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[IN THE COURT OF APPEAL.]

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WIEDEMANN v. WALPOLE.

July 9.

Breach of Promise of Marriage—Corroboration of Promise—Omission to answer Letters, Effect of—32 & 33 Vict. c. 68, s. 2.

In an action for breach of promise of marriage, the mere fact that the defendant did not answer letters written to him by the plaintiff, in which she stated that he had promised to marry her, was held no evidence corroborating the plaintiff's testimony in support of such promise within the meaning of 32 & 33 Vict. c. 68, s. 2.

MOTION to enter judgment for the defendant on one of the issues in an action tried before Pollock, B., and a jury.

The action was brought to recover damages for the breach of the defendant's promise to marry the plaintiff; to recover damages for libel, and to recover the amount of expenses incurred by the plaintiff in making certain journeys at the defendant's request. The defendant pleaded a denial of the promise to marry, and of the libel, and further, that the occasion of publishing the alleged libel was privileged. At the trial the following facts were proved with respect to the alleged promise of marriage. In September, 1882, the defendant met the plaintiff at an hotel in Constantinople. He had sexual intercourse with her there, and remained with her a few days, giving her 100*l.* when they parted, and, according to her evidence, he promised whilst their intimacy was going on to marry her. In November, 1882, the plaintiff went to an hotel in Cannes, where she met and conversed with the defendant's mother, and the plaintiff alleged that she went from Constantinople to Cannes by the arrangement of the defendant, and in order to be introduced to his mother. The plaintiff produced at the trial copies of letters written by her to the defendant subsequently to her meeting with his mother, the first being a letter of November 27, 1882, written from the hotel at Cannes, in which letters she stated that he had promised to marry her. The plaintiff also produced a copy of a letter, dated January 3, 1883, and written to the defendant by her brother-in-law, a burgomaster of Nordhausen. This letter contained no reference to the alleged promise of

marriage, but asked the defendant to communicate his intentions and resolutions for the future of the plaintiff as soon as possible, and said that the defendant must have considered that the compromised honour of the family could not be received without further explanation. The plaintiff further produced a copy of a letter written to the defendant about February 3, 1884, by the pastor of the German Church at Sydenham, asking the defendant whether he intended to fulfil his promise to marry the plaintiff, and threatening that the writer would see by means of the law and the press that justice was done to his countrywoman. The defendant did not answer any of these letters. The plaintiff also produced the defendant's signet-ring, and alleged that he gave it to her at the hotel at Constantinople. He, on the other hand, alleged that the ring dropped on the floor of the dressing-room, and that she picked it up, and did not return it to him. At the close of the plaintiff's case, Pollock, B., ruled that the fact of the defendant not having answered the letters was such material evidence in corroboration of the promise as was required by 32 & 33 Vict. c. 68, s. 2, and declined to enter judgment for the defendant on the issue of breach of promise of marriage. The defendant was called, and admitted having received the letters, and that the copies produced were substantially correct. The jury found a general verdict for the plaintiff for 300*l.* on all the issues. The defendant now moved to have judgment entered for himself on the issue of breach of promise of marriage.

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Lockwood, Q.C., and *W. Graham*, for the defendant. The letters in question were not evidence in corroboration of the plaintiff's testimony within 32 & 33 Vict. c. 68, s. 2, which provides "that no plaintiff in any action for breach of promise of marriage shall recover a verdict unless his or her testimony shall be corroborated by some other material evidence in support of such promise." The mere fact that a man does not answer a letter from a woman alleging that he has promised to marry her is no evidence that he admits the allegation. The facts in *Bessela v. Stern* (1), which may be relied on for the plaintiff, distinguish that case from this. The defendant had been taxed

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 1891 the sister overheard a conversation between the plaintiff and the
 WIEDEMANN defendant, in which she said, "You always promised to marry
 v. me, and you don't keep your word," and he did not deny the
 WALPOLE. promise, but said he would give her some money to go away. The judgment proceeded on the ground that, as the defendant did not deny the promise when he had that opportunity, there was some evidence in corroboration of it. The present case differs from mercantile cases where there is a correspondence with respect to some business matter in which negotiations are being carried on between the parties. It may be that the omission to answer one letter out of a series in such a correspondence, having regard to the surrounding circumstances, is some evidence of an admission of the truth of what is stated in the letter; but here there are no circumstances which ought reasonably to lead any one to such a conclusion. No inference ought to be drawn from a person not answering a letter unless the parties are in such a relation that an answer might properly be expected: *Richards v. Gellatley* (1), and *Felthouse v. Bindley*. (2)

Thomas Terrell, (*E. F. C. Philips*, and *Warraker*, with him), for the plaintiff. The defendant's omission to answer the letters was some evidence for the jury of corroboration. It is for the jury to say whether the evidence is material. In *Wilcox v. Gotfrey* (3), *Bramwell, B.*, at nisi prius, ruled that the fact that the defendant did not go into the witness-box to deny the promise was some evidence of corroboration, and he left to the jury the question whether the evidence corroborated the promise.

[*KAY, L.J.* *Bramwell, B.*, agreed with the rest of the Court of Exchequer when the case came before that Court. (4) It seems doubtful whether his observations at the trial can have been correctly reported.]

