

The Salvaging Of Civilization

THE PROBABLE FUTURE OF MANKIND
BY H. G. WELLS

I ask the reader to detach himself from these present conflicts of natural politics of political parties, and of the class war, as completely as he can, then to play such a part in them regardless of any other consideration as may be most conducive to a wide-thinking, wide-ranging education upon which we can base a new world order.

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Thousands reported to be dying of famine in Kiev.

THE MAGUIRE APPEAL CASE

(Continued from Page 1.)
ducing and harboring, alienation, and criminal conversation, is loss of consortium.

Mr. Cunningham's Contentions.
Mr. Cunningham, for the respondent, contends that the gist of the action of criminal conversation is not merely loss of society, affection, comfort and services of the wife, but is the invasion of the plaintiff's exclusive right of intercourse, entitling him to additional compensation for the insult to which he has been submitted by the corruption of his wife, and he relies for this proposition on the cases of *Bailey v. King*, 27 A.R. 703, at 712 and 714, in appeal 21 S.C.R. 333; and on C.V.D., 8 O.L.R. 308, at 316, in appeal, 12 O.L.R. 24.

The precise point raised here was not, I think, raised in any of these cases, but a perusal of the opinions in these and the *Butterworth* case will show that there has been much difference of judicial opinion, and that the law is not as clear and well settled as it might be. In the *Bailey* case, *Moss, J. A.*, at page 712, says: "It has long been the law that if a wife is separated from her husband without his consent, and while separate is guilty of adultery, the adulterer is liable to the husband. This is upon the ground that the action does not rest upon the deprivation of the wife's affections, society and services, though this may properly be shown in aggravation of the damages, but upon the injury done to the husband by the defilement of his wife, the invasion of his exclusive right to marital intercourse, and the consequences resulting therefrom." while *Armour, C.J.O.*, at p. 714, says:

"The cause of action for enticing away a wife is essentially different from the cause of action for criminal conversation with a wife. The former is brought on the assumption of the wife's innocence, for the purpose of procuring her return to her husband and for damages for his temporary loss of consortium, and every day she is procured from her husband a new tort is committed by the enticer."

In C.V.D., *Meredith, C.J.* (now C.J.O.), reviewed the authorities including the *King* case, and at page 316, says:

"It is apparent from these observations, I think, that the view of the learned President was that the gist of the action of criminal conversation is not merely the loss of the society, comfort and assistance of the wife, but that it includes also the wrong done by the intolerable insult to which he has been subjected by the corruption of his wife."

Each a New Wrong.

The question in the *King* case was whether or not the Statute of Limitations applied, and the court held that each act of adultery was a new wrong, and afforded a new case of action.

In the C. v. D. case the court held that although the plaintiff's wife had left him and had been for ten years separated from him, during which time she had obtained a divorce in the United States, which the court held to be invalid, and had married the defendant, yet because the plaintiff had not abandoned her, and had not relinquished his right of consortium, the plaintiff had a good cause of action, but in neither judgment was it, I think, necessary for the decision, or was it expressly decided that the gist of the plaintiff's action was not loss of consortium.

In the C. v. D. case, the trial judge, *Anglin, J.*, told the jury that if they came to the conclusion that before the adulterous intercourse the plaintiff had totally and permanently given up all the advantages to be derived from the society of his wife, he was not entitled to recover, and the divisional court were of the opinion that this direction was right.

This direction would indicate that the basis of the plaintiff's loss was consortium, and not invasion of the plaintiff's exclusive rights of injury to his dignity and feelings, and that, I think, is the view expressed by *McCardie, J.*, in *Butterworth v. Butterworth*.

As I read that case, the learned judge was of the opinion that alienation involves a loss and damage, but that proof of adultery may not be proof of loss, because it is not an action in trespass, but an action of trespass on the case, requiring proof of actual loss, and that it is necessary to the proof of actual loss to prove loss or injury to consortium, but he points out that there are two elements of damage, (1) the actual value of the wife to the husband, and (2) proper compensation to the husband for the injury to his feelings, and the blow to his marital honor, and

the serious hurt to his matrimonial and family life.

Trial Judge's Instruction.

