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Vicarious Liability of Husband for Torts of his Spouse

Eileen Ellis Murphy

COMMENTS

VICARIOUS LIABILITY OF HUSBAND FOR TORTS OF HIS SPOUSE

". . . and they shall be two in one flesh."
—*Genesis ii, 24.*

I. Introduction

In handing down the decision in *Rogers v. Newby* [1] in July of 1949 the Florida Supreme Court neglected an opportunity to change the jurisprudence of this state on a subject in which Florida is Victorian. The certified question "Whether Chapter 21932, Laws of Florida, Acts of 1943, § 708.08, Florida Statutes 1941, relieves a husband of liability for the 'pure' torts of his wife" was answered in the negative by the supreme court and by their reply they refused to let Florida join with the great majority of her sister states who do not impose vicarious liability on the husband.

It is proposed to show, first, the statutory history of Florida in regards to married women's property; second, the common law rules relating to the subject; third, how the other states treat and have treated this problem; and fourth, what Florida can and should do in this respect.

II. History

Provisions in our constitutions since statehood were scant in any reference to married women's property. In the Florida Constitution of 1861, § 21 of Art. IV, there was a simple provision that ". . . no law shall be made allowing married women or minors to contract or to manage their estates . . ." and in the Constitution of 1865, § 19, Art. IV, this provision was revised to omit any reference to married women. This hiatus was eliminated in the Constitution of 1868, § 26 of Art. IV where it was provided that "All property . . . of the wife . . . shall be her separate property and not liable for the debts of her husband." Our present constitution provides that a married woman's property shall not be liable for her husband's debts but certain charges can be enforced against her separate estate.[2] The Married Women's Property Act abrogates the common law disabilities of married women.[3] By § 708.02 the wife is the owner of all property she held before marriage, and all that is acquired under cover-

1. 41 So.2d 451 (Fla. 1949).
2. Fla. Const. Art. XI, §§ 1, 2 (1886).
3. Fla. Stat. c. 708 (1941).

ture by gift, devise, bequest, descent or purchase; and this property shall be liable for her debts but not for the debts of her husband. Section 708.05 holds the husband not liable for the debts of the wife contracted before marriage, but her separate property is liable for such debts. Further, a married woman is entitled to all wages and earnings acquired by her in any employment separate from her husband and they are considered as her separate property and subject to her own disposal. She may sue for and recover them as though she were a single woman.[4] In 1943 a statute was approved which provided that every married woman is empowered to sue and be sued as if single, to hold and manage all her property, and to act in all ways as a feme sole, excepting it is still necessary for the husband to join in the conveyance of her property.[5] However, in refusing to construe the Married Women's Property Act as abrogating the common law rule, the court advanced the provisions of the act which preserve to the wife the protections she has enjoyed, such as support and maintenance, dower, and the necessity of joinder by her husband in all conveyances and encumbrances of her separate estate. The court also said, "We think it cannot be said that because of this act a husband and his wife now tread their separate and independent paths in all respects. It is still perfectly natural for them to reside in a common home and raise a family, the success of the whole enterprise being the result of the efforts of both, he in the mart and she in the home. By such an arrangement it is the usual case that the material things which are garnered during their life together often stand in his name. . . . Her potential interest in their joint material wealth, carried in his name, would not be subject to a judgment against her for damages flowing from torts she committed." [6]

In distinguishing the ability of a married woman to contract the court held that if one contracts with a married woman he does so voluntarily; he is easily informed of what he is about and can advise himself at the outset whether any damage which might eventually arise from a breach of the contract could be collected from her separate property. But the injury to one resulting from a tortious act is quite another matter. This is obviously involuntary on the part of the injured person.

