TORT OF SEDUCTION AND THE OPPRESSION OF WOMEN

Cassandra Rerick

T00552614

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Women in the 19th century were oppressed for many reasons and historians are just beginning to understand the cause and effects. It seems that every time women began to gain a bit of independence; it proved to simultaneously be a step in the opposite direction. A perfect example was the Tort of Seduction in Canada during the 19th century. A law originally meant to compensate masters of harm done to their property, or servants, was altered to compensate fathers for the wrongful seduction of their daughters. Being a patriarchal society, plaintiff father’s ensued justice for the dishonour of their daughters along with the loss of service and costs of their daughter’s pregnancy. The law soon evolved from ensuing justice of illicit pregnancy to receiving compensation of legitimate marriages that the family did not approve of. This legislative initiative could be thought as a positive step toward females being able to receive justice from fraudulent men, as 90 percent of all trial cases were awarded to the daughter and fathers of the besmirched family. When in fact was not about the daughter at all. The jury, comprised of only men, often sided with the plaintiff because they sympathized with the father over the young seducer. This is evident because of opposite outcomes when regarding rape trials, in which the jury would side with the accused criminal rather than the female victim.[[1]](#footnote-1) The evidence collected from my research aims to provide an enlightened interpretation of the tort alongside the oppression of women rights, and how this allowed the tort to evolve through the mid 1800s.

It was not uncommon for an unmarried woman to wind up pregnant in the 19th Century. However when it happened, there was a certain social upheaval that surrounded the gossip. The following passage gives insight to what kind of social pressures a family would have went through surrounding the illicit pregnancy of someone in their family.

“Stern fathers called upon young men’s parents; male relatives chased down fleeing scoundrels; women proudly turned their heads aside to avoid the piercing gazes of their neighbours and had their babies out of wedlock; young women were dispatched to distant relatives to overcome mysterious ‘illnesses”’ hasty marriages were conducted under promise of land or money; and women travelled secretly to cities where they attempted to escape their plight.”[[2]](#footnote-2)

The legal system was a last effort to receive any ounce of justice that the family could not attain on their own. “The tort of seduction, one of the most popular civil actions in nineteenth-century Canada, was rooted in feudal notions that suggested that certain individuals could hold property interests in others.”[[3]](#footnote-3) The basis is that the tort allowed individuals to hold property interests in others and the master-servant trend grew until the law only concerned daughters and fathers. The tort proved to be highly successful towards fathers who had direct monetary value in their daughter’s chastity. This ideal of lost services became more prominent in court and the tort of seduction began to embody a legal extension of property rights in women, not women’s rights. Davis wrote that the plaintiff was required to prove that the defendant “debauched and carnally knew” the plaintiff’s servant, and that she became pregnant and gave birth to a child, “by means of which the plaintiff was deprived of her services and put to expense in nursing and taking care of her.” [[4]](#footnote-4) The plaintiff did not necessarily have to be a father, since a master would equally be as entitled to sue over loss of service had their servant been seduced. There was no legal stipulation around the nature or circumstances surrounding the intercourse, except that there had to be proof of illicit intercourse, therefore it had to occur outside of wedlock. Moreover, the seducer has then stolen the chastity of the plaintiff’s daughter, which lessens her value socially. It would be extremely hard for her to find a good husband to help support the family. This proved that a father’s societal and economic value rested heavily on how his daughter’s virtue was regarded. It was perceived as an essential aspect of family life. The court recognized this and began to award additional damages for the wounded feelings of the parent and moral injury inflicted by the defendant.[[5]](#footnote-5) The tort of seduction was not the beginning of women’s rights but did offer some protection for families who may have been lost otherwise. “If any person shall unlawfully take or cause to be taken any unmarried girl, being under the age of sixteen years, out of the possession, and against the will of her father or mother…shall be guilty of a misdemeanour”.[[6]](#footnote-6) If it was on the girls terms to leave her house in order to find a better life with a man her parents did not approve of, he would be tried in court and she would be returned to her family home. “The consent of the girl makes no difference” because the law was originally developed to protect the property of masters.[[7]](#footnote-7) It is under these very sexist pretences that the tort harms women independence and keeps them from moving out of the family unit to find their own careers and lives. Therefore the tort allowed parents and men of the court to muffle the emerging independent voices of women in a modernizing world.

