

seduction. The plaintiff, before the seduction, married again; her second husband, Edward Stoner, died before the action was brought, and before the birth of the illegitimate child, but he was living at the date of the seduction. The learned Judge said that he would assume that the plaintiff and her second husband were living together at the time of the seduction. The daughter was only 16 years of age when seduced.

The defendant denied the seduction, and pleaded that the statement of claim disclosed no cause of action.

The origin and basis of the action for seduction in this Province was the right to service, and the interruption of the right through the act of the defendant; and at common law the plaintiff's action, upon the facts here disclosed, must fail—the cause of action (if any) being in Stoner, the girl's stepfather, upon the master and servant theory. But the Seduction Act and other statutes had to be considered.

The learned Judge distinguished *Entner v. Benneweis* (1894), 24 O.R. 407, saying that that action was launched, attempted to be maintained, and decided as a common law action, and no statutory provision was or could be invoked in favour of the plaintiff. The deceased in that case was the father of the girl, not the second husband of the mother; the girl was seduced in the lifetime of her father, and the cause of action vested in him and continued to be vested in him until his death; and there was no statute which divested or transmitted a cause of action so vested in the father to the mother in the event of his death.

*Hamilton v. Long*, [1903] 2 I.R. 407, [1905] 2 I.R. 552, also distinguished; and *Whitfield v. Todd* (1844), 1 U.C.R. 223, and *Smith v. Crooker* (1863), 23 U.C.R. 84, referred to.

Section 2 of the Seduction Act, R.S.O. 1914 ch. 72, provides that the father or, in case of his death, the mother, whether she remains a widow or has married again, of an unmarried female who has been seduced, and for whose seduction the father or mother could maintain an action if such unmarried female was at the time dwelling under his or her protection, may maintain an action for the seduction, notwithstanding that such unmarried female was, at the time of her seduction, serving or residing with another person upon hire or otherwise. By sec. 3, upon the trial of an action brought by the father or mother, service shall be presumed, and no evidence shall be received to the contrary.

Here the cause of action did not vest in the second husband; he was eliminated by the words "whether she remains a widow or has married again."

The learned Judge referred also to the Married Women's Property Act, R.S.O. 1914 ch. 149, sec. 4 (2), conferring upon a married woman the capacity of suing and being sued alone,