

No 10 of 1936

40

IN THE HIGH COURT OF AUSTRALIA.

Saer

v.

Schick

REASONS FOR JUDGMENT.

High Court of Australia,
Principal Registry.

*Delivered on the
18/6/1937*

Judgment delivered at Melbourne
on 18th June 1937.

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IN THE HIGH COURT OF AUSTRALIA

Original Jurisdiction.

B E T W E E N

STAER

(Plaintiff)

- and -

SCHICK

(Defendant).

(Action for damages for breach of
promise of marriage).

BEFORE HIS HONOR MR. JUSTICE DIXON

MELBOURNE, FRIDAY, 18th JUNE, 1937, AT 11.45 A.M.

J U D G M E N T .

HIS HONOR: This is an action for breach of promise of marriage, brought by a young lady who, at the time of the engagement, was under 21. The engagement took place in October 1935, and she became 21 in March 1936. The defendant is a constable of police stationed in Western Queensland, near the South Australian border, at a place called Bidowrie, and is said to be somewhat older than she. The acquaintance between the parties was not of very long duration, being some three or four months, and, on the occasion when the proposal of marriage was made and accepted, there was some

discussion as to the desirability of marrying at once or allowing the engagement to stand for some period. The parties were of different religions, and both were conscious that this would cause difficulty and that objections would be bound to exist in the minds of their respective parents. The desirability of obtaining approval of the marriage on the part of the plaintiff's mother was discussed, and partly because she was under age and partly because of the situation of the parties and the lack of accommodation at Bidowrie for a young married woman, it was decided that the engagement should stand. The plaintiff was employed as a governess at a station nearby, but she gave up her employment and went to Adelaide, where, from some time in October until the following September - 1936 - she resided. The parties did not actually meet in the interval. They corresponded freely, and the defendant wrote particularly voluminous letters, expressed in language of enthusiastic affection. Finally, a date was fixed for the marriage - the 22nd September 1936. That date was fixed in relation to the leave which the defendant could obtain. In the interval, the plaintiff's mother had written to the defendant letters which showed a very considerable degree of hostility to the union, and letters which he must have found unpleasant reading. Four of them have been put in evidence, and it does not appear whether there were more or not. In the plaintiff's letters to the defendant, she gave from time to time an account of the difficulties she was experiencing from her mother and from her brother, who were both opposed to the marriage, entirely on the ground of the difference in religion of the parties.

The defence to the action is that it was a condition of the engagement that the plaintiff's mother should consent to the marriage. I do not think that such a

condition was ever made. I accept the plaintiff's evidence. She appeared to me to be a truthful witness, and her evidence is uncontradicted and is not inconsistent with the letters put in evidence, so far as I have read them. There are some natural suggestions in the correspondence that the mother's consent should be sought and obtained, but I do not think the letters show that it was a condition going to the validity of the contract of engagement; but whether it was or not, the stage was reached when the question of the mother's consent was clearly no longer part of the arrangement to marry. The plaintiff sent to the defendant a form for particulars in regard to the marriage; she fixed a date after consultation by correspondence with him, and, on the 22nd July, he wrote to her saying that they would be married on the 22nd September. He said:- "My loving Beth; We will be married on the 22nd September 1936, which is just 62 days from today, and just think of it, Beth, in another 44 days, I will be leaving Bidowrie to commence what will be the happiest period of my life, which will be endeavouring to make you, my love, the happiest of women". Then the letter proceeds. That was on the 22nd July. On the 25th July, he wrote another letter in the same strain, describing his doings, expressing himself in most affectionate terms, and dealing with the arrangements for their marriage. It appears that, on the 5th July, the plaintiff's mother wrote a letter to him, which he may have received before he wrote the letter of the 25th July. He ought to have received it if the mails were reliable, but as they are not reliable, it may be that he did not receive it until after he had written his letter. The mother's letter states her continued opposition in spirit to the union, but says that she is accepting the situation because she must, and says that she views his coming with nothing but dread, and she is sorry that it should be, but Beth's happiness

is dearer to her than her hope of Heaven. As I have said, it does not appear when he received that letter, but, on the 5th August, he sent a telegram reading, "Cancel arrangements marriage. Explained letter posted urgent. Must alter plans. Tony". He wrote a letter, in point of fact, in which he said that the engagement could not go on, that his religious faith and the opposition of the parents proved an insurmountable obstacle. I do not read the whole letter, but his breach of the engagement is put down entirely to the difference in their religions, his own scruples, the opposition of her mother, and the letter which he had received. It may well be that he found himself in difficulty, and it is a great pity that he did not resolve the difficulty at an earlier stage. The plaintiff had been induced to issue invitations to a marriage ceremony, to make all the arrangements for the marriage, and although she shows by her letters that she found herself in a very difficult position with her people, she was apparently quite prepared to encounter all their displeasure and persist in a union which was regarded by her as a settled thing. Whatever may be the wisdom of the course he took in breaking off the engagement, it cannot, I think, be denied that it must have had a very harsh and cruel effect from her point of view, and I do not think that it is a case in which insubstantial damages ought to be given. I recognise that his position in life is such that he cannot be expected to pay very heavy damages, and that it is unwise to award large damages against a defendant who is not in a position to pay them, and who may find his future directed by a judgment from which he cannot extricate himself; but, at the same time, I think the plaintiff is entitled to receive a sum of money which would be ample proof that her whole conduct is vindicated, and that she has suffered a wrong from a man who ought not to have first decided to marry her and then decided that he would

not, whatever may be the grounds on which he made the second decision. In breach of promise cases, the assessment of damages is notoriously difficult. It is a contract in regard to which exemplary damages ^{are} ~~should be~~ given, and the purpose of the damages is to vindicate the position of the plaintiff and show to the world that she has been wronged, as well as to recompense her to some extent for the indignity she has suffered, in addition to the material loss. Taking all things into consideration, I propose in the present case to award a sum of £200. Judgment will be entered for that sum with the costs of the action.

(A stay of 60 days was granted.)

THE COURT THEN PROCEEDED WITH OTHER BUSINESS.