In the case at bar, the learned trial judge instructed the jury, as follows:

"Well, gentlemen, I think perhaps I was a little wrong in the way I put to you the question of the amount of the damages. I rather indicated—or, if I did indicate, I was wrong in so indicating—that you could give damages by way of punishing the defendant. You do not do it for punishment. What is said is that the grounds on which you give damages are, the actual value of the loss of the wife; that is one thing, if you can fix it in money. As I say, it is very difficult to do that. Two, compensation to the husband for the injury to his feelings, the blow to his honor, and the hurt to his family life. Those are the things that I said you could not measure in money; at least, I said you could not measure in money the love, services and society of a wife. However, it has been recently stated by a very eminent judge that you may take into consideration the compensation to the husband for the injury to his feelings, the blow to his honor, and the hurt to his family life. How you get at it I do not know; nobody can tell, but you get at it the best way you can."

and the jury's verdict reads:

"Juror: The jury find in favor of the plaintiff on both counts, fifteen thousand dollars; five thousand dollars for alienation of the wife's affections, and for criminal conversation, ten thousand dollars.

"The registrar: Gentlemen of the jury, hearken to your verdict as the court records it. Verdict for the plaintiff with fifteen thousand dollars damages, of which five thousand dollars is for alienation of the affections of the plaintiff's wife, and ten thousand dollars is for criminal conversation, and so say you all."

"Jurors, Yes."

To my mind, in this case it makes no difference what the gist of the action is. The real question is: Have the jury assessed the damages for the wrong done, on the proper basis? On this point, the instruction of the trial judge seems to me to be in accord with the opinions of the learned judges in both the Canadian and the English authorities, and while the whole damages might have been awarded as resulting from the adultery, the whole could not have been awarded as resulting from alienation. To accede to the appellant's contention would be to assume that the jury awarded damages for the alienation twice. This, I think, is not the meaning of the verdict.

Reading the verdict along with the charge, I am of the opinion that the jury intended to award \$5,000 for the alienation and necessary loss of consortium, and \$10,000 compensation for the husband for the injury to his feelings, the blow to his marital honor, and the serious hurt to his matrimonial and family life.

I would dismiss the appeal with costs.

Meredith, C. J. O.
Maclaren, J. A.
Magee, J. A.
We agree.

BRAKEMAN INJURED AT OUTER STATION

A Brockville Man Fell From an Engine There.

While switching was in progress at Kingston Junction at 12.45 o'clock Friday morning, Robert B. Anderson, Grand Trunk brakeman, 118 Perth street, Brockville, fell from the tender of a locomotive and striking his shoulder against a rail, fractured his shoulder bone. Anderson had cut the engine off eastbound train No. 494 and had given the signal to proceed ahead. As he was riding on the back side step of the tender, he slipped and fell, striking his left shoulder on the rail and breaking the bone. Dr. Morrison, Kingston, set the fracture, after which Anderson went to his home in Brockville.

J. A. Sutcliffe Buys "Firhurst"

"Firhurst," the one time beautiful home of the late W. H. Austin and family, Trenton, has changed hands. The portion of the property and residence owned by Lieut.-Col. Bywater has been sold to J. A. Sutcliffe. He and family are moving in this week. Improvements to the premises have already been started and no doubt Mr. Sutcliffe will make it one of the most attractive spots in town.

L.O.F. Notice.

All Foresters will meet at Calvary church, Bagot and Charles streets, tomorrow evening at 6.45 o'clock to attend anniversary service.

You can't always tell. Many a man who comes from Boston uses bad English and hates baked beans.

TWICE TOLD TALES

News of Kingston

TEN YEARS AGO.

Three Kingston men were hurt in the wreck of the G. T. R. International Ltd., at Newcastle, Ont.

A purse of gold was presented to Rev. Thomas E. Bourke on the occasion of his departure from Brock Street church.

The census takers have almost finished their work in Kingston.

The Fire committee recommends that the new ladder truck be built by James Laturney at \$1,175.

The Yacht Club is arranging for some fine races this season.

Chief Armstrong has already received a coronation souvenir from a Canadian in England.

TWENTY-FIVE YEARS AGO.

Rideau street residents are complaining of poor light down that way.

Inspector Kidd reports that the standard at Victoria school has gone up considerably.

"Heaven" is the nickname for Victoria school. It rather reflects in the rest, whose appellation is left to the imagination.

The First Congregational church choir had an enjoyable trip down the river in the yacht *Whericon* yesterday.

Two young city lads have disappeared from their homes, leaving notes that they were off to seek their fortunes.

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