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that foreign bases be manned in the most efficient manner. It is submitted that questions of discipline, as well as of morale and security, are relevant considerations in this area.

It appears that these decisions could have been avoided by using the Necessary and Proper Clause to sustain military jurisdiction over employees and dependents. The cases seem unfortunate when viewed against the lack of practicable answers to the problem of where these persons will be tried and the unsatisfactory consequences which will probably flow from the adoption of any of the available solutions.

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The Wife's Cause of Action for Loss of Consortium

Prior to 1950 the right of a wife to recover for loss of consortium[1] resulting from the negligent injury of her husband by a third person was not recognized.[2] In that year, however, in the landmark case of *Hitaffer v. Argonne Co.*,[3] the Court of Appeal for the District of Columbia recognized the wife's right to such recovery. This decision has resulted in an extensive reexamination of the question by courts in many other jurisdictions. It is the purpose of this Comment to determine the present status of this right and to examine the bases of the decisions.

The concept of consortium originated in the early common law as a right in the husband to the material services of his wife.[4] With the passage of time, this concept was expanded to include other components of the marriage relation — society, sexual relations, and conjugal affection.[5] At common law the husband's interest was protected against such interferences with the

1. Consortium has been defined as "conjugal fellowship of husband and wife, and the right of each to the company, cooperation, affection, and aid of the other in every conjugal relation." BLACK'S LAW DICTIONARY (4th ed. 1957).

2. See note 15 *infra*.

3. 183 F.2d 811 (D.C. Cir. 1950), cert. denied, 340 U.S. 852 (1950). There were two major holdings of the *Hitaffer* decision — (1) a wife has a cause of action for loss of consortium resulting from negligent injury of her husband by a third person, and (2) that this right was not barred by the "exclusive remedy" provision of the Longshoremen's and Harbor Workers' Compensation Act. The second holding has been overruled subsequently. See note 20 *infra*.

4. See 3 BLACKSTONE, COMMENTARIES *139; Lippman, *The Breakdown of Consortium*, 30 COLUM. L. REV. 651 (1930).

5. See PROSSER, TORTS 683 (2d ed. 1955); Holbrook, *The Change in the Meaning of Consortium*, 22 MICH. L. REV. 1, 2 (1923); Lippman, *The Breakdown of Consortium*, 30 COLUM. L. REV. 651, 662 (1930). These three aspects have been labeled the "sentimental components" of marriage.

marital relationship as enticement, criminal conversation, and alienation of affections.[6] In addition, his interest was afforded protection against tortious physical injury to the wife causing deprivation of her services or society.[7] The common law, however, did not allow recovery for loss of consortium to the wife.[8] The basis for this denial is disputed. One view is that the wife lacked a substantive right.[9] Another view is that although a substantive right did exist, it was held in abeyance because of incapacity to sue in her own name.[10] After the passage of Married Women's Emancipation Acts giving the wife the legal capacity to bring actions in her own name, the rights of both spouses were subjected to a re-examination. Most jurisdictions continued to recognize the husband's right.[11] Some courts, however, reasoning that the action for loss of consortium was based only on the loss of services and that after these Acts the husband was no longer entitled to the services, disallowed his right to recover for loss of consortium caused by physical injury to the wife.[12] As to

6. Tinker v. Colwell, 193 U.S. 473 (1904) (criminal conversation); Multer v. Knibbs, 193 Mass. 556, 76 N.E. 762 (1907) (enticement); Egbert v. Greenwalt, 44 Mich. 245, 6 N.W. 654 (1880) (criminal conversation); Heermance v. James, 47 Barb. 120 (N.Y. 1866) (alienation of affection). See PROSSER, TORTS 684-95 (2d ed. 1955).

7. Brockbank v. The Whitehaven Junction Ry., 7 H. & N. 834, 158 Eng. Rep. 706 (1862). See PROSSER, TORTS § 104 (2d ed. 1955); Holbrook, *The Change in the Meaning of Consortium*, 22 MICH. L. REV. 1, 2 (1923).

8. 1 HARPER & JAMES, TORTS 611, 639 (1956); PROSSER, TORTS 690 (2d ed. 1955).

