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Rings of power: a legal history of the engagement ring in early twentieth-century Australia

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ABSTRACT

This article explores the gendered regulation of courtship by providing a legal history of the engagement ring across the nineteenth and twentieth centuries. Bringing the relationship between love, law, material culture and gender into dialogue, I use actions for breach of promise of marriage to trace the life path of the ring from the private world of romance to the moral theatre of law, examining how the ring functioned as tangible proof of contract, as a constraint on women's sexuality, as a legitimation of their sexual identities, and as compensation for economic losses suffered in consequences of a broken engagement. Rather than a top-down analysis of how the state orders intimate life, this is a study of the vernacular life of law: of why people began imbuing rings with legal significance and how courts came to accept their reasoning.

KEYWORDS

Gender; law; romance; material culture; marriage

In literature from around the Indo-European world, rings of betrothal appear as objects of sex and power: compelling the truth, authenticating a woman's sexuality, fettering the recipient of the ring to the giver, vouchsafing the paternity of children, changing identities and promising eternal love against the transience of flesh and feelings.[1] As historian Wendy Doniger has argued, being the stuff of myth, the link between rings, femininity and romantic love has been seen as ageless and universal. 'Myths have to make us believe that it has always been this way', she explains, which is exactly what the de Beers company managed to do when inventing the tradition of the diamond engagement ring in the early twentieth century.[2] Moving from the fantastical novels, poetry and advertising used by Doniger to the rational tomes of law, we find engagement rings still imbued with an aura of timelessness. 'The origins of the engagement ring have been forgotten', mused Justice Sherman in *Jacobs v Davis* (1917), a leading British case concerning who keeps the engagement ring after a broken engagement.[3] He conjectured that as in

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[1]Wendy Doniger, *The Ring of Truth and Other Myths of Sex and Jewelry* (Oxford: Oxford University Press, 2017).
[2]Ibid., 259.
[3]Sherman J, *Jacobs v Davis* (1917) 2 K. B. 532 (1917).

'Roman times', it still 'retains the character of a pledge or something to bind the bargain or contract to marry'.[4] Justice McCardie in the landmark British case of *Cohen v Sellar* (1926) was also vague: 'It is curious that, after the centuries in which so many engagements to marry have been made in hope, but dissolved in disillusion, the questions now before me have not been long ago determined by direct decision.'[5] These two cases remain the leading authorities on the return of engagement rings in Australia, establishing that the ring is a conditional gift, and that the person who broke the engagement forfeits ownership of it.[6]

Yet if judges in Australia had inspected the more than one thousand Breach of Promise of Marriage cases, since the early colonial period, in which rings might have featured as legal evidence, they would have found that questions concerning rings began not 'centuries' ago, as McCardie assumed, but arose quite suddenly at the turn of the twentieth century. Why did women begin to take their rings to court at this time? What gendered meanings, both legal and cultural, did ordinary people ascribe to rings and how did courts come to enshrine these beliefs in common law doctrine? What rituals ensured that rings acquired legal status as proof separate from the other gifts of jewellery a woman might receive? What role did rings play in the gendered regulation of pre-marital relations?

At present, the paucity of historical scholarship on engagements, in contrast to marriage, and the focus of legal scholarship on questions of property (who owns the ring?) means that these questions, and the insights they yield into the legal regulation of betrothal, remain unaddressed.[7] Although excellent studies of breach of promise of marriage exist across the common law world, the focus is primarily on the nineteenth century.[8] As such, scholars have missed the sudden flooding of courtrooms with romantic commodities in the early twentieth century: rings, gifts of jewellery, ostrich feathers, salacious books, and the items of women's trousseaux, such as negligees, cutlery, cosmetics, linens and pyjamas. Historians interested in courtship have also negated the regulatory function performed by betrothal rings, possibly because they often assume that the period before marriage was a time of relative agency for women, in contrast to the iron cage of lawful marriage.[9] That courtship enlivened legal obligation and awakened a complicated regime of premarital regulation by the state and community, steeped in gendered logic, remains under-examined.[10] Finally,

[4]Ibid.

[5]McCardie J, *Cohen v Sellar* (1926) 1 K.B. 536, 541.

[6]James Duffy, Elizabeth Dickson, and John O'Brien, 'Rituals of Engagement: What Happens to the Ring when an Engagement is Called Off?', *The Australian Law Journal* 94, no. 1 (2020): 61–74.

[7]See Rebecca Tushnet, 'Rules of Engagement', *Yale Law Journal* 107 (1997–1998): 2586; Duffy, Dickson, and O'Brien, 'Rituals of Engagement', 61–74.

[8]See: Kirsten McKenzie, *Scandal in the Colonies* (Melbourne: Melbourne University Press, 2004), 50ff; Alecia Simmonds, 'Promises and Pie-Crusts Were Made To Be Broke', *Australian Feminist Law Journal* 23, no. 1 (2005): 99–120; Saskia Lettmaier, *Broken Engagements* (Oxford: Oxford University Press, 2010); Ginger S. Frost, *Promises Broken*: *Courtship, Class, and Gender in Victorian England* (Virginia: University of Virginia Press, 2005); Rosemary Coombe, 'The Most Disgusting, Disgraceful and Iniquitous Proceeding in Our Law', *University of Toronto Law Journal* 38 (1998): 65–69; Patrick Brode, *Courted and Abandoned* (Toronto: University of Toronto Press, 2002). Exceptions to the focus on the nineteenth century are: Margaret Thornton, 'Historicising Citizenship', *Melbourne University Law Review* 20 (1996): 1072–86; Alecia Simmonds, *Courting: An Intimate History of Love and the Law* (Melbourne: La Trobe University Press, 2023).

[9]See: Beth Bailey, *From Front Port to Back Seat: Courtship in Twentieth-Century America* (Baltimore: JHU Press, 1989).

[10]Alecia Simmonds, 'The Legal History of Non-Indigenous Marriage' in *Cambridge Legal History of Australia,* ed. Peter Cane, Lisa Ford, and Mark McMillan, (Cambridge: Cambridge University Press, 2022).

legal scholars inspired by high-profile cases concerning celebrities squabbling over engagement rings, have focused on the ring's legal status as a conditional gift rather than its multiple other legal functions and meanings.[11] In the United States, where the law dictates the return of the ring to the (usually male) giver regardless of fault, scholars such as Rebecca Tushnet have been critical, arguing that women can make no legal claims to compensation for premarital expenditure, while men's financial investment is recognised and rewarded. This scholarship is useful for its analysis of how the law values male contributions while assuming women to be incalculable 'labours of love', although it assumes that the primary legal significance of the ring is as an object of portable property, rather than as proof or evidence.[12]

