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At common law, one spouse could not sue the other in tort because husband and wife were considered as one person.⁴ Statutes, known as "Married Women's Acts," have been passed in all jurisdictions in this country. In general, they allow a wife to sue as if unmarried and to hold property in her own right.⁵ Courts in the majority of states have said that these statutes did not alter the common law view barring suits between husband and wife for personal torts.⁶ Ohio appellate courts followed this view.⁷

In the principal case, however, the Ohio Supreme Court said: "The statutory provisions evince a clear purpose to eliminate the barriers erected by the common law" ⁸ Ohio, in following the minority view, continues the liberal tendency of *Signs v. Signs*.⁹

STANLEY WIENER

ALIENATION OF AFFECTIONS — TEMPORARY INJUNCTION

The plaintiff in an action for alimony and separate maintenance requested temporary injunctions against her husband and another woman to restrain them from "visiting, conversing socially, associating, or meeting" with each other during the statutory¹ six-week waiting period between issuance of summons in the action and hearing of the case on its merits. The court overruled the defendants' demurrers and enjoined both defendants as

N.W. 526 (1932); *Courtney v. Courtney*, 184 Okla. 395, 87 P.2d 660 (1938). See *Thompson v. Thompson*, 218 U. S. 611, 619-624, 31 S.Ct. 111, 113-114 (1910).

⁴ PROSSER, TORTS 898 (1941).

⁵ E.g. OHIO GEN. CODE §§ 8002-1 to 8002-8. See also OHIO GEN. CODE §§ 11245, 11591. See also OHIO CONST. Art. I, § 16.

⁶ *Thompson v. Thompson*, 218 U. S. 611, 31 S.Ct. 111 (1910); *Austin v. Austin*, 136 Miss. 61, 100 So. 591 (1924); *Willott v. Willott*, 333 Mo. 896, 62 S.W.2d 1084 (1933); *Fehr v. General Accident, Fire & Life Assur. Corporation*, 246 Wis. 228, 16 N.W.2d 787 (1944).

⁷ *Tanno v. Eby*, 78 Ohio App. 21, 68 N.E.2d 813 (1946); *Wirtig v. Harter*, 29 Ohio L. Abs. 587 (1939); *Finn v. Finn*, 19 Ohio App. 302 (1924).

The court in *Leonardi v. Leonardi*, 21 Ohio App. 110, 117, 153 N.E. 93, 95 (1925) stated: "None of the sections of the General Code from 7995 to 8004 clearly expresses the intention on the part of the Legislature to abrogate the common law principle that a married woman cannot maintain an action against her husband for a personal injury caused by his neglect; nor does section 11245, General Code, do so. Until the Legislature does so express its intentions, the wife cannot maintain an action against her husband to recover damages for a personal injury caused by his negligent act."

⁸ *Damm v. Elyria Lodge*, 158 Ohio St. 107, 116, —N.E.2d— (1952).

⁹ 156 Ohio St. 566, 103 N.E.2d 743 (1952). Discussed in W.R.U. LAW REV. p. 80 *supra*. "In that case the court refused to follow the rule adopted in the majority of the states that actions are not permissible between parent and minor child for personal torts and recognized instead the tendency of modern decisions to liberalize the rule." *Damm v. Elyria Lodge*, 158 Ohio St. 107, 118, 107 N.E.2d 337 (1952).

requested, for the purpose of furthering reconciliation between the husband and wife by protecting the marital status during the pendency of the action.²

In a majority of jurisdictions in which the question has arisen, the courts have refused to grant an injunction to prevent a third party from alienating the affections of a spouse. In one jurisdiction injunctive relief was denied on the ground that the right to be protected is not a property right; therefore, equity can have no jurisdiction.³ One court held that the injunction should be refused because the decree sought would impose an unfair restriction upon the personal liberty of the defendant by denying him the normal social intercourse of talking to and associating with the plaintiff's spouse.⁴ Three courts reasoned that injunctive relief should be refused because the decree would be too difficult to enforce, and because the injunction would be of little or no benefit in aiding in the reconciliation of husband and wife.⁵ In two cases, the courts held that the plaintiff in seeking a decree for separate maintenance or divorce was, in effect, estopped from invoking equity's jurisdiction for the injunction.⁶

Courts of two jurisdictions have allowed injunctions to prevent a third party from alienating the affections of the plaintiff's spouse.⁷ These courts held that equity has jurisdiction of the subject matter of the action and in a proper case is not powerless to aid in reconciliation of husband and wife by injunctive decree.

¹ "An action for divorce or alimony may not be heard and decided until after the expiration of six weeks from the service of summons or the first publication of notice." OHIO GENERAL CODE § 8003-10 (1951).

² Pashko v. Pashko, 101 N.E.2d 804 (Cuyahoga Com. Pl. 1951).

³ Bank v. Bank, 180 Md. 254, 23 A.2d 700 (1942). Equity's traditional limitation on its jurisdiction to the protection of property rights stems from a dictum of Lord Eldon in *Gee v. Pritchard*, 2 Swanst. 402, 413 (1818). However, courts of equity have always protected some rights of personality under the guise of "property" rights, and the modern trend is toward a more extensive and franker protection of non-property rights. See Chafee, *The Progress of the Law—Equitable Relief against Torts*, 34 HARV. L. REV. 388 (1921); Long, *Equitable Jurisdiction to Protect Personal Rights*, 33 YALE L. J. 115 (1923); Moreland, *Injunctive Control of Family Relations*, 18 KY. L.J. 207 (1930); Pound, *Equitable Relief against Defamation and Injuries to Personality*, 29 HARV. L. REV. 640 (1916); Simpson, *Fifty Years of American Equity*, 50 HARV. L. REV. 640 (1936); Theobald, *Does Equity Protect Property Rights in Domestic Relations*, 19 KY. L.J. 57 (1930).

⁴ Snedaker v. King, 111 Ohio St. 225, 145 N.E. 15 (1924).

⁵ White v. Thomson, 324 Mass. 140, 85 N.E.2d 246 (1949); Hadley v. Hadley, 323 Mich. 555, 36 N.W.2d 144 (1949); Snedaker v. King, *supra* note 4.

⁶ Pearce v. Pearce, 37 Wash.2d 918, 226 P.2d 895 (1951) (temporary injunction for period between interlocutory and final divorce decrees); Knighton v. Knighton, 252 Ala. 520, 41 So. 2d 172 (1949) (permanent injunction in an action for separate maintenance). *Pearce v. Pearce* may be distinguished from the principal case on the ground that the plaintiff requested a complete severing of the marriage bonds by a divorce action.

⁷ Henley v. Rockett, 243 Ala. 172, 8 So.2d 852 (1942); Smith v. Womack, 271 S.W. 209 (Tex. Civ. App. 1925); Witte v. Bauderer, 255 S.W. 1016 (Tex. Civ.