Breach of Promise to Marry In Illinois;
An Action That Belongs In The Past

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In March of 1992, two months after Sharon Wildey met Dick Springs, she proposed marriage, and he accepted. Dick immediately bought Sharon a $19,000 engagement ring, and opened a joint checking account. It was a whirlwind romance, but when the wind began to die down, Dick began to have doubts. Dick’s life was on his cattle ranch in Oregon; Sharon’s with her law practice and two children in Chicago. The relationship seemed unworkable. After Sharon and her daughters visited the ranch in Oregon, it was obvious they would not be happy "living on his isolated ranch." and Dick knew he could not live in Chicago. Seven weeks later, thinking "it was better to terminate it earlier rather than later," Dick wrote Sharon a card breaking the engagement. In the card he offered to let her to keep the engagement ring, and the $10,000 in the bank account "to help [her] through these times." Sharon responded to Dick’s letter by filing a breach of promise to marry action in Chicago District Court. During the trial, Sharon, divorced three times, testified that when this relationship ended "she couldn’t bring herself to tell friends

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1 Gottesman, Andrew & Matt O’Connor, No Fury Like That Of A Lover Scorned, Chicago Tribune, SC1 (11/17/93).

2 O’Connor, Matt, Federal Jury Awards Jilled Fiance $178,000, Chicago Tribune, DU1 (11/10/93).

3 The Subject is Sex--Part 4, Morning Edition, NPR (6:00 a.m. ET, 1/19/95).

4 Id.

5 Id.

6 O’Connor, supra note 1.

about the spill, fell into a deep depression, struggled to work and even had trouble talking." Dick had breached his promise to marry Sharon, and they jury awarded her $93,000 for pain and suffering and $25,000 for psychiatric expenses.  

To most modern readers, this result seems absurd. The modern concept of relationships encompasses equal partners taking their chances in love. Engagements are a waiting period ensure that each party is ready to make a life-long commitment. While a break up can be upsetting, its generally accepted that its better that it come before, not after, the marriage vows. A suit for breach of promise to marry rejects this modern understanding of relationships. It is an action from another time. A time when men and women could not be considered equals. Historically, breach of promise was a common law action. In Illinois, the common law action was abolished in 1935, but in 1946 the action was statutorily recreated. This paper will trace the history of the action for breach of promise to marry in Illinois in an attempt to understand the social forces that supported the action, caused its abolition, and allowed its recreation.

The origins of breach of promise suits can be traced back to the fifteenth century, and England’s ecclesiastical courts. Under the Canon Law, the promise to

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8 Id.

9 The Subject is Sex--Part 4, supra note 3. The jury also awarded $60,000 for business losses that District Court Judge Suzanne B. Conlon dismissed as unrelated to the breach of promise. Judge Trims $60,000 From Jilting Settlement, The Seattle Times, A15 (1/21/94).

marry essentially equalled a legal marriage, so when an action was brought, the court's would simply order the "additional formality of solemnization 'in the face of the church.'"\textsuperscript{11} By the seventeenth century, a common law remedy for breach of promise was also recognized. Initially, the action was an action in tort "brought to recover money paid on the faith of a promise of marriage."\textsuperscript{12} However, by 1639, the action was understood as one based on contract theory.\textsuperscript{13} When a man and woman promised to marry each other they formed a contract. When the man backed out, he breached that contract, causing social, economic and emotional injury to the woman.\textsuperscript{14} Although under a contract theory, either the man or the woman could breach the promise, only the woman was in fact allowed to maintain a suit.\textsuperscript{15} The common law action flourished in England,\textsuperscript{16} and was carried over to America with the colonists. In

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\item \textsuperscript{11} Wright, The Action for Breach of the Marriage Promise, 10 Va. L. R. 361, 364 (1924). These actions could be brought by either a man or a woman because once the promise was made the couple was married. White, Breach of Promise of Marriage, 10 Law Q. Rev. 134, 136 (1894).
\item \textsuperscript{12} CLARK, HOMER H., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES, 1 (1968).
\item \textsuperscript{13} Streech v. Parker, Mich. 12 (1639) (as cited in White, supra note 11, 135.).
\item \textsuperscript{14} White, supra note 11, 136.
\item \textsuperscript{15} White, supra note 11, 136. In 1698 a man successfully brought a suit, Harrison v. Cage, Carthwy 467, but a motion to the King's Bench stopped the action. \textit{Id.}. The Bench found that "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." \textit{Id.}. It is unclear precisely what motivated the King's bench, but it may be because a man had never before brought a suit so they determined it was intended for women only. Or it could have been that the girl and not her father had agreed to this marriage, and the Court was holding that it was precisely her promise that was of no value. This explanation seems plausible because soon after she had promised the man who brought suit, she married another man, perhaps her father's choice. \textit{Id.}.
\item \textsuperscript{16} In 1729, the reach of the action was dramatically extended when the Court found that "the words of the fourth section of the Statute of Frauds, which required a signed written agreement to maintain an action on 'any agreement made upon consideration of marriage,' did not apply to this class of bargains." White, supra note 11, at 137.
\end{itemize}
America, the action remained essentially the same as the one created by the English courts. To bring a successful claim, the woman had to show that there was a promise to marry that the defendant had breached that promise, causing an injury to the plaintiff.\textsuperscript{17}

\textbf{Family and Marriage: 1859-1864}

Peter Fidler had been courting Nancy McKinley for three years before she became pregnant.\textsuperscript{18} Although Nancy had never explicitly agreed to marry Peter, he had promised Nancy’s father, and her father had consented.\textsuperscript{19} The marriage date was put off because Peter still lived and worked on his father’s farm, and had no personal property of his own.\textsuperscript{20} When Nancy became pregnant, however, Nancy’s father demanded that Peter follow through on his promise. With her bastard child, Nancy would have little chance for marriage to someone else, and her father would have to be responsible for both her and the child. Nancy’s father took Peter out to an empty cornfield, and, with an open pocket-knife, threatened to kill Peter if he did not marry Nancy.\textsuperscript{21} Then Nancy brought a bastardy proceeding against Peter, in which the

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\item \textsuperscript{17} CLARK, supra note 12, 2.
\item \textsuperscript{18} Fidler v. McKinley, 21 Ill. 308, 309 (1859).
\item \textsuperscript{19} Id. at 311.
\item \textsuperscript{20} Id. at 310.
\item \textsuperscript{21} Id. at 309.
\end{itemize}
Judge stayed the proceedings to allow Peter a chance to marry Nancy.\textsuperscript{22} Finally, when these other attempts failed, Nancy brought a suit for breach of promise to marry. Her only witnesses were her father, her uncle and her lawyer from the bastardy proceeding.\textsuperscript{23} The jury believed these men, and issued a verdict in Nancy’s favor.\textsuperscript{24}

