Does the Common Law Doctrine that the Husband is Solely Liable for the Tort of His Wife, Committed in His Presence on the Theory that the Wife was Prima Facie Presumed to be Acting Under His Influence and Coercion, Still Prevail in This State?

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DOES THE COMMON LAW DOCTRINE THAT THE HUSBAND IS SOLELY LIABLE FOR THE TORT OF HIS WIFE, COMMITTED IN HIS PRESENCE ON THE THEORY THAT THE WIFE WAS PRIMA FACIE PRESUMED TO BE ACTING UNDER HIS INFLUENCE AND COERCION, STILL PREVAIL IN THIS STATE?

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Numerous and radical changes have been made in recent years with respect to the legal status of married women when compared with their status as it existed under the Common Law. Some of these changes appear in legislative enactments, others are reflected in judicial decisions. The Common Law theory that the legal status of married women was completely merged in that of their husbands' has been swept aside and married women today are independent agents, exercising their own individual influence without hindrance on the part of their husbands.

In spite of this emancipation of married women, circumstances nevertheless arise involving the husband's liability for the acts of his wife which must be solved without the aid of legislative or judicial precedents, for example: Does the Common Law doctrine which made the husband solely liable for the tort committed by his wife, if committed in his presence on the theory that she was presumed prima facie to be acting under his influence and coercion, still prevail in this state?

While our Supreme Court has never had occasion to pass upon this question, and it is very difficult to find precedents in point in other jurisdictions, nevertheless, in very numerous decisions relating to the husband's liability for the acts of his wife courts have had occasion to use language from which one must draw the necessary inference that the presence of the husband while the wife is committing a tort, providing that she is not acting under his express direction, does not change the rule regarding the husband's liability for his wife's tort. If the husband is exempt from responding for his wife's conduct towards others, no sufficient reason exists why this exemption should not remain in effect where the wife injures others in his presence.
It is an old maxim of the Common Law that "cessante ratione, cessat lex". If we refer back to the Common Law and consider the legal disabilities surrounding a married woman, we will easily understand the reason for the added responsibility and liability of the husband for the acts of his wife. Under the Common Law the husband was the sole master of the personal property of his wife; he was entitled to the rents and profits accruing from her real estate; he could reduce to his possession her choses in action, providing he did so during the lifetime of his wife; she was unable to enter into any contractual relations; she could not sue or be sued. In other words, her legal existence was merged in that of her husband and, as was well stated by the Supreme Court of Kansas, "she was sunk into almost absolute nonentity and rested in almost total disability".

Speaking of the changed conditions of the wife under modern statutes as compared with her legal position under the Common Law, our Supreme Court in the case of Wright Lumber Co. vs. McCord, 145 Wis. 93, uses the following language:

“Our statutes have endowed married women with very full and complete rights, not only as to their separate property, but also as to their liberty of conduct, and have given them practically perfect freedom to deal with property, to contract for their personal services, to conduct their separate business, to bring suit for the enforcement of their rights, and generally to control their own actions without let or hindrance from their husbands. With these rights necessarily come some added responsibilities. Privilege and opportunity always bring with them corresponding duties. When a woman’s personality was considered to be submerged in that of her husband, it might well be held that she should be held to be under no responsibility for her acts; but when she stands on a level with her husband and becomes practically master of her own property and destiny, it seems plain that she must logically be charged with the duties and responsibilities which attend every other free and independent personality in its dealings with its peers. 2 Pomeroy Eq. Jur. (3rd Ed.) Sec. 815."

“If, therefore, the relation of husband and wife has been so changed as to deprive him of all right to her property and to the control of her person and her time, every principle of right would be violated to hold him still responsible for her conduct. If she is emancipated he should not be enslaved.” Martin vs. Robson, 65 Ill. 129.
LIABILITY OF HUSBAND FOR TORTS OF WIFE

If we examine Chapter 108 of the Revised Statutes of Wisconsin, which is entitled "Property. Rights of Married Women," we find that nowhere have the legislatures enacted statutes more sweeping in their innovations and inroads upon the Common Law as it affects married women than has the legislature in Wisconsin. This chapter gives the wife sole ownership and control in and over all of her real and personal property and makes it "not subject to the disposal of her husband". It recognizes the dual personality of husband and wife and a dissolution of such fictitious union of person as existed at Common Law by providing that "any conveyance, transfer or lien executed by either husband or wife to or in favor of the other shall be valid to the same extent as between other persons". It confers upon the wife the right to her individual earnings, freed of disposition or control by her husband. It provides further that the wife may sue and be sued in her own name. It abrogates by express enactment the Common Law doctrine that a husband is liable for the ante-nuptial debts of his wife.

