tion of the cessation of illicit co-habitation, and void. In such a case, if the agreement is in the form of a bond—or covenant under seal—so there may be *prima facie* a valid contract, "if the security is of such a nature as to hold out an inducement or to constitute to either party a motive to continue the connection, the instrument would be void." There is presumption of illegal consideration from the mere fact of continued co-habitation after security is given. See Leake on Contracts, 5th ed., p. 541. This action to set aside the agreement cannot be successfully prosecuted by plaintiff. "No claim or defence can be maintained which requires to be supported by allegation or proof of illegal agreement." Leake, p. 550.

In my view of the law the defendant cannot enforce this agreement.

The plaintiff's claim for breach of promise of marriage is absurd as she has married a person other than the defendant—so that presumably she has benefited by defendant's breach of that part of his contract.

The plaintiff's action must be dismissed but without costs—and it will be without prejudice to her right of action for any money claim, if any, vitiated by illegality.

The defendant's counterclaim will also be dismissed without costs. Thirty days' stay.

HON. MR. JUSTICE MIDDLETON. MAY 2ND, 1913.

GODSON v. McLEOD.

4 O. W. N. 1205.

Contract—Offer to Sell Machine—"In Place"—Meaning of Under Circumstances—Alleged Acceptance—"In Place" therein Defined as "on Car"—Parties Never ad idem—Interim Injunction—Undertaking—Damages—Demurrage on Cars—Agreement to Accept.

MIDDLETON, J., *held*, that upon the facts of the case an offer to sell a machine for $5,000 "in place" meant in the situation in which it then stood and that no contract was formed by an alleged acceptance which read as follows: We accept your fifteen-ton four-wheel Brown machine at the price you name in your letter of to-day now before me, viz.: $5,000 in place which means we presume on car."

Clyde v. *Beaumont*, 1 De G. & S. 397, distinguished.

Action for delivery of a machine or damages for non-delivery and for an injunction restraining defendants parting with the same, tried at Toronto on 1st May, 1913.