Although successful for hundreds of fathers looking to protect the interests of their family unit, there was still plenty of opposition concerning the tort, as it could be seen as a way to justify intercourse outside the confines as marriage. The law evolved to control the course of young women’s lives and attempted to deliberately “assert parental property interests in the face of a family unit.” [[8]](#footnote-8) The law also moved from an initial compensation to a place where fathers further wanted to ensue for emotional damages and distress surrounding the loss of the daughter’s chastity. Plaintiffs also didn’t require providing any proof of ‘acts of service performed by the person seduced.’[[9]](#footnote-9) This could be attributed to women being allowed to leave the household to work and provide for the family rather than doing it from chores within the families household. The work available to these young ladies would have commonly been as servants. “The size of the award may also have been related to the jury’s assessment of [a woman’s] physical attractiveness and feminine demeanour.[[10]](#footnote-10)

We must remember that although the world was in the very early stages of modernization, it was very much so a society revolved around men. The public didn’t generally care about the welfare of women during cases. “If it were the situation of the woman that had motivated the jury, they would have been as supportive of rape victims as they were of victims of seduction.”[[11]](#footnote-11) The more tainted a woman’s virtue was prior to the trial the less the family was awarded from the court. This proved that the tort of seduction was so successful because it had little to do with evidence and the jury relied solely on the ability to sway the jury to believe that their families name is honourable. The idea of intercourse out of wedlock was still heavily frowned upon, so when it did happen, this was the family’s only way to protect what they could of their honour. If a woman was seduced upon fraudulent terms then this offered the family a way to find justice for her. However, it also marked the young woman as property to which her chastity is her value. “The most powerful rules governing intimacy were social and ethical, not legal.”[[12]](#footnote-12) The tort of seduction gives us an idea of how 19th century Canadians denied heterosexuality in order to become socially pure within their community. “It is best, perhaps, to point out that this study is not a history of illegitimacy, sexual offences, or Canadian women. It is, rather, a study of the law’s reaction to the… accusations of seduction were dealt with in the civil and criminal courts.”[[13]](#footnote-13)

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1. Constance Backhouse. *The tort of seduction: Fathers and daughters in nineteenth-century Canada.* (*Dalhousie Law Journal* 10,1986), 45. This paper further enriches the information by Davis in order to show how the tort was practiced and what biases were in place. [↑](#footnote-ref-1)
2. Carolyn Strange. Courtship, *Love and Marriage in Nineteenth Century English Canada*, p. 211. [↑](#footnote-ref-2)
3. Constance Backhouse. *The tort of seduction: Fathers and daughters in nineteenth-century Canada.* (*Dalhousie Law Journal* 10,1986), 45 [↑](#footnote-ref-3)
4. For details regarding essential elements of the tort, see James Edward Davis, *“Prize Essay on The Laws for The Protection of Women”* (London 1854), p.140. [↑](#footnote-ref-4)
5. Constance Backhouse., Petticoats and Prejudice: Women and Law in Nineteenth Century Canada, p. 133. [↑](#footnote-ref-5)
6. Ibid., 122. [↑](#footnote-ref-6)
7. Ibid., 127. [↑](#footnote-ref-7)
8. Constance Backhouse., The Tort of Seduction: Fathers and Daughters in Nineteenth Century Canada. P 48. [↑](#footnote-ref-8)
9. Ibid., p 50. [↑](#footnote-ref-9)
10. Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-century Canada*. (Toronto, 1991), p. 52. [↑](#footnote-ref-10)
11. Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada*. (Toronto, 1991), p. 50 [↑](#footnote-ref-11)
12. Carolyn Strange. *Courtship, Love and Marriage in Nineteenth-Century Canada*, (Canadian Journal of Women and Law, 1994), p.35 [↑](#footnote-ref-12)
13. Patrick Brode. *Courted and Abandoned: Seduction in Canadian Law*. (Toronto: University of Toronto Press, 2002), preface x [↑](#footnote-ref-13)