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Abstracts of Recent Cases

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committed a culpable act, not the plaintiff's geographical location. *Randall v. Shelton*, 293 S.W.2d 559 (Ky. 1956).

No West Virginia case has been found that would indicate that this state has yet adopted the Restatement view of non-liability for unintentional, non-negligent entries to land. It must be assumed, then, that the strict rule of liability is still applicable in West Virginia. Under this view, even if the defendant in the principal case was not negligent, he would be held strictly liable as a trespasser on the plaintiff's property. His only defense would be that his entry was involuntary—that he was carried onto plaintiff's property against his will by the act of another person.

The adoption of the new West Virginia Rules of Civil Procedure, abolishing the common-law forms of action and providing for a "civil action", has no affect on the outcome of the principal case. It is only matters of form which have been affected by these provisions. The substantial distinctions and the principles of law underlying the common-law forms of action remain, until modified by statute. *North River Ins. Co. v. Aetna Fin. Co.*, 186 Kan. 758, 352 P.2d 1060 (1960). To be entitled to recover the plaintiff need only show that he is possessed of a right which has been violated by the defendant, to the plaintiff's damage.

Thomas Richard Ralston

ABSTRACTS

Domestic Relations—Wife's Action For Loss of Consortium

P's husband was injured in an automobile accident. *P* brought an action for loss of consortium against *D* on the theory that *D* negligently caused the injury to *P's* husband. *D's* motion to dismiss was sustained. *Held*, affirmed. A wife may not maintain an action for loss of consortium of her husband caused by the negligence of the defendant tort-feasor. *Seagraves v. Legg*, 127 S.E.2d 605 (W.Va. 1962).

Note is taken that this is a case of first impression in West Virginia. A discussion of the division of authority on this issue is found in 63 W. VA. L. REV. 186 (1961). The author of that comment pointed out, as did the principal case, that the weight of authority supports the view denying recovery to a wife under such

circumstances. That author also predicted that West Virginia might follow the majority view and deny recovery. The prediction was based partly upon the difinition which the West Virginia court has placed upon the term "consortium". The expression found in *Shreve v. Faris*, 144 W.Va. 819, 111 S.E. 2d 169 (1959), is that consortium is "a right. . .in a husband, arising from the marital union. . . ."

It thus appears that the pronouncement of the principal case fulfills the prediction that West Virginia would follow the majority view in denying the wife's right to maintain an action for loss of consortium of her husband caused by the negligence of a third party.

Domestic Relations—Divorce—Misconduct by the Prevailing Party Before the Entry of the Final Decree

P prevailed in her suit for absolute divorce and an interlocutory decree was entered in accordance with the statutory provisions of the jurisdiction. *P's* husband objected to the entry of the final decree upon learning of *P's* misconduct after the interlocutory decree and before the entry of the final decree. The objection was sustained. *Held*, affirmed. The prevailing party must, after the decision for divorce, continue to comply with allegations of the petition pertaining to his or her conduct until entry of the final decree. *Pakuris v. Pakuris*, 186 A.2d 719 (R.I. 1962).

While the need for such a holding is not doubted, it should be noted that its application may not be of equal importance throughout the various states. Many jurisdictions, such as that of the principal case, have adopted statutory provisions for interlocutory divorce decrees. Annot., 174 A.L.R. 519 (1948). The theory behind such legislation is apparently the desire to afford every opportunity for reconciliation before making the divorce final by decree. Under such statutes, a waiting period is established during which it is hoped that the parties will conclude that the wrong path has been taken and the final decree should not be entered. Some parties will quietly await the passage of the period and seek the final decree. The third group is illustrated by *P* who admitted that she had lived with with another man as his wife during the six months' period. While one is urged to use the period for the purpose of effecting a recon-

McMunn: Abstracts of Recent Cases

ciliation, he is not forced to do so. However, the period cannot be used for acts, such as adultery, which are inconsistent with the allegations of conduct contained in the petition for divorce. Annot., 109 A.L.R. *supra* at 1009; 174 A.L.R. *supra* at 523.

West Virginia, however, has no interlocutory divorce statute. The W.VA. CODE ch. 48, art. 2, § 22 (Michie 1961), establishes a sixty day period after the entry of the decree during which the parties cannot remarry. Although there is apparently no authority in point, it seems that a violation of this section does not affect the finality of the divorce decree. Thus, in West Virginia, a divorce would appear to be final when the decree is signed unless the decree itself has been otherwise conditioned.

There could exist a period between the decision for divorce and the signing of the decree in which the prevailing party could participate in an inconsistant act. This lapse of time may be due to the necessity of having the decree physically prepared for signing resulting in a very short period of time during which the possibility of such an act is quite remote. However, if an attorney is dilatory and does not have the decree prepared and signed until the next day or even later, he may lose his case due to his client's misconduct.