In 1859, Nancy’s suit was the first breach of promise action to ever reach the appellate courts in Illinois, and is typical of those taking place during the early years of the action. Although there had been ten national women’s rights conventions since the first one in Seneca Falls in 1848, most women’s lives had not been substantially altered by the women’s rights movement.\textsuperscript{25} In fact, most women did not expect to have the independence the women of Seneca Falls demanded, but instead expected to live their entire lives under the authority of a man: first their fathers, then their husbands.\textsuperscript{26}

In an agrarian society this social and economic dominance by men was even more pronounced. While industry became a pivotal force in American life during the

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\item \textsuperscript{22} \textit{Id.}.
\item \textsuperscript{23} \textit{Id.} at 310.
\item \textsuperscript{24} \textit{Id.} at 309 (jury’s verdict reversed due to faulty jury instructions).
\item \textsuperscript{25} \text{FLEXNER, ELEANOR, CENTURY OF STRUGGLE, 70} (1959).
\item \textsuperscript{26} \text{CHAFE, WILLIAM, THE PARADOX OF CHANGE; AMERICAN WOMEN IN THE TWENTIETH CENTURY, 3} (1991).
\end{itemize}
1830's and 1840's, the lives of the people involved with the early breach of promise cases indicate that they still worked on family farms. "In the family economy the family had owned, managed, and worked in its business, in most cases the family farm." Men, women and children worked on the farm, and all transactions were calculated to advance the family lot. Accordingly, the union of marriage not primarily one based on love, but on advancing the family. As a result, a woman's father often had more discretion in choosing a husband for his daughter then she did.

This focus on the family, and the economic aspects of marriage was reflected in the early breach of promise cases in Illinois. While Nancy Fidler might have been emotionally attached to Peter, she, herself, never consented to marry him; her father consented for her. Peter seemed to want to fulfil his promise to marry Nancy, but was tied to his family's farm. Nancy was surely upset that her reputation was damaged, that she had a child, but no husband, and that she had little chance of marrying another; but the focus of the case was not on Nancy, but her father. He was the person who was going to have to take permanent care of Nancy and her child. Her relationship, rather than advancing the family lot, had given it another mouth to feed. The law recognized this as an injury, and held Peter accountable for it.

The economic nature of relationships, and lack of control by women in their

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27 CHAFF, supra note 26, 9.

28 MATTHAEI, JULIE, AN ECONOMIC HISTORY OF WOMEN IN AMERICA, 102 (1982).

29 Id. at 105.
relationships was even more pronounced in 1863 case of *Prescott v. Guyler*.\(^{30}\) In that case Catherine Guyler’s father and Gottlieb Prescott agreed through the mail that Gottlieb and Catherine should marry.\(^{31}\) As Gottlieb was "up North," it is not clear that Catherine and Gottlieb ever met until the day he broke the engagement.\(^{32}\) That was the day Gottlieb was scheduled to retrieve Catherine. When Gottlieb arrived at the Guyler home, he was met by Catherine, her father and her sister Julia. When Catherine’s father turned the discussion to marriage, Gottlieb announced that he would rather marry Julia than Catherine.\(^{33}\) Catherine, furious, asserted that "she would not marry him now," and her father, no less offended, stated, "if [Gottlieb] did not want Catherine, he should not have Julia."\(^{34}\) Catherine’s exclusion from the marriage negotiations and Gottlieb’s hope that he could "trade-in" one sister for the other, indicate that there was never a great emotional attachment between Catherine and Gottlieb. It seems more likely that the marriage was going to advance the economic well-being of Catherine’s family, which would give Gottlieb the confidence to ask for the other sister. He obviously did not count on Catherine’s father taking such offense, or the resulting breach of promise action.

\(^{30}\) 32 Ill. 312 (1863).

\(^{31}\) Id. at 323.

\(^{32}\) Id.

\(^{33}\) Id.

\(^{34}\) Id. Julia’s reaction to Gottlieb’s announcement would likely be the most interesting, but, unfortunately, is not documented in the record.
In the suit that followed, the jury awarded Catherine $800, and Gottlieb appealed claiming of two errors. First, he argued that there had been no promise to marry because Catherine's father, not Catherine, had been the one to agree to the marriage.\textsuperscript{35} Supporting the conclusion that women had little independence from their families, the Court asserted that it was obvious that a girl's father was authorized to speak for her.\textsuperscript{36} Second, Gottlieb argued that he never refused to marry Catherine, but she had refused to marry him after learning he preferred her sister.\textsuperscript{37} The Supreme Court scoffed at this argument stating that "any female of the least sensibility would certainly consider [his comment about her sister] a sufficient refusal to marry her."\textsuperscript{38}

The Court's reference to a woman's "sensibility," indicated another aspect of breach of promise cases in the early years. In assessing the damages in a breach of promise case, juries were free to determine exactly what injuries the bride-to-be had suffered. In making that assessment, the jury determined not only the financial cost of remaining single, but more personal injuries, such as insults to her "sensibility." If the man proved to be cruel, the woman suffered a greater emotional injury than if he simply rejected her, and juries accounted for this in damages. It is interesting to note

\textsuperscript{35} Id.

\textsuperscript{36} Id.

\textsuperscript{37} Id.

\textsuperscript{38} Id.
that "since love was not a great consideration [in marriage]" at this time,\textsuperscript{39} broken hearts were not mentioned in the cases. The greatest injury a woman could suffer was a loss of virtue. In \textit{Fidler}, the Court stated that when there was a seduction accompanying a man’s breach of promise to marry:

there is a total loss of character; and all hopes of future happiness and usefulness are blighted and certain degradation and future misery, if not crime, are its consequences.\textsuperscript{40}

Since Nancy had been a virtuous girl before knowing Peter, her injury was especially great, and the jury was specifically instructed to take her loss of character into account when assessing damages.\textsuperscript{41} One year later, in \textit{Burnett v. Simpkins}, the Court made it explicit that less virtuous girls deserved less protection: "the proposition is too plain to be denied by any, that an injury to the character of a virtuous and good woman, is greater than to that of one who is depraved and abandoned."\textsuperscript{42}

\textbf{Breadwinner and Homemaker: 1869-1883}

No breach of promise to marry suits reached the appellate level between 1863 and 1869, but the 1869 case of \textit{Sprague v. Craig} illustrated that tremendous changes had taken place in Illinois society during that time. Industrial development "was

\textsuperscript{39} \textsc{Winnie Hazou, The Social and Legal Status of Women; A Global Perspective,} \textit{51} (1990).

