

CARTWRIGHT, MASTER.

JANUARY 11TH, 1905.

CHAMBERS.

BARNUM v. HENRY.

*Summary Judgment—Rule 616—Pleading—Breach of Promise of Marriage—Examination of Plaintiff for Discovery—Admission of no Breach before Action.*

Action for breach of promise to marry plaintiff. The marriage was to have taken place in July, 1904; at the request of defendant it was postponed.

The defendant moved under Rule 616 for summary judgment dismissing the action on the grounds: (1) that the statement of claim did not allege that there was a breach of the alleged contract before action; (2) that plaintiff in her examination for discovery admitted that this was not any breach before action.

W. C. McKay, for defendant.

J. T. Richardson, for plaintiff.

THE MASTER.—In answer to question 379 plaintiff says: "He did not fix any special day. We were to be married when my sister was here; he pleaded business, and said we could just as well be married in August; that is all that was said about it." The marriage not having taken place in the first half of that month, plaintiff became uneasy. She went to defendant's house, but his sister said he was ill. Her mother afterwards went to see defendant, and her step-father also went but failed to see him.

It is quite true that plaintiff is not able to point to any specific and definite request to defendant, made either by herself, her mother, or her step-father, to marry her on any fixed day in August. It was therefore argued that there was no breach, because there being no request there could be no refusal; and that the action should therefore be dismissed. As might be expected the cases under Rule 616 are few. From *Cook v. Lemieux*, 10 P. R. 577, to *Coyle v. Coyle*, 19 P. R. 97, these applications, it is said, are to be granted only in the very clearest cases.

After reading through the whole of plaintiff's depositions, I am not satisfied that the present is a proper case for applying the Rule invoked.

In actions of this kind it cannot be necessary that a formal notice should be served on the suitor calling on him to perform his contract, or that he should be required to do so by plaintiff in a prepaid registered letter.