

the plaintiff and the other half by the defendants Smith and Coleridge. These defendants are to pay the costs of this action. The defendant Nugent will be bound by this judgment, and must submit to be redeemed and convey the property to the purchaser. There is no authority for declaring that the defendants have forfeited their shares. D. L. McCarthy, K.C., for the plaintiff. Matthew Wilson, K.C., and F. D. Davis, for the defendants.

ORENSTEIN V. SMITH—LENNOX, J.—MARCH 3.

Marriage—Contract to Marry—Action for Breach—Evidence—Abandonment of Contract by Mutual Consent—Damages—Provisional Assessment.—Action by Minnie Orenstein against Samuel Smith for breach of promise of marriage, tried without a jury. LENNOX, J., said that, the promise of marriage being established by an undisputed agreement in writing signed by the parties, the onus was on the defendant to shew justification for not marrying the plaintiff. There was no great preponderance of evidence either way, and there was a great deal of difficulty in coming to a conclusion. The length of time which had elapsed, and the total inaction of the plaintiff and her father for months, and years in fact, were circumstances which gave great weight to the defendant's contention that the plaintiff became unwilling to marry him before the date fixed for the marriage, and that the agreement was abandoned by mutual consent. The learned Judge could not bring himself to believe that either party regarded the contract as subsisting, or desired its continuance, after the meeting at the house of the defendant's mother in the summer of 1912. The parties were then in agreement upon everything except upon the question of the engagement ring—a souvenir valued at upwards of \$100, which the plaintiff insisted upon retaining and had since retained. Take it all in all, the plaintiff had not made out her case. As it was an indulgence to the defendant to be allowed in to defend, after he had made default, the action should be dismissed without costs. If there should hereafter be judgment for the plaintiff, the damages should not be assessed at more than \$300 or \$400. J. M. Godfrey, for the plaintiff. L. F. Heyd, K.C., for the defendant.