This article intervenes in this area of law and scholarship – still clouded in myth and obscurity – by offering a legal history of the engagement ring. Bringing the relationship between romantic love, law, material culture, gender, and visual culture into dialogue, I explain why engagement rings began to appear in cases in the early twentieth century and elucidate the role they played in the regulation of gender and courtship. By tracing the life path of the ring from the private world of romance to the spectacular moral theatre of law, we can see how the ring functioned as tangible proof of contract, as a constraint on women's sexuality, as a legitimation of their sexual identities, and as compensation for economic losses suffered in consequences of a broken engagement. I argue that the sudden proliferation of cases involving engagement rings in the early twentieth century was not because engaged couples were dupes of mass marketing, but rather because social, economic, epistemic, and legal shifts motivated people and courts to inscribe engagement rings with legal significance. As twentieth-century courtship ceased to be policed by family and kin or bound by the formalities of the Victorian era, the rules of romance became open to debate. Amorous words were uncoupled from their economic and legal meanings and romantic gestures were unmoored from their marital teleology. In this vexed and uncertain terrain, the courts became a site where the new 'rules of engagement' could be drawn. Judges and juries, influenced by an epistemic bias enshrined in law against the authority and credibility of women's testimony, and following the logic of the couples who appeared before them, sought certainty in the 'ocular proof' of romantic objects. In so arguing, this paper illuminates the role played by rings in the regulation of courtship and presents an argument for a more grounded understanding of legal regulation. Rather than a top-down analysis of how the state imposes upon and orders intimate life, this is a study of the vernacular life of law: of why ordinary people began imbuing rings with legal significance and how courts came to accept their reasoning.

Background to the action for breach of promise of marriage

The action for breach of promise of marriage has its historical origins in British medieval canon law that allowed jilted lovers to sue for specific performance or enforcement of marriage. *Hardwicke's Marriage Act* of 1753 marked a turning point for the action as it shifted the jurisdiction of marriage from the ecclesiastic to the

[11]Duffy, Dickson, and O'Brien, 'Rituals of Engagement', 61–74.
[12]Tushnet, 'Rules of Engagement', 2586.

temporal courts and abolished the ecclesiastic courts' power to enforce marriage. After the passing of *Hardwicke's Act*, the civil law action for breach of promise of marriage was the only remedy available for the broken-hearted. It could be found nestled in contract treatises under the category of assumpsit (a general action for damages for breach of a simple contract). According to legal historian Saskia Lettemaier, in the late eighteenth and nineteenth centuries breach of promise became a curious mixture of contract and tort law, with rules governing the breach of contract derived from contract and the punitive damages for injured feelings, borrowed from tort.[13]

At its most basic, a breach of promise of marriage required an express or implied promise that had been unjustifiably broken. To make out a case, the plaintiff had to show firstly that a contract subsisted between the parties and secondly that the defendant had unjustifiably broken it. The defendant would argue a defence to the breach, which was usually unchastity in the nineteenth century and mutual recission or exoneration in the twentieth. It was not until 1871 with the passing of the *Evidence (Further Amendment) Act*, that the plaintiff and defendant were permitted to give testimony, although the Act stipulated that the plaintiff's evidence be corroborated by 'some other material evidence'.[14] Prior to this, the risk of perjury was considered to be too great, thus the courts would infer promises from romantic gestures, such as walking out together, frequent visitations and gifts, or they would read contracts of marriage into love letters. The last stage of the suit was the assessment of damages which, unless a magistrate heard the case in a lower court, the jury would determine. Here the plaintiff could claim for general damages (damages arising 'naturally' from the wrong) which included injured feelings, as well as loss of settlement (or the pecuniary value of the lost marriage); and they could claim for special damages (damages that inflamed the general damages), which included bodily or financial harm, such as injury experienced on account of heartbreak and expenditure on a trousseau.[15]

Breach of promise of marriage cases offers an ideal set of primary sources to interrogate the legal and social life of the engagement ring. Where the current literature on rings of betrothal tends to focus on either the wealthy or the middle classes, breach of promise litigants were usually working class, thus giving us access to a group often rendered inarticulate in state and family archives. Such cases thus also make it possible to identify when rings began to be given legal significance *en masse*. The cases examined in this article have been drawn from a database that comprises every breach of promise case reported in Australian newspapers, complemented, where possible, with archival research from the state records of each Australian state. I placed no limits upon my search for cases in the digital newspaper database *Trove*

[13]Lettmaier, *Broken Engagements*, 19–24.

[14]*Evidence (Further Amendment) Act 1869* 32 Vict., c.68; assented to in all the Australian colonies except Victoria as *An Act for the Further Amendment of the Law of Evidence*, s.2 (Western Australia, 1871; New South Wales, 1876; South Australia, 1870; Queensland, 1874; Tasmania, 1870). Note that Victoria did pass an *Act for the Further Amendment of the Law of Evidence* (1876) however it did not require corroboration.

[15]Theodore Sedgwick and Arthur George Sedewick, *A Treatise on the Measure of Damages* (Voorhis and Company, 1874), 1272–83; Lettmaier, *Broken Engagements*, 47.

and found 211 cases in the nineteenth century and 523 cases in the first three decades of the twentieth century.

Wilcox v Rowbtham: a case study

On 10 September 1920, 23-year-old piano-teacher Alice Ellen Wilcox appeared in the Toowoomba District Court before Justice Chubb, a jury, and a 'crowded public gallery', with a story of blasted affections. The tale of her broken engagement began on her twenty-first birthday when she was wearing an engagement ring from her fiancé, Edward, a medical student based in Scotland, and she was also in possession of a gold wristlet watch that 31-year-old Albert Rowbotham, a wealthy boot manufacturer and 'persistent suitor', had gifted her the night before. Uncertain about accepting Albert's watch, Alice followed the advice of her mother: she declined to wear it until Edward had responded to a letter she wrote to him seeking his permission. But Alice's feelings towards Edward were already starting to cool. She had been disappointed to receive only a 'small diamond ring' for her engagement (which she promptly had valued at the jewellers) rather than the 'large solitaire ring' he had promised. And then there was Albert, who after her birthday, according to her sister Marion was 'in and out of the house continually… he would ring up on the phone and sing a song through it, and also recited poetry' to her. Alice told the court that he had promised to buy her 'a better ring' if she would let him, as well as a motorcar to drive around in on their honeymoon. When Marion chastised Albert for pursuing an engaged woman, he blithely responded that 'everything is fair in love and war'. Albert made his move one afternoon when he and Alice were 'frolicking' together. He took a rubber ring out of one of the lemonade bottles and proposed marriage to her with it. When she declined on account of Edward, he said: 'if you change your mind, send this to me.'[16]

Some days later, Alice ended her engagement to Edward and returned his ring by post. She had seen Albert at an entertainment event at the local Methodist church, which convinced her of her feelings for him. Previously, she had written to request that Albert stay away from their family home, but now she extended an invitation. When he stepped into the lounge room, Alice's two sisters and her mother slipped away leaving Alice singing at the piano. She stopped, turned to face him and solemnly handed him the rubber ring. 'Are you going to be my wife?' he asked. 'Yes', she replied. The rubber ring was soon replaced by a real one, which she selected from a range that was shown to her at Walkers Pty Ltd, the local jewellers. After this, according to Albert, came petulant quarrels, bursts of temper, jealous rages, and spiteful returns of the ring. Perhaps they were not well suited, Alice mused one day. Albert agreed and confirmed this thought in a letter. Alice and her sisters begged him to reconsider, but to no avail. Alice once again gave him back the ring, although in their last conversation, she asked for its return. A friend had informed her, she told the court, 'that she could not take an action for breach of promise unless she had the ring'.[17]

[16]*Wilcox v Rowbotham* (1920) QLDSC; 'Alleged Breach of Promise', *Darling Downs Gazette,* 10 September 1920, 3, https://trove.nla.gov.au/newspaper/article/174103185.
[17]Ibid.