9. Nash v. Mobile & O.R.R., 149 Miss. 823, 116 So. 100 (1928); Bernhardt v. Perry, 276 Mo. 612, 208 S.W. 462 (1918); Best v. Samuel Fox & Co., [1952] A.C. 716, 2 All E.R. 394; Holbrook, *The Change in the Meaning of Consortium*, 22 MICH. L. REV. 1, 3-4 (1923); Lippman, *The Breakdown of Consortium*, 30 COLUM. L. REV. 651, 664 (1930). And see 3 BLACKSTONE'S COMMENTARIES *142, wherein a reason for this is suggested: "[T]he inferior hath no kind of property in the company, care, or assistance of the superior, . . . and therefore can suffer no loss or injury."

10. The only early authority in favor of the existence of the right is a dictum of Lord Campbell in Lynch v. Knight, 9 H.L. Cas. 577, 589, 11 Eng. Rep. 854, 859 (1861). See Bennett v. Bennett, 116 N.Y. 584, 23 N.E. 17 (1889). See also Hitaffer v. Argonne Co., 183 F.2d 811 (D.C. Cir. 1950): "That these rights existed prior to the passage of the Married Women's Act cannot be doubted. The Act simply removed the wife's disability to invoke the law's protection."

11. Little Rock Gas & Fuel Co. v. Coppedge, 116 Ark. 334, 172 S.W. 885 (1915); Commercial Carriers, Inc. v. Small, 277 Ky. 189, 126 S.W. 143 (1939); Guevin v. Manchester Street Ry., 78 N.H. 289, 99 Atl. 298 (1916). See PROSSER, TORTS 701 (2d ed. 1955). See also RESTATEMENT, TORTS § 693 (1938): "One who by reason of his tortious conduct is liable to a married woman for illness or other bodily harm is subject to liability to her husband for the resulting loss of her services and society, including any impairment of her capacity for sexual intercourse, and for any reasonable expense incurred by him in providing medical treatment."

12. Marri v. Stamford St. R.R., 84 Conn. 9, 78 Atl. 582 (1911); Taylor v. S. H. Kress & Co., 136 Kan. 155, 12 P.2d 808 (1932); Bolger v. Boston Elevated Ry., 205 Mass. 420, 91 N.E. 389 (1910); Blair v. Seitner Dry Goods Co., 184 Mich. 304, 151 N.W. 724 (1915); Helmstetler v. Duke Power Co., 224 N.C. 821, 32 S.E.2d 711 (1945); Martin v. United Electric Rys., 71 R.I. 137, 42 A.2d 897

the wife, the courts generally recognized her right to maintain actions for alienation of affections, enticement, and criminal conversation.[13] In addition, some jurisdictions allowed her to recover against persons who sold habit-forming drugs to her husband.[14] Nevertheless, it was consistently held that the wife had no cause of action for loss of consortium where the husband was injured by a third person.[15]

Notwithstanding the great weight of authority to the contrary, it was held in the 1950 case of *Hitaffer v. Argonne Co.* that a wife had a cause of action for loss of consortium where she was deprived of her husband's assistance, enjoyment, and sexual relations by an injury to his person resulting from the negligence of a third person.[16] Since this decision, the same question has been presented to courts in several other jurisdictions.

(1955); Golden v. R. L. Green Paper Co., 44 R.I. 231, 116 Atl. 579 (1922); Floyd v. Miller, 190 Va. 303, 57 S.E.2d 114 (1950). For further development in Virginia, see Comment, 46 VA. L. REV. 184 (1960).

13. Parker v. Newman, 200 Ala. 103, 75 So. 479 (1917) (alienation of affection); Foot v. Card, 58 Conn. 1, 18 Atl. 1027 (1889) (alienation of affection); Roberts v. Roberts, 230 Ky. 165, 18 S.W.2d 981 (1929) (criminal conversation); Wolf v. Frank, 92 Me. 138, 48 Atl. 132 (1900) (alienation of affection); Bradstreet v. Wallace, 254 Mass. 509, 150 N.E. 405 (1926) (enticement); Oppenheim v. Kridel, 236 N.Y. 156, 140 N.E. 227 (1923) (criminal conversation); Bennett v. Bennett, 116 N.Y. 584, 23 N.E. 17 (1889) (enticement); Rott v. Goehring, 33 N.D. 413, 157 N.W. 294 (1916) (alienation of affection); Newsom v. Fleming, 165 Va. 89, 181 S.E. 393 (1935) (criminal conversation).

