

and the month of May 1857, both inclusive, the defender courted the pursuer for his wife, and promised and engaged to marry her? And whether the defender has wrongfully failed to implement the said promise, to the loss, injury, and damage of the pursuer?

“ Damages laid at £500.”

Agent for Pursuer—D. F. Bridgeford, S.S.C.

Agent for Defender—James Somerville, S.S.C.

Saturday, May 16.

FORBES v. WILSON.

*Reparation—Breach of promise to marry—Seduction—Issue.* In an action of damages for breach of promise of marriage and seduction, objection by defender to relevancy, on the ground that the pursuer's averments amounted to averment of actual marriage, *repelled*, and relevancy sustained.

This was an action of damages for breach of promise of marriage and seduction. The pursuer, after stating that the defender visited her repeatedly at her father's house, and began to court her with a view to marriage, alleged that “the defender continued paying his addresses to the pursuer, and to reiterate his love and attachment to her, until one occasion in the month of July 1864, when he offered to marry her, and she accepted him. The subject of their marriage had been frequently talked of before July 1864, but it was not till then that it was finally resolved upon. The defender, in the winter of 1865, and in her father's house, taking advantage of the ascendancy which he had acquired over the pursuer, and the feelings of love and affection for him with which he had inspired her, as well as of his position as the accepted suitor and promised husband of the pursuer, prevailed upon the pursuer to allow him to have carnal connection with her, and succeeded in having carnal connection with the pursuer; and the pursuer was thus seduced by the defender.”

The pursuer proposed issues founded on the two grounds of action. The defender objected to any issue being granted, and the Lord Ordinary (BARCAPLE) reported the case with the following note:—

“The defender objects that there is not a relevant case for an issue, either of breach of promise or seduction. The Lord Ordinary had to dispose of precisely the same question, on a plea to relevancy, in the case of *Craig v. Tennent*, in which a reclaiming note was boxed to the First Division of the Court on 23d January 1863. The issue of breach of promise was afterwards withdrawn, and the case went to trial on the issue of seduction, without a judgment of the Court upon the point. But the withdrawal of the issue of breach of promise will not obviate the objection to relevancy, which applies equally to both branches of the case. The Lord Ordinary adheres to the opinion expressed in his note in the case referred to, which is appended:—

‘*Note.*—In this action of damages for seduction and breach of promise of marriage, the pursuer makes sufficient averments to support the conclusions of her summons. But the defender pleads that the action cannot be maintained, in respect that the pursuer avers that the defender promised to marry her, and that carnal connection followed thereon. The promise is denied by the defender, as well as all the other material averments. Such

a promise could be proved for the purpose of establishing a marriage only by writing (which in the present case is not alleged to exist), or by the oath of the defender. The woman, in such circumstances, is not compelled to betake herself to what may be the hopeless remedy of an action of declarator of marriage, which must be rested upon the oath of the defender, who denies the promise. The Lord Ordinary thinks that she may insist for damages, both for seduction and for breach of promise. It is only a promise proved either by writing or by oath that, when followed by *copula*, constitutes marriage. The pursuer of the present action does not undertake such a proof; and, consistently, she does not conclude for declarator of marriage. The Lord Ordinary is of opinion that her averments must be construed and dealt with in reference to the conclusions of the action.”

THOMAS (with him D.-F. MONCRIEFF), for the defender, contended that the averments of the pursuer amounted to actual marriage (1) by *de presenti* interchange of consent, and (2) by promise *subsequente copula*. There was therefore no breach of promise, and no issue could be granted either of breach of promise or of seduction. The Lord Ordinary erred in mixing up the matter of proof with relevancy of averment. The pursuer's averments must be taken at this stage to be all true—that is, if need be, proved by oath; and if so, the case here stated was one of *ipsum matrimonium*.

A. MONCRIEFF, for the pursuer, was not called on. At advising—

LORD PRESIDENT—I have no doubt of the relevancy. An engagement to marry, on the strength of which the man prevails on the woman to surrender her person, and then breaks his engagement, is about the worst case of breach of promise and of seduction that can be libelled.

LORD CURRIEHILL concurred.

LORD DEAS—If the law were, as is contended by the defender's counsel, it would certainly not be common sense. The only way in which the pursuer can make out her promise is, if it is in writing, but that is not alleged here. The only other way would have been by the oath of the defender; and if he had stated that he was ready to depone to a marriage, on oath, I could have understood his defence, but he has done nothing of the sort.

LORD ARMILLAN concurred.

The Court approved of the following issues—

“I. Whether, in or about July 1864, the defender promised and agreed to marry the pursuer; and whether the defender wrongfully failed to perform said promise, to the loss, injury, and damage of the pursuer?

Damages laid at £3000 sterling.

“II. Whether, in or about the year 1864 and 1865, the defender courted the pursuer, and professed intention to marry her; and whether, by means of these professions, the defender, in or about November 1865, seduced the pursuer, and prevailed upon her to permit him to have connection with her, to her loss, injury, and damage?

Damages laid at £3000 sterling.”

Expenses to pursuer since date of Lord Ordinary's interlocutor.

Agents for Pursuer—White-Millar, & Robson, S.S.C.

Agents for Defender—Lindsay & Paterson, W.S.