

1934

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Recommended Citation

LIMITATION OF ACTIONS-HUSBAND AND WIFE-SUSPENSION OF THE STATUTE OF LIMITATIONS DURING COVERTURE, 33 MICH. L. REV. 129 (1934).

Available at: <https://repository.law.umich.edu/mlr/vol33/iss1/15>

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LIMITATION OF ACTIONS—HUSBAND AND WIFE—SUSPENSION OF THE STATUTE OF LIMITATIONS DURING COVERTURE—Plaintiff sued in equity to recover for services rendered to her deceased husband for a period of six years prior to her marriage to him. Defendant, the executor of decedent, contended that she could not recover the portion of her claim which represented wages earned more than six years before a claim was filed with the estate. *Held*, the statute of limitations does not run on the claim of one spouse against the other during the continuance of the marital state, irrespective of whether the claim arose before or during coverture. Therefore, plaintiff could now recover for the six year period immediately preceding her marriage to decedent. *Morris v. Pennsgrove National Bank & Trust Co.*, (N. J. Eq. 1934) 170 Atl. 16.

Although at common law husband and wife could not contract with each other, this rule has been changed in many States by the Married Women's Acts.¹ In equity the courts always have recognized the right of the wife to con-

¹ See cases cited in I SCHOULER, MARRIAGE, DIVORCE, SEPARATION, AND DOMESTIC RELATIONS, 6th ed., p. 546, n. 81 (1921). These acts take various forms. Some expressly authorize husband and wife to contract with each other (*Glas v.*

tract with her husband.² As for debts owed by a man to a woman, the well-settled law was that the indebtedness was extinguished by their marriage.³ Similarly, marriage effected a discharge of the debt of the woman to the man.⁴ However, the Married Women's Acts have altered this rule also, so that generally today the marriage does not destroy the debt.⁵ Although this is true, a new difficulty presents itself in the form of the statute of limitations when the creditor sues the debtor or the latter's representative, after termination of coverture by divorce or death. There is not a little authority to support the proposition that the statute forms an effective bar to the action in such a case.⁶ On the other hand, just as many courts have held with the court in the instant case that the statute does not run against claims existing between husband and wife during the continuance of coverture.⁷ These latter courts place their stand upon grounds of public policy, which frowns upon controversies between husband and wife and considers them productive of domestic discord.⁸ A distinction has been drawn between antenuptial and postnuptial contracts. If the contract is of the former sort, it has been held that the subsequent marriage does not interrupt the running of the statute.⁹ Nevertheless, a substantial number of courts hold that even when the contract is antenuptial, coverture suspends the operation of the statute.¹⁰ The court in the present case felt that the latter view was more

Glas, 114 Cal. 566, 46 Pac. 667, 55 Am. St. Rep. 90 (1896)); some provide that a wife may contract with respect to her separate property as if sole (In re Deane's Estate, 126 Iowa 701, 102 N. W. 825, 106 Am. St. Rep. 374 (1905)).

² Collins v. Babbitt, 67 N. J. Eq. 165, 58 Atl. 481 (1904); Spitz's Appeal, 56 Conn. 184, 14 Atl. 776, 7 Am. St. Rep. 303 (1888).

³ See note in 21 L. R. A. (N. S.) 683 (1909).

⁴ See note in 16 Ann. Cas. 221 (1910).

⁵ See cases cited in footnote in 13 R. C. L. 1358 (1916). Tennessee still preserves the old common law rule. See Schilling v. Darmody, 102 Tenn. 439, 52 S. W. 291, 73 Am. St. Rep. 892 (1899).

⁶ Graves v. Howard, 159 N. C. 594, 75 S. E. 998, Ann. Cas. 1914C 565 (1912); In re Deane's Estate, 126 Iowa 701, 102 N. W. 825, 106 Am. St. Rep. 374 (1905); Gray v. Gray, 13 Neb. 453, 14 N. W. 390 (1882); Muus v. Muus, 29 Minn. 115, 12 N. W. 343 (1882).

⁷ Hamby v. Brooks, 86 Ark. 448, 111 S. W. 277 (1908); Metlar v. Williams, 86 N. J. Eq. 330, 97 Atl. 961 (1916); In re Brundage's Estate, 185 Wis. 558 at 565, 201 N. W. 820 at 823 (1925). See also cases cited in 19 Am. & Eng. Encyc. of Law 186, n. 1 (1901).

⁸ Some few cases which are in accord with the principal case give as their reason the fact that a wife cannot sue her husband during the existence of the marital relation. Such reasoning has little to recommend it, since in most States married women's procedural disabilities have been removed.

⁹ Charmley v. Charmley, 125 Wis. 297 at 307, 103 N. W. 1106 at 1109 (1905); Enwright v. Griffith, 169 Wis. 284 at 286, 172 N. W. 156 at 157 (1919). The reason for the different rule in this type of situation is the familiar one that once the statute starts running, it will continue over subsequent disabilities and intermediate acts and events. 17 R. C. L., sec. 188, pp. 825-827 (1917), and cases cited there in footnotes.

¹⁰ Stockwell v. Stockwell's Estate, 92 Vt. 489 at 496, 105 Atl. 30 at 33 (1918); Fourthman v. Fourthman, 15 Ind. App. 199, 43 N. E. 965 (1896).

sound.¹¹ If it is conceded that a court has power to create an "implied exception" to the generalized provisions of limitation acts,¹² the special factors of policy existing in the marriage field would seem amply to justify the result reached in the principal case.

M. C. D.

¹¹ *Morris v. Pennsgrove Nat. Bank & Trust Co.*, (N. J. Eq. 1934) 170 Atl. 16 at 18. Vice-Chancellor Sooy says, ". . . this argument [based on the fact that the contract was made prior to coverture] is unsound because the thing the court was seeking to prevent was domestic infelicity, arising out of litigation during coverture, and it makes no difference whether the contract which gave rise to the suit was made before or after marriage."

¹² Dawson, "Undiscovered Fraud and Statutes of Limitation," 31 MICH. L. REV. 591 at 595 (1933).