14. Flandermeyer v. Cooper, 85 Ohio St. 327, 98 N.E. 102 (1912) (defendant had wilfully sold excessive quantities of harmful drugs to the husband despite the protests of the wife, resulting in husband's confinement in an asylum) Moberg v. Scott, 38 S.D. 422, 161 N.W. 998 (1917) (allowed wife to recover for damages suffered by reason of sale of opium to husband). See 3 RESTATEMENT, TORTS § 697 (1938). Some courts extended this rule to include the sale of intoxicating liquor to the husband. Pratt v. Daly, 55 Ariz. 534, 104 P.2d 147 (1947); Swanson v. Ball, 67 S.D. 161, 290 N.W. 482 (1940). *Cf.* Work v. Campbell, 164 Cal. 343, 128 Pac. 943 (1912) (defendant knowingly made false statements concerning plaintiff's husband which caused her to send him away).

15. Feneff v. New York C. & H. R.R., 203 Mass. 278, 89 N.E. 436 (1909). See cases collected in Annot., 23 A.L.R.2d 1366, 1389 (1952), and cases in footnote 5 of Hitaffer v. Argonne Co., 183 F.2d 811, 812-13, 23 A.L.R.2d 1366, 1367-69 (1950); 3 RESTATEMENT, TORTS § 695 (1938).

The experience of the North Carolina court is interesting. The court first recognized the wife's right (Hipp v. E. I. Dupont de Nemours & Co., 182 N.C. 9, 108 S.E. 318 (1921)), then denied it (Hinnant v. Tide Water Power Co., 189 N.C. 120, 126 S.E. 307, 37 A.L.R. 889 (1925)), and finally resolved the matter by denying it to both spouses (Helmstetler v. Duke Power Co., 224 N.C. 821, 32 S.E.2d 611 (1945)).

The wife's right was recognized in Griffin v. Cincinnati Realty Co., 27 Ohio Dec. 585 (1913); however, the contrary rule was adopted in Smith v. Nicholas Bldg. Co., 93 Ohio St. 101, 112 N.E. 204 (1913).

For other judicial rumblings prior to *Hitaffer v. Argonne Co.*, see McDade v. West, 80 Ga. App. 481, 56 S.E.2d 299 (1949) (evenly divided court) and the dissenting opinions in Bernhardt v. Perry, 276 Mo. 612, 208 S.W. 462, 13 A.L.R. 1320 (1918) and Landwehr v. Barbas, 241 App. Div. 769, 270 N.Y. Supp. 534 (1934).

16. Hitaffer v. Argonne Co., 183 F.2d 811, 23 A.L.R.2d 1366 (D.C. Cir. 1950), cert. denied, 340 U.S. 852 (1950).

In the re-examination of the action for loss of consortium since the decision most jurisdictions have refused to follow the *Hitaffer* decision.[17] However, the wife's cause of action has been recognized by several courts[18] and, in two very recent decisions, by the supreme courts of Michigan[19] and South Dakota.[20] Never-

