

for breach of promise of marriage brought in somewhat peculiar circumstances. The defence was that by reason of the plaintiff's ill health she was not fit to marry. It appeared by the evidence that on the 9th April, 1913, the day originally fixed for the marriage, the plaintiff was suffering from a supposed tubercular affection and had gone to a sanitarium where her sister was a consumptive patient. On the 14th of April, 1913, the defendant's solicitor wrote to the plaintiff's father to the effect that owing to the plaintiff's state of health the defendant would not proceed with the contemplated marriage; this letter was communicated to the plaintiff in the following May. The plaintiff subsequently left the sanitarium and went to reside with her parents and in a short time recovered her health, and in August, 1913, was examined by a physician who certified that in his opinion she was in good health. On September 4th her solicitor wrote to the defendant's solicitors announcing the fact and asking what the defendant intended to do regarding the marriage and they replied on 12th Sept. stating that, notwithstanding the defendant's continued affection for the plaintiff, the contemplated marriage could not now take place on the ground of the plaintiff's state of health and family history. The action was commenced on 23rd September, 1913. The judge at the trial put questions to the jury: (1) Was the plaintiff suffering from tuberculosis between 28th March and 15th April, 1913, or on 12th Sept., 1913? (2) Was the plaintiff on 12th Sept. in such a condition as to be unfit for marriage within a reasonable time after that day? (3) Did defendant honestly believe the plaintiff was unfit for marriage within a reasonable time after 12th Sept. and did he refuse to marry her on that ground? The jury on the evidence was unable to say whether the plaintiff was suffering from tuberculosis on the 15th April, 1913, but found she was not so suffering on 12th September, 1913, and that she was not then unfit for marriage, and that the defendant did not reasonably believe that she was unfit for marriage on that day and that he did not refuse to marry the plaintiff on that ground.

Bray, J., on the findings of the jury, gave judgment for the plaintiff for the damages assessed. On the appeal it was contended that the judge at the trial erred in fixing the 12th day of Sept. as the date of the breach, and not an earlier date in April or May when the defendant's letter was communicated to the plaintiff, and also in directing the jury that the onus was on the defendant to show that the plaintiff was in fact unfit for marriage, which he had not discharged. The Court of Appeal (Eady, Phillimore and Pickford, L.JJ.) although inclined to the opinion that the breach