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TRACT expressly required the purchaser's personal satisfaction as to
the items to be included in the overhead. Further, there was no
waiver or other equity in favor of the seller. The court explains
that while overhead charges may not be dependent upon taste or
fancy, still experts often disagree as to what items should be included
in overhead, and since it is largely a matter of individual judgment,
such a contract requiring personal satisfaction should be strictly
construed.\(^1\)

L. H. R.

**CONTRACT—REPLEVIN—ENGAGEMENT TOKENS.**—The plaintiff
and the defendant were engaged to be married. As a pledge for, or
token of, a mutual agreement to marry one another, plaintiff pre-
sented defendant with a diamond ring. Plaintiff alleges that he
intended the gift as an engagement ring and that it was so accepted
by the defendant. Thereafter, plaintiff and defendant by "mutual
consent" cancelled and abandoned their contract to marry. In an
action in replevin to recover possession of the ring, defendant moved
for judgment on the pleadings. *Held,* motion denied; the complaint
stated facts sufficient to constitute a cause of action. *Wilson v. Riggs,*
267 N. Y. 570, 196 N. E. 584 (1935).

It is well settled that when the donee breaks the engagement
without legal cause, the ring or other consideration must be returned,\(^1\)

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\(^{1}\) Beck v. Cohen, 237 App. Div. 729, 262 N. Y. Supp. 716 (1st Dept. 1933); 
Beer v. Hart, 153 Misc. 277, 274 N. Y. Supp. 671 (1934); Humble v. Gay,
168 Cal. 516, 143 Pac. 777 (1914); Lumsden v. Arbaugh, 207 Mo. App. 561,
227 S. W. 868 (1921); cf. Rosenberg v. Lewis, 210 App. Div. 690, 206 N. Y.
Supp. 353 (1st Dept. 1924), where it was held that where gifts are made

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this condition being implied, and infancy is no defense. But the donee may keep the ring if the donor refuses to carry out the promise without legal justification or has by his fraud induced the donee’s promise. But when the parties mutually agree to break the engagement, a different problem arises. A contract to marry may, like other contracts, be abrogated by mutual consent, in which case neither party is at fault. The Roman Law provided for the return of betrothal gifts when parties mutually dissolved the contract. In the instant case the court found that since the engagement was cancelled by mutual consent, the principle applied that the ring was given and received upon the condition subsequent that it would be returned if the parties did not wed without fault of either. In following this rule the court is giving utterance to a public conscience, for essentially the problem is one of ethics.

H. S.

CONTRACTS—STATUTE OF FRAUDS—ORAL CONTRACT TO BE PERFORMED WITHIN A LIFETIME.—The plaintiff was the holder of a note executed by the defendant’s brother, one Arnold. The note, when due, was not paid and plaintiff threatened suit, unless Arnold procured a loan on his insurance policy in which defendant was named as beneficiary. Defendant learning of the above facts, entered into an oral agreement with the plaintiff, that if he would forbear to sue Arnold on the note, and would renew the note for one year, the defendant would “in the event that Arnold die before the maturity of the renewal note, pay the amount of the note to plaintiff out of the proceeds of the aforementioned insurance policy.” Arnold died before the note matured and plaintiff now seeks to recover on defendant’s oral promise. The defendant interposes the Statute of Frauds. Held, the contract is unenforceable under the Statute of

relying on the promise to marry, it cannot be said that they were given upon condition that they would be returned if defendant refused to keep her promise.

2 Sloin v. Lavine, — N. J. —, 168 Atl. 849 (1933); Williamson v. Johnson, 62 Vt. 378, 28 Atl. 27 (1890); Jacobs v. Davis, 2 K. B. 532 (1917).


4 Fross v. Hockstim, 72 Misc. 343, 130 N. Y. Supp. 315 (1st Dep’t 1911); Cohen v. Sellar, 1 K. B. 536 (1926).

5 Grant v. Willey, 101 Mass. 356 (1869).

6 Sherman, Roman Law in the Modern World (1922) 45.