17. Filice v. United States, 217 F.2d 515 (9th Cir. 1954) (applying California law. *Cf.* Deshotel v. Atchison, T. & S.F. Ry., 50 Cal.2d 664, 328 P.2d 449 (1958)); Seymour v. Union News Co., 217 F.2d 168 (7th Cir. 1954) (applying Illinois law); O'Niell v. United States, 202 F.2d 366 (D.C. Cir. 1953) (applying Maryland law. Compare with Coastal Tank Lines, Inc. v. Canoles, 207 Md. 37, 113 A.2d 82 (1954)); Jeune v. Del E. Webb Const. Co., 77 Ariz. 226, 269 P.2d 723 (1954); Deshotel v. Atchison, T. & S.F. Ry., 50 Cal.2d 664, 328 P.2d 449 (1958); Franzen v. Zimmerman, 127 Colo. 320, 256 P.2d 897 (1953); Ripley v. Ewell, 61 So.2d 420 (Fla. 1952); LeEace v. Cincinnati, N. & C. Ry., 249 S.W.2d 534 (Ky. 1952); Coastal Tank Lines, Inc. v. Canoles, 207 Md. 37, 113 A.2d 82 (1954); Don v. Benjamin M. Knapp, Inc., 200 N.Y. 675, 117 N.E.2d 128 (1954), affirming 281 App. Div. 892, 893, 119 N.Y.S.2d 800, 801 (1953); Passalacqua v. Draper, 279 App. Div. 660, 107 N.Y.S.2d 812 (1951), reversing 199 Misc. 827, 104 N.Y.S.2d 973 (1951); Larocca v. American Chain & Cable, 23 N.J. Super. 195, 92 A.2d 811 (1952); Nelson v. A. M. Lockett & Co., 206 Okla. 334, 243 P.2d 719 (1952); Ash v. S. S. Mullen, Inc., 43 Wash.2d 345, 261 P.2d 118 (1953); Nickel v. Hardware Mutual Casualty Co., 269 Wis. 647, 70 N.W.2d 205 (1955); Best v. Samuel Fox & Co., [1952] A.C. 716; [1952] 2 All E.R. 394; [1951] 2 K.B. 639, [1951] 2 All E.R. 116; [1950] 2 All E.R. 798 (Leeds Assizes).

The following decisions, although refusing to recognize the wife's cause of action, expressed an attitude sympathetic to the view of the *Hitaffer* decision. Kronenbitter v. Washborn Wire Co., 5 Misc.2d 961, 159 N.Y.S.2d 739 (1957) (court indicated it thought rule was illogical and an anachronism and stated it would be inclined to follow the trend since *Hitaffer*); Lurie v. Mammone, 200 Misc. 320, 107 N.Y.S.2d 182 (1951); Garrett v. Reno Oil Co., 271 S.W.2d 764 (Tex. Civ. App. 1954).

Compare the plight of the federal courts sitting in diversity cases. In Werthan Bag Corp. v. Agnew, 202 F.2d 119 (6th Cir. 1953), although much impressed with the reasoning of the *Hitaffer* decision, the court felt that it was not free to declare the law of Arkansas to be contrary to the overwhelming weight of state court authority. *But cf.* Missouri Pacific Transportation Co. v. Miller, 227 Ark. 351, 299 S.W.2d 41 (1957) (Arkansas court recognized the wife's action). See Josewski v. Midland Constructors, Inc., 117 F. Supp. 681 (D. S.D. 1953). The court stated that *Hitaffer* may be the beacon, but that the light must first be seen by the state courts if the ruling was to be recognized in the federal courts outside the District of Columbia. That the South Dakota court saw the light, see Hoekstra v. Helgeland, 98 N.W.2d 699 (S.D. 1959), *Cf.* Cooney v. Moomaw, 109 F. Supp. 448 (D. Neb. 1953), holding that the law of Nebraska would recognize the wife's right.

18. Cooney v. Moomaw, 109 F. Supp. 448 (D. Neb. 1953), noted in 41 GEO. L.J. 443 (1953) (applying Nebraska law); Missouri Pacific Transportation Co. v. Miller, 227 Ark. 351, 299 S.W.2d 41 (1957), noted in 57 COLUM. L. REV. 902 (1957) and 18 U. PITT. L. REV. 842 (1957); Brown v. Georgia-Tennessee Coaches, Inc., 88 Ga. App. 519, 77 S.E.2d 24 (1953), noted in 1 U.C.L.A. L. REV. 223 (1954) and 23 U. CIN. L. REV. 108 (1954); Acuff v. Schmitt, 248 Iowa 272, 78 N.W.2d 480 (1956), noted in 42 IOWA L. REV. 634 (1957) and 55 MICH. L. REV. 721 (1957).