III. Common Law

The unquestioned rule at common law was that a husband was liable, either jointly or solely, for all torts committed by his wife during coverture.[7]

4. Fla. Stat. § 708.06 (1941).
5. Fla. Stat. § 708.08 (1941).
6. Rogers v. Newby, *supra* at 452.
7. 2 Kent. Comm. 149. Blackstone in his *Commentaries*, c. 15, p. 445, after stating the principal legal effects of marriage, observed that ". . . even the disabilities which the wife lies under are for the most part intended for her protection and benefit; so great a favorite is the female sex of the laws of England."

This liability also extended to all torts committed by the woman before marriage as long as she was not the wife of another man.[8] There are some exceptions to this liability on the part of the husband, since it covered only his wife's "simpliciter" or "pure" torts, that is torts not arising from or mixed with any element of contract, since the "real injury flows from her non-compliance with her engagement, and an action to recover compensation for it, if maintainable, gives equal effect to her contract, no matter in what form the action may be brought, whether in form ex contractu or ex delicto. It practically enforces it." [9]

Another exception to the general rule is that a married woman cannot be liable for the torts of an agent, even if she is living apart from her husband.[10] The reason seems to be that she cannot be liable for a tort mixed with an element of contract as to which she is under disability to enter into. A further reason is that she is under disability to contract for the services of an agent.

The husband is liable even though the tort was committed out of his presence, without his knowledge or consent, against his will or even while the spouses are living separate and apart.[11] A wife, however, is not liable for a tort committed by her in the presence and under the coercion of her husband: it is his tort, and he alone is liable.[12] Some statutes, in making a married woman liable for her separate torts, and relieving her husband from liability therefor, except torts committed by her under his coercion.[13] The common law rule is that the husband's presence raises a rebuttable presumption of his direction and coercion. However, it may be shown, so as to render the wife jointly liable, that she acted of her own volition. *A fortiori*, she is liable if her act, although committed in the presence of her husband, is against his will and command.[14]

The common law liability of a husband for the torts of his wife is not a personal liability in the sense that his liability for his own torts is personal to him; it is because he is entitled to the personalty and the usufruct of the realty of the wife, and because she could not be sued.[15] The cases also hold that this liability depended upon a de jure marriage.[16] Even though the liability of the husband includes torts occurring before marriage as well as those which arise during coverture, he is liable only while the parties remain married to each other. His liability ceases if she predeceases him, or if the marriage is terminated by a decree of divorce, or, in some cases, if a decree of judicial separa-

8. Culmer v. Wilson, 13 Utah 129, 44 Pac. 883 (1896).
9. Keen v. Hartman, 48 Pa. 497 (1865).
10. Ferguson v. Neilson, 17 R.I. 81, 20 Atl. 229 (1890).
11. Edwards v. Wessinger, 65 S.C. 161, 43 S.E. 518 (1903). *Contra:* McClure v. McMarter, 104 La. 496, 29 So. 227 (1901).
12. Wheeler & Wilson Mfg. Co. v. Heil, 115 Pa. 487, 8 Atl. 616 (1887).
13. Landry v. Richmond, 45 R.I. 504, 124 Atl. 263 (1924).
14. Note 12, *supra*.
15. Wolf v. Keagg, 33 Del. 362, 136 Atl. 520 (1927).
16. Note, 74 U. OF PA. L. REV. 305 (1926).

tion is obtained before the action is brought to enforce the liability of the husband. Moreover, an action against him abates if she dies during its pendency, and the husband's liability does not survive as against his estate regardless of whether he dies before suit or before judgment in a pending suit.[17]

A husband's liability for compensatory damages is recognized at the common law when he is held liable for the torts of his wife. She is liable, in a proper case, for punitive damages. In some cases his liability for such punitive damages is denied since her wrong is not imputed to him. The broad general rule has been laid down, however, that where a husband is liable for the torts of his wife, he is liable therefor to the same extent that she would be liable if she alone were answerable; hence, punitive damages would be recoverable in a proper case.[18]