\textsuperscript{40} \textit{Fidler}, \textit{21 Ill.} at 313.

\textsuperscript{41} \textit{Id.} at 313.

\textsuperscript{42} \textit{24 Ill.} 264, 264 (1860).
tremendously accelerated by the Civil War," and industrialization changed the nature of relationships between men and women by changing men's and women's roles in society. As ownership of land became less of a factor for men, they became financially independent from their families. The ideal man was a "self-made" man, and he made his way in the world by earning a wage. This new man demanded a new woman. Although more women entered the labor force as a result of industrialization, the ideal woman was not "self-made." Instead, as William Chafe wrote in A PARADOX OF CHANGE, after industrialization, "a woman's survival" still depended on her ability to find a husband:

A man might conquer the world in a hundred ways, but for a woman there was only 'a single channel, a single choice. Wealth, power, social distinction, fame . . . all must come through a small gold ring." 

The ideal woman, then, was a married woman who created a safe haven for her husband to return to after spending the day in the competitive industrialized world. Her job was to ensure the physical and spiritual well-being of the household. Because she and her children were, in large part, freed from the heavy labor of farm living, her responsibilities included raising successful, moral children. For her sons,

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43 FLEXNER, supra note 24, 131.
44 MATTHAEI supra note, 104.
45 CHAFE, supra note 27, 8.
46 MATTHAEI, supra note 27, 109.
47 Id. at 58.
that meant they learned to be independent and capable of competing in the industrialized world.\footnote{Id. at 115.} For her daughters, that meant that they too learned to be "mothers and wife/supporters" to the new industrial man.\footnote{Id. at 108. While fulfilling the role of the ideal homemaker was a practical impossibility for poor women, it is important to note that the ideal was accepted throughout the classes. Id. at 112. Poor women did not work because they wanted to, but because they had to. Id.. Poor families aspired to reach an economic level that would allow the husband to be the sole breadwinner, and the woman to be a full-time homemaker. Id..} As their roles changed, men and women were perceived as acquiring new traits:

Men as participants in the capitalist economy, the sphere of self advancement and competition, acquired the personal characteristics of self-seeking, competition and even ruthlessness. Women on the other hand, emerged as guardians of the family, creators of the home; they acquired the personal characteristics of generosity, sensitivity to the needs of others and self-sacrifice.\footnote{Id. at 115.}

This change in roles for men and women was reflected in breach of promise to marry claims. In the cases between 1869 and 1899, more attention was paid to whether the woman would have fulfilled her role as a proper homemaker, or whether the man would have fulfilled his role as bread-winner. This type of discussion first appeared in 1869 in \textit{Sprague v. Craig}. Elisha Sprague had breached his promise to marry Amanda Craig, but soon after passed away from a debilitating disease.\footnote{51 Ill. at 288.} In evaluating the case, the Court had two primary concerns. First, it was concerned with
the woman's virtue. It stated that if the woman was shown to be "unchaste after an
gagement to marry was entered into, that fact released [him] from the agreement,
whether he knew of the fact or not, as a [man] cannot be required to marry another
who is not virtuous."\textsuperscript{52} This standard was much harsher than the earlier breach of
promise cases, where damages were only reduced for a lack of virtue,\textsuperscript{53} and was
directly related to the woman's role in society. A woman without virtue could not
provide the moral home necessary to raise a family, and shelter the man from the
industrial world; thus, she could not hold a man to his promise to marry her.\textsuperscript{54}

Second, the Court was concerned with the man's economic prowess. Since a
man's duty was to support his wife, his ability to do that was directly related to the
injury she suffered if he breached his promise. In this case, Elisha, a sick man,
would not have been able to provide well for Amanda even if he had fulfilled his
promise. The Court stated, "all must know that marriage with a healthy person, free
from all disease, would when all things else were equal, be more desirable than with a
person with an incurable and offensive disease."\textsuperscript{55} Thus, the jury was instructed to
take Elisha's illness into consideration when assessing damages.\textsuperscript{56}

\textsuperscript{52} \textit{Id}. at 295.

\textsuperscript{53} See note 41, and accompanying text.

\textsuperscript{54} It is worth noting that many women of "questionable" virtue probably married, and provided
excellent homes for their families.

\textsuperscript{55} \textit{Id}. at 292.

\textsuperscript{56} \textit{Id}.,
With these changed roles in society, the nature of the relationships changed as well. The strong household in industrial America had to have "an emotional underpinning," it required "love and personal attachment between family members."\textsuperscript{57} As a result, "mutual affection became a socially recognized basis for marriage,"\textsuperscript{58} and breach of promise cases began to include the "broken-heart" as an aspect of damages. For example, in the 1870 case of Sulzer v. Yott, the Court excused un-lady-like assertions as an indication of the pain Lydia Yott felt when Fredrick Sulzer rejected her.\textsuperscript{59} The Court noted that Fredrick had seemed to "have paid attention to [Lydia]," and led her to believe that he loved her.\textsuperscript{60} Thus, when he abruptly broke up with her, the Court felt it was natural for her to resent him:

she would have been something higher than human had she not felt indignant, and would have been unusually prudent, had she failed on some occasion and to some person to manifest feeling and even bitterness.\textsuperscript{61}

Rather than reducing her damages for being less than perfect, these assertions of bitterness demonstrated that her injury ran deep.

Women made significant strides towards economic independence with the passage of the Married Women’s Property Acts enacted in 1873, but breach of

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\textsuperscript{57} MATTHAEI, supra note 27, 110.

\textsuperscript{58} Id. at 57.

\textsuperscript{59} 57 Ill. 165 (1870).

\textsuperscript{60} Id. at 167.

\textsuperscript{61} Id. at 167.
promise cases of this time reflected the reality that social change moves slowly. The Court articulated its opinion on the "Married Women’s Laws" in the 1873 case, *Douglas v. Gausman*.\(^{62}\) The Court stated that "with few exceptions" married couples’ responsibilities to one another had not changed with the passage of these laws.\(^{63}\) It continued to state that despite the new law, it was not "prepared to hold" that a wife could, "without the consent of her husband," begin acquiring earnings "for her separate use."\(^{64}\) While a marriage could be based upon love and affection, it also had an economic component that could not be ignored:

> the woman, upon marriage, acquires the right to be supported according to the condition in life of her husband; and whilst marriage is not supposed to be merely for the purpose of bettering the pecuniary condition of the parties, yet that is a circumstance connected with the relation that should not be ignored.\(^{65}\)

With this understanding of relationships, the Court sustained a substantial recovery for Dina Gausman. When John Douglas breached his promise to marry Dina, he was worth about $25,000; the jury awarded Dina, $3,600.\(^{66}\)

The traditional understanding of men and women reflected in the *Douglas* case emphasized that men were still expected to be the breadwinners. In *Blackburn v.*

\(^{62}\) 68 Ill. 170 (1873).

