

finding that there had been no final abandonment nor any final separation between the parties, though they were, no doubt, and had for a long time been, living apart when defendant, supposing that he had the right to do so, and perhaps even ignorant of their former relations, assumed to intermarry with plaintiff's wife. Plaintiff, therefore, had not forfeited the right, whatever may be its value, to complain of the insult and wrong inflicted upon him by the seduction of his wife and of the loss of the matrimonial consortium, all chance of the renewal of which was certainly put an end to by the conduct of defendant, however venial that, in the circumstances, may be thought to have been. Speaking for myself, I agree with the opinion of the dissenting Judge (Wilson, J.) in *Patterson v. MacGregor*, and with his view of the authorities, rather than with that of his learned colleagues, and it may be noted that the Chief Justice (Richards, C.J.), though concurring with Morrison, J., in the disposition of the demurrer, added that in a court of appeal he might, on further consideration, arrive at a different conclusion. The express license of the husband to do the wrong complained of is, of course, a defence, but, unless abandonment, taking place before adultery, can be regarded as amounting, in the circumstances, to connivance or general license to the wife to misconduct herself with any one, it is not, in my opinion, an answer to the husband's action, though it may well "be taken into account as a very important element operating in diminution of the damages." . . .

[Reference to cases cited by Wilson, J., in *Patterson v. MacGregor*, and to *Evans v. Evans*, [1899] P. 195; *King v. Bailey*, 27 A. R. 703.]

Defendant's appeal from the judgment of the Divisional Court must, therefore, be dismissed, because the case could not have been withdrawn from the jury on any such ground, *sc.*, abandonment, as is now contended for.

Plaintiff's cross-appeal from that judgment must also be dismissed because there was a plain miscarriage at the trial in more than one respect. . . .

The appeal and cross-appeal are dismissed with costs.