

plaintiffs. The statement of claim alleged the seduction of the daughter by the defendant and the breach by him of a promise to marry her. It also alleged that the defendant induced the daughter to allow an operation to be performed upon her person to procure an abortion, which resulted in severe bodily injury.

Furlong, for defendant. These causes of action could not be joined in one action.

Masten, for the plaintiffs. By the new Rule 185 a change was made in the law, so that such cases as *Smurthwaite v. Hannay*, (1894) A.C. 494, and *Mooney v. Joyce*, 17 P.R. 241, were no longer applicable.

Held, that Rule 185 did not permit of claims for seduction and breach of promise of marriage being joined in one action, and made the order asked by the defendant with costs to be costs in the action.

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MEREDITH, C.J.]

[Oct. 22

MUNRO v. WALLER.

Damages—Measure of—Breach of covenant not to assign lease—Evidence.

By the judgment it was declared that the defendant, the assignee of a lease, had broken a covenant in the lease not to assign without leave, and a reference was directed to ascertain the damages to which the lessors were thereby entitled.

The referee found that the defendant at the time he assigned the lease was solvent and able to pay the rent as it should become due, and to perform the covenant for payment of taxes and insurance premiums, and that the person to whom the defendant assigned was insolvent, and without means, business or credit; and he assessed the past damages at \$1,551.62, made up of the rent and taxes in arrear, and the future damages at \$2,346, made up by capitalizing all the accruing instalments of rent and future insurance premiums down to the expiration of the lease, and \$400 for damages for past breaches of the covenant to repair.

The evidence showed that the defendant up to the time he assigned the lease had paid the rent, though not punctually, and had, since he left the demised premises up to the time of judgment, paid his rent for the hotel to which he removed; but the business carried on by him upon the demised premises had been deteriorating, and must soon have become an unprofitable one.

Held, upon appeal from the referee's report, that while the plaintiffs were entitled to recover as damages such sum of money as would put them in the same position as if the covenant had not been broken, and they had retained the liability of the defendant, instead of an inferior liability; yet, the damages assessed were excessive upon the evidence, and in estimating the value of the defendant's liability no allowance had been made for the vicissitudes of business and the uncertainty of life and health; and the damages were reduced to \$500.

Williams v. Earle, L.R. 3 Q.B. 751, followed.

D. Urquhart, for the defendant.

C. Millar, for the plaintiffs.