

viction or judgment, the prisoner is to be held with a view to further inquiry and the production of evidence which may lead to his discharge or to his being committed for surrender. The practice is defined by Kelly, C. B., in *Ex p. Terrany*, 4 Ex. D. 68: "In a case where there must be further inquiry which requires the continued imprisonment of the party charged, if a habeas corpus be obtained, he is not to be discharged, but should be remanded for the purpose of the further inquiry before a competent authority in order that he may be either put upon his trial or discharged according to the result of the inquiry.

The jurisdiction of the Divisional Court was not questioned, but it is not to be taken that we could act as on an appeal if objection were raised.

We dismissed the application at the close of the argument, but now give our reasons "for the convenience of the profession."

FEBRUARY 23RD, 1906.

C.A.

• MILLOY v. WELLINGTON.

Husband and Wife—Criminal Conversation—Abandonment of Wife—Evidence—Improper Reception—Misdirection—Excessive Damages—New Trial—Appeal from Order Directing—Death of Plaintiff—Revivor—Reduction of Damages—Consent of Parties to Disposal of Case—Nominal Damages—Costs.

Appeal by defendant and cross-appeal by plaintiff from order of a Divisional Court, 4 O. W. R. 82, holding that there was a case proper to be submitted to the jury, but directing a new trial on the ground of improper reception of evidence, misdirection, and excessive damages.

The appeal and cross-appeal were heard by Moss, C.J.O., OSLER, GARROW, MACLAREN, MEREDITH, J.J.A.

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

W. R. Smyth, for plaintiff.

OSLER, J.A.:—We cannot, in my opinion, hold that the deceased plaintiff had lost his right of action. If abandonment of the wife is a defence in an action of this kind, the