On the 16th of May, 1861, the defendant made an assignment of this mortgage to the plaintiff as a collateral security, Rogers continued in possession up to the 1st of November, 1862, and by indenture of that date demised and leased the same premises to the defendant, *habendum* for two years from the date, at a rental of $120 payable in advance. Nothing was shewn to have been paid on the mortgage. In December, 1862, Rogers conveyed his equity of redemption to the plaintiff.

On this evidence the defendant had a verdict, with leave to the plaintiff to move to enter a verdict for him.

In Michaelmas Term, *J. H. Cameron, Q. C.*, obtained a rule to shew cause why the verdict should not be entered for the plaintiff, pursuant to leave reserved.

Robert A. Harrison shewed cause, citing *Toronto Permanent Building Society* v. *McCurry*, 12 U. C. C. P. 532; *Stevenson* v. *Cuthertson*, Ib. 79.

Galt, Q. C., supported the rule.

DRAPER, C. J., delivered the judgment of the court.

We think it quite clear this rule should be made absolute.

The case is this:—Rogers being seised in fee, on the 23rd of April, 1861, makes a mortgage in fee to the now defendant; the principal money is to be paid on the 23rd of April, 1863, and the interest half-yearly. The mortgage contains a covenant from the mortgagor that the mortgagee may enter on default, and is subject to a proviso, that if default is made, and if the mortgagee shall after the time for payment is expired have given notice in writing demanding payment, and a calendar month shall elapse after such notice without payment, the mortgagee may enter, receive rents and profits, make leases and sell. And the mortgagee covenants not to sell or lease, or take steps for recovering possession, until such calendar month's notice in writing has been given. On the 16th of May, 1861, the defendant assigns the mortgaged premises and his rights as mortgagee to the plaintiff. Rogers continues in possession, but makes default in payment of the interest, and after such default makes a lease for two years, to be computed from the 1st of November, 1862, to the defendant, who enters. Neither principal nor interest being paid, Rogers, in December, 1862, conveys and releases his equity of redemption to the plaintiff, who on the 7th of July, 1863, brings this ejectment. The objection raised to his recovery is that he has not given the notice in writing required by the proviso, and therefore this action is brought too soon—relying on the later proviso, that until default shall be made in payment after notice in writing demanding payment as aforesaid, &c.

The case of *Wilkinson* v. *Hall* (3 Bing. N. C. 508), establishes the doctrine, that an agreement that a mortgagor shall remain in possession until default is made in payment of interest or principal, operates as a re-demise of the mortgaged premises until the day for payment arrives and no payment is made. There is a fixed period, at which on a given event, *i. e.*, non-payment, the term created by the re-demise expires. The last proviso above referred to differs in this respect, for there is no certainty as to the time when the event which will determine the tenancy must happen, for it is uncertain when the mortgagee may serve notice demanding payment, and the month only begins to run from the service of that notice.

Independently of that difference, there is another and most important one. The notice is to be one demanding payment, which necessarily implies a right to payment in the party making the demand, and a right in the party on whom the demand is made to redeem the fee by making the payment. But in this case the right of redemption was extinguished, and the plaintiff, though he first derived title under the mortgage, had acquired the land and lost the claim to the debt, and the defendant never had the right to redeem. No demand of payment could therefore be effectually made, and the want of it cannot, therefore, in our opinion, prevent the owner of the land from treating the defendant as a tenant at sufferance.

The cases of *Pmhorn* v. *Souster* (8 Ex. 763), and *Jolly* v. *Arbuthnot* (4 DeG. & J. 224, 5 Jur. N. S. 689), may be referred to with advantage as to the operation and effect of leases made by mortgagors.

Rule absolute.

KELLY v. BULL.

Seduction.

A declaration by a woman that defendant seduced her daughter and servant, whereby she lost her services *Held*, good, either at common law or under the statute, without alleging the father's death.

[Q. B., H. T., 27 Vic., 1864.]