The fact that the defendant gave the plaintiff his signet-ring is also some evidence in support of her statement that he promised to marry her. Taking all the circumstances together, there was

(1) Law Rep. 7 C. P. 127, per Willes, J. (2) 11 C. B. (N.S.) 875.

(3) 26 L. T. (N.S.) 328.

(4) 26 L. T. (N.S.) 481.

some material evidence for the jury corroborating her testimony with respect to the promise.

Lockwood, Q.C., replied.

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LORD ESHER, M.R. The first and main question to be decided in this case is a question of law, and I shall give no opinion upon any other questions in dispute between the parties. The point of law is whether in such a case as this—where nothing has happened beyond what has happened here—the mere fact of the defendant not answering any of the letters which have been brought before us is any such evidence in corroboration of the promise to marry as is required by the statute. We have not to determine whether or not a promise to marry was given. That was a question for the jury. The question for us is whether, according to law, the fact of the defendant not answering the letters could be taken as any evidence of the corroboration required by the statute. Another question is whether the possession by the plaintiff of the defendant's signet-ring is such evidence. The first letter put forward by the plaintiff's counsel is one written by the plaintiff to the defendant, in which she states in effect to the defendant that he had promised to marry her. He did not answer it. When one comes to think what is meant by not answering it, it is impossible to see how that could be any evidence in corroboration of the promise to marry. The argument that it was such evidence must be that not answering was an admission by the defendant of the truth of what was alleged against him in the letter. Now the allegation in the present case was that he had promised to marry the plaintiff. Suppose, however, the letter had charged against him some grievous offence or misconduct, and the writer had stated that unless the defendant paid something he would be exposed. The argument, if true at all, must be that by not answering such a letter the man who receives it must be taken to admit that he is guilty of the charges contained in it. Now there are cases—business and mercantile cases—in which the Courts have taken notice that, in the ordinary course of business, if one man of business states in a letter to another that he has agreed to do certain things, the person who receives that letter must answer

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of carrying on some business negotiations, and one writes to the other, "but you promised me that you would do this or that," if the other does not answer the letter, but proceeds with the negotiations, he must be taken to admit the truth of the statement. But such cases as those are wholly unlike the case of a letter charging a man with some offence or meanness. Is it the ordinary habit of mankind, of which the Courts will take notice, to answer such letters; and must it be taken, according to the ordinary practice of mankind, that if a man does not answer he admits the truth of the charge made against him? If it were so, life would be unbearable. A man might day by day write such letters, which, if they were not answered, would be brought forward as evidence of the truth of the charges made in them. The ordinary and wise practice is not to answer them—to take no notice of them. Unless it is made out to be the ordinary practice of mankind to answer, I cannot see that not answering is any evidence that the person who receives such letters admits the truth of the statements contained in them. I have, therefore, no doubt that the mere fact of not answering a letter stating that the person to whom it is written has made a promise of marriage, is no evidence whatever of an admission that he did make the promise, and therefore no evidence in corroboration of the promise. I do not say there may not be circumstances, occurring in a correspondence between a man and woman, which would or might make the omission to answer one letter in the correspondence some evidence of an admission of the truth of the statements contained in that letter. There might be cases in which the Court thought that, having regard to the nature of the correspondence and the circumstances of it, the not answering one letter in that correspondence did amount to evidence of an admission; but this is not one of those cases. Here we have only to say whether the mere fact of not answering the letters, with nothing else for us to consider, is any evidence in corroboration of the promise. If the fact of the defendant not having answered the plaintiff's letter is no evidence in corroboration, it is clear that the not answering the letter of a mere stranger

such as the pastor of the German church, or the letter of the burgomaster, which does not contain any reference to the alleged promise to marry, cannot be evidence in corroboration. Then as to the ring, could any sensible person say, where relations such as those in this case had existed between the parties, that the mere fact of the plaintiff having the defendant's signet-ring in her possession was more consistent with his having promised to marry her, than with the other view of their intimacy? In my opinion it would be contrary to sense to say that the possession of the ring was any evidence corroborating the promise. It matters not whether he gave her the ring, or she took it up from the floor, as he alleges, though the fact that it was a signet-ring makes it less likely that he did give it to her. It was urged that it was a question for the jury whether there was evidence in corroboration of the promise to marry. If that were so, the statute might just as well be discarded altogether. I am of opinion that there was no evidence of the corroboration of the promise to marry required by the statute. The judge, therefore, ought to have non-suited the plaintiff with respect to her claim for damages for breach of promise of marriage, and upon that issue there should be judgment for the defendant.

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BOWEN, L.J. It seems to me that, with respect to the question of law for our decision in this case, the matter admits of no doubt. It would be a monstrous thing if the mere fact of not answering a letter which charges a man with some misconduct was held to be evidence of an admission by him that he had been guilty of it. There must be some limitation placed upon the doctrine that silence when a charge is made amounts to evidence of an admission of the truth of the charge. The limitation is, I think, this: 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 that he would not. That appears to me good sense, and it is in substance the principle laid down by Willes, J., in *Richards v. Gellatly*. (1) He says: "It seems to have been at one time thought that a duty

(1) Law Rep. 7 C. P. 127, at p. 131.