There is a certain legal and conceptual promiscuity to the ring in Alice's story: it signifies financial and emotional investment in the relationship, contractual offer and acceptance, rescission of contract, and proof of contract. Alice's rings operated as a kind of speech act, enacting, almost magically, a change in status or circumstances by virtue of the words, atmosphere and gestures that surrounded them. When placed on Alice's finger the ring put her on a trajectory from spinster to wife. It was a possession that signified her possession by a man; a precursor to exclusive sexual ownership that would be perfected in marriage. And just as she was transformed by the ring, so too did she transform the ring. It metamorphosed from a mass-produced commodity with universal and quantifiable value, to a sacred possession, quarantined from the market by love's radical particularity: as incomparable as the loved one herself. If the engagement ring had carried her to the altar, then its legal status would have changed from a conditional gift to her absolute property, absent any agreement to the contrary.[18] The narrative path of the ring was ineluctable, triumphal and pointed towards the infinite. As one newspaper article told its female readers: 'the finger ring [is] the emblem of eternity and it is pleasant to connect this idea with the affection of which it is the symbol.'[19] The ring was a promise of future happiness, and a showcase of Albert's wealth and Alice's social status; as such any diversion was read as tragedy. When Alice's rings washed up in Court, they appeared as emotional debris; or morbid artefacts in a museum of dashed hopes. Alice's rings, in the words of Arjun Appadrurai, had deviated from their 'culturally and legally approved paths'.[20] In order to make sense of the life paths that Alice's rings followed, we need to begin with the historical contingency of their birth.

The engagement ring in the nineteenth and twentieth centuries

Had Alice been born 50 years earlier, it is entirely possible that she would have drifted in and out of her two engagements with naked fingers, and that this would have had no bearing upon her chances of legal success. Nineteenth-century etiquette manuals and contract treatises were silent on the question of engagement rings. The 1859 Etiquette Manual, *Miss Leslie's Behaviour Book,* discusses the rather vexed etiquette around receipt of romantic presents from men but does not include rings, while the 1896 Australian etiquette manual, *Manners and Rules of Good Society,* stipulates the 'return of letters, portraits and presents' in the case of a broken engagement, but nowhere mentions a ring.[21] Similarly, the nineteenth-century editions of *Chitty on Contract* – the pre-eminent nineteenth-century contract treatise – make no mention of engagement rings as proof of a contract to marry. According to Chitty, an express promise was not necessary to prove *in totidem verbis*, instead one needed 'the unequivocal conduct of the parties' and a mutual agreement to marry expressed

[18]*Cohen v Sellar*, 547.
[19]'Old Engagement Rings', *The Riverine Grazier,* 27 October 1893, 5, https://trove.nla.gov.au/newspaper/article/140006610. See also: 'Old Engagement Rings', *Macleay Argus,* 22 November 1893, 2, https://trove.nla.gov.au/newspaper/article/234100697.
[20]Arjun Appadurai, *The Social Life of Things* (Cambridge: Cambridge University Press, 1988), 3–36.
[21]Elisa Leslie, *Miss Leslie's Behaviour Book* (Philadelphia: Peterson, 1839), 181–82; Member of the Aristocracy, *Manners and Rules of Good Society* (London and New York: F. Warne and Co, 1888), 231.

between 'them, their friends and relations'.[22] What constituted unequivocal conduct? Parker CJ in *Wightman v Coates* (1818) said that a promise could be inferred 'from a man's visits to a woman, and his declaration that he had promised to marry her'.[23] Although contract law required that the promise be mutual, nineteenth-century judges agreed that an active agreement on the part of the woman would be 'dangerous to public manners'.[24] Best CJ in *Daniel v Bowles* (1826) said that 'it was sufficient to prove that he asked the lady's hand in the presence of herself and mother – that the mother assented – that the lady did not dissent, though she said nothing – that the Defendant took the mother's hand and said 'from this time, consider me as your son' and that the Defendant was allowed to visit as a suitor'.[25] Thus, norms of feminine propriety, and the regulation of courtship by family and kin, reduced women's legal status in romantic contracts to that of an infant, unable to consent. The putting on or removal of a ring – signifying acceptance or recission of contract – had little place in a legal regime that could not fathom women's sexual or romantic agency.

The absence of rings in prescriptive advice literature and legal treatises is echoed in colonial-era breach of promise of marriage cases. There are no engagement rings mentioned in cases from the first half of the nineteenth century, very few (only 22) in the second half, and in actions where rings are mentioned, they generally have no weight as legal evidence. In the 1871 case of *Fowler v Bayliss* the defence argued that there had been no contract because the plaintiff 'would sometimes wear her ring and sometimes not' showing that 'there was no evidence of the reciprocity necessary for there to be a promise of marriage'. When the Judge agreed and directed the jury to regard it as evidence of a lack of contract, he was found to have misdirected the jury and was overturned on appeal.[26] The rituals of courtship such as visiting, walking out, obtaining parental consent, kissing, and writing love letters were the behavioural norms that converted romance into a contract in the colonial-era civil courts.

Engagement rings first appeared *en masse* in courtrooms during the first decade of the twentieth century and barristers began to demand them as proof. This confused working-class litigants, who couldn't afford rings, and struggled to explain their bare fingers to upper-middle-class barristers. When a barrister asked Miss Brown in 1909 if she had 'ever heard of a girl being engaged without a ring' she responded, blithely, 'plenty of them'.[27] In 1915 Miss Bell told the court that 'she had never received any ring from him nor any presents as he always pleaded poverty'.[28] The question as to whether the ring should be produced remained unresolved for some

[22]Joseph Chitty, A *Practical Treatise on the Law of Contracts Not Under Seal* (London: G. and C. Merriam, 1826), 158, 585.
[23]*Wightman v Coates* (1818), 15 Mass 4, Parker CJ, as cited in Chitty, A *Practical Treatise on the Law of Contracts Not Under Seal*, 585.
[24]Ibid.
[25]*Daniel v Bowles* (1826), 2 P C and P 553, as cited in Chitty, A *Practical Treatise on the Law of Contracts Not Under Seal*, 585.
[26]*Fowler v Bayliss* (1871) NSWSC; 'Breach of Promise', *Evening News,* 16 November 1871, 3, https://trove.nla.gov.au/newspaper/article/129963154.
[27]*Brown v Byham* (1909) VICSC; 'Breach of Promise. Lady Sues for Damages', *Western Star,* 5 May 1909, 4, https://trove.nla.gov.au/newspaper/article/97440470.
[28]*Bell v Pongoure* (1915) QLDSC; 'Dalliance on the Downs', Brisbane Courier, 25 July 1915, 11, https://trove.nla.gov.au/newspaper/article/203038506.

