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Deposition--Scope of Inquiry--Names of Witnesses

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The only prior Ohio law on the point is the case of *Snedaker v. King*,[8] in which an injunction restraining a woman from alienating the affections of the plaintiff's husband was dissolved by the Ohio Supreme Court on the grounds that the injunction was an unfair restriction of the personal freedom of the defendant, would be too difficult to enforce, and would aggravate the estrangement between husband and wife.

The court in the principal case distinguishes it from *Snedaker v. King* on these grounds: first, the injunctions in this case are not permanent but for only six weeks, and hence, the enforcement problem is not so grave as in the *Snedaker* case; second, in this case the injunctions are sought in connection with an action for alimony, and the state is interested in promoting a reconciliation between husband and wife;[9] to aid in the desired reconciliation, the Ohio Legislature has enacted the mandatory six-week waiting period between the issuance of summons and the hearing of the case,[10] and by enjoining the defendants *pendente lite* the court is giving effect to the statutory policy.

No other case has been found in which an injunction was granted restraining a spouse from associating with a third person. In the dissenting opinion of Judge Marshall in *Snedaker v. King*, he implies that had the injunction been sought against the husband, rather than the third party, it should have been denied.[11] In the principal case, however, the granting of the temporary injunctions against both defendants during the pendency of the alimony action seems justified in view of the important public policy of encouraging a reconciliation between the husband and wife and the statutory waiting period enacted to implement that policy.

LARRY A. BROCK

DEPOSITION — SCOPE OF INQUIRY — NAMES OF WITNESSES

The defendant in a personal injury suit was taking the plaintiff's deposition. The plaintiff testified that she was accompanied by her husband and three other couples when the injuries were incurred, but when asked the names and addresses of these other couples, she refused to answer. The notary before whom the deposition was taken then filed a request that the court instruct the plaintiff to answer the question. *Held:* The plaintiff must reveal the names and addresses of these witnesses.[1] The court reasoned

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App. 1923); *Ex parte* Warfield, 40 Tex. Cr. App. 413, 50 S.W 933 (1899). And *see* Hall v. Smith, 80 Misc. 85, 87, 140 N.Y. Supp. 796, 798 (1913).

[8] 111 Ohio St. 225, 145 N.E. 15 (1924)

[9] See KEEZER, MARRIAGE AND DIVORCE 243 (3rd ed. 1946).

[10] See note 1, *supra.*

[11] *See* 111 Ohio St. 225, 244, 145 N.E. 15, 21 (1924); Knighton v. Knighton, 252 Ala. 520, 524, 41 So.2d 172, 175 (1949).

that the question was relevant as seeking information not relating exclusively to the plaintiff's case and not privileged.

The bill of discovery, which originated in courts of chancery, permitted discovery of an opponent's testimony and was by statutes made a part of the practice in common law courts.[2] The courts, in interpreting these statutes, have generally held that their purpose is merely to extend to all courts a practice that formerly existed in equity alone, and that, consequently, the discovery is limited to the obtaining of the opponent's own testimony and can not be used to ascertain his other evidence.[3] As a corollary to this limitation, most courts will not compel a party to disclose the names of his witnesses upon statutory discovery proceedings.[4]

In the leading Ohio case of Ex parte *Schoepf*,[5] the court stated that where the only purpose of an inquiry is to compel a party to disclose before trial the names of his possible witnesses, such inquiry is "clearly incompetent."[6] The court in the principal case, however, contends that this rule has been changed by subsequent Ohio decisions, so that the names of witnesses can be obtained from an adverse party on deposition if such names were known to that party at the time the facts constituting the cause of action occurred. To support this contention the court relies upon In re *Hyde*[7] and In re *Keough*.[8] In those cases the plaintiffs attempted to elicit by subpoena general records of a transit company containing the names and addresses of the operators of company vehicles involved in traffic accidents. In each case the court held that such information, contained in

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[1] Furman v. Central Park Plaza Corp., 102 N.E.2d 622 (Cuyahoga Com. Pl. 1951).

[2] 6 WIGMORE, EVIDENCE § 1856a (3rd ed. 1940). See, *e.g.*, OHIO GENERAL CODE §§ 11348-11350, 11497, 11555.

[3] 6 WIGMORE, EVIDENCE § 1856b (3rd ed. 1940); *Ex parte* Schoepf, 74 Ohio St. 1, 77 N.E. 276 (1906). In equity the bill of discovery was strictly limited to the opponent's own testimony, and he was not required to divulge in advance his evidence in support of his testimony, or to disclose the names of his witnesses. 6 WIGMORE, EVIDENCE § 1856 (3rd ed. 1940).

[4] Kinney v. Rice, 238 Fed. 444 (D.C.Cir. 1916); *Ex parte* Nolen, 223 Ala. 213, 135 So. 337 (1931); Montgomery L. & T. v. Harris, 197 Ala. 358, 72 So. 619 (1916); Wise v. Western Union Tel. Co., 36 Del. Super. Ct. 456, 178 Atl. 640 (1935); State *ex rel.* Evans v. Broaddus, 245 Mo. 123, 149 S.W 473 (1912); Watkins v. Cope, 84 N. J.L. 143, 86 Atl. 545 (1913); *Ex parte* Schoepf, 74 Ohio St. 1, 77 N.E. 276 (1906); Armstrong v. Portland Ry. Co., 52 Ore. 437, 97 Pac. 715 (1908) Yorkshire Worsted Mills v. National Transit Co., 325 Pa. 427, 190 Atl. 897 (1937); *cf.* Penniam v. Jones, 59 N.H. 119 (1879); *contra:* FED. R. CIV. P. 26b; MASS. LAWS c. 231, Sec. 63; McNeil v. Middlesex & B. St. R. Co., 233 Mass. 254, 123 N.E. 676 (1919); SOUTH DAKOTA CODE of 1939 Sec. 36.0505.

[5] 74 Ohio St. 1, 77 N.E. 276 (1906).

[6] It is noteworthy that the court in the *Schoepf* case did not cite any authority to sustain its holding; nor did the court rely on the historical equity practice as did the cases cited in note 4, *supra.*

[7] 149 Ohio St. 407, 79 N.E.2d 224 (1948).

[8] 151 Ohio St. 307, 85 N.E.2d 550 (1949).