

The defendant has appealed to this Court firstly on the ground that no action lies on such a charge where, as here, the wife is still living with her husband, or where the jury have not found that adultery has been committed.

The first reported case on which the trial Judge relied for the sufficiency of the ground of action is *Winsmore v. Greenbank* (1745), Willes 577. It is cited as still being law in the leading text-books on the subject. See Addison on Torts, 8th ed., p. 858; Clerk & Lindsell on Torts, 3rd ed., p. 5; Pollock on Torts, 9th ed., p. 235; Eversley on Domestic Relations, 3rd ed., p. 175. It is also cited with approval by Armour, C.J.O., in *Bailey v. King* (1900), 27 A.R. 703, at p. 713.

This ground of objection, in my opinion, is not well founded.

The appellant also urges that the two paragraphs above referred to overlap. The first alleges that the defendant enticed away from the plaintiff his wife and procured her to absent herself unlawfully for long intervals from his house and society. The second, that the defendant by his wrongful acts alienated from the plaintiff the affections of his wife and deprived him of her love, services, and society.

For the wrongful acts of the defendant whereby he alienated from the plaintiff the affections of his wife and deprived him of her love, services, and society, the jury have awarded the plaintiff \$1,000. What damage has the plaintiff suffered beyond the loss of his wife's affections, love, services, and society? Nothing more is suggested in the evidence, and it is difficult to imagine any further loss or damage. The first paragraph refers rather to the means used, the second to the damages resulting therefrom. This is dealt with in the case of *Winsmore v. Greenbank*, *supra*, at p. 582. . . .

See also the case of *Metcalf v. Roberts* (1895), 23 O.R. 130, where the cases on the subject are fully discussed.

I am consequently of opinion that the whole damages which the plaintiff can recover are included in the third question, based upon the second paragraph, and that the judgment should be reduced to \$1,000, and that there should be no costs of the appeal.