened, the extensive preparations for Beatrice Alleyne’s wedding had begun, particularly the dress-making by her good

44 "Our Engagement," p. 140.

45 "A Breach of Promise," All the Year Round 28 (December 3, 1881), pp. 297–302.
friend, Miss Mowbray. Alleyne's fiance was a young naval surgeon named Guy Littleton, a strange, but accomplished man, about whom Alleyne's parents had doubts. On the wedding day, their concern proved well-founded, since he wrote a short note to his fiancee, breaking off the engagement. Beatrice broke down at the news, but Miss Mowbray cleared the room of others and comforted her. It seemed that Littleton had jilted Mowbray years before, leaving her standing at the altar; her father died shortly thereafter, and she was forced to earn her living as a milliner. Mowbray refused to see their jiltings as anything but blessings in disguise, and Alleyne agreed:

"We have each had a narrow escape from a madman!" Beatrice says, and there is a stirring ring in her tones which seems to promise that there will be no weak repining on her part about this calamity which has overtaken her.46

Beatrice bravely stood by her words and did not mourn openly. Mowbray, although in her late thirties, eventually met a kind man who ran an insane asylum and married him. One night, when her friend Miss Alleyne was visiting, one of the patients tried to choke himself and Dr. Walters had to leave, explaining, "... he has gone mad on the point of breach of promise of marriage; these things generally go the other way round; we conclude that he has been cruelly jilted, as he fancies he has jilted someone else."47 The patient was obviously Guy Littleton, and the two women smiled at each other with their knowledge and relief at having avoided marriage to such a man.


Obviously, the message of the story was that both of the women were better off single than married to Guy Littleton. Both were presented positively for their refusal to seek revenge, or even to mourn long over, their lost fiancées. Miss Mowbray, despite having supported herself alone for over ten years, did eventually marry a suitable gentleman, and Miss Alleyne had as good a chance as her friend of finding a comfortable home. Both women were "ladies"—noble, self-sacrificing, patient, uncomplaining. If they were also relatively passive and uninteresting that was all to the good. For their ladylike deportment, they were rewarded by their ultimate happiness and the approval of all around them. The author, through the story, urged women to follow their examples and not to seek vengeance on unworthy suitors, but instead to consider a lost fiancé as a narrow escape.\(^{48}\)

A final example was a novel written in 1907 by Eleanor Holmes.\(^{49}\) Holmes' heroine is Philippa D'Almaigne who had just become engaged to an

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\(^{48}\)This same point was made probably dozens of times in Victorian fiction. E.g., in Anthony Trollope's *The Small House at Allington*, Adolphus Crosbie jilts his fiancée of a few days, Lily Dale, for the rich and beautiful Lady Alexandrina de Courcy. Lily forgives him and refuses to hate him, despite his despicable behavior; no one in her family even considers formal action. Her father insists that his punishment would be "the scorn which men and women will feel for him," and queries Mrs. Dale, "You would not have Lily's name brought before a tribunal of law?" to which she replied, "Certainly not that." Eventually, Crosbie's own feelings of remorse and the contempt of his fellows caused his punishment. *Small House at Allington* (London: J.M. Dent & Sons, 1909), pp. 280-287, quotes from p. 287. See Sybil Wolfram's remarks about Trollope's work in *In-Laws and Out-laws: Kinship and Marriage in England* (London: Croom Helm, 1987), p. 118; see also Judith Rowbotham's examination of the ideal woman in middle class fiction in *Good Girls Make Good Wives: Guidance for Girls in Victorian Fiction* (Oxford: Basil Blackwell, 1989), especially Chapter One.

organist, Dr. Alfred Lindridge, as the book opened. Her family heartily
disapproved, but they wisely refrained from saying so. Shortly into her
engagement, Philippa realized that she had made a mistake; she did not
love Alfred as a future wife should. She then truly fell in love with
Grenville Scrope, the gentleman that her family had always wanted her to
see. The rest of the novel traced her attempts to extricate herself from
this unfortunate situation. Eventually, Maggie Randall, her rival and
later friend, fell in love with Alfred and he with her, and Philippa and
Alfred agreed to part to be with the ones that they loved. The story
ended with the D'Almaine's grandmother triumphantly insisting that she
knew it would all come right in the end.

Again, the main point of the novel was that engagements were—and
should be—probationary. If one or both of the participants felt they
would not be happy in a marriage, they must feel free to break the
engagement and avoid a life of misery. Like the women in all the
fictional cases, Philippa was well-off, uncompromised, and not seriously
attached to her fiance. Her engagement was short and she lost nothing at
its termination, since she had another lover waiting in the wings. She,
unlike so many actual plaintiffs in breach of promise cases, had nothing
about which to complain in the behavior of her suitors. Even if she had,
she would not have resorted to the courtroom; a lady sorrowed in silence
rather than parade her miseries before the world. In such a value system,
breach of promise cases were unnecessary and more than a little vulgar.