Declaration.—Mary Kelly, by R. G. D., "her attorney," sues John Bull, who has been summoned, &c. "For that the defendant, John Bull, debauched and carnally knew Mary Kelly, the daughter and servant of the plaintiff, whereby the said Mary Kelly became pregnant with child, and the plaintiff lost the services of the said Mary Kelly for a long time, and incurred expenses in nursing and taking care of her, and about the delivery of the said child."

Demurrer.—That the said action is brought by the plaintiff as the mother of the said Margaret Kelly, without alleging the death of the father of the said Mary Kelly.

The points marked in the margin of the demurrer for argument on the part of the plaintiff were:

1. That there is not, upon demurrer, any presumption, either from the name "Mary" or the pronoun used, that the plaintiff is the mother, the plaintiff may be the father.

2. The defence that the father survives, if true, should have been pleaded, with the other facts necessary to make that defence, as the declaration, assuming it to be under the statute, shews a *primâ facie* right in the plaintiff.

3 But the declaration is good at common law, for it shews the relation of master and servant, the seduction, and the consequent loss of service and damage.

McMichael, for the demurrer, cited *Browne* v. *Smith*, 1 U. C. P. R. 351; *McLeod* v. *McLeod*, 9 U. C. Q. B. 331; *Lake* v. *Bemiss*, 5 U. C. C. P. 430; *McKay* v. *Burley*, 18 U. C. Q. B. 251.

Dalton, contra, cited *Mabon* v. *Townsend*, 1 Dowl. N. S. 634; *Scott* v. *Soans*, 3 East 111; *Whitfield* v. *Todd*, 1 U. C. Q. B. 223; Chy. Plg. I. 273.

HAGARTY, J., delivered the judgment of the court.

We do not pretend to reconcile all that is said in the many cases in our own courts since the passing of the act respecting seduction, but we have neither heard nor read anything to induce us to think that this is not a good declaration, either with or without the statute. We cannot understand why it should be necessary to aver the death of the father. If he be living, the defendant has ample means of availing himself of a defence. Unless we are prepared to hold that no declaration by a woman can be good, without averring that she never had a husband or that her husband is dead, we cannot give way to defendant's argument.

We do not see why the declaration is not good at common law, for the loss of a servant's service.

Judgment for plaintiff on demurrer.*

COMMON PLEAS.

(*Reported by* E. C. JONES, Esq., *Reporter to the Court*)

KEHOE v. BROWN ET AL.

Division Court—Judgment—Transcript of—Filed in County Court—Examination of Defendant thereupon—Con. Stat. U. C. secs. 12, 41.

Declaration in trespass on the case to which the defendant B. pleaded, that having recovered a judgment in the Division Court, against the *now* plaintiff for the sum of $60 odd, and the execution issued thereupon having been returned *nulla bona*, a transcript of the judgment was obtained and filed in the County Court; upon this a writ of execution was issued, which being returned *nulla bona*, an order was made by the learned judge of the County Court under sec. 41 of Con. Stat. U. C. c. 24, calling upon the now plaintiff to appear before the clerk of the court and be examined, &c., &c. In accordance therewith he did appear and was examined, &c., &c, and a report and return was made in compliance with the order. Upon reading such report, &c., the judge of the County Court issued a summons calling upon plaintiff to shew cause why he should not be committed, &c., and on return thereof the plaintiff not appearing, and no cause being shewn to the contrary, the judge ordered that a writ *ca. sa.* should issue within five days; which was issued accordingly, whereupon plaintiff was imprisoned.

To this plea plaintiff demurred. 1st. Because the judgment and amount for which *ca. sa.* issued was less than $100. 2nd That the judgment on which the *ca. sa.* issued is founded on a judgment of the Division Court, that the plaintiff

* *M. C. Cameron, Q. C.*, for the defendant, at the conclusion of this judgment applied for leave to plead, but the application was refused