\(^{63}\) Id. at 173.

\(^{64}\) Id. at 173.

\(^{65}\) Id. at 172.

\(^{66}\) Id. at 171.
Mann, the Court revealed its continued belief that men dominated and controlled relationships, and women were passive actors. As the Court told the facts, right up to the moment: David Blackburn announced to Sarah Jane Mann that he was planning to marry another woman, Sarah Jane believed that she and David were engaged to be married. "Social relations [between them had] continued through a period of many years during all which time [David] was constantly giving [Sarah Jane] assurances of his affectionate regard." Their relationship was not dictated by their families, but was based on romantic love. Believing assurances that she would soon be married, Sarah Jane consented to engage in sexual intercourse with David from which they bore a child. Though Sarah Jane pleaded with David to remove the "stain from her name," they still did not get married, but David assured her that "he would never disown her." That was a lie. In response to David's announcement that he would marry another, Sarah Jane sued David in an Illinois court for breach of promise to marry. In analyzing the Court's language, it is interesting to note that, although the relationship had continued for fifteen years without the benefit of a marriage license, Sarah was still perceived to be the victim. She was a virtuous girl who had invested her "marriageable" years in a man who had taken advantage of her, and then disposed

67 85 Ill. App. 222, 224 (1877).

68 Id. at 224.

69 Id. at 223.

70 Id. .
of her. When he married another, he ruined her chance of marriage, ruined her reputation, and revealed himself as baseless and cruel. He had used the heartlessness that was such a positive attribute in the industrial realm, in his private life, and it was morally offensive. During the trial, when he attempted "to blacken and defame" Sarah’s character even more, the Trial Court advised the jury that if it did not believe his accusations it could find aggravating damages for Sarah Jane. The jury clearly did not believe David’s version of the facts, and awarded Sarah $15,000.72

The success of the women who brought suits like Sarah Jane Mann’s, probably had a significant connection with the advance of Comstockery. When the Comstock laws were passed by Congress in 1873, the public discussion of sexual lives decreased markedly. It is likely that these laws greatly reduced the number of women who came forward with a claim because the public discussion of a breach and possibly a seduction was thought to be socially unacceptable. Paradoxically, though, the women who actually brought claims between the passage of the Comstock laws and the passing of the Victorian era, were probably advantaged by the strict morality surrounding the period. Virtuous women were the foundation of this society, and if a woman could show she was virtuous when the man began courting her, he, as a sinner, would inevitably be blamed for her downfall.

71 Id. at 226.

72 Id. at 228.

Even when a man was not heartless or immoral, but simply changed his mind, Illinois Courts still permitted the woman to recover. For instance, J.W. Richmond never actually proposed to Virginia Roberts, but he declared his love and implicitly asked when he sent her the article, "Love, the Conqueror:"

The article may be regarded as the defendant's own letter; it doubtless contained sentiments which he sanctioned, couched in language more choice than he could compose. It was his appeal for marriage, it foretold in clear and emphatic language his object and intent in his courtship with her.\footnote{Richmond v. Roberts, 98 Ill. 472, 477.}

The Court believed that Virginia had probably "laid it aside as a rare treasure," but J.W. soon broke their engagement because "he had a change of feelings . . . toward [her]."\footnote{Id. at 472.} Virginia responded to his changed feelings by filing a suit for breach of promise to marry. J.W. argued that he should not be punished for not marrying a woman he did not love; an argument that considering the perceived importance of an intimate homelife seems persuasive. However, at this time, breach of promise actions were not about the success of marriages, but instead about the injury suffered by the woman. J.W.'s rejection of Virginia, regardless of his reason, still damaged her reputation, broke her heart and deprived her of a marriage. In 1881, the Court upheld the jury's award of $4,000.\footnote{Id. at 472.} Properly understood, then, Virginia's injury was only
different by degree, not nature, from Bonnie Kirkman’s.\textsuperscript{77} When Bonnie told her fiancée that she was pregnant, he broke his marriage promise in "terms of uncommon heartlessness," declaring "he had got out of her all he wanted."\textsuperscript{78} This focus on the woman’s injuries illustrated the Courts’ continued belief that women were far more fragile and sensitive than men, and needed the action.

**Criticism and Endurance: 1884-1899**

The earliest academic critic of breach of promise to marry actions, "George Lawyer," shared the Courts’ belief that most women were more sensitive than men. However, he argued that the women who brought breach of promise to marry suits were the exception to this general rule. In contrast to the woman who brought the breach of promise suit, the virtuous woman did not want public attention or money when her heart was broken:

> The woman harmed will even be the last to seek the court. There is no price upon her affections, and publicity neither gratifies her, nor does money compensate the injury sustained. The confiding, sensitive, loving and virtuous, do not take the world into confidence or stand ready to dispose of their affections as if they were merchandise.\textsuperscript{79}

Considering the practical realities of becoming a soiled woman, virtue was linked with money. Women whose families had the money to care for them, could afford to walk

\textsuperscript{77} *Doubet v. Kirkman*, 15 Ill. App. 622 (1884) (verdict in favor of plaintiff reversed due to improper judicial interference with witness).

\textsuperscript{78} *Id.* at 623.

away from a breached promise to marry. In dismissing the action for breach of promise, George Lawyer embraced the idea of home and hearth, but completely overlooked the economic dependence most women still had to men. As eloquent as the sentiment "gold offers no balm and heals no pain"\textsuperscript{80} was, it ignored the practical reality that a broken promise to marry often caused a real economic loss to a woman.

The only economic loss Lawyer was concerned with was the man's. He claimed, "it is not merely a matter of opinion that the majority of cases are settled out of court."\textsuperscript{81} Like the good woman, a good man was thought to want to avoid the limelight of court, and would settle even the most frivolous suits.\textsuperscript{82} He was left with less cash, while she was free to trap another unsuspecting man. Another undesirable result of the action was a forced marriage. Unlike the Court in \textit{Richmond}, Lawyer was concerned that a forced marriage would wreck havoc on the stable home.\textsuperscript{83} Instead of being a sanctuary, the home would be a place marked by "a general indifference, habitual neglect, a failure to support, cruelty [and] misery."\textsuperscript{84}

While it is impossible to know the extent to which these feared out of court consequences occurred, it is clear that breach of promise appeals all but disappeared

\textsuperscript{80} Id...