time. Arriving in Court in 1906 wearing her engagement ring and jewellery, Miss Tuttle was severely chastised for her indecorousness – 'She comes into Court in this way and asks for damages!' roared the Judge and ruled against her.[29] A few years later, however, Miss Ewan was challenged by the defence for failing to bring her engagement ring to Court: 'I have it at home. I did not know I had to bring it here', she explained.[30]

Judicial clarity on the probative weight of the ring first appeared in Australia in 1914 with a Judge reflecting in detail on the changing romantic norms in the twentieth century. 'The jury must understand that a man could call on a girl for as many years as he liked and could kiss and spoon with her, so long as she allowed and the girl could not come to court and say he had so many kisses and so much amusement and that she wanted payment', he declared. 'But if this were done after a promise of marriage had been given it was a different matter.' In this case, the promise of marriage was proved through an engagement ring.[31] The rapidity of intimacy between women and men that characterised early-twentieth-century courtship in contrast to the nineteenth century – described here as kissing, 'spooning' or walking out – no longer possessed the legal meaning it once had. Increasing romantic *informality* triggered a need for greater *formality* in marking an engagement and making it legible to law. The promise of marriage needed to be explicit, and a ring was the most incontrovertible proof.

These changes in courtship practices among ordinary people became enshrined in legal treatises. Chitty's first mention of a ring appears in 1912 in a section on the return of presents in the case of a broken engagement, however, it is not until the 1923 edition that a ring appears under proof of contract. The American case of *Horan v Earle* is cited with approval:

> Whatever the expression of earlier cases, then, a promise to marry cannot be inferred alone at this day from one's devoted attention, frequent visits and apparently exclusive attachment. Nor from mere presents or letters, not to the point. Nor from the Plaintiff's sole announcement to friends of her wedding preparations without the Defendant's knowledge. Nor from what the man's mother or father may have said to the woman without his knowledge and vice versa. … *But the giving and acceptance of an engagement ring, if properly shown, becomes a most important circumstance.*[32]

In Australia, the case of *Manterfield v Bloomfield* (1929) confirmed this position. Echoing the 1871 case of *Fowler v Bayliss*, the defence argued that 'There had never been any definite engagement, as disclosed by the binding symbol of a ring, and it was not enough for the jury to be of the sentimental opinion that having proceeded so far with his friendship for the Plaintiff, the Defendant ought to have gone further

[29]*Tuttle v Tasker* (1906) NSWSC; 'Alleged Breach of Promise', *Dubbo Dispatch,* 15 December 1906, 5, https://trove.nla.gov.au/newspaper/article/228337951.
[30]*Ewen v Temby* (1911) NSWSC; 'Bunyip Romance', *Weekly Times,* 25 November 1911, 12, https://trove.nla.gov.au/newspaper/article/224942732.
[31]*Flannigan v Cunningham* (1914) VICSC; 'Kissing and Spooning', *The Advertiser,* 1 April 1914, 16, https://trove.nla.gov.au/newspaper/article/5422402.
[32]Joseph Chitty, *Chitty on Contract*, (1912), 630; *Chitty on Contract*, (1921), 624f; *Horan v Earle* 53 (NY 267, 271) as cited in *Chitty on Contract* (1921), 624.

and married her'. The Judge found for the defence and this time (60 years later) was not overturned.[33]

Courtship, proof of contract, and credibility

How do we explain the elevation of the engagement ring to a crucial piece of legal evidence? First, we could say, there needed to be a shift in the economic structures underpinning Australian society from production to consumption: shops needed to be filled with cheap (or cheaper) romantic commodities and consumer appetites needed to be stimulated through advertising, media, and tantalising displays in department stores. Connected to this, there needed to have been an increase in the standard of living, such that working people possessed an income above the basic requirements for survival and they could now display their gentility through possessions. All of this, as histories of consumerism have shown, happened in Australia and around the world at the turn of the century and was accelerated by the emergence of a national market and new advertising techniques post World War One.[34] But this only explains why people bought rings, it does not explain why they started attaching legal weight to them.

To explain this, we need to examine the larger cultural shifts in the early twentieth century, specifically at the intersection between changes in courtship practices, the movement towards an increasingly visual culture, shifts in the law of evidence, and the emergence of a mass market. The case of *Wilcox v Rowbotham* offers a useful example. Alice's rings began their life in a period when practices of courtship shifted from romantic rituals conducted in the home under the watchful eye of family and kin to increasingly autonomous affairs played out in commodified leisure arenas. This spatial movement from the 'front porch to the back seat' in the words of historian Beth Bailey, also involved a shift in power, from women to men.[35] Courtship moved from the domestic interior where it was supervised by women and their families to an anonymous commercial leisure arena: dance halls, theatres, cinemas, streets, hotels, motorcars, restaurants, and department stores. The post-war flourishing of mass consumer culture meant that romance and femininity now needed to be bought. Courtship took on the features of market exchange where men paid, and women, according to romantic advice writers, gave their 'cheerfulness' and, sex appeal (although ideally not sex) in return. The model was based on the anachronistic presumption that men worked and women did not. In fact, by the time Alice went to Court, growth in the services sector had increased economic opportunities for middle-class women. They could also vote, were educated, and had ease of access to public space via the department store and new leisure arenas. Unlike their

[33]*Manterfield v Bloomfield* (1929) TASSC; '£100 Claimed. Alleged Breach of Promise', *The Mercury*, Friday 25 October 1929, 3, https://trove.nla.gov.au/newspaper/article/29138791.

[34]See: Liz Conor, *The Spectacular Modern Woman* (Bloomington: Indiana University Press, 2004); Jill Julius Matthews, *Dance Hall & Picture Palace* (Melbourne: Currency Press, 2005); Gail Reekie, *Temptations* (Sydney: Allen and Unwin, 1993); Martin Pumphrey, 'The Flapper, the Housewife and the Making of Modernity', *Cultural Studies* 1, no. 2 (1987): 179–94.

[35]Beth L. Bailey, *From Front Porch to Back Seat: Courtship in Twentieth-century America* (Baltimore: Johns Hopkins University Press, 1988).

nineteenth-century counterparts, twentieth-century women's expressions of sexuality were also considered natural, thanks to sex advice literature, sexology, popular Freudianism and consumer culture.[36]

Alice's suit against Albert appears at this historical juncture: the proposal of marriage takes place in the domestic sphere; Alice and her mother invite Albert to visit their home; Alice's mother plays a supervisory role and Albert asks both Alice and her mother for consent to marry. But the case also contains elements distinct to the twentieth century: the couple defy Alice's mother's prohibitions upon going out together at night, there are numerous trips to the countryside in Albert's motorcar and abundant references to flirtation. According to Alice's sister, Albert once suggested that when he and Alice were married he would 'invite some nice boys up [to the country] and then [Marion, Alice's sister] can have a good time and you can flirt with them and get plenty of proposals'.[37] Albert understands courtship through commercial ideas of competition: he will 'win Alice', he says, and proceeds to do so by promising to buy her a new motorcar after they marry and by purchasing her an opera cloak, a camera, a dress, a wristlet watch and significantly, a ring.