It is submitted that the rule in the principal case is not as applicable, as a practical matter, in West Virginia as in those jurisdictions which have adopted interlocutory divorce statutes. Nevertheless, as a safety precaution one should have the divorce decree prepared and signed as soon as possible for the protection of both the attorney and client.

Practice of Law—Completion of Legal Instruments by One Not an Attorney

P brought a suit to enjoin a private escrow company from preparing conveyances and other specified instruments. *Held*, escrow agents engage in the "practice of law" at any time they exercise discretion in the selection or preparation of an instrument for another, with or without cost, or if they act in an advisory capacity in recommending or designing conveyances as an extra service to customers, but would not be engaging in the practice of law if, as scriveners, they merely fill in blanks in warranty deeds, purchase-money mortgages, satisfactions of mortgages and other such forms as

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may be selected by their customers. *Oregon State Bar v. Security Escrows, Inc.*, 377 P.2d 334 (Ore. 1962).

The issue in this case is the basis of concern throughout the United States. See generally, Annot., 53 A.L.R.2d 788 (1957); 3 MARTINDALE - HUBBELL LAW DIRECTORY 147A (1963); Adler, *Are Real Estate Agents Entitled To Practice A Little Law?*, 4 ARIZ. L. REV. 188 (1963); Marks, *The Lawyers and the Realtors: Arizona's Experience*, 49 A.B.A.J. 139 (1963); 1962 U. ILL. L. F. 457 (1962); 28 UNAUTHORIZED PRACTICE NEWS 357, 409, 413 (1963). Statutes have been enacted, constitutions have been amended, many articles have been written and studies have been made. Even with this wealth of information, the issue is yet unsettled.

In defining the practice of law, the Supreme Court of Appeals of West Virginia clearly established that the preparation of legal instruments constitutes the practice of law and therefore must be done by an attorney. However, no mention is made in the definition as to the matter of "filling in" blanks in legal instruments. Defining the Practice of Law, order of the Supreme Court of Appeals, 3 W.VA. CODE 221 (Michie 1961). Research fails to disclose any West Virginia court interpretation or construction of the definition of the practice of law on this particular point or any definitive position taken thereon by the West Virginia State Bar Committee on Unlawful Practice.

Service of Process—Agent Authorized to Accept Service Must Be Required to Give Notice

P, a corporation whose principal place of business is in New York, leased certain farm equipment to *Ds*, residents of Michigan. The lease provided that one *W* was authorized to accept service of process for *Ds* in New York should *Ds* default under the lease. *Ds* did default and *P* instituted a suit against *Ds* serving *W* with a copy of the summons and complaint. Notice was given to *Ds* by both *W* and *P* although the terms of the lease did not require *W* to do so. *P* appealed from an order quashing service of process. *Held*, affirmed. The FED. R. CIV. P. 4(d)(1) provides for service of process upon an individual by the delivery of a copy of the summons and complaint to an agent authorized by appointment to receive service of process. Although an agent is not required to give notice to the principal when the parties freely contract for such service, the lack

of a provision in the contract requiring such notice may be considered in determining the meaning and effect of the provisions of the contract. In a two to one decision, the court determined that *W* was not in fact designated an agent by *Ds* but was acting under an agreement with and supervision of *P* by virtue of the contract of adhesion. The illusory purported agency provision was thus ineffective to subject *Ds* to suit in New York. *National Equip. Rental, Ltd. v. Szukhent & Szukhent,* 311 F.2d 79 (2d Cir. 1962).

W. VA. R. C. P. 4(d)(1) contains the same language as that of the Federal Rules applied in the instant case. While the West Virginia court is not bound by this decision and apparently has yet to construe the language of Rule 4(d)(1), this holding may be persuasive when the issue is presented.

Under the opinion in the principal case, the omission of the requirement of notice is not alone sufficient to render the service ineffective. The omission only enables the court to look to the full provisions of the contract and if it is discovered that a true agency was not established, the service upon that person will not subject the purported principal to the court's jurisdiction. "Rule 4(d)(1), Federal Rules of Civil Procedure, 28 U.S.C.A., provides for service upon an agent authorized by appointment to receive service of process. 'By appointment' means an actual appointment by the defendant, and, if such has been made, service upon the agent gives the court jurisdiction." *Szabo v. Keeshin Motor Express Co.,* 10 F.R.D. 275, 276 (1950).

Until the West Virginia court decides the issue, it would seem advisable to include a provision making notice essential thereby avoiding the possible result of the principal case should that view be adopted.

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