

rendered for horse hire, etc., and to the sum of \$20 paid out to defendants' men for reloading vessel at request of defendants' agent, making a total of \$176.62, for which I direct judgment to be entered for plaintiff against defendants with costs of the action. And I dismiss defendants' counterclaim without costs.

MAY 26TH, 1906.

C.A.

MILLOY v. WELLINGTON.

Husband and Wife—Criminal Conversation—Action against Seducer—Defence—Abandonment of Wife—License to Commit Adultery—Damages—New Trial—Miscarriage—Appeal.

Upon the settlement of the minutes of the judgment of the Court of Appeal delivered on 23rd February, 1906 (ante 298), it appeared that there had been some misunderstanding as to the terms of the consent on which the Judges composing the Court supposed they were acting, and the terms of the judgment were discussed by counsel before the Court.

E. B. Ryckman and C. S. MacInnes, for defendant.

W. R. Smyth, for plaintiff by revivor.

The judgment of the Court (MOSS, C.J.O., OSLER, GARROW, MACLAREN, MEREDITH, J.J.A.), was delivered by

OSLER, J.A.:—My former judgment is to be considered as withdrawn, and is not to be made use of or referred to by either party in the subsequent proceedings in the case.

We cannot, in my opinion, hold upon the evidence that the deceased plaintiff had lost his right of action. Even if the mere abandonment of the society of the wife or a separation between the husband and wife were a defence in an action of this kind—and it would seem to have been so held on demurrer by a divided court in *Patterson v. MacGregor*, 28 U. C. R. 280—the evidence, fairly read and without resting on any merely isolated expressions, warranted the jury in