

If we were at liberty to deal with the case at bar on principle and unfettered by authority, I should be prepared to hold, in accordance with the view of the dissenting Judge in *Patterson v. McGregor*, and for the reasons given by him as well as those of Sir Francis Jenne in *Evans v. Evans* and of Mr. Justice Gorell Barnes in *Gardner v. Gardner* . . . that the husband does not forfeit his right to maintain such an action as this by any act or misconduct of his own not amounting to connivance at or consent to his wife's adultery, and that no man can justify himself, when living with another's wife against her husband's consent, by setting up, as an absolute bar and answer to the husband's complaint, that the law can give him no redress because he has totally and permanently given up her society.

We are, however, I think, bound by what was decided in *Patterson v. McGregor*, and must follow it, leaving plaintiff, if he is so minded, to challenge the correctness of the decision in a Court which has the power to overrule it.

Having come to this conclusion, it follows that we must hold that my brother Anglin, in telling the jury, as he did, that, if they came to the conclusion that, before the adulterous intercourse between defendant and plaintiff's wife began, plaintiff had totally and permanently given up all the advantage to be derived from the society of his wife, he was not entitled to recover, rightly directed them.

I come next to the ground taken by defendant's counsel as to the improper reception of evidence.

The evidence which plaintiff was permitted to give, notwithstanding objection to its admissibility, was of rumours of various acts of infidelity committed by his wife with defendant long before they went through the form of marriage at Rochester. My learned brother Anglin admitted the evidence because, in his opinion, though otherwise it would not have been admissible, defendant's counsel "had opened the door" for its admission by asking plaintiff on cross-examination the following questions:—"You heard he (defendant) was paying some attentions to your wife?" "Did you ever go to him and tell him she was your wife?" "Did you write to him and tell him that she was your wife, and that you did not want him to have anything to do with her?"

Plaintiff had stated in his examination in chief, in answer to questions put to him (apparently without objection), that he had heard his wife's name connected with some person "along about the year 1896 or 1897;" that he had heard