\textsuperscript{81} Id. at 273.

\textsuperscript{82} Id. at 274.

\textsuperscript{83} See notes 74-76 and accompanying text.

\textsuperscript{84} Id. at 273.
from the Illinois Appellate Courts between 1885 and 1899. In the few cases that did reach the appellate level there was a wariness toward breach of promise claims that had not been evident in earlier cases. In 1887, the Court disallowed evidence of preparations by Estella Clark for her upcoming wedding because the preparations were done without the knowledge of her "fiancée," Edward Dunlap. The Court said that to rule otherwise, would allow "a designing woman" to trap men by making preparations for marriage and then bringing a suit.

In 1894, more academic criticism was published, this time attacking the partiality of juries to beautiful women. While the piece, Breach of Promise of Marriage, asserted that many women actually suffered a real injury when the promise to marry was breached, it countered that all male juries were incapable of fairly measuring the damages:

If the girl be pretty, the jury generally give her heavy damages; if she be unattractive, they often have a sneaking sympathy with the man. She who has her fortune still before her is handsomely recompensated, while her plainer sister, who could ill afford to lose the best years of her life, is often sent empty away.

Again there is no way of knowing whether this concern, which seems intuitively sensible, played itself out in the cases. The Courts never mentioned the perceived

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86 Id.
87 White, supra note 11, 141.
88 Id.
beauty of the plaintiff’s in the appellate cases, but often referred to the competence of the jury in assessing damages.\textsuperscript{89}

The same year, 1894, Philip Judy’s appeal from a verdict in favor of Amanda Sterrett in a breach of promise action reached the Illinois Supreme Court.\textsuperscript{90} While Amanda’s award of $3,500 was affirmed, the Court focused most of its attention on whether a promise to marry conditioned on sexual intercourse was valid.\textsuperscript{91} It concluded that a promise conditioned on intercourse was immoral, and thus, unenforceable.\textsuperscript{92} Thus, the Court believed that determining the virtue of a plaintiff when she agreed to marry, not only ensured a moral home, but made it more difficult for a depraved woman to trap a man.

The increased acceptance of women in the labor force, along with the heightened morality of the time, probably reduced the number of breach of promise claims brought in the late nineteenth century. By 1890, women comprised about 17.1 percent of the labor force.\textsuperscript{93} Marital status still determined whether a woman worked, with only 4.6 percent of married women working, but entering the labor force was a

\textsuperscript{89} See Sulzer, 57 Ill. at 168; Douglas, 68 Ill. at 171; Richmond, 98 Ill. at 480.

\textsuperscript{90} Judy v. Sterrett, 153 Ill. 94 (1894).

\textsuperscript{91} Id. at 95.

\textsuperscript{92} Id. at 94.

\textsuperscript{93} MATTIAELI, supra note 27, 142.
way for women to stall until they became homemakers.\textsuperscript{94} This opportunity for daughters to provide an income for their family, created an economic alternative if a man breached his promise to marry. While the woman would still be dependent upon her father, she could at least off set the cost of her dependence by working. If she never married, "the period of employed daughterhood could extend itself indefinitely."\textsuperscript{95}

The increased wariness about breach of promise claims, the heightened morality, and the economic opportunities for women led to a decrease in the number of breach of promise cases in the final decades of the nineteenth century. Still, the final case of the century, \textit{Zatlin v. Davenport}, indicated that the action was still considered a viable option for women who had been wronged. Ida Davenport began seeing Charles Zatlin in April of 1895, and they agreed to marry in September of 1895.\textsuperscript{96} In May of 1895, they began to have sexual intercourse, and when Ida became pregnant Charles told her "he would never marry her."\textsuperscript{97} Ida brought suit, and was awarded $500.\textsuperscript{98} The case was upheld without commentary.

\begin{itemize}
\item \textsuperscript{94} \textit{Id.}.
\item \textsuperscript{95} \textit{Id.} at 152.
\item \textsuperscript{96} \textit{Zatlin v. Davenport}, 71 Ill. App. 292, 292 (1897).
\item \textsuperscript{97} \textit{Id.} at 293.
\item \textsuperscript{98} \textit{Id.} at 293.
\end{itemize}
Resurgence and Change: 1900-1920

In contrast to *Zatlin v. Davenport*, the first suit in the twentieth century undermined the legitimacy of the action for breach of promise. *La Porte v. Wallace* was the only reported case in Illinois history where the Court identified a "designing" woman taking advantage of a gullible man.\(^9\) Notably, her suit was not successful. When Nettie Wallace’s case reached the Supreme Court of Illinois she was 29 years old, and Alonzo La Porte was 79.\(^1\) Testimony indicated that everyone in the community, except Alonzo, knew that Nettie was not a "chaste or virtuous woman," but was "inexcusably loose and careless" with men both before and after her engagement.\(^2\) In contrast, Alonzo believed that when he became engaged to Nettie, she "had never had carnal knowledge of any man."\(^3\) When he learned she had, he immediately broke the engagement. The Court sustained his position, disallowing any award of damages to Nettie.

As damaging as Nettie Wallace’s claim was to the legitimacy of the action, the other two cases at the turn of the century illustrated the Court’s continued belief that some women still had legitimate claims. The first, *Poehlmann v. Kertz*, involved a widower with two children who, looking for a wife, set his sights on his brother’s

\(^9\) 89 Ill. 521 (1900).

\(^1\) Id. at 519.

\(^2\) Id. at 520 (14 witnesses testified to Nettie’s bad reputation).

\(^3\) Id. at 519.
domestic, Barbara.\textsuperscript{103} According to Barbara’s testimony in August of 1898:

[he] asked me to be his housekeeper. The next morning he asked me if I would sooner get married to him. . . . I said, "If you want to marry me you will have to marry a poor girl without money."

He said, "I am not looking for money now." . . .

After that he said, . . . "Will you promise to marry me?"

I said, "I will promise to marry you." . . .

He brought me flowers and gave me a diamond ring.\textsuperscript{104}

Barbara continued to work for his brother, but she and John kept in correspondence.