As the proposal of marriage was conducted in accordance with Victorian-era norms – at Alice's home and with her family as witnesses – she had no problems proving that there was a contract of marriage. Other breach of promise litigants, however, found that new courtship practices made questions of proof rather vexed. Although on one level heterosexuality became an increasingly visible performance conducted at eye level on the street or in the community hall, it also became invisible to interested witnesses (such as family) and the promise became more difficult to prove. Amorous words were ephemeral, romantic gestures were ambiguous and promises of marriage could dissipate into the air. Lovers thus looked to romantic objects and material culture for visual certainty. They acquired the status of proof. In the 1909 case of *Williamson v Blacker,* the plaintiff had no love letters to substantiate the promise of marriage. She relied entirely, and successfully, on a brooch and an engagement ring.[38] In *Hartney v Bell* (1904) the plaintiff won her case on the basis of her ring, even though the letters admitted into evidence, 'were not gushing'.[39] It is significant that Alice, despite of all the corroborating evidence she had in the form of her mother, sister and love letters, still believed that she could not bring an action unless she had a ring. The rich gestural vocabulary of nineteenth-century romance, with its calls, visits, 'walking out' and epistles, was narrowed by the twentieth century to the width of a finger.

[36]For historical literature on early twentieth-century love and romance in Australia see: Hsu Ming Teo, 'The Americanisation of Romantic Love in Australia' in *Connected Worlds: History in Transnational Perspective*, ed. Anne Curthoys and Marilyn Lake (Canberra: ANU Press, 2006), 171–92; Hsu Ming Teo, 'Love Writes', *Australian Feminist Studies* 20, no. 48 (2016): 343–61; Gail Reekie, *Temptations*; Frank Bongiorno, *The Sex Lives of Australians* (Melbourne: Black Inc, 2015), 165. For Britain and America see: Eva Illouz, *Consuming the Romantic Utopia* (San Francisco: University of California Press, 1997); Bailey, *From Front Porch to Back Seat*; David Shumway, *Modern Love: Romance, Intimacy, and the Marriage Crisis* (New York: NYU Press, 2003); Steven Seidman, *Romantic Longings: Love in America, 1830–1980,* (New York: Routledge, 1991); Claire Langhamer, *The English in Love: The Intimate Story of an Emotional Revolution* (Oxford: Oxford University Press, 2013).

[37]*Wilcox v Rowbotham* (1920) QLDSC; 'Alleged Breach of Promise', 3.

[38]*Williamson v Blacker* (1909) NSWSC; 'Bega Breach of Promise', *Daily Telegraph,* 1 April 1909, 10, https://trove.nla.gov.au/newspaper/article/238268637.

[39]*Hartney v Bell* (1904) VICSC; 'Breach of Promise', *Bendigo Independent,* 16 March 1904, 4, https://trove.nla.gov.au/newspaper/article/227010744.

Popular beliefs in the ring's legal status converted into real claims in Court. 'What proof have you of an engagement?' asked a defendant in a 1904 breach of promise case. His letters had been perfunctory and he had since married another woman. She responded, 'I have your ring and bracelet and your letters in store'.[40] In a 1905 case, a woman wrote a letter to her suitor that ran: 'Sir, Sorry to have to inform you that I cannot return your ring and set as I might require them'. She felt 'bound to take proceedings against you for breach of promise of marriage'.[41] That there was no legal foundation for these claims in the first decade of the twentieth century did not seem to matter. Litigants would bring their rings and romantic objects to court and judges and juries, as I have outlined above, varied in the probative weight that they ascribed to them. In short, people mapped their own ideas of law onto engagement rings until the law, in the 1910s and 1920s caught up. This is seen most clearly in the aforementioned 1929 case of *Manterfield v Bloomfield* where there was abundant evidence of visits, familial consent, letters and corroborating statements from witnesses, which would have won her the case in the previous century. She lost, however, because she did not have a ring; because vernacular understandings of the ring as proof of engagement had now achieved legal status.[42]

That the court was ultimately receptive to people's beliefs in the ring as material proof of contract was also because of shifts in the laws of evidence. On one reading, the courts happily adopted the legal significance that ordinary people invested in the ring because it constituted a visible form of evidence. The ring gestured towards intimacies that the courts could not hope (or wish) to know or arbitrate. But there was another, more gendered reason as to why the courts may have eventually embraced romantic objects as proof, which begins with the nineteenth-century revolution in evidence law. Prior to the passage in England of *Lord Denman's Evidence Act* in 1843 most interested persons in most types of action were unable to act as witnesses in their own cause as it was assumed that they would perjure themselves.[43] Personal or subjective experience, in short, not only lacked authority, it was held to be deeply suspect. *Lord Denman's Act*, followed by further amendments to the Act in 1851 and 1853, removed the disqualification placed on so-called 'party-witnesses'.[44] Breach of Promise of marriage remained an exception and it was not until 1869 in England and 1871 in Australia that the parties to breach of promise actions were finally given their speaking rights, and it came with a proviso: the plaintiff's evidence required material corroboration. Because, as Lord Chelmsford argued in the House of Commons, people had 'very serious apprehensions as to the danger that would be incurred' by trusting the woman's word alone'.[45] It was not just women who were the problem, it was specifically women in love. As the Judge in the NSW case of *Farrel v Harris* argued

[40]*Horton v Keenan* (1904) VICSC; 'Alleged Breach of Promise', *Adelaide Observer,* 5 March 1904, 41, https://trove.nla.gov.au/newspaper/article/163041858.
[41]*Garie v Mander* (1905); 'Breach of Promise', *Express and Telegraph,* Wednesday 5 July 1905, 1, https://trove.nla.gov.au/newspaper/article/208897482.
[42]*Manterfield v Bloomfield* (1929) TASSC; '£100 Claimed. Alleged Breach of Promise', 3.
[43]For a discussion of the early history of the rule disqualifying interested parties from giving evidence see: W. Holdsworth, *A History of English Law* (London: Little Brown and Company, 1938), 193–97.
[44]Joel N. Bodansky, 'The Abolition of the Party-Witness Disqualification: An Historical Survey', *Kentucky Law Journal* 70, no. 1 (1981): 93–105.
[45]*Hansard*, Vol. 198 (30 July 1869), 988.

in 1923, 'knowing the tendency of women to imagine a promise' other material evidence was necessary.[46] The engagement ring could be read as part of this turn towards material corroboration. Thus, as reform democratised who was permitted to give evidence, a gendered mistrust of women's words was enshrined in law.

