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who reject renvoi, or, for that matter, to some other point equally arbitrary. But given the renvoi approach—which comes nearest to reaching the objective established for conflict principles—there is good reason to advocate the adoption, by interstate and international agreements, of rules defining the point at which the reference may in each particular situation most appropriately be stopped. See Knauth, *Renvoi, etc. in Transportation Law*, 49 COL. L. REV. 1 (1949).

Philip A. Erickson

HUSBAND AND WIFE — RECOVERY BY WIFE FOR LOSS OF CONSORTIUM

Plaintiff's husband, while in defendant's employ, suffered severe and permanent injuries to his body. As a result, plaintiff alleged that she had been deprived of her husband's aid, assistance and conjugal enjoyment. The husband collected an award under the Longshoreman's and Harbor Worker's Compensation Act, the applicable workmen's compensation law for the District of Columbia. The "exclusive liability" section of the act, 44 Stat. 426, 33 U. S. C. A. § 905, provides that the liability under the act "shall be exclusive and in place of all other liability of the employer to the employee . . . husband or wife . . . and anyone otherwise entitled to recover damages from such employer . . . on account of such injury or death." *Held*: a wife has a cause of action for loss of consortium resulting from a negligent injury to her husband. Also, the "exclusive liability" section of the Longshoremen's and Harbor Workers' Compensation Act is not a bar to her action, because: (1) her right is independent, and (2) the section is aimed at, and only bars, derivative suits. *Hitafer v. Argonne Co.* 183 F. 2d 811 (1950); *cert. denied*, 340 U. S. 852, 71 Sup. Ct. 80 (1950).

Case authority against the proposition that a wife has a cause of action for loss of consortium occasioned by the negligent injury of her husband is uniform throughout the nation. *Tyler v. Brown-Service Funeral Homes*, 250 Ala. 295, 34 So. 2d 203 (1948); *Boden v. Del-Mar Garage*, 205 Ind. 59, 185 N. E. 86 (1933); *Feneff v. N. Y. C. and H. R. R.*, 203 Mass. 278, 89 N. E. 436 (1909); *Landwehr v. Barbas*, 241 App. Div. 769, 270 N. Y. Supp. 534 (2d Dept. 1934); *Goldman v. Cohen*, 30 Misc. 336, 63 N. Y. Supp. 459 (1900); *Bernhardt v. Perry*, 276 Mo. 612, 208 S. W. 462, 13 A. L. R. 1320 (1909); and other cases cited 59 A. L. R. 680 (1929).

Various reasons have been assigned for denying the wife this right. Some cases rule that since the wife is not entitled to her husband's services, she has no cause of action, because "material services" is the only compensable element of consortium. *Boden v. Del-Mar Garage, supra*. Some courts, with this

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in mind, have interpreted the Married Women's Emancipation Acts to mean that the husband no longer has a right to his wife's services and therefore, he too cannot recover. *Marri v. Stamford St. R. Co.*, 84 Conn. 9, 78 A. 582, 33 L. R. A. N. S. 1042 (1911); *Harker v. Bushouse*, 254 Mich. 187, 236 N. W. 222 (1931). It may be that the wife is indirectly compensated for loss of services when the husband recovers for his negligently caused injury, since the husband is under a legal duty to support his wife. *Bernhardt v. Perry*, *supra*. Other courts deny the wife the right to recover for loss of consortium because her injuries are considered too remote to be capable of measurement. *Feneff v. N. Y. C. and H. R. Co.*, *supra*; *Goldman v. Cohen*, *supra*.

A wife has been allowed to sue for loss of consortium, however, where the tort was one which required the unlawful participation of the husband, *Swanson v. Ball*, 67 S. D. 161, 290 N. W. 482 (1940), noted 39 MICH. L. REV. 820 (1941), see other cases cited there; *Flandermeyer v. Cooper*, 85 Ohio St. 327, 98 N. E. 102 (1912). Yet where this same interest is invaded by defendant's negligence, the wife has been categorically denied the right. A reason offered for the distinction between wilful and negligent injuries to the husband in those jurisdictions that do recognize consortium as compensable is that in such actions as alienation of affections and criminal conversation the wife is the only person who could sue for the injury because the husband has joined in the wrongful act and cannot then be heard to complain. But where the husband is not a participant in the injurious act, that is, where the suit is based on negligence, to allow the wife the right to sue would give rise to a double recovery. See 5 CORNELL LAW QUARTERLY 171 at 172 (1920). This rationale again presupposes that the services element is the only element capable of being compensated.