Lower courts in two states have recognized the wife's right, but were later overruled on appeal. Deshotel v. Atchison, T. & S.F. Ry., 319 P.2d 357 (Cal. App. 1957), rev'd, 50 Cal.2d 664, 328 P.2d 449 (1958); Passalacqua v. Draper, 199 Misc. 827, 104 N.Y.S.2d 973 (1951), rev'd, 279 App. Div. 660, 107 N.Y.S.2d 812 (1951).

19. Montgomery v. Stephen, 101 N.W.2d 227 (Mich. 1960).

20. Hoekstra v. Helgeland, 98 N.W.2d 669 (S.D. 1959). A significant aspect of this case which is outside the scope of this Comment is the disposition of the wife's claim for loss of consortium after the death of the husband. The court

theless, it appears that the majority rule today is that the wife has no cause of action for loss of consortium where the husband is injured by a third person.

Under the Louisiana jurisprudence neither spouse has been allowed recovery for loss of consortium by reason of enticement and alienation of affections or of physical injury to the spouse. In the leading case of *Moulin v. Monteleone*,[21] the Louisiana Supreme Court held that there was no action for alienation of affections in Louisiana. Although this case involved only an action for alienation of affections, the court stated that there is no cause of action for the loss of the companionship, services, and

denied recovery on the ground that the wrongful death statute was the exclusive remedy of a spouse after the other's death.

It can be seen that if an action for negligent impairment of the consortium is recognized by the courts, there develops a problem of reconciling this action with existing statutory remedies such as the Workmen's Compensation Acts and the Wrongful Death Statutes. As a general rule, the courts have held that the remedy provided by the Workmen's Compensation Act is exclusive and have denied the right to a spouse to recover for loss of consortium. Smither & Co. v. Coles, 242 F.2d 220 (D.C. Cir. 1957), cert. denied, 354 U.S. 914 (1957); Thol v. United States, 218 F.2d 12 (9th Cir. 1954); Underwood v. United States, 207 F.2d 862 (10th Cir. 1953); Hartman v. Cold Spring Granite Co., 247 Minn. 515, 77 N.W.2d 651 (1956); Bevis v. Armco Steel Corp., 156 Ohio St. 295, 102 N.E.2d 444 (1951); Napier v. Martin, 194 Tenn. 105, 250 S.W.2d 35 (1952); Garrett v. Reno Oil Co., 271 S.W.2d 764 (Tex. Civ. App. 1954); Ash v. S. S. Mullen, Inc., 43 Wash.2d 345, 261 P.2d 118 (1953); Guse v. A. O. Smith Corp., 260 Wis. 403, 51 N.W.2d 24 (1952). See 2 LARSON, WORKMEN'S COMPENSATION LAW § 66.20 (1952).

The *Hitaffer* case has since been overruled insofar as it held that the wife would not be barred from bringing an action against his employer for loss of her husband's consortium. Smither & Co. v. Coles, 242 F.2d 220 (D.C. Cir. 1957), cert. denied, 354 U.S. 914 (1957). This result is probably sound in view of the compromise nature of the workmen's compensation acts and the pervasive statutory scheme of regulating these actions. See 2 LARSON, WORKMEN'S COMPENSATION LAW § 66.20 (1952).

A similar result has been reached with respect to the exclusiveness of the remedy provided by the wrongful death statute on the ground that at common law there could be no recovery for the death of a human being. Graham v. Central of Georgia Ry., 217 Ala. 658, 117 So. 286 (1928); Long v. Morrison, 14 Ind. 595, 77 Am. Dec. 72 (1860); Rogers v. Fancy Farm Telephone Co., 160 Ky. 841, 170 S.W. 178 (1914). See RESTATEMENT, TORTS § 694, comment (e) (1938); HARPER & JAMES, TORTS 637 (1956).

The result here is not too inequitable in those states which allow the surviving spouse to recover for loss of affection, e.g., Mississippi: Delta Chevrolet Co. v. Waid, 211 Miss. 256, 51 So.2d 443 (1951). However, in those jurisdictions where recovery is limited to pecuniary loss, the effect of this rule is to decrease the liability of the defendant who manages to kill the spouse instead of maiming him for life. In Alexander v. Botkins, 329 S.W.2d 530 (Ark. 1959), the Arkansas court refused to follow the general rule and allowed a wife to recover for loss of consortium in addition to her remedy under the wrongful death statute. And see criticism of the majority rule in Comment, 30 IND. L.J. 276, 283 *et seq.* (1955).