There can be no doubt but that it was the intention of the legislature, when it enacted these various statutes, to completely emancipate the wife from her Common Law disability and at the same time to emancipate the husband from his Common Law responsibility for his wife's conduct. It is also clear in the light of these statutes that there can be no reason for holding a husband responsible for the torts of his wife, even though they be committed in his presence, if he does not participate in them or direct and countenance their commission.

The fundamental reason for holding a husband liable alone for a tort committed by his wife, whether in his presence or in his absence, was the fact that the wife's personality was completely merged in that of her husband and for that reason she could not be sued for her wrong. Under that doctrine, whenever a wife committed a wrong the injured person would be without legal redress unless he could hold the husband responsible for her wrong. Our statutes, as shown above, have removed that disability and have made it possible to sue the wife in her own name. Since the reason for the old Common Law rule has vanished, it follows that the law must be considered as no longer in existence.

In the case of Jones vs. Monson, 137 Wis. 478, in which an action was brought against a husband and wife for depriving the plaintiff of his wife's affections, the Court uses the following language: "We are not familiar with the supposed rule counsel
contends for that a wife is incapable of being guilty of a wrong jointly with her husband, because of the ancient presumption that what a wife does in that regard in the husband's presence or so nearby as to be within his influence, is presumed to be under coercion of his will. That doctrine so far as it existed and is not obsolete, relates to a mere rebuttable presumption, not disability."

This language, while it does not clearly answer the question under discussion, surely throws a doubt on the existence of the old Common Law doctrine that what a wife does in her husband's presence is presumed to be under coercion of his will.

In the case of Huber vs. Seeger, 161 Wis. 135, it was held that a married woman is responsible for a tort committed by her when not under coercion by her husband. This decision amounts to an abrogation of the old Common Law doctrine that the tort of the wife was always the husband's tort, but it does not throw much light on the question under consideration because anyone who coerces another to commit a tort is liable as a matter of law as a joint tort feasor.

Sect. 2969 R. S. of Wis., Subd. 9, provides:

"When an execution shall be issued upon a judgment against husband and wife in any action or proceeding in which they shall have been joined as defendants, to recover damages for any tort committed by the wife alone, it shall be levied upon and satisfied out of the property and effects of the wife only, and the attorney, clerk or other officer issuing execution in any such action, shall endorse thereon a direction to the sheriff or other officer, to collect the same from her property and effects only."

Under this section if one commences suit against the husband and wife for a tort committed by the wife, whether in his presence or not, and recovers judgment against both for the tort of the wife, he is compelled to collect his judgment out of the property of the wife alone. Can it be said then that the plaintiff can circumvent the provisions of this statute by omitting to make the wife a party to the suit where the wife alone commits the tort?

In addition to the enactment of the married women's act and the various decisions of our court regarding the legal status of married women, another step has been taken in the emancipation of women from the legal limitations that have surrounded them in the past. The Constitution of the United States has been amended so as to grant the unlimited right of franchise to all women married or unmarried who are otherwise qualified under
the law to exercise this right. It may seem at first blush that this
is something not germane to this question, but it is safe to assume
that the courts of this country will not close their eyes to the fact
that this constitutional amendment has raised women to a plane
of complete civil and political equality with men. It has not only
given them a voice in the choice of legislators, but has made them
eligible to jury service and made it possible for them to be elected
to any office of honor or trust within the gift of the people.

The foregoing authorities setting forth the constitutional and
statutory provisions, changing the legal status of married women,
as compared with their status under the Common Law, clearly
establishes the fact that the old doctrine which gave rise to the
prima facie presumption that every tort committed by a married
woman in the presence of her husband was committed by his con-
sent and under his coercion and made him solely liable for such
tort, has been abrogated and is no longer the law in this state.