evidence of the daughter, if believed, proves that this connection was obtained by force, and in circumstances amounting to a felony. And Vincent v. Sprague, 3 U. C. R. 283, was relied on as an authority that, in such circumstances, the action must fail. And to this contention Teetzel, J., appears to have acceded by granting the order dismissing the action. The Divisional Court, however, took the opposite view, and set aside the order.

At p. 495 of 10 O. L. R. the Chancellor quotes with approval from the judgment in Kennedy v. Shea, 110 Mass. 147, 151, the following passage: "The gist of the action is the debauching of the daughter, and the consequent supposed or actual loss of her services. It is immaterial to plaintiff's claim under what special circumstances the injury was wrought, or whether it was accompanied with force and violence, or not. The action will lie although trespass vi et armis might have been sustained. It would be no defence that the crime was rape and not seduction." I, too, approve, and I have repeated the quotation because, in my opinion, it succinctly meets and answers Mr. Middleton's ingenious argument for defendant, and indeed covers the whole substantial ground involved in this appeal.

The common law action of seduction was based upon the relationship, not of parent and child, but of master and servant, and the gist of the action was the loss of service caused by the illness resulting from the connection. Where the daughter was an infant residing at home, this service was presumed, but where she was adult or residing elsewhere, the service had to be proved. And that is the case still in England: see Whitbourne v. Williams, [1901] 2 K. B. 722. But, as modified by R. S. O. 1897 ch. 69, the service necessary at common law to maintain the action is, in the case of a parent suing, to be presumed, and no evidence to the contrary is to be received. In other respects the action is still, in my opinion, the common law action, and not a new or statutory action merely.

And at common law the action always involved the idea of trespass: see Dodd v. Norris, 3 Camp. 518. And the declaration might have been either in trespass or in case: Chamberlain v. Hazlewood, 5 M. & W. 515. In such an action consent by the servant could only bind herself. It could not bind the master. If she did not consent, she too might have an action for the assault, but the injury to the master was the same whether she consented or not.