

evidence, fairly read, without resting upon isolated expressions, warranted the jury in finding that there had been no abandonment, and that the husband had not in point of law forfeited the right to complain 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 may, in the circumstances, be thought to have been. At the same time it must be said that a verdict for defendant, or a verdict for plaintiff with nominal damages, would have been quite justified by the evidence of plaintiff's conduct towards his wife, and more satisfactory than the extravagant verdict which has been set aside.

As the case stood at the close of the argument, we should have been obliged to dismiss the appeal and plaintiff's cross-appeal; the former because the case could not have been withdrawn from the jury on any such ground, sc., of abandonment, as is now contended for; and the latter because there was a plain miscarriage at the trial in more than one respect, notably by the admission of improper evidence and otherwise, as pointed out in the judgment below directing a new trial, which must have prevented the jury from considering the case in those aspects which invited a verdict for defendant, and which probably led them to assess the damages at a sum which, in the circumstances, cannot but be deemed inordinately large.

Since the judgment in appeal was given, the original plaintiff has died, and the action has been revived under the statute by his administrator. But, even though the principle on which, in that event, damages are to be assessed may not be affected by the death—and I do not say that it is not—it is, or ought to be, hopeless to expect that a jury would look with sympathy upon the claim of a mere representative, more especially when the conduct of the intestate was such as ought to repel it, were he alive to continue the prosecution of the suit.

To put an end to the further litigation of a very painful case, both parties have, since the argument, very reasonably agreed to the suggestion of the Court that the Court may finally dispose of the case and direct judgment for either party as they may think proper.

Upon full consideration of the whole of the facts, we think that justice will be done by directing judgment for plaintiff for \$5 as nominal damages, with all costs of the