

formance may possibly be averted or mitigated. It is true, as is pointed out by the Lord Chief Baron in his judgment in this case, that there can be no actual breach of a contract by reason of nonperformance so long as the time for performance has not yet arrived. But, on the other hand, there is—and the decision in *Hochester v. De la Tour* proceeds on that assumption—a breach of a contract when the promisor repudiates it, and declares he will no longer be bound by it. The promisee has an inchoate right to the performance of the bargain, which becomes complete when the time for performance has arrived. In the meantime he has a right to have the contract kept open as a subsisting and effective contract. Its unimpaired and unimpeached efficacy may be essential to his interests. His right acquired under it may be dealt with by him in various ways for his benefit and advantage. Of all such advantage the repudiation of the contract by the other party and the announcement that it never will be fulfilled must of course deprive him. It is therefore quite right to hold that such an announcement amounts to a violation of the contract *in omnibus*, and that upon it the promisee, if so minded, may at once treat it as a breach of the entire contract, and bring his action accordingly. The contract having been thus broken by the promisor, and treated as broken by the promisee, performance at the appointed time becomes excluded, and the breach by reason of future nonperformance becomes virtually involved in the action as one of the consequences of the repudiation of the contract; and the eventual nonperformance may therefore by anticipation be treated as a cause of action, and damages be assessed and recovered in respect of it, though the time for performance may yet be remote. It is obvious that such a course must tend to the convenience of both parties; and though we should be unwilling to found our opinion on grounds of convenience alone, yet the latter tend strongly to support the view that such an action ought to be admitted and upheld. By acting on such a notice of the intention of the promisor, and taking timely measures, the promisee may in such cases avert, or at all events materially mitigate, the injurious effects that would otherwise flow from the nonfulfilment of the contract; and, in assessing the damages for breach of performance, a jury will, of course, take into account whatever the plaintiff has done or has had the means of doing, and as a prudent man ought in reason to have done, whereby his loss has been or should have been diminished. It appears to us that the foregoing considerations apply to a contract, the performance of which is made to depend on a contingency, as much as to one in which the performance is to take place at a future time, and we are therefore of opinion that the principle of the decision in *Hochester v. De la Tour* is equally applicable to such a case as the present. It is next to be observed that the law, as settled by *Hochester v. De la Tour* and the *Danube and Black Sea Company v. Xenos*, is obviously quite as applicable to a contract in which personal status or personal rights are involved as to one relating to commerce or pecuniary interests. Indeed, the contract of marriage appears to afford a striking illustration of the expediency of holding that an action may be maintained on the repudiation of

a contract to be performed in future. On such a contract being entered into, not only does a right to its completion arise with reference to domestic relations and possibly pecuniary advantages, as also to social status accruing on marriage, but a new status, that of betrothment, arises between the parties. This relation, it is true, has not by the law of England the same important consequences which attached to it by the canon law and the law of many other countries, nevertheless it carries with it consequences of the greatest importance to the parties; each becomes bound to the other; and neither can consistently with such a relation enter into a similar engagement with another person. Each has an implied right to have this relation continued till the contract is finally accomplished by marriage. To the woman more especially it is all important that the relation shall not be put an end to. Independently of the mental pain occasioned to the feelings by the abrupt termination of such an engagement, the fact of its existence, if followed by such a termination, must necessarily operate to her serious disadvantage. During its continuance others will naturally be deterred from approaching her with matrimonial intentions, nor could she admit of such approaches if made; while the breaking off of the engagement is too apt to cast a slur upon one who has been thus treated. We see therefore every reason for applying the principle of *Hochester v. De la Tour* to such a case, and for holding that the contract is broken on repudiation not only in its present but in its ultimate obligations and consequences. To hold that the aggrieved party must wait till the time fixed for marrying shall have arrived, or the event on which it is to depend shall have happened, would have the effect of aggravating the injury by preventing the party from forming any other union, and by reason of advancing age rendering the probability of such a union constantly less. It has been suggested, indeed, that as the desire for marriage and the happiness to be expected from it diminish with advancing years, where by the contract marriage is only to take place at a remote time, the value of the marriage and the damages to be recovered for a breach of the promise would be less if the refusal were made when the time for marrying was accomplished; and that consequently an action ought not to be allowed till the time when the fulfilment of the contract could have been claimed. We cannot concur in this view. We cannot but think that in estimating the amount of injury, and the compensation to be made for it, the wasted years, if the contract were broken when the time for marrying had come and the impossibility of forming any other engagement during the intermediate time, should be taken into account and not merely the age of the parties and the then existing value of the marriage. It appears, therefore, manifest that it is better for both parties—for the party intending to break the contract as well as for the party wronged by the breach of it—that an express repudiation of the contract should be treated as a violation of it in all its incidents, and give a right to the party wronged to bring an action at once and have the damages assessed at the earliest moment. No one can doubt that morally speaking a party who has determined to break off a matrimonial engage-