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was cast upon the recipient of a letter to answer it, and that his omission to do so amounted to evidence of an admission of the truth of the statements contained in it. But that notion has been long since exploded, and the absurdity of acting upon it demonstrated. It may be otherwise where the relation between the parties is such that a reply might be properly expected." In this case I think it would be unreasonable and insensible to suppose that the defendant was called upon to answer the statements contained in the plaintiff's letter to him, upon the alternative that they must be taken to be true if he did not deny them. In *Bessela v. Stern* (1), a conversation between the plaintiff and defendant was overheard, in which the defendant, on being taxed with having promised to marry the plaintiff, did not deny it. That, it is true, was held to be some corroborating evidence. That, however, was a very different case from this. The Court of Appeal held that, having regard to the circumstances under which the statement was made, the fact that the defendant did not deny it was evidence of an admission that it was correct. The case only illustrates the limitation to be placed upon the doctrine that silence is not evidence of an admission unless it is reasonable to expect that if the statements made were untrue they would be met with an immediate denial. I am of opinion that there was no evidence in corroboration of the alleged promise to marry.

KAY, L.J. The plaintiff's counsel relies upon various matters as evidence which corroborated the plaintiff's testimony that the defendant promised to marry her. I may dispose of some of those matters very shortly. With respect to the ring, it is, to my mind, impossible to treat the possession by the plaintiff of the defendant's signet-ring as corroboration of the promise. A man does not usually give his signet-ring in such cases. It was said that the fact of the defendant not answering certain letters was evidence in corroboration of the promise. The letter written by the burgomaster contains no mention of a promise of marriage, and is clearly not evidence in corroboration. The letter written

(1) 2 C. P. D. 265.

by the pastor of the German church is a letter written by a perfect stranger to the defendant, and it contains a threat to punish him by means of the law or the press for his misconduct. It is clearly a letter which nine out of ten men would refuse to answer, and the refusal to answer it cannot be any corroboration. The real question is, whether the letters written by the plaintiff herself so imperatively required an answer, that the not answering is evidence that the defendant admitted the truth of the statement that he had promised to marry her. I decline to lay down any general rule on this matter. There are certain letters written on business matters, and received by one of the parties to the litigation before the Court, the not answering of which has been taken as very strong evidence that the person receiving the letter admitted the truth of what was stated in it. In some cases that is the only possible conclusion which could be drawn, as where a man states, "I employed you to do this or that business upon such and such terms," and the person who receives the letter does not deny the statement and undertakes the business. The only fair way of stating the rule of law is that in every case you must look at all the circumstances under which the letter was written, and you must determine for yourself whether the circumstances are such that the refusal to reply alone amounts to an admission. The facts in the present case are that the defendant had had sexual connection with the plaintiff. They had parted, he giving her 100*l*. She goes to an hotel at Cannes, where his mother was living, and she writes to him from that hotel, having seen his mother, and states in effect that he had promised her marriage. Is it an irresistible inference that by declining to answer the letter he must be taken to have admitted the promise? His declining to answer is just as consistent with his not having made the promise as with his having made it. I cannot see that the mere fact of his declining to answer affords the corroborating evidence required by the Act of Parliament. I agree with what has been said by the rest of the Court in this respect, and I think that the proper course which the learned judge at the trial ought to have taken was to say that the plaintiff's evidence with respect to the promise had not been materially corroborated in such a way that there was

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Motion granted accordingly.

Solicitors for plaintiff: *Hughes & Hughes.*

Solicitors for defendant: *Wakeford, May, & Woulfe.*

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*May 13;
July 25.*

[IN THE COURT OF APPEAL.]

SKINNERS' COMPANY v. KNIGHT.

Landlord and Tenant—Breach of Covenant in a Lease—Ejectment—Compensation—Solicitor's and Surveyor's Charges of Preparing Notice—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14.

The "compensation" for breach of covenant which a lessee is liable to pay under s. 14 of 44 & 45 Vict. c. 41, does not include the cost incurred by the lessor in consulting and employing a solicitor and surveyor in respect of the preparation of the notice required by that section.

MOTION to enter judgment for the plaintiffs in an action of ejectment, tried before Charles, J., and a jury.

The following statement of the material facts is taken from the judgment of the Court of Appeal, delivered by Fry, L.J. (post, p. 544):—

By a lease, dated January 2, 1857, the plaintiffs demised certain houses in Middlesex to one Nicholls for a term now unexpired, and the lessee covenanted to maintain and repair the demised premises. The lease contained the usual condition for re-entry for non-observance of any covenant. The defendant Knight is the assign of this leasehold interest. The plaintiffs have brought ejectment against the defendant, alleging (amongst other things) that on June 5, 1889, Knight had made default in his covenant to repair, and that on that day the plaintiffs had served on Knight a notice pursuant to the 14th section of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), specifying the breaches, and requiring the defendant to remedy the breaches, and to make compensation in money for the breaches, and that the defendant had failed so to do within a reasonable time. At the trial the learned judge left to the jury