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Real Party in Interest — Mother as Necessary Party in Suit for Wages of Minor — The plaintiff brought suit under the Fair Labor Standards Act for minimum wages, overtime, liquidated damages and attorney's fees, arising from work performed for the defendant by the plaintiff's minor sons. The court held that the plaintiff could bring the action in his own name, since the father is the real party in interest, to recover for the work done by an unemancipated minor. Because of a statute in South Carolina making the wife equal to her husband in the matters of custody and control of services and earnings of minors, the court held further that the mother was also a real party in interest and a necessary party to the action. The plaintiff was directed to amend the complaint to make the mother a party plaintiff. *Constance v. Gosnell*, 62 F. Supp. 253, (1945, South Carolina).

The right of the father to collect the wages of his minor child, as a corollary to his duty to support and provide for the minor, is unquestioned.¹ If the minor is unemancipated, it makes no difference that he contracted to do the work in his own name or on his own terms.²

The status of the mother as a party in interest is not so settled or so clear. At common law the father had the predominate right and the mother's rights were regarded as in abeyance during the father's life.³ She could sue for the child's earnings only in the absence of the father through death or desertion, and where she had the burden of support.⁴

The interesting aspect of this case arises from the statute equalizing the rights of parents with regard to their children in South Carolina, a type of statute which has become more and more common in recent years.⁵ The South Carolina statute interpreted in this case reads as follows:

The husband and wife are the joint natural guardians of their minor children and are equally charged with their welfare and education, and the care and management of their estates; and the wife and husband shall have equal power, rights and duties, and neither parent has any right paramount to the right

¹ *Lessard v. Great Falls Woolen Co.*, 83 N. H. 476, 145 A. 782, 63 A. L. R. 1142, (1929); *Schonberger v. Culbertson et al*, 247 N. Y. S. 180, 231 App. Div. 257, (1931); *Patek v. Plankinton Packing Co.*, 179 Wis. 442, 190 N. W. 920, (1923).

² *Wardrobe v. Miller*, 53 Cal. App. 370, 200 P. 77, (1921); *Darling v. Noyes*, 32 Iowa 96, (1871); *Roxana Petroleum Co. v. Cope*, 132 Okla. 152, 269 P. 1084, 60 A. L. R. 837, (1928).

³ 32 Am. Jur. 599, Par. 11.

⁴ 32 Am. Jur. 599, Par. 11.

⁵ Revised Code of Delaware, (1935), 3576-78; Revised Statutes of Maine, (1944), Chap. 153, Sec. 16-17; Revised Statutes of Missouri, (1939), 375; Pennsylvania Statutes, (Purdon's 1936), Title 48, Sec. 91.

of the other concerning the custody of the minor or the control of the services or the earnings of such minor or any other matter affecting the minor . . . Nothing herein contained shall be construed to relieve the father of his common law obligation to support his children, nor shall it be construed to increase the liability of the mother to support the children.⁶

The court in this case considered that this statute so enlarged the rights of the wife that she became a necessary party to the action. It may be expected however that courts will be reluctant to give such complete effect to this type of statute, especially since it is still true that the father generally supports the family. A number of state courts have held under such statutes that the wife is a proper party to the action for the minor's wages and may be joined in such an action.⁷ The question in this case as to whether the wife is a necessary party appears to have arisen in only one instance, a Minnesota case,⁸ where the Minnesota statute⁹ analagous to the above quoted law of South Carolina was interpreted. In this case the father sued for loss of the services of a child who had been injured. The contention of the defendant that the mother was a necessary party to the action was rejected. The court stressed the fact that the statute made no change in the rule of common law placing the whole burden of support upon the father. In the instant case the South Carolina Court reached the opposite conclusion, even though the statute expressly preserved the common law situation as to the duty of support. It is submitted that the courts generally should not require the wife to be a necessary party unless and until she is placed by statute upon an equal basis with her husband as to the burden of support.

This case also involved the subsidiary question as to whether the liquidated damages provided for by the Fair Labor Standards Act in an amount equal to the unpaid wages were items for which

⁶ Code of Laws of South Carolina, (1942), 8638.

⁷ *Hare v. Dean*, 90 Maine 308, 38 A. 227, (1897); *Thomas v. St. Louis I. M. & S. Ry. Co.*, 180 S. W. 1030, (1915); *Lessard v. Great Falls Woolen Co.*, 83 N. H. 576, 145 A. 782, 63 A. L. R. 1142, (1929).

⁸ *Ackert v. City of Minneapolis*, 129 Minn. 190, 151 N. W. 976 at 978, L. R. A. 1915D, (1915) in which the court says: "Defendant insists that both parents are equally entitled to the custody of them, and that it follows as a consequence that they are jointly entitled to the benefit of the services of the children and must bring a joint action to recover for the loss of such services. This contention is correct to some extent, but we think it was neither the purpose nor the effect of these statutes to make any material change in the duty imposed upon the husband and father to support and maintain his family. . . . Where he in fact performs this duty, we think he may maintain an action to recover for loss of the services of his minor child."

⁹ Minnesota Statutes, (G.S. 1913), 7442. "The father and mother are the natural guardians of their minor children, and, being themselves competent to transact their own business and not otherwise unsuitable, they are equally entitled to their custody and the care of their education."

the father could recover.¹⁰ The classification of this portion of the recovery sought has arisen in several cases under the Fair Labor Standards Act, and it has been held that the liquidated damages provided for are not a penalty, but are in the nature of wages.¹¹ The decisions involved suits in the state courts where the additional amount could not be recovered if a penalty, because jurisdiction in suits for penalties resides exclusively in the federal courts.¹² In these cases the courts held that the added amount was not a penalty and therefore subject to recovery in the state court. Presumably these decisions are authority in support of the right of the father to collect the liquidated damages due the child, and such right of the father was upheld in the instant case.

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¹⁰ 29 U. S. C. A. 216; "Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and an additional amount as liquidated damages."

¹¹ 29 U. S. C. A. 216. Note 4; *Maddox v. Jones*, 42 Fed. Supp. 35 (1941); *La Guardia v. Austin-Bliss Gen. Tire Co.* 41 F. Supp. 678 (1941); *Forsyth v. Cent. Foundry Co.* 198 So. 706, 240 Ala. 277 (1940).

¹² 28 U. S. C. A. 371.

