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Domestic Relations--Alienation of Affections--Recovery for Partial Alienation--Motive

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v. Carr and Barrett v. Coal Co., supra, on the grounds that it is a working contract, entailing expense of preparation and permitting large expenditures in execution before determination of disputes. Berry v. Temple Association, 80 W. Va. 342, 93 S. E. 355.

—R. M. M.

DOMESTIC RELATIONS—ALIENATION OF AFFECTIONS—RECOVERY FOR PARTIAL ALIENATION—MOTIVE.—A’s wife left him for cause, and was living apart. A was attempting to effect a reconciliation, and B, who was on intimate terms with A’s wife, was partly instrumental in persuading her to seek a divorce. A sues B for alienation of his wife’s affections. Held, A can recover if B prevented a resumption of marital relations. The fact that the wife’s affections were at least partially alienated before B’s intervention does not prevent A’s recovery for partial alienation of his wife’s affections. Rush v. Buckles, 117 S. E. 130 (W. Va. 1923).

This case, while reversed on grounds of error in the trial court, propounds a rule that has been established as law in several other states, under similar circumstances. It is a well-settled rule that a husband can recover from a third party for the alienation of his wife’s affections. Gross v. Gross, 70 W. Va. 317, 73 S. E. 961; Ratcliffe v. Walker, 117 Va. 569, 85 S. E. 575; Nichols v. Nichols, 147 Mo. 387, 48 S. W. 947; Miller v. Pearce, 86 Vt. 322, 85 Atl. 620, 43 L. R. A. (N. S.) 332. And a famous Missouri case is authority for the statement that complete alienation is not necessary but that if the defendant had induced plaintiff’s husband to withdraw from her his support and affection, no secret affection he might still retain for her would defeat her cause of action. Nichols v. Nichols, 147 Mo. 387, 48 S. W. 947. That case, as setting a precedent for the decision in the principal case, is directly in point. A further development of the same general principle is illustrated by the rule that even if the wife had no affection for her husband at the time of the suit, recovery would be allowed, for the defendant should not have interfered to cut off all chance for the husband to revive his wife’s affections. Dallas v. Sellers, 17 Ind. 479, 79 Am. Dec. 489; Van Vocter v. McKillip, 7 Blackf. (Ind.) 578. This rule was quoted with approval by the court of another jurisdiction, which added that “As to the claim that there
is no such a thing as a partial alienation of affections, it is enough to say that experience and observation show the fact to be far otherwise." Fratini v. Caslini, 66 Vt. 273, 29 Atl. 252. The fact that plaintiff was at fault in causing his wife to leave will not prevent his recovery, when defendant prevents a reconciliation. Prettyman v. Williamson, 1 Pennewill (Del.) 224, 39 Atl. 731. Defendant's motive is important in determining liability for alienation of affections. The interference by defendant must be culpable and calculated to produce that result. If defendant is a stranger, there is a presumption of bad notice. But if defendant is a member of the immediate family of plaintiff's wife or husband, malice or bad motive must be proved. Gross v. Gross, supra; Ratcliffe v. Walker, supra. See Schouler, Domestic Relations, 5th ed., 41. The cases cited have, it is apparent, gone much farther than the court found it necessary to go in the principal case, in applying the law in regard to alienation of affections to peculiar facts. Thus the West Virginia court, while its decision in this case is progressive in its nature, does not depart from the path of judicial precedent or advance any doctrine not approved by respectable authority.

—C. L. W.

Evidence—Admissibility to Vary the Plain Meaning of a Word in a Will.—Testator, by his will, gave to his brother, the plaintiff, a farm. Other items of the will were bequests to relatives. The last item directed payment of the residue of the estate to "the above-named legatees." Plaintiff, seeking to share in the residuary estate, offered evidence to prove that testator did not use the word "legatees" in the technical sense, but that when he dictated the will to the scrivener, he had said that the residuary estate should be paid to "the above-named persons." Held, parole evidence of intention of testator was not admissible. Hobbs v. Brenneman, 118 S. E. 546 (W. Va. 1923).

The exclusion of this evidence, together with other evidence showing that it was the intention of the testator to favor the plaintiff in the drawing up of the will, seems to indicate that the decision has defeated the intention of the testator by the application of the strict rule. The court has followed a line of