21. 165 La. 169, 115 So. 447 (1928). *But see* Hennessey v. Wahlig, 155 La. 465, 99 So. 405 (1924), in which an action for alienation of affections was apparently recognized. In Gaines v. Poindexter, 155 F. Supp. 638 (W.D. La. 1957) the federal district court held that an action for alienation of affections which arose in Texas would not be enforceable in a federal court sitting in Louisiana in view of the fact that such an action was opposed to the public policy of Louisiana.

support of any person except insofar as Article 2315 of the Louisiana Civil Code expressly granted a cause of action for wrongful death to relations therein enumerated.[22] Since the *Moulin* decision, the courts of appeal and the federal courts have followed the broad rule there enunciated and have denied any recovery for loss of consortium resulting from the negligent injury of a spouse.[23] It can be seen that Louisiana takes a position quite similar to that taken by those jurisdictions which have denied either spouse the right to recover for loss of consortium by reason of physical injury to the spouse.[24] It is submitted, however, that this particular question has never been passed on definitively in Louisiana. This writer has found no reported case in which the Louisiana Supreme Court has decided the particular issue. The decisions of the Louisiana courts of appeal and the federal courts denying such an action are apparently grounded on *Moulin v. Monteleone*.[25] However, as that was an action for alienation of affections many of the reasons advanced for denying that cause of action, such as the punitive nature of the damages in an action for alienation of affections and the tendency of recognition of the action to encourage blackmail, are inapplicable to the situation involving physical injury to the spouse. In addition, one of the reasons given in the *Moulin* decision was that since the action at common law was based on the husband's right to the wife's services and since the husband had no such right in Louisiana, the action should be denied. As with the common law jurisdictions which retracted the husband's cause of action arising from physical injury to the wife after the passage of the Married Women's Acts, this rationale overlooks the fact that the service aspect became only one of the elements of consortium as the common law developed.[26]

In denying the wife recovery for loss of consortium, the

22. Moulin v. Monteleone, 165 La. 169, 178, 115 So. 447, 451 (1928).

23. Rollins v. Beaumont — Port Arthur Bus Lines, 88 F. Supp. 908 (W.D. La. 1950) (citing no cases); Grier v. Tri-State Transit Co., 36 F. Supp. 26 (W.D. La. 1940) (citing Moulin v. Monteleone); Bea v. Russo, 21 So.2d 530, 533 (La. App. 1945) ("His claim for damages on account of loss of consortium of his wife cannot be allowed in view of the present state of our jurisprudence which does not allow or sanction an estimation of such value in monetary terms." Citing no cases.).

However, the husband as head and master of the community has been allowed to recover medical expenses (Chase v. Burley, 76 So.2d 587 (La. App. 1954)), loss of the wife's earnings (Hollinquest v. Kansas City So. Ry., 88 F. Supp. 905 (W.D. La. 1950)), and the actual costs of a servant hired to perform the wife's household duties (Lively v. State, 15 So.2d 617 (La. App. 1943)).

24. See cases in note 12 *supra*.

25. See cases in note 23 *supra*.

26. See PROSSER, TORTS 704 (2d ed. 1955).

Anglo-American courts have advanced several reasons for their decision. First, it has been said that the injury to the wife is too indirect and too remote.[27] However, as the loss to a wife would seem to be no less than the judicially recognized loss to a husband, this reason would seem to be without merit. Second, recovery has been denied the wife on the ground that the cause of action is based upon the loss of the services of the spouse and that as the wife has no right to the services of her husband, she has no action for loss of consortium.[28] This view, however, is subject to the criticism that although this aspect of consortium may have been exclusive at one time, it has come to be merely an excuse for granting recovery for the so-called sentimental aspects of consortium — society, sexual relations, and conjugal relations.[29] Third, recovery has been denied on the ground that recovery is a matter of policy which belongs in the realm of legislative action.[30] This argument, however, would seem to lose much of its cogency when viewed in the light of the historical development of the common law and of the judicial policy of expanding the law as the needs of society dictate. A fourth reason for denying the wife recovery rests on the view that judicial recognition of a cause of action would have an adverse effect on prior compromises and settlements with the husband.[31] However, it would appear that any undue detriment would be mitigated by the existence of statutes of limitations and the probability that the wife's loss of consortium was not included in the settlement.