Legal performances, ritual and commodity culture

Yet not all rings were considered to offer proof of marriage. It was only through a process of sacralisation – taking the ring out of the market, wrapping it in romantic words, gifting it in a performance of solemnity and sincerity – that the ring obtained legal status. This would convert the ring from a standardised commodity capable of endless exchange into a unique gift of love destined exclusively for one. It was thus emotion, not financial value that gave objects probative weight, and any conflation of love and commerce could render the woman's legal testimony suspect. For instance, the defence in *Wilcox v Rowbotham* attempted to discredit Alice's testimony by pointing to the fact that she had Edward's ring valued and suggesting that she was motivated by a desire to have a bigger ring than her sister's.[47] Similarly, Esther Baker's corroborating witness in *Baker v Harris* made the error of describing to the Court not just that she had seen the ring, but that Esther had told her the price of it.[48] In the 1920 case of *Milne v Wilson*, one of the possible reasons for the plaintiff's loss was that she had told her suitor that his gift of a cheap Chinese engagement ring was not sufficient.[49] Women were caught in a double bind. Given that a man may be hinting at romantic promises to any number of women, a ring was an undeniable expression of financial investment in the relationship; it anchored the illusory elements of love in the cold realities of commerce, and it offered women material compensation in the case of a broken engagement. Given the high stakes for women in accepting a ring (particularly the expectation that she would give up work), money mattered. On the other hand, any suggestion that she cared about the price of her ring weakened her case in law and led to accusations of 'gold digging', a term indebted to the nineteenth-century distinction between love and commerce, and that became a defining stereotype of women involved in breach of promise of marriage suits in the early and mid-twentieth century. As courtship was restructured as a transaction between men who paid and women who offered emotional and sexual support in return, concerns about 'vamps, adventuresses and gold-diggers' wended their way from cinemas into courtrooms, working to police class boundaries and to shame women who made explicit the implicit terms of the new sexual contract.[50] It is in this light that the rubber ring – entirely valueless on the market – becomes a

[46]*Harris v Farrel* (1923) QLDSC; 'Engaged Six Times', *Daily Standard,* 30 August 1923, 1, https://trove.nla.gov.au/newspaper/article/184706709.
[47]*Wilcox v Rowbotham* (1920) QLDSC; 'Alleged Breach of Promise', 3.
[48]*Baker v Harris* (1904) VICSC; 'Breach of Promise Case', *Evening Journal,* 18 May 1904, 1, https://trove.nla.gov.au/newspaper/article/200815698.
[49]*Milne v Wilson* (1920) SASC; 'Breach of Promise Case', *Daily Telegraph*, 18 December 1920, 13, https://trove.nla.gov.au/newspaper/article/153018907.
[50]Simmonds, *Courting: An Intimate History of Love and Law*, 298–99. See also: Sharon Thompson, 'Whos Afraid of the Gold Digger?', in *Research Handbook on Family Property and the Law*, ed., Margaret Briggs and Andy Hayward (London: Edward Elgar Publishing, 2024), 374–89.

significant legal crux of Alice's case, not simply a fatuous gewgaw. Objects sanctified by love, or that existed outside of commercial structures, proved a woman's integrity and were given evidentiary weight in court whereas those that failed to slough off their commodity status were treated as suspect, and could potentially imply that the woman was scheming.

There was nothing self-evident about engagement rings – their probative force and their distinction from the thousand other identical rings in city stores came through the romantic words and gestures that encased them. Alice explained to the jury that she 'did not ask [the] defendant for the ring as a keepsake, neither did she want to wear it as a dress ring'.[51] Albert had offered it to her on bended knee as an engagement ring. The defendant in *Maudsley v Sinclair* (1895) claimed that he gave the plaintiff 'the ring because she admired it, but had no intention of marrying her',[52] while in the 1927 case of *Supple v Geddes* the defendant tried to claim, unsuccessfully, that the diamond ring that he gave to the plaintiff was merely a gift of friendship.[53] Etiquette manuals were predictably indignant about these matters. 'I might add', advised Eleanor Aimes, 'that there is no 'friendship' ring. Either it is a ring of betrothal, in which case the girl accepts it, or it is purely a gift of jewellery, and must be declined'.[54] Given that romance could include, in the words of James Schouler's 1921 treatise on the *Law of Separation, Marriage and Divorce*, 'mere coquetry, flirtation [and] loose jest', the law had to make judgements about performances of courtship to determine when romance became a contract of engagement.[55] To be successful, women needed to make the conditions under which the ring was given – the words and gestures that brought it to life – intelligible to law. This did not simply require proving that the words were romantic, but that they were intended as such and not uttered in jest.

To this extent, the ring's existence in both law and love, was wholly dependent upon solemnity and ritual. The monolithic seriousness of law was mapped onto promises of marriage; and the enemy of each was laughter. Mr Blondsmith admitted that he gave Ms Ezzy a ring, but argued that it was given 'when they were skylarking'.[56] When Ms Rowbtham asked Mr Walker for a ring in 1914, he 'brought up the top of a whiskey bottle cork carved in the shape of a ring, and told her as a joke she ought to be married in ten or twenty years'.[57] In each case, the defendant was disbelieved and the plaintiff's claims of seriousness combined with the physical proof of the ring proved more compelling. Indeed so common had the defence of jesting become by the 1920s that Schouler's treatise on marriage law devoted an entire section to the legal distinction between solemnity and jest: 'serious and honourable

[51] *Wilcox v Rowbotham* (1920) QLDSC; 'Alleged Breach of Promise', *Darling Downs Gazette*, 9 September 1920, 3, https://trove.nla.gov.au/newspaper/article/174104626.
[52] *Maudlsey v Sinclair* (1895) VICCC; 'Breach of Promise Case', *Richmond River Herald and Northern Districts Advertiser,* 5 April 1895, 3, https://trove.nla.gov.au/newspaper/article/125890459.
[53] *Supple v Geddes* (1927) NSWSC; '£5000 Claimed. Alleged Breach of Promise', *Daily Examiner,* 18 March 1927, 5, https://trove.nla.gov.au/newspaper/article/195185147.
[54] Eleanor Aimes, *Book of Modern Etiquette* (New York: Walter J. Black, 1935), 111ff.
[55] James Schouler, *A Treatise on the Law of Husband and Wife* (Boston: Little Brown, 1882).
[56] *Ezzy v Blondsmith* (1910) NSWSC; 'Alleged Breach of Promise', *Evening News*, 15 June 1910, 7, https://trove.nla.gov.au/newspaper/article/115244514.
[57] *Wilcox v Rowbotham* (1920) QLDSC; 'Alleged Breach of Promise', *Darling Downs Gazette*, 9 September 1920, 3.

intention may be inferred from acts and declarations justifying that inference; for where one so conducts as to induce the other to believe there is an engagement between them … such party, it is said, cannot set up a light or jesting purpose afterwards, or deny that the engagement in fact existed.'[58] Proposals and acceptances, the author declared, must be serious and direct on both sides.