His letters to her indicated a continued desire to get married, but by 1900, it was obvious he was not going to keep his promise.\textsuperscript{105} John testified that if he had ever said anything about marrying Barbara, "it was maybe in a joke," but admitted writing the letters to her, and giving her the diamond ring, and engaging in intercourse with her.\textsuperscript{106} The jury awarded Barbara $2,500.\textsuperscript{107}

The second case involved, Frank Jacoby, a ruthless man, who took advantage of a girl named Lena Stark.\textsuperscript{108} In upholding the jury’s verdict, the Court wrote a scathing account of the facts, finding ample evidence that Frank "insincerely and deceitfully advanced untruthful, unsubstantial and frivolous reasons for casting [Lena]
aside, as to fairly justify the imputation that he was trifling with her affections and
was moved by evil or improper motives."\textsuperscript{109} A promise of marriage was still a
coveted pledge for a woman, and the Court ruled that it was appropriate for the jury
to assess punitive damages if it believed that Frank led Lena on for two years, with no
intention of every marrying her.\textsuperscript{110}

Following these two cases, breach of promise actions virtually disappeared from
Illinois appellate courts. This is not surprising because for the first time in American
history, large groups of women began to enjoy real economic and social freedom, and
were becoming actively involved in politics. While most women in the late nineteenth
century had not been involved in formal politics, their roles as moral guides often
made them active participants in their local communities'.\textsuperscript{111} By the turn of the
century, women's organizations' influence had grown, and they were one of the
moving forces behind the protectionist legislation of the Progressives.\textsuperscript{112} Further,
women across the country had finally united in the suffrage movement.\textsuperscript{113} As the
century progressed, many believed that women would get the vote, and become a

\textsuperscript{109} \textit{Id.} at 37.

\textsuperscript{110} \textit{Id.} at 36.

\textsuperscript{111} CHAFF, supra note 25, 34.

\textsuperscript{112} \textit{Id.} at 34.

\textsuperscript{113} FLEXNER, supra note 24, 276.
major political force.\textsuperscript{114} While these strides into men's political "sphere" were not directly related to breach of promise actions, they indicated that women were becoming more independent. In at least some areas of their lives, women were demanding to be treated as equals to men, and breach of promise actions, which focused on women's dependence on men, were naturally less appealing.

This new political consciousness was enforced by a degree of social and economic independence unmatched in the past. Many young women were working and attending coed high schools and colleges. Out of every five bachelor degrees being bestowed in America, one was going to a woman.\textsuperscript{115} Young women who worked were beginning to gain financial independence from their parents, some even choosing to live independently of them.\textsuperscript{116} As Julie Matthaei wrote in \textit{AN ECONOMIC HISTORY OF WOMEN IN AMERICA}:

\begin{quote}
The combination of higher education and social homemaking led to the emergence of feminine serving professions--teaching, social work, nursing, librarianship. Between 1890 and 1920, women's participation in the paid professions increased by 226\% and men's by only 78\%. Once these feminine professions were established, they became the accepted alternatives to marriage and homemaking.\textsuperscript{117}
\end{quote}

Even though most women were still only working until they got married, these new

\begin{flushright}
\textsuperscript{114} \textit{Id.} at 325.
\textsuperscript{115} \textit{BERGMAN, BARBARA, THE ECONOMIC EMERGENCE OF WOMEN}, 25 (1986).
\textsuperscript{116} \textit{MATTHAEI, supra} note 27, 156.
\textsuperscript{117} \textit{Id.} at 157.
\end{flushright}
opportunities gave women legitimate, respected alternatives if a promise to marry fell through.

As a result of all of the changes in women's lives, it is not surprising that the action virtually disappeared in the early twentieth century, with only two breach of promise suits between 1903 and 1919. Both suits reached the appellate level in 1917, and neither were reported in full. In *Miskell v. Murry*, the Court found that a promise made by a married man to marry another woman, when she knew he was married, was unlawful, immoral and void.\textsuperscript{118} In *Birkel v. Powers*, the court upheld a verdict of $10,000 for Clara Birkel because the evidence had shown that John Power's behavior toward her was "monstrous."\textsuperscript{119}

**Independence and Attack: 1920-1929**

Remarkable changes in women's lives occurred during the twenties, thus, the continued absence of appellate cases, and renewed academic criticism was not surprising. Women's enrollment in coed colleges and universities "soared" in the 1920's,\textsuperscript{120} with women receiving one bachelor degree for every two given to men.\textsuperscript{121} "Young people of both sexes mingled for four years between home and marketplace,

\begin{footnotes}
\footnote{118}{204 Ill. App. 567, 567 (1917).}
\footnote{119}{208 Ill. App. 430, 431 (1917).}
\footnote{120}{MEYER, supra note 73, 357.}
\footnote{121}{BERGMAN, supra note 115, 25.}
\end{footnotes}
between home and marriage," and they were enjoying this freedom. This new freedom manifested itself most obviously in women’s looks. Donald Meyer, in SEX AND POWER, noted that by the end of the decade, men still looked the same, but women’s looks had changed dramatically:

By 1920, she would begin shortening her skirts. In two years, the weight of clothing worn by women was cut in half; by the mid-twenties by two-thirds. . . . Corset manufactures went bankrupt. No amount of advertising, no salesman’s guile mattered. Cosmetic manufactures soon were making millions. Long hair fell onto busy barber’s floors.\(^{123}\)

Women’s looks became provocative. Women became individuals. Women gained control of their bodies and their sexuality. While "magazines and novels portrayed the decade as a nonstop revel featuring jazz bands, risque dances and uninhibited sex," it seems likely that this lifestyle represented a small portion of the population. Still, women had achieved a degree of social independence that was incompatible with breach of promise suits. They no longer prized their "virtue," or at least they began to define it differently; and they no longer, as a group, suffered irreparable harm when a promise to marry was breached.

These "new women" caused critics of the breach of promise action to write with renewed vigor. The primary new point of the critics was that women were no

\(^{122}\) MEYER, supra note 73, 358.

\(^{123}\) MEYER, supra note 73, 361.

\(^{124}\) CHAFE, supra note 25, 64.
longer as dependent upon men as they used to be. While a woman "still gained a very large advantage" when she married, the economic loss she suffered when a promise to marry was breached was lessened because women could now work. Socially, they argued, her loss was lessened because "the emancipation of women [had] progressed far enough so [that a woman might], and not infrequently [did], choose not to marry." Emotionally, the critics complained, the breach of promise action had never offered a solution because for those who actually suffered a "cruel wrong," cash could not mend their wound. Thus, for the honest woman, the breach of promise action was no longer necessary.