It would appear that the most convincing reason for denying the wife's right to recover would be fear of a double recovery.[32]

27. Brown v. Kistleman, 177 Ind. 692, 98 N.E. 631 (1912); Feneff v. New York C. & H.R. R.R., 203 Mass. 278, 89 N.E. 436 (1909); Smith v. Nicholas Bldg. Co., 93 Ohio St. 108, 112 N.E. 204 (1913).

28. Boden v. Del-Mar Garage, Inc., 205 Ind. 59, 185 N.E. 860 (1933); Cravens v. Louisville & N. R.R., 195 Ky. 257, 242 S.W. 628 (1922); Stout v. Kansas City Terminal R.R., 172 Mo. App. 113, 157 S.W. 1019 (1913).

29. See PROSSER, TORTS 704 (2d ed. 1955).

30. Deshotel v. Atchison, T. & S.F. Ry., 50 Cal.2d 664, 328 P.2d 449 (1958); Franzen v. Zimmerman, 127 Colo. 320, 256 P.2d 897 (1953); Ripley v. Ewell, 61 So.2d 420 (Fla. 1952); Larocca v. American Chain & Cable, 23 N.J. Super. 195, 92 A.2d 811 (1952); Nelson v. A. M. Lockett Co., 206 Okla. 334, 243 P.2d 719 (1952); Garrett v. Reno Oil Co., 271 S.W.2d 764 (Tex. Civ. App. 1954); Nickel v. Hardware Mutual Casualty Co., 269 Wis. 647, 70 N.W.2d 205 (1955).

31. Deshotel v. Atchison, T. & S.F. Ry., 50 Cal.2d 664, 328 P.2d 449 (1958); Ripley v. Ewell, 61 So.2d 420 (Fla. 1952); Coastal Tank Lines, Inc. v. Canoles, 207 Md. 37, 113 A.2d 82 (1954); Garrett v. Reno Oil Co., 271 S.W.2d 764 (Tex. Civ. App. 1954).

32. See Deshotel v. Atchison, T. & S.F. Ry., 50 Cal.2d 664, 328 P.2d 449 (1958); Giggey v. Gallagher Transp. Co., 101 Colo. 258, 72 P.2d 1100 (1937); Tobiassen v. Polley, 96 N.J.L. 66, 114 Atl. 153 (1921); Nickel v. Hardware Mutual Casualty Co., 269 Wis. 647, 70 N.W.2d 205 (1955).

If the husband sues, he will recover for his own injuries, his loss of earning capacity, and his loss of ability to support his wife. Theoretically this does not include damages for the wife's loss of consortium. However, it may be that the courts fear that the jury in fixing the damages will take the marital status of the husband into consideration and will include in the award compensation for the wife's loss. Consequently, to allow the wife to recover in her own right would result in an overpayment to the wife. It may be that this objection could be met by proper instructions to the jury and appellate review A better solution, however, would appear to be to require that the wife join in the same suit with the husband.[33] Through this method both causes of action would be decided at the same time and there would be less likelihood of the wife's recovering twice.

In light of the status of a married woman in today's society, it seems difficult to justify the unequal result reached by the majority position. Even after the *Hitaffer* decision paved the way for recognition of a right in the wife, the courts have generally been unwilling to extend protection to her interest. In view of this, it would appear that recognition of her right may have to come by way of legislative action.

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33. See, e.g., Pennsylvania statute "Whenever injury, not resulting in death, shall be wrongfully inflicted upon the person of the wife, and a right of action for such wrongful injury accrues to the wife, and also to the husband, these two rights of action shall be redressed in only one suit brought in the names of the husband and the wife." PA. STAT. ANN. tit. 12, § 1621 (1953). The effect of this section has been suspended by Rule 2250 of the Pennsylvania Rules of Civil Procedure.