as to the favor it would be to her if he would let her have the whiskey without going to the other shop. On these facts two things were clear: the one, that the appellant had, according to the strict letter of the law, committed an offence for which he was liable to punishment; the other, that but for the solicitations and inducements of the police no such offence would have been committed. On such facts Titley was convicted. The Scotch Court, however, thought it unnecessary to pronounce any considered opinions, but simply quashed the conviction, ordered the repayment of the fine, and gave the appellant his costs. In the Scotch and English cases alike, the action of the police may have been occasioned by an honest excess of zeal and a desire to obtain the punishment of one who was, they were well satisfied, an offender, but it would be as well that they, the guardians of law and order, should for the future refrain from inciting to offences against law and order, even though they may have suspicions as to what has occurred on former occasions."

BREACH OF PROMISE.

The action for breach of promise to marry applies the most prosaic of remedies to the most sentimental and romantic of complaints. The ashes are weighed on the cold altar after the sacred flame has gone out. Tender confidences, whispered protestations, the passionate phrases of love-letters, all those mysterious signs and symbols which love dotes upon, are carefully put together by twelve plain jurymen to establish a transaction, as though the wooing of a human heart were like bargaining for a pair of lungs. From this phase of life's tragedy, poets and romancers turn with a shudder. But to such sufferers as seek the courts, our common law imparts a consolation which ought, at all events, to expel the last symptoms of a lingering passion from the breast of the suitor.

We purpose, in these pages, to set before the reader the main principles pertaining to such promises, illustrating them more particularly by reference to our latest decisions.

1. *Foundation of the Right of Action.*—A contract to marry must be clearly distinguished from the marriage contract, or marriage institution, which rests upon solemn foundations of its own. Promises to marry have been treated by the common law, from the earliest times, on the general footing of agreements. Policy forbids that specific performance of such a contract be enforced in equity. But, for breach of the promise an action would always lie for damages at the common law, as in other cases of *assumpsit;* though in aggravated cases we shall find damages assessed somewhat after the manner of a tort.

In the early reports, nevertheless, doubts were entertained as to the jurisdiction of common-law courts in such suits; and this because the contract to marry was so nearly allied with marriage, while marriage, from the time of Pope Alexander III, or the latter part of the twelfth century, was in England a matter for the cognizance of spiritual or ecclesiastical courts only. A motion to arrest judgment, where the plaintiff had a verdict, was argued on this ground, in Holcroft v. Dickenson (Cart. 233,) in 25 Charles II., but three of the four judges (Chief Justice Vaughan dissenting) pronounced in favor of the plaintiff.

This historical uncertainty concerning the practice of bringing the common-law action in common-law courts, was adverted to in a recent Indiana case (Short v. Stotts, 58 Ind. 29,) where counsel for the defence made the very ingenious argument, that, at the first settlement of the United States, there was no such common-law right of action at all. Stretcher v. Parker (1 Rolle's Abr. 22,) decided in 1639, was, as counsel contended, the earliest breach of promise case ever maintained in England, in a common-law court.

Admitting all this, however, the question in Coke's day was one of jurisdiction local to England, and the doubt did not touch the right of action at all. "Indeed," observes Worden, J., "the principle which upholds such action is as old as the principle which gives damages in any case for the breach of a contract; and it is immaterial whether any case can be found in England, prior to 1607, in which such action has been maintained. (58 Ind. 29, 35.)

2. *Parties to the Action.*—In practice, it is found that the suit for breach of promise is almost exclusively a woman's weapon; not, we may imagine, because those light perfidies are wholly on the man's part, nor necessarily because, when injured, he feels the humiliation less, but rather on account of sexual differences of tem-