Just as the promise of marriage needed to be intelligible to contract law, so too did its rescission. Solemnity was key. In *Wilcox v Rowbotham,* the promise of marriage was not contested; the only issue for the jury to determine was whether Alice had rescinded the contract. In her case, it was a combination of her allegedly musing that 'perhaps they were not suited for each other' and her return of the ring that was argued in support of the defence. 'The giving of the ring', submitted counsel for the defence, 'was the usual … token of an engagement just as the giving back of the ring was the usual sort of token to end the engagement'.[59] In the 1920 case of *Brown v Storey,* the defendant had promised the plaintiff marriage so long as she would stay away from dancing halls while he was at the war, and if she stopped visiting her friend Florence Atherton, of whom he was jealous. She refused and during one of their fights she returned the engagement ring. In so doing, he argued, she rescinded their agreement to marry.[60] There is no doubt that people believed that the return of a ring had legal repercussions. If there was a ring involved, defendants invariably pointed to its return in defence. Yet unlike the ring's role in the promise of marriage – where we see a gradual official adoption by the law of everyday practices– with the defence of mutual rescission the law remained steadfast. Unless the ring was returned in a stolid and rational ceremony of exoneration, the person returning the ring was not legally bound by their actions. The reason, quite simply, was that in accordance with the basic principle of contract law, the breaking of a solemn engagement must be a deliberate and rational act. As the Judge in Alice's case advised the jury 'to put an end to the contract required the same mind as when the contract was made … They must be in their very sober senses'.[61] Thus, the other argument that Rowbotham had been making in his defence, that centred on Alice's 'ungovernable temper' worked against him. The fact that they had quarrelled before she gave him the ring, coupled with evidence of her churlish refusals to play the piano for him and her fury over the washing up, made it easy to prove that her actions were neither rational nor deliberate.

Rings, power and sexuality

If rings became crucial pieces of evidence used in the legal regulation of courtship, they also operated informally to regulate women and men's sexual behaviour in courtship. At its most sentimentally benign, the original engagement ring that Alice received from Edward signified an imagined marital future and created a bond between the couple across oceans of distance. But it also communicated to Alice and

[58]James Schouler, *A Treatise on the Law of Separation, Marriage and Divorce* (Boston: M. Bender, 1921), 36.
[59]*Wilcox v Rowbotham* (1920) QLDSC; 'Alleged Breach of Promise', *Darling Downs Gazette*, 9 September 1920, 3.
[60]*Brown v Storey* (1920) TASSC; 'Breach of Promise. Plaintiff Awarded £130', *Daily Telegraph,* 20 November 1920, 7, https://trove.nla.gov.au/newspaper/article/153020159.
[61]*Wilcox v Rowbotham* (1920) QLDSC; 'Alleged Breach of Promise', 3.

to other men his proprietary claims on her and publicly legitimated her sexuality – her desires were now circumscribed by a male partner and would be channelled into marriage. There is no suggestion in the case that Alice had sex with either Albert or Edward, however historical scholarship in Australia and Britain suggests that sexual activity was common among the working classes, and to this extent the ring, in Wendy Doniger's words, had the 'power to ensure your integrity is above suspicion'.[62] Once placed on a woman's body, the ring made her body legible to others: here was a woman who may have exchanged sex for a ring but whose sexual identity was now 'authenticated' by an owning man. She was 'out of circulation' and being engaged, would be expected to retreat from social life until the wedding. Any betrothed woman who ventured unaccompanied into the public arena would ideally have had a ring signifying her status as engaged, exemplified in the case *Horton v Keenan* (1904) where a suitor prohibited the female plaintiff from boarding a ship alone until he had given her a ring.[63] At the precise moment women became more socially mobile and sexually liberated, the practice of ring giving emerged to mark them as the possessions of men.

The inextricable links between jewellery and sexuality also meant that a woman like Alice could not receive a gift of jewellery (particularly while engaged) without being greeted with moral opprobrium and suspicion. 'There are certain conventions and rules which the wise girl will not ignore', thundered Eleanor Aimes in her 1935 book on manners. 'She will not accept personal gifts from men, certainly not jewellery.'[64] This is why Alice's receipt of Rowbotham's gift while she was engaged to Edward was such a focal point of her hearing. When Alice admitted to receiving a wristlet watch on her twenty-first birthday, the Judge, unusually, intervened in her cross-examination: 'what was the present?' he asked. 'A wristlet watch', she repeated. 'You were to get Edward's consent later?' Alice replied in the affirmative.[65] Similarly, in the 1900 case of *Wildie v Constable*, the plaintiff assured the jury that she never went 'walking with anyone else while she had the ring'.[66] In short, the acceptance of jewellery from multiple suitors indicated that a woman was unchaste, promiscuous and 'common property' rather than the property of just one man. One ring signified legitimate sexuality, several rings signified lechery.[67] In breach of promise cases this evidence could be used, as it was in Alice's case, to support a defence of 'unchastity': that the engagement was ended because of the woman's bad sexual reputation.

The constraints that rings placed upon women's sexuality and mobility made women cautious about accepting rings from men. In Alice's case, she did not immediately accept Albert's ring, but rather talked it over with her family, waited a week and then staged a theatrical moment at the piano where she offered him the ring to propose to her. Other women were not so obliging. In the 1905 New South Wales

[62]Doniger, *The Ring of Truth and Other Myths of Sex and Jewelry*, xxii.
[63]*Horton v Keenan* (1904) VICSC; 'Alleged Breach of Promise', 41.
[64]Aimes, *Book of Modern Etiquette*, 111ff.
[65]*Wilcox v Rowbotham*, (1920) QLDSC; 'Alleged Breach of Promise', 3.
[66]*Wildie v Constable* (1900) SASC; 'Breach of Promise Case', *Express and Telegraph,* 30 November 1900, 3, https://trove.nla.gov.au/newspaper/article/209547363.
[67]See: Doniger, *The Ring of Truth*, xxii.

case of *Brunesdon v Kiernan*, the defendant 'asked to put the ring on [the woman's] finger' to which the latter responded: 'put it down there. I may put it on presently.'[68] In the 1910 case of *Ezzy v Blondsmith,* the plaintiff, who responded to Blondsmith's request for marriage with the words 'What rot! I have not known you long enough' then decided to return the ring after three days.[69] In a society where women's decision-making capacities were still denied in so many areas of life, we witness them here relishing the power of consent that a ring gave them. But these women were also no doubt cautious about accepting rings because they knew that acceptance would change their identities and constrain their freedom. In the engagement ring we see the first act of male ownership, a fettering of the female wearer to the male giver, the first chafing of the marital yoke. After all, there was never a question of men wearing engagement rings. In Vicki Howard's words: 'men proposed and women became engaged.'[70]