All of these accounts were written from a middle-class bias and for
a largely lower middle and middle class audience. Like the middle-class
men and women who urged the abolition of the class of suit, these authors
did not try to comprehend the true grievances of many breach of promise plaintiffs: their precarious economic situation, their illegitimate children, their advancing age. In not one work was a breach of promise plaintiff portrayed sympathetically; the women who were valued were those who refused to sue despite their pain. Passive, sweet, long-suffering women were the ideal; any woman who took matters to court was automatically assumed to be unladylike, vindictive, and wrong-headed. Since "Bardell v. Pickwick" was the best known breach of promise case in the nineteenth century, the British public did not have an accurate picture of the men and women involved in these trials. Instead, they had a cultural invention, an image that justified public disdain at those who brought their broken hearts to court. Fortunately for the mostly female plaintiffs, it was the "thick-headed" jurymen, and not the men and women who wrote about them, who heard and decided breach of promise cases.
CONCLUSION

Breach of promise cases were a class-biased phenomenon in the Victorian period. The (mostly) women who brought these actions were those who worked for middle class respectability, but who did not have the economic security of actual middle class life. They, therefore, stood to lose the most at the loss of an engagement, yet had the resources and know-how to use the Common Law to their advantage. They also were in the group most likely to marry across class lines, and they therefore courted men with enough money to be worth suing. The fact that they would risk their precious respectability by exposing themselves in the law courts in itself demonstrates the difficulties and peculiarities of lower middle class courtship. The amounts the plaintiffs won were not astronomical, but they were enough to mean the difference between poverty and a decent living, particularly where illegitimate children were involved.

Breach of promise cases were also gender-biased; spinsters and widows had definite advantages over bachelors and widowers. It was a uniquely feminine civil action, and women used it with surprising frequency. Both because of and in spite of the Victorian ideal of womanhood, the action remained the province of the female sex; the ambiguities of its relation to Victorian values was reflected in the ambivalence of most women in using and observing it. Women escaped powerlessness in using it, but at the same time, they risked a backlash from both men and other women. The action both protected and separated them; like many legal actions, it was both feminist and anti-feminist at the same time.

Because of its class and sex base, the action provoked a reaction
from some upper and upper middle class men and women who did not understand the economic necessities of the lower middle and upper working classes. People in these classes wanted companions, too, but they also needed providers and homemakers to have successful marriages. The need for both romance and pragmatism marked the "middling" sort's courtship and their approach to broken engagements. Without the economic and familial support of middle class women, spinsters of lower classes could not face with equanimity the prospect of losing their positions, spending precious savings on weddings that did not take place, raising illegitimate children alone, and, perhaps, never marrying at all. Marriage for romantic love was the hallmark of middle class domesticity, but it could not simply be imported to the lower classes; it required the financial security that the middle classes could give to aging spinsters. Until women's structural economic inequality changed, their need for marriage pushed them to legal remedies that their better-off sisters disdained.

Upper and upper middle class commentators seldom understood these difficulties, and they sharply criticized the action for its view of marriage. Furthermore, they found its use by women nefarious, since they recognized the power that it gave to the female sex. Most fiction writers supported this critical view, portraying breach of promise and its plaintiffs in a consistently negative light. Yet the action was not without its defenders, since the urge to protect women was another strand in Victorian ideology, and some people recognized the reasons women sought economic compensation for the loss of marriage. Women played on the chivalric ideal shamelessly, despite the fact that they contradicted it by their very presence in the courtroom. Plaintiffs used the paternalism
of the law against itself; the patriarchal views of the judges that barred women from the professions and left them exposed to abuses within marriage helped single women to bring jilters to book. In breach of promise, and the varying reactions to it, the contradictions and ambiguities of the "Victorian mind" become increasingly clear. The sharp contrast between the experience of breach of promise plaintiffs and the perception of them by upper middle class essayists and writers is also a pointed reminder of the many different views of love and marriage that existed into the twentieth century.

Breach of promise has not been actionable in Britain for twenty years, yet the issues that it raised are still current. Particularly, the problem of equality under the law for feminists is one that is frequently debated (over easy divorce, for example). It also points to the differences that exist in the reasons men and women marry up to the present day; women still have more practical reasons, since their economic viability remains less than men's and they retain the primary responsibility for any children. The companionate ideal, even in the late twentieth century, is the province of those who can afford it. In that sense, the action of breach of promise of marriage is not out-of-date and may never be.
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