While a wife must show loss of services in a consortium action in order to recover, a husband has been allowed recovery where there could be no loss of services because he and his wife were living apart. *Pierce v. Crisp*, 260 Ky. 519, 86 S. W. 2d 293 (1935); *Peak v. Rhyno*, 200 Iowa 864, 205 N. W. 515 (1925). Again, while the wife has been given the half right to recover for wilful invasion of the consortium, the husband has been awarded a complete right and may recover when the injury is intentional, *Pierce v. Crisp*, *supra*, and where it is negligent, *Lansburgh, Inc. v. Clark*, 75 U. S. App. D. C. 339, 127 F. 2d 301 (1942). Yet the interest of the wife in the consortium is co-extensive with that of the husband. *Commercial Carriers, Inc. v. Small*, 277 Ky. 189, 126 S. W. 2d 143 (1936).

The United States Court of Appeals in this case was faced with a new question, never before decided in the District of Columbia circuit. It was committed to the rule that a husband could recover for loss of consortium due to the negligent injury of his wife, *Lansburgh, Inc. v. Clark*, *supra*. With this

rule before the court, the decision seems to be a logical extension of the law of the District despite the denial of the right to the wife in foreign jurisdictions. The wife's right to recover for loss of consortium negligently caused, has been, and is, advocated by legal writers who stress the equal interest of the wife and the husband in the consortium. HARPER, *LAW OF TORTS* (1933) at 566; PROSSER, *TORTS* (1941) at 948; Lippman, *The Breakdown of Consortium* 30 COL. L. REV. 651 at 668 (1930); Holbrook, *The Change in the Meaning of Consortium*, 22 MICH. L. REV. 1 at 8 (1923).

There is now, therefore, an authority in the United States that a wife has a cause of action for loss of consortium due to the negligent injury of her husband by the defendant. Whether this case and its reasoning will be followed in other jurisdictions, or whether the sheer weight of contrary precedents will prevail is a question for each jurisdiction to determine as the problem is raised.

Thomas J. Kelly

ANNULMENT PROCEEDINGS FOR FRAUD — SUFFICIENCY OF PROOF — HOW TO PROVE REFUSAL TO HAVE SEXUAL INTERCOURSE

In an annulment action based on the fraudulent implied promise to have normal sexual relations, plaintiff gave evidence as to all the essential elements of fraud and her son corroborated her as to certain admissions allegedly made by defendant. Husband contended that plaintiff failed to show "other satisfactory evidence" required by § 1143, N. Y. Civil Practice Act. Decree of annulment affirmed. *Held* (4-3): Husband's ignorance of conspicuous scars on wife's body sufficiently corroborated her claim of refusal to have normal relations. *DeBaillet-Latour v. DeBaillet-Latour*, 301 N. Y. 428, 94 N. E. 2d 715 (1950).

This decision presents a timely re-examination of a vital evidentiary factor in many annulment actions. Section 1143 of the Civil Practice Act provides that in an annulment action "the declarations or confessions of either party to the marriage is not alone sufficient as proof, but other satisfactory evidence of the facts must be produced." The statute is but a reiteration of a rule whose origin is in the ecclesiastical court of England. See *Davenbach v. Davenbach*, 5 Paige 554, 555, 28 Am Dec. 443 (N. Y. 1836); see also 2 BURN, *ECCLESIASTICAL LAW* 509; 1 PHILLIMORE, *ECCLESIASTICAL LAW* 640. In 1829 the New York Legislature embodied the rule in the Revised Statutes. Rev. Stat., Part 2, ch. 8, tit. 1, § 36. In 1880 the provision was adopted into the Code of Civil Procedure in § 1753. The present statute represents a repetition without change of that section.

Absence of corroboration is the second most frequently raised defect re-