Perhaps the darkest side of the equation between rings and male control of female sexuality is seen in the breach of promise cases that involved sexual violence. Once women were permitted to give their own evidence in the 1870s, a number of women brought breach of promise actions involving sexual assault to court, and in many of these cases, rings featured as a means to render the violence legitimate. In *Vaughan v McRae* (1891) Ilma Vaughan claimed that she had been sexually assaulted twice by her fiancée, once at home after which he offered her a ring and on another occasion at night in the park. In the first instance, Ilma's mother burst into the room where Ilma had been assaulted, and threatened to take proceedings against McRae. McRae allegedly laughed and grabbed Ilma's hand: 'You cannot do anything now, because I have put a ring on her finger.'[71] The judge agreed that the ring and promise of marriage retrospectively converted non-consent into consent, and that this was the ideal resolution to sexual assault: 'One would suppose that a mother who valued the character and happiness of her daughter would have insisted upon something very definite being done in the way of reparation. She would tell him: 'You are going to marry my daughter and that is the best reparation you can make for the outrage'.'[72] The possibility of legal action for rape is not considered: her sexual assault claim in the first instance failed while her second claim succeeded. Similarly, in the case of *Ohlrich v Bromberg* (1881), the plaintiff agreed not to tell her parents that her partner had sexually assaulted her as he 'promised to bring her a ring at his next visit.'[73] In both actions, we see the ring partaking in the legal regime of coverture; the legal

[68]*Brunesdon v Kiernan* (1905) VICCC; 'Alleged Breach of Promise', *Express and Telegraph,* 15 December 1905, 4, https://trove.nla.gov.au/newspaper/article/208790215.
[69]*Ezzy v Blondsmith* (1910) NSWSC; 'Alleged Breach of Promise', 7.
[70]Vicki Howard, '"A Real Man's Ring": Gender and the Invention of Tradition', *Journal of Social History* 36, no. 4 (2003): 843.
[71]This summary has been taken from: 'Law Report: Supreme Court', *Sydney Morning Herald,* 17 March 1891, 7, https://trove.nla.gov.au/newspaper/article/13817670. It has been verified against: *Vaughan v McRae,* (NSWSC) 1891 per Innes J. See: Vaughan v McRae, 'Index to Judgment Books: Civil Jurisdiction: Civil Jurisdiction' *State Records Office NSW* 9/917 (1891); 'Judgment Papers', Container 20/11055 (first term) and also No. 3769 (1890); Justice Innes Notebook NRS 6228 2/4565; 2/4537.
[72]*Vaughan v McRae* (1891) NSWSC; 'Law Report: Supreme Court', *Sydney Morning Herald,* 17 March 1891, 7, https://trove.nla.gov.au/newspaper/article/13817670.
[73]*Ohlrich v Bromberg* (1881) QLDSC; 'The Supreme Court', *Telegraph,* 24 March 1881, 2, https://trove.nla.gov.au/newspaper/article/183373681.

doctrine that subsumed women's identities into that of their husbands, making them the property of their husbands and thus incapable of being raped by their husbands (one could not trespass upon property that one already owned). The idea that a promise of marriage could work to 'cover' a betrothed woman in a similar way to a marriage, rendering her body violable, has its origins in the meaning of marital promises in ecclesiastic law: it meant that the husband to be claimed dominion over the wife's body. Legal commentary in newspapers echoed these views. In an 1894 article commenting on a breach of promise case the author argued: 'All persons who have under promise of marriage lived for any time a connubial life should thereby confer and acquire mutual rights for each other, and collateral rights for the children of such union.'[74] In popular and legal discourse an engaged woman's body was constructed as violable and a ring became a means by which non-consent was converted into consent: it 'saved' women from the 'shame' of having been raped.

Conclusion

In 1864 an article on engagement rings did the rounds of the Australian newspapers. 'Of all personal ornaments, the finger-ring is, perhaps, the most ancient, and has been the most extensively worn', the writer began. 'A ring has been used in all ages as a gift of love, or token of betrothal. Since the beginning of the present century, it has been called an "Engagement Ring" and as young ladies well know, it is worn on the index finger of the left hand.'[75] Yet judging by the letters pages in the decades that followed, few did in fact know the precise etiquette around engagement rings. 'Several correspondents desire to know on which finger the "engaged ring" is to be worn', remarked an editor in 1871, and advised the third finger or the right hand, contrary to editorial advice two months earlier recommending the fourth finger of the left hand.[76] Although advertisements and commentators described rings as a timeless custom, universally known, the scare quotes around an 'engaged ring', a 'finger ring' or an 'engagement ring' hints at their novelty among ordinary people in the nineteenth century.

While breach of promise of marriage cases may not be able to tell us precisely when people began wearing engagement rings, they do indicate that people began using them as evidence of an engagement at the turn of the twentieth century and that courts came to adopt their logic. The elevation of the engagement ring to the status of legal proof, I have suggested, can be ascribed to the intersection between shifts in romantic and sexual norms, the emergence of a mass market, changes in the laws of evidence, and the movement towards an increasingly visual culture. As romance ceased to be controlled and invigilated by family and kin or bound by the formalised rules and rituals of the Victorian era, the rules of engagement became less certain and people looked to material culture for proof. The increasing informality of

[74]'Connubial Rights', *Telegraph*, 12 May 1894, 4, https://trove.nla.gov.au/newspaper/article/173163376 .
[75]'Engagement Rings', *Yass Courier,* 15 June 1864, 4, https://trove.nla.gov.au/newspaper/article/263974114?searchTerm=Engagement%20Rings.
[76]'Correspondence', *Leader,* 25 February 1871, 16, https://trove.nla.gov.au/newspaper/article/196830922; 'Young Ladies As They Are', *Mercury,* 5 April 1871, 3, https://trove.nla.gov.au/newspaper/article/8866788.

romance – which now took place in cars, dance halls and on streets – and the shift towards serial dating, inspired a desire on the part of ordinary people and courts, for greater contractual formality. Added to this was the court's longstanding, and flagrantly sexist, mistrust of women's words, enshrined in its requirement of material corroboration for plaintiffs. It is in this context that the engagement ring became the court's most cherished object in breach of promise hearings as a material symbol of a betrothal. When given in a ritual of amorous solemnity, rings transformed from a fungible commodity to a legal pledge. They also transformed the woman wearing the ring, marking her as the property of her partner, circumscribing her mobility and sociality, and setting her on a trajectory from single woman to wife. The ring authenticated women's sexuality – she was now under the control of an owning man – and made her body violable through the same logic of coverture that permitted rape in marriage. 'I threw his engagement ring back at him, and told him I would be no man's slave!', said a protagonist in a popular Australian story in the late nineteenth century, neatly summing up the way that men used rings to exert power over women.[77] Yet women also used engagement rings to exercise agency in engagements: we see them wielding the humiliating power to refuse a ring with delight, they brought rings to court as material proof against the slippery words of perfidious men, and we know that they walked out of court with the ring in their pocket, carrying a substantial form of financial compensation for their loss. Alice Wilcox was one of numerous successful litigants. She walked out of court with her ring, her wristlet watch and a very substantial 750 pounds damages to redress her loss of income, her status and her 'lacerated feelings'.

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[77]'Buying a Picture', *Manning River News and Advocate for the Northern Coast Districts of New South Wales*, 13 April 1872, 1, https://trove.nla.gov.au/newspaper/article/266396147.