

MULOCK, C.J. Ex.

MAY 13TH, 1918.

LATHA v. HALYCZNIK.

*Marriage—Breach of Promise of—Plea of Infancy—Evidence—
Proof of Promise and Breach—Verdict of Jury—Damages—
Alien Enemy—Right to Maintain Action.*

An action for breach of promise of marriage, tried with a jury at Kitchener.

E. W. Clement, for the plaintiff.

A. B. McBride, for the defendant.

MULOCK, C.J. Ex., in a written judgment, said that the plaintiff in her statement of claim alleged that the contract was made prior to December, 1916.

The evidence shewed that, after the promise, the defendant seduced the plaintiff, and that, at the solicitation of friends, she agreed to marry another man; that, whilst the bans for this marriage were being published, the defendant persuaded her to stop their publication, agreeing to marry her. Accordingly she did stop the publication; and, after a short time, he again refused to marry her. This second promise was made after the 17th March, 1917; and the plaintiff should have leave, if desired, to amend her statement of claim by setting up the second promise also.

The defendant denied the promise, and pleaded infancy. The onus of establishing this plea was upon him, and in support of it he said that he would not be 21 years old until April, 1918. It was shewn that on the 24th February, 1916, he had registered as an alien enemy, giving his age then as 22. There was some vague evidence by a witness named Lacharnk as to the comparative ages of himself and the defendant. But the evidence in support of the plea of infancy was so slight that at the trial the defendant's counsel appeared to abandon it. When addressing the jury, he did not allude to it, nor did he ask to have it submitted to the jury; and, accordingly, the learned Chief Justice assumed that he had abandoned the defence of infancy, and submitted to the jury merely the issue in regard to the promise and breach and the question of damages. The jury rendered a verdict for \$500.

Counsel for the defence then contended that the plaintiff, being an alien enemy, was not entitled to maintain the action. The evidence shewed that the plaintiff was an Austrian by birth,