statute at all, for it is capable of being performed within a year, and that is enough. An agreement to marry may commonly be regarded as a continuing contract by mutual consent, and hence, unaffected by the statute.

5. *At what Time a Promise to Marry may be regarded as broken*—If a person engaged to marry B., marries C. instead, such party puts it out of his or her power to fulfill the former engagement, and B. may sue at once for breach of promise. If, again, the wedding with B. was fixed for a certain day, and A. inexcusably fails to appear, B., who was ready, may treat the contract as broken. And modern precedents, moreover, both in England and the United States, favor the rule, that a breach of contract arises upon a positive refusal to perform, although the time specified for performance has not yet arrived. Hence, where parties had engaged to marry "in the fall," fixing no day, and the man, in October, announced his determination not to perform the contract, it was held that the woman might bring her action immediately.

But, on principle, some tender should precede all such common-law suits; and the plaintiff (due allowance being made for the natural modesty of the sex) ought to allege and prove an offer and refusal. Readiness, however, is held to be enough on a woman's part, since it is for the man *ducere uxorem*.

6. *Rescission of a Contract to Marry*—A mutual release from a marriage engagement is the true way for parties to get rid of it. They who enter into such a promise mutually, have mutually the power to rescind. But such a release must have been fairly and honorably procured, in order to avail the party who sets it up. The man or woman who breaks off an engagement discharges the other party; but the latter has the option of treating this as a breach, and making it the foundation of a suit for damages. The reasons upon which the defendant seeks to justify breaking it off, may, however, be shown, in mitigation of damages. Release of the promise, like the promise itself, may usually be by word of mouth.

7. *When Promises to Marry are against Public Policy.*— If there is any one thing that a woman clearly understands, it is that a man who is already married is not at liberty to take her to wife. The thought of making a marriage under such circumstances is a moral sin, while the passionate compact to do so, when opportunity shall occur, not only places the promising parties in a most perilous relation towards one another, but doubly exposes the conjugal party, whose rights obstruct their inclination, to wanton and wicked sacrifice. And yet, so blind is jealousy, or the guilty passion, that we find woman, in two States, fighting her way to the tribunal of last resort, quite recently, for the purpose of compelling a fickle man to pay damages, who had agreed, when married, to marry the plaintiff as soon as death or divorce should rid him of his wife. It is well that in both these States (New Jersey and Illinois) the agreement was pronounced contrary to public policy, and void. (*Noice* v. *Brown*, 39 N.J.L. 228; *Paddock* v. *Robinson*, 63 Ill. 99.)

But guilty complicity is what excludes the plaintiff, and, hence, one may doubtless sue for breach of promise, if ignorant, at the time of the engagement, that the defendant was already married. In Tennessee, this reservation has been indulged to a grave latitude. A married man courted a young woman, who supposed him single, offering himself by letter. She accepted in form; whereupon he confided to her at once, in his next epistle, that he had a wife then living, from whom he expected to procure a divorce, on getting certain papers passed. Instead of repudiating the contract, inquiring into the affair for herself, or keeping in reserve, as a woman should, she encouraged his love, pressing him fervently to hurry up those papers. He could not procure the divorce, because he had no grounds for one, and then she sued him for his breach of promise. The plaintiff was an intelligent and well-educated person. And yet it was held that, not being *in pari delicto*, she could maintain her action upon the offer she had accepted while supposing him single, and that her subsequent knowledge of his marriage could only be set up in diminution of damages.

No action can be maintained for breach of a promise of marriage, made in consideration of illicit sexual intercourse between the parties.

On the whole, we may question whether this right to sue for breach of promise of marriage is not productive of more evil than good. It is admitted that only one sex makes practical use of such a remedy, though its logical appli-