February 1951

Husband and Wife--Right of Wife to Recover For Loss of Consortium Due to Injury Caused by Negligence

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stocks of goods in bulk without first giving the creditors of the vendor an opportunity to protect themselves. What opportunity or advantage could the lessor have by receiving notice of the sale in advance? The lessee had not broken his lease; his rent was paid in full. On what grounds could the lessor base his complaint in taking any action prior to the sale? There is nothing to show that the rights of the lessor have been prejudiced.

W. W. A.

Husband and Wife—Right of Wife to Recover for Loss of Consortium Due to Injury Caused by Negligence.—An employee of defendant company was injured as a result of its negligence while in its employ. The employee's loss was covered by a compensation act, but his wife sued the company to recover for the loss of consortium as a result of the negligent injuries. Held, on appeal, that a wife has a cause of action for the loss of consortium due to a negligent injury of her husband, that consortium includes not only material services but also love, affection, companionship and sexual relations, and that her recovery is not barred by his receiving benefits under the compensation act. Judgment reversed. Hitaffer v. Argonne Co., 183 F.2d 811 (D.C. Cir. 1950).

This decision is particularly worthy of note because it is only the second case holding that the wife was able to recover for loss of consortium due to a negligent injury of her spouse. The first case to so hold, Hipp v. Dupont de Nemours & Co., 182 N.C. 9, 108 S.E. 318 (1921), was later overruled. Hinnant v. Tide Water Power Co., 189 N.C. 120, 126 S.E. 307 (1925). Although at least one commentator points out that the path is clear for such a recovery by the wife, so far as has been found, the principal case is the only standing decision to permit such action. Harper, Torts 566 (1933).

The weight of authority is overwhelmingly against allowing the wife to recover anything for the loss of consortium as a result of the negligent injury of her husband. Emerson v. Taylor, 133 Md. 192, 104 Atl. 538 (1918); Cravens v. Louisville & N.R.R., 195 Ky. 257, 242 S.W. 628 (1922); Howard v. Verdigris Val. Elec. Co-op., 207 P.2d 784 (Okla. 1949). There is a generally recognized exception to this denial to the wife. When the injury is intentional, such as criminal conversation, adultery or seduction, she has a right of recovery against the offending party. Eschenbach v. Benjamine,
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195 Minn. 187, 263 N.W. 154 (1935); Oppenheim v. Kridel, 236 N.Y. 156, 140 N.E. 227 (1923); Brown v. Kistleman, 177 Ind. 692, 98 N.E. 631 (1912). In allowing recovery in these cases the courts reason that the law by necessity is compelled to follow such policies primarily to inflict heavy damage on the enticer or seducer and that it is punishment rather than compensation. Thus, they are making excuses for the illogical rule of no recovery for the wife's loss of consortium in negligence cases.

When the shoe is on the other foot, that is, when the wife is injured negligently, the husband is permitted to recover for the loss of consortium. Guevin v. Manchester Street Ry., 78 N.H. 289, 99 Atl. 298 (1916); Lansburgh & Bros. v. Clark, 127 F.2d 331 (D.C. Cir. 1942). These decisions are based mainly on the reasoning that the husband is entitled to the wife's services, society and sexual companionship.

Admittedly the weight of authority is that the wife is not entitled to recovery for the loss of consortium due to negligent injuries. Several reasons are assigned. One is that the injury is too remote to be capable of measurement, Fenett v. New York Central R.R., 203 Mass. 278, 89 N.E. 436 (1909); another that it is too indirect a result of the negligent conduct, Giggey v. Gallagher Co., 101 Colo. 258, 72 P.2d 1100 (1937). If it is too remote or indirect as to the wife, then how do courts sustain such illogical reasoning when they allow the husband to recover? Stare decisis alone? That seems to be the basis in at least one case. Sheard v. Oregon Elec. Ry., 127 Ore. 341, 2 P.2d 916 (1931). Another basis is that this would constitute a double recovery, the reasoning being that when the husband in his action gets all his elements of damage the wife is indirectly compensated by receiving the benefits resulting from his legal obligation to support her. Brown v. Kistleman, supra; Bernhardt v. Perry, 276 Mo. 612, 208 S.W. 462 (1919). This is not a double recovery for he could not, as an element of damages, recover for the loss of his wife's right to his society and sexual relations. These are reciprocal rights in the consortium of each other; and if there is a disturbance of such rights, each should have a cause of action. Does the fact that he must support her compensate her for the loss of his society, companionship and procreation? Other cases have held that while the husband bases his claim of loss of consortium on the loss of material services of his wife, the wife has no corresponding right to his services. With this as a starting point the courts rationalize their denial of the wife's action.
for loss of consortium on the theory that loss of sentimental or emotional rights are pecuniarily immeasurable, unless coupled with a right to compensation for material loss. Stout v. Kansas City T. Ry., 172 Mo. App. 113, 157 S.W. 1019 (1913). Right to services is only one element of the right of consortium. Although the term originally meant predominantly services, it has since been recognized to include also, society, companionship and conjugal affection, in short, all the rights of the husband and wife to each other's company, co-operation and aid in every conjugal relation. Bradstreet v. Wallace, 254 Mass. 509, 150 N.E. 405 (1931). This type of reasoning for denying recovery seems too antiquated to be the sole basis of decision.

It is not logical to allow recovery to the husband and deny recovery to the wife, as the majority view allows. The aforementioned reasons were developed in the days when the wife was considered as a chattel and the husband as the lord and master. Another view is that since the wife now has equal rights with the husband due to the emancipation acts, neither shall recover. This is certainly more logical than the inequality of the majority rule. Gearing v. Berkson, 223 Mass. 257, 111 N.E. 785 (1916); Marri v. Stamford Street R.R., 84 Conn. 9, 78 Atl. 582 (1910); Helmsstetler v. Duke Power Co., 224 N.C. 821, 32 S.E.2d 611 (1929); Harker v. Bushouse, 254 Mich. 187, 236 N.W. 222 (1931). However, there is a recognized right in consortium, and with the growth of the equality of women with men, why not permit this as another step in that growth? The flimsiness of the antiquated reasons for holding otherwise has been demonstrated herein, and the principal case seems the fairer modern rule and should be followed.

F. R. S.