

Divisional Court.] MILLOY v. WELLINGTON. [July 15.
*Husband and wife—Divorce—Foreign divorce—Crim. con.—Alienation
 of affections—Damages.*

The plaintiff's wife separated from him with, as was found on the evidence, his consent, and after some years obtained, in the United States, a divorce from him, not valid, according to the law of this Province. She then went through the ceremony of marriage with the defendant, and lived with him as his wife for some years before this action, which was brought to recover damages for criminal conversation and alienation of affections. The latter branch was abandoned at the trial, but on the former the jury allowed \$5,000 damages, and judgment was entered for this sum:—

Held, MACMAHON, J., dissenting, that notwithstanding the separation and the divorce the action lay, but that the damages were grossly excessive, and on this ground, and on the ground of improper reception of evidence, a new trial was granted.

Per MACMAHON, J.: The separation and subsequent conduct amounted to an absolute abandonment of his wife by the plaintiff, and were a bar to the action. Judgment of ANGLIN, J., reversed.

Ritchie, K.C., and *Ryckman*, for appellant. *W. R. Smyth*, for respondent.

MacMahon, J.] [July 20.

ELGIN LOAN, ETC. CO. v. LONDON GUARANTEE CO.
*Guarantee—Condition modifying liability—Necessity to set out in contract
 —Change in nature of business—Liability.*

By s. 144 (I.) of the Insurance Act R.S.O. 1837, c. 203, all the terms and conditions modifying and impairing the effect of an Insurance contract must be set out in full on the face or on the back thereof; otherwise the same shall have no effect; but by sub-s. 1 (a) this is not to exclude the application of the insured from being considered as part of the contract.

Where, therefore, on the application of the manager of a loan company a guarantee agreement was entered into guaranteeing the company against any loss which might be sustained in case of the defalcations of such manager, statements made at the time of the making of the agreement, not by the applicant, but by the president of the company, as to the safeguarding of the funds, and as to there being an effective audit, which, though recited in the agreement, were not set out in full as required, cannot be set up as an answer to a claim under the guarantee.

Where, however, the guarantee provided that any change made in the nature of the business without the guarantee company's consent in writing would vitiate the agreement, and it appeared that the loan company had subsequently obtained a charter enabling them to carry on the business of buying and selling stocks, and pending the issue to them of the required license therefor, and authorized the manager to carry on such business in