

deduction of wages by reason of some alleged fault or wrongdoing, is misconduct such as will permit of the old offence being revived and used to justify dismissal? I think not.

Upon all grounds, I think the decision of the County Court Judge is right.

Appeal dismissed with costs.

FALCONBRIDGE, C.J., and IDINGTON, J., each gave reasons in writing for the same conclusion.

OSLER, J.A.

JANUARY 31ST, 1905.

C.A.—CHAMBERS.

BOULTON v. BOULTON.

*Appeal—Court of Appeal—Delay in Setting down—Extension of Time—Waiver of Right of Appeal—Proceeding in Master's Office—Consent.*

Motion by defendants to extend the time for appealing to the Court of Appeal from order of MEREDITH, C.J. (2 O. W. R. 884) on appeal from Master's report.

W. J. Clark, for defendants.

C. A. Moss, for plaintiff.

OSLER, J.A.—I have read all the papers left with me. The appellants are plainly out of time and in delay in setting down their appeal, and the respondent appears to have proceeded regularly in treating it as an abandoned appeal.

If the delay only were in question, I might have seen my way to relieve the appellants and allow them to set down their appeal for hearing, upon proper terms, notwithstanding the delay. But it appears that since the order appealed from (22nd October, 1903), and under the reference back thereby directed, the parties went into the Master's office, and that the amount due to plaintiff was then settled and arranged by compromise and consent, as shewn by the Master's report of 22nd July, 1904. The appellants now say that this was done without their authority, but that is no part of their reasons of appeal, and indeed could not be. While the Master's report stands, it would seem to be a complete answer to the appeal, and it would, therefore, be useless for me to give the relief now asked.

The motion is, therefore, dismissed, and with costs.