That left only the "adventuress and woman of shady character," who critics believed actively exploited the action. They complained that there was "nothing to prevent [her] from concocting a case out of her own head, and supporting it by unblushing perjury" in court. Rather than recognizing this farce, the critics believed that male jurors always felt sympathy to the woman in court, especially when there was a seduction involved. With women's new sexual freedom, this was easy to

125 Wright, supra note 11, 368.
127 Id.
128 Id. at 493.
129 Id. at 491.
130 Wright, supra note 11, 376.
ensure: "first [she would inflame] his desires and then [yield] to them for no other purpose that to entrap him into marriage or recover heavy damages."\textsuperscript{131} If she chose damages, she would have succeeded in court. The only limits to her success would have been her own "beauty and the defendant's ability to pay."\textsuperscript{132}

Cognizant of the disadvantage they would have in court, men were extremely vulnerable to the out of court demands of a calculating woman. Rather than expose themselves to the lurid publicity of a trial, critics stated that many men of good repute would pay a woman a "settlement" to leave him alone.\textsuperscript{133} Others, they feared, would be forced in to a marriage they did not want. Marriages were the foundation to a healthy society, but forced marriages undermined this base. These marriages were unhappy, and as one critic noted, "many things which [were] not accepted as an excuse for failure to perform the agreement [were] yet grounds for divorce after marriage."\textsuperscript{134} Thus, critics believed that the action for breach of promise to marry was not needed to protect good women, but instead was a tool for designing women, which led to unjust verdicts, blackmail and divorce.

**Depression and Abolition: 1930-1939**

The criticism of breach of promise that began in earnest in the twenties became

\textsuperscript{131} *Id.* at 378.

\textsuperscript{132} *Id.* at 376.

\textsuperscript{133} *Id.* at 361.

\textsuperscript{134} *Id.* at 371.
political in the thirties, and led to the abolition of the action in Illinois in 1935. The concerns expressed in the twenties were exacerbated by the Depression. Men simply could not afford the action for breach of promise because they had lost the economic independence they had had since the industrial revolution. As a group, their "self-image, self-confidence, [and] faith in themselves" was at an all time low.\textsuperscript{135} Since women were not expected as a group to be "bread-winners," their self-confidence was not as shaken by the depression, but their pocket-books were also empty. The combined desperation for money, social independence, and freer sexuality led to the concern that even more women would attempt to trap the more vulnerable man with a breach of promise suit.\textsuperscript{136}

At the same time, many women began to resent the breach of promise action. Many feminists were embracing their sexuality as a form of equality with men, and breach of promise actions undermined their claims.\textsuperscript{137} A 1938 survey revealed that of 777 middle-class women, 74 percent of those born between 1890-1900 remained virgins until they married; but that percentage dropped to 31.7 with those born after 1910.\textsuperscript{138} Women were becoming more liberal sexually and socially before marriage,
but still believed they could be good homemakers and mothers after marriage.\footnote{Id. at 106.}

Further, while women had not united into a single political voice following the passage of the 19th Amendment, they were playing a much more active role in politics by the mid-1930’s. The action for breach of promise to marry had derived from a time when women were dependent on men, and these women likely believed that its existence inhibited their advancement socially and politically.

Legislatures were not immune to the growing antipathy to the breach of promise to marry action, and in 1935, led by Mrs. Meredith Nicholson, Jr., a woman legislator, Indiana became the first state to abolish the action.\footnote{Ind. Laws 1935, c. 208. Feinsinger, \textit{Current Legislative Attack Affecting Breach of Promise to Marry; Alienation of Affections; and Related Actions}, 10 Wis. L. Rev. 417, 417 (1935).} New York soon followed,\footnote{N.Y. Laws 1935, c. 263. Id. at 419.} and on April 17, 1935, the Illinois legislature abolished the action with only one dissenting vote.\footnote{Ill. Rev. Stat. Ch. 38, para. 246.1 (1935). Feinsinger, supra note 136, 419. (1935).} Beyond abolishing the action for breach of promise to marry, the Act also outlawed any suits based upon alienation of affections, or criminal conversion.\footnote{Ill. Rev. Stat., Ch. 38, para. 246.1 (1935). See Appendix A for statute.} It was part of the criminal code, and made it a crime to bring or threaten to bring a suit based upon the breach of promise to marry. The broad scope of the Act was unprecedented, and was intended to prevent the types of widespread
blackmail critics believed resulted from these types of actions.\textsuperscript{144}

Recreation and Beyond: 1946-1995

Almost immediately after World War II ended, the right to sue for breach of promise to marry was recreated. In 1946, a constitutional test case made it to the Illinois Supreme Court.\textsuperscript{145} In \textit{Heck v. Schupp}, Heck, a veteran, returned home from the War to discover that his wife was having an affair. He sued the other man for alienation of affection.\textsuperscript{146} The Trial Court had dismissed the action, but the Supreme Court reversed finding that the anti-heart-balm legislation violated Section 19 of Article II of the Illinois Constitution. The Court stated:

\begin{quote}
This section, oft referred to as part of the "bill of rights," provides that "Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation."\textsuperscript{147}
\end{quote}

As a result, the actions for alienation of affection, criminal conversion and breach of promise were constitutionally recreated.

That the breach of promise action, which traditionally protected women in

\textsuperscript{144} Kane, \textit{Heartbalm and Public Policy}, 5 Fordham L. Rev. 63, 63 (1936). As one commentator pointed out, it also made it difficult to "test the constitutionality of the new laws" because it was a criminal misdemeanor to bring a test suit. This aspect of the law was a concern to Illinois Governor Horner who "allowed the bill to become law without his signature, expressing doubt as to its constitutionality." Feinsinger, \textit{supra} note 140, at 419.


\textsuperscript{146} \textit{Id.} at 465.

\textsuperscript{147} \textit{Id.} at 466.
relationships, was recreated in a case decided to protect veterans returning to America is not shocking. America was proud of its veterans, and made every attempt to make their return to American life easier.\textsuperscript{148} Moreover, post-War America was substantially different from the decades before the War. Emerging from the War as a Super-Power, the American economy had recovered from the Depression, and was thriving. While single women continued to work, and record numbers of married women were entering the labor force, America was returning to more traditional values.\textsuperscript{149} As America became more conservative and gained economic strength, the action for breach of promise probably appeared less threatening than it had been during the Roaring Twenties or the Depression. Still, within a year of the Court’s ruling, the Illinois legislature statutorily defined the breach of promise to marry action, explicitly outlining the necessary elements of a breach of promise suit, and strictly limiting the possible damages recoverable.\textsuperscript{150}

Since the action has been recreated, only three other cases, all argued before 1960, have reached the appellate level in Illinois.\textsuperscript{151} In each case a woman brought the suit, and with the exception of Sharon Wildly’s case, each suit was upheld upon

\textsuperscript{148} Meyer, supra note 72, 371.

