Pleading - Married Woman's Right to Sue in Her Own Name

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Repository Citation
LaVerne L. Reichow, Pleading - Married Woman's Right to Sue in Her Own Name, 28 Marq. L. Rev. 133 (1944).
Available at: http://scholarship.law.marquette.edu/mulr/vol28/iss2/8

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when the court was given the power to act at all. However, power to act at all has been restricted by Congress. The Norris La Guardia Act has restricted the court to enjoin in circumstances designated in the Act. The limiting of this power of the courts was held to be a valid exercise of the power of Congress, for Congress may within fixed limits give either whole or restricted jurisdiction to the District Courts.

MICHAEI J. PULITO

Pleading—Married Woman’s Right to Sue in Her Own Name.—

Singer v. Singer (14 N.W. (2d) 43, Wisconsin 1944) was an action by Angeline F. Singer, plaintiff, against Anthony A. Singer, Max Singer, and Catherine Fuerstenburg, defendants, to recover for damages sustained by her as a result of a willful conspiracy among the defendants, plaintiff’s husband, his brother, and their employee. Anthony A. Singer, the husband demurred to the complaint. From an order sustaining the demurrer, the plaintiff appealed.

The court held that inasmuch as the statute 246.071 did not give a married woman the right to maintain an action in her own name other than for injury to person or character, or the alienation of her husband’s affections without joining him, she must sue in her husband’s name in an action for conspiracy to injure her marital rights; and that as it was manifest that the husband could not be both plaintiff and defendant in the same action, the cause of action for conspiracy must fail.

The statute 6.0152 which gave women equal rights and privileges was construed as to be limited by the earlier statute allowing women

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1 Wis. Stat. § 246.07 “May sue in her own name. Every married woman may sue in her own name and shall have all the remedies of an unmarried woman in regard to her separate property or business and to recover the earnings secured to her by 246.05 and 246.06, and shall be liable to be sued in respect to her separate property or business, and judgment may be rendered against her and be enforced against her and her separate property in all respects as if she were unmarried. And any married woman may bring and maintain an action in her own name for any injury to her person or character the same as if she were sole. She may also bring and maintain an action in her own name and for her own benefit, for the alienation and the loss of the affection and society of her husband. Any judgment recovered in any such action shall be the separate property and estate of such married woman. Nothing herein contained shall affect the right of the husband to maintain a separate action for any such injuries as are now provided by law.”

2 Wis. Stat. § 6.015 “Women to have equal rights. (1) Women shall have the same rights and privileges under the law as men in the exercise of suffrage, freedom of contract, choice of residence for voting purposes, jury service, holding office, holding and conveying property, care and custody of children, and in all other respects. The various courts, executive and administrative
the right to sue only under certain circumstances. In Singer v. Singer, the construction put upon section 6.015 still allows a woman only the right to sue in her own name for injury to her person and character and the alienation of husband's affection as provided in section 246.07.

At common law there existed a legal unity, with the personality of the wife merged in that of the husband. This conception (exemplified by the rule that the husband had title to the wife's property) was the result of conditions no longer existent. Wisconsin by statutes and decisions is removing legal disabilities of the married woman gradually equalizing her position with that of her husband.

In Wait v. Pierce, the court discussed the contention that section 6.015 was intended to effect the suffrage amendment and to give women equality with men before the law, but not to affect the rights of married women. Referring to the portion of the statute obviously intended for married women, since it concerned rights already held by the feme sole, the court said: "It seems too clear for argument that section 6.015 further modified the rights of husband and wife as they existed at common law and that it was designed to place them on a basis of equality before the law not only in particulars mentioned but in 'all other respects'."

The question in the leading case, whether a married woman has the right to sue in her own name, is one of procedure. In Thompson v. Thompson the right of a married woman to sue in her own name in tort is recognized as set forth in a statute. However, it was held she had no cause of action against her husband in a case of assault and battery as a matter of substantive law.

It would seem that the legislative intent in enacting section 6.015 was to give the wife and husband equality before the law as to the right to sue where there is a cause of action, but not to wholly change the common law relations between them.

In New York, a narrow construction was placed on early statutes affecting women's rights. This was modified in 1937, by Section 57, officers shall construe the statutes where the masculine gender is used to include feminine gender unless such construction will deny to females the special protection and privileges which they now enjoy for the general welfare. The courts, executive and administrative officers shall make all necessary rules and provisions to carry out the intent and purposes of this statute."

Art. IV, Domestic Relations Law, Laws of 1937, c. 669,\(^6\) which clearly expressed the right of a married woman to maintain a tort action in her own name.

The technical distinction made in Singer v. Singer seems out of accord with the legislative intent of Section 6.015 to place women on a basis of equality before the law. If as a practical matter this construction should cause hardship, the legislature should amend the statute giving definite equality as to right to sue similar to that existing in New York.

LAVERNE L. REICHOW.

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Taxation—Immunity of Federal Property from State and Local Taxes.—In reversing a Pennsylvania Supreme Court decision, in United States & Mesta Machine Co. v. County of Alleghany, 64 Sup. Ct. 908,88 L.Ed. 845 (1944), the United States Supreme Court reaffirmed the long standing immunity of federal property from state and local taxes.\(^1\)

In the present case the war department contracted with Mesta Machine Co. for the manufacture of ordnance.\(^2\) Since the plant was not equipped for this type of work, it was agreed that the additional machinery required should be furnished at Government cost and remain the property of the United States. Machinery was to be acquired by Mesta as independent contractor by purchase; Mesta could manufacture it; the government could furnish it. That which was bought or built was inspected and compensated by the government and title was to vest at delivery at site of work and inspection and acceptance. For rental of one dollar the government leased to Mesta

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\(^6\) N. Y. STAT. Art. IV, No. 57, Domestic Relations Law, Laws of 1937. "Right of action by or against married woman and by husband or wife against the other, for torts—A married woman has a right of action for an injury to her person, property or character for an injury arising out of the marital relation, as if unmarried. She is liable for her wrongful or tortious acts, her husband is not liable for such acts unless they were done by his actual coercion or instigation; and such coercion or instigation shall not be presumed, but must be proved. A married woman has a right of action against her husband for his wrongful or tortious acts resulting to her in any personal injury as defined in section 37a of the general construction law, or resulting in any injury to her property, as if they were unmarried, and she is liable to her husband for her wrongful or tortious acts resulting in any such personal injury to her husband or to his property, as if they were unmarried.

\(^1\) McCulloch v. Maryland, 4 Wheat. 316 (1819), which case involved the state's right to tax issues of notes of a bank of the United States. The Court held it a tax on the means of the government to execute one of its powers and the sovereignty of the State did not extend to those means.

\(^2\) Clallam Co. v. United States, 263 U.S. 341, 44 Sup. Ct. 121, 68 L. Ed. 328 (1923). Held that a state could not tax the property of a corporation organized by Federal Government by act of 1918 for production of war materials, the property which is conveyed to it, or bought with money of the United States.