

her a marriage portion ; to bestow upon her some of his property, or to provide for her in some way or other ; and some of the proofs describe a contract essentially different from that deduced from the letter. But the plaintiffs cannot be allowed to use the letter as evidence of a contract in connexion with a part only of the verbal testimony, rejecting the rest. The whole must be taken together ; and then the verbal proof, instead of sustaining, materially differs from and falsifies the terms of that contract, which it is contended is shewn by the letter.(a)

The bill rests the plaintiff's pretensions upon the ground, that the late *Amos Ogden* induced *John W. Ogden* to marry *Nancy* by a promise, that he would give her twelve thousand dollars as a marriage portion ; and refers to the letter of the 22d of May, and certain other circumstances, as evidence of that promise. The defendant *Amos Ogden* admits, that the copy exhibited is in the handwriting of the late *Amos Ogden* ; but all the defendants positively deny having any knowledge whatever of any such *promise* or *inducement* to the marriage as is charged in the bill. None of the defendants have, in their answers, relied upon the statute of frauds ; but it has been mainly insisted upon by them, in argument, at the hearing.

The statute of frauds, so far as it is applicable to this case, is expressed in these words :—“ No action shall be brought whereby to charge any person, upon any agreement made upon consideration of marriage, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.”(b)

This clause was at one time supposed to embrace mutual promises to marry, but that notion has long since been abandoned, and it is now held to extend only to agreements to pay marriage portions, or to such cases as the one now under consideration.(c) The word “ agreement,” it has been settled, must not be loosely construed, but be taken in its proper and correct sense, as signifying a mutual contract on consideration between two or more parties ; the whole of which, the *consideration* as well as the *promise*, must be in writing.(d)

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(a) *Cooper v. Smith*, 15 East, 103.—(b) 29 Car. 2, c. 3, s. 4.—(c) *Harrison v. Cage*, 1 Ld. Raym. 337.—(d) *Wain v. Warlters*, 5 East, 10 ; *Stadt v. Lill*, 9 East, 343 ; *Randall v. Morgan*, 12 Ves. 74.