\textsuperscript{149} Id.

\textsuperscript{150} Ill. Rev. Stat., Ch. 38, para. 246.1 (1947); Ill. Rev. Stat., Ch. 89, para 33 (1947). See Appendix A for statutes.

\textsuperscript{151} Poinexter v. Willis, 77 Ill. App. 219 (1966); White v. Frenzler, 19 Ill. App.2d 231 (1958); Smith v. Hill, 12 Ill.2d 58 (1958).
appeal.\textsuperscript{152} In the case of Sharon and Dick, in January of 1995, the Seventh Circuit reversed Sharon’s award because she had not placed the date the promise to marry was made on her complaint.\textsuperscript{153} While Dick Springs did not have to pay the $118,000 in damages to Sharon Wildly, his seven week engagement still cost him nearly $400,000 in legal fees.\textsuperscript{154} The critics fears about the action resonate in today’s society. It seems clear that the defendant’s ability to pay was a major factor in assessing damages in this case. Further, his ability to pay his lawyers allowed him to appeal this case as a matter of principle, for others, this may not be a viable option. In these litigious times, it seems likely that now that the statute has been revived, many more suits will be brought and settled out of court.

\textbf{Conclusion}

The history of the action for breach of promise to marry in Illinois is encouraging. When most women were completely dependent upon men, a woman suffered economic, emotional and social harm when a promise to marry was breached, and the action provided her with a remedy. As women became more economically and socially independent, their need for the action was diminished, and the action fell into disuse, suffered severe criticism, and was eventually abolished. However, in the

\textsuperscript{152} \textit{Id.}.

\textsuperscript{153} Lehmann, Daniel J., \textit{Court Discards Jury Award to Jilted Fiancee}, Chicago Sun-Times, 5 (1/21/95).

\textsuperscript{154} \textit{Interview with Samantha Springs-Swindell, Dick Springs’ Daughter} (5/7/95). While Dick has not given up on romance, he has given up on lawyers. This case cost Dick his faith in the legal system. \textit{Id.}
post-War era, the action was recreated, and is still exists in Illinois. In this age of gender equality, the action does not protect any interest, but leaves both men and women open to frivolous suits tomorrow. As a result, the future of the action for breach of promise to marry in Illinois is ominous.
Appendix A


"An Act in relation to certain causes of action conducive to extortion and blackmail, and to declare illegal, contracts and acts made and done in pursuance thereof."

Ill. Rev. Stat., Ch. 38, para. 246.1 (1947)

"Unconstitutional"
Appendix A, continued


"An Act relating to actions for breach of promise or agreement to marry."

**Actions for Breach of Promise or Agreement to Marry**

AN ACT relating to actions for breach of promise or agreement to marry. Approved July 9, 1947, L.1947, p. 1181.

1801. Legislative declaration of necessity.] § 1. It is hereby declared, as a matter of legislative determination, that the remedy heretofore provided by law for the enforcement of actions based upon breaches of promises or agreements to marry has been subject to grave abuses and has been used as an instrument for blackmail by unscrupulous persons for their unjust enrichment, due to the indefiniteness of the damages recoverable in such actions and the consequent fear of persons threatened with such actions that exorbitant damages might be assessed against them. It is also hereby declared that the award of monetary damages in such actions is ineffective as a recompense for genuine mental or emotional distress. Accordingly, it is hereby declared as the public policy of the state that the best interests of the people of the state will be served by limiting the damages recoverable in such actions, and by leaving any punishments of wrongdoers guilty of seduction to proceedings under the criminal laws of the state, rather than to the imposition of punitive, exemplary, vindictive or aggravated damages in actions for breach of promise or agreement to marry. Consequently, in the public interest, the necessity for the enactment of this chapter is hereby declared as a matter of legislative determination.

1802. Actual damages only recoverable.] § 2. The damages to be recovered in any action for breach of promise or agreement to marry shall be limited to the actual damages sustained as a result of the injury complained of.

1803. Punitive, exemplary, vindictive or aggravated damages not recoverable.] § 3. No punitive, exemplary, vindictive or aggravated damages shall be allowed in any action for breach of promise or agreement to marry.

1804. Notice required before bringing action for breach of promise.] § 4. Within three months from the date that the breach of promise or agreement to marry occurred, unless such breach occurred prior to the effective date of the act, any person who is about to commence any civil action in any court for breach of promise or agreement to marry shall give to the person against whom said action is to be brought, or send in a sealed envelope with first class postage prepaid and deposited in the United States mail to such person at his or her last known address, notice in writing, signed by the person who is about to commence said action, giving the date upon which the promise or agreement to marry was made, and the date upon which the marriage ceremony was to have been performed, stating the damages suffered by the person signing said notice and stating whether the person signing said notice is or is not still willing to marry the person to whom the statement is given. If the breach occurred prior to the effective date of this act the notice herein required shall be served within three months after such effective date.

1805. Action barred unless notice is given.] § 5. If the notice provided for by Section 4 is not given as provided in that section, any such civil action for breach of promise or agreement to marry shall be dismissed and the person to whom any such cause of action accrued shall be forever barred from further suing.

1 Chapter 40, §1804.

1806. Limitations.] § 6. Actions on promises or agreements to marry shall be commenced within one year next after the cause of action accrued.

1807. Retroactive effect.] § 7. This act shall apply to all actions for breach of promise or agreement to marry begun after the effective date of this act, even though the alleged breach of promise or agreement to marry on which the action is based occurred prior to such effective date.

1 Chapter 40, §1807.

1808. Criminal laws not affected.] § 8. Nothing herein contained shall be deemed to repeal or amend any provisions of the criminal laws of this state.

1809. Liberal construction—Partial invalidity.] § 9. This act shall be liberally construed to effectuate the objects and purposes thereof and the public policy as herein declared. If any section, clause, sentence, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the section, clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered. If the application of this act, or any part thereof, to any person or circumstance shall be adjudged by such court to be invalid or ineffectual for any reason, such judgment shall not affect the application of this act, or part thereof, to any other person or circumstance.

1 Chapter 40, §§ 1801 to 1816.

1810. Effective date.] § 10. This Act shall become effective on January 1, 1948.

1 Chapter 40, §§ 1801 to 1816.