At common law, husband and wife were sued jointly for her individual torts, and she could be sued alone if she survived him, she alone remaining liable if he died before suit was brought. The common law liability of the husband would render him, it seems, subject to civil arrest as though he himself had committed the tort.[19] Under this common law rule of joint liability of husband and wife, judgment is rendered against both of them. The judgment can be enforced first against the separate property of the wife, in most jurisdictions, before the property of the husband is levied upon.[20] The wife, at common law, under no circumstances was liable for the debts or torts of her husband.[21]

The reasons stated for this rule of vicarious liability are many and varied. More than likely some of the real reasons have been lost in antiquity. The most common are, that the husband, at common law, had the power of correcting his wife, and therefore he was responsible for her conduct; that, since he has the control of her property, he should be answerable for her wrongs; and that, since she cannot be sued alone, the injured party would be without redress unless the husband is held liable with her.[22] It has been thought that the rule is mainly the result of the supposition that the acts of the wife are the result of the superior will and influence of the husband, which fact makes it difficult for a court to determine when she has acted freely and when she has acted at his dictation or direction. Another reason asserted for the rule, still deemed to exist, is the headship of the husband in the family.[23] Bracton is alleged to have originated the vogue of entity in husband and wife, that they are one, and

17. Edwards v. Wessinger, 65 S.C. 161, 43 S.E. 518 (1903).
18. Sargean v. Fedor, 3 N.J. Misc. 832, 130 Atl. 207 (Sup. Ct. 1925). *Contra:* Price v. Clapp, 119 Tenn. 425, 105 S.W. 864 (1907).
19. Hall v. White, 27 Conn. 488 (1858).
20. Gill v. State, 39 W. Va. 479, 20 S.E. 568 (1894). *Contra:* Stanley v. Powers, 123 Fla. 359, 166 So. 843 (1936) (Constitutional provision authorizing sale of married woman's separate estate [realty and personalty] for specified obligations held inapplicable to judgment against married woman in tort action.)
21. Multer v. Knibbs, 193 Mass. 556, 79 N.E. 762 (1907).
22. Meeks v. Johnston, 85 Fla. 248, 95 So. 670 (1923).
23. Rogers v. Newby, *supra* at 452: "We apprehend, too, that despite the act, the man remains the head of the family."

thus the wife is not capable of being separately liable.[24] In fact, the notion of conjugal unity has a biblical origin, the quotation from Genesis ii, 24, being found in the New Testament in Matt. XIX, 5-6.[25] There can be no doubt that it was this theological metaphor that produced the legal maxim. The duty of a husband to protect and provide for his wife, in return for her services to him, has been said to include the acceptance of the liability for her torts. A more practical contention seems to be that since a wife had no separate property at common law from which successful litigants could recover judgments, the husband should be a necessary party to an otherwise fruitless suit. Another logical suggestion appears to be that the rule arose from a procedural necessity of joining the husband in an action against the wife, since at common law the married woman could not sue or be sued in her own name. This procedural maxim itself quite probably arose from the venerable entity theory.[26]

If the entity theory were true, then a statute giving a married woman the right to sue and be sued in her own name, as the Florida statute does, would abrogate the common law rule in regard to the husband's tort liability. This would seem to follow logically if it is true that the unity of the husband and wife is the reason for the rule, as many of the authorities believe. The Florida court in *Prentiss v. Paisley*[27] said, "His (the husband's) liability for her (the wife's) torts is a result of the mere fact that by the common law rule suit cannot be maintained against the wife alone during coverture." If this dicta expresses the true reason for upholding the common law rule in Florida then the basis for the rule has ceased, since the wife can now be sued in her name, and the rule should cease.

IV. Under Statute

The statutes of twenty-three states have definite provisions which abrogate the vicarious liability of the husband for the torts of his wife.[28] The District of Columbia,[29] Alaska[30] and England[31] also have statutes which have elimi-

24. 6 Bracton, De Legibus Angliae (1883) 392: "A husband and wife are as if one person, being one flesh and one blood."

25. Mark X, 8 also quotes Genesis ii, 24.

26. Comment, 32 Minn. L. Rev. 262-92 (1948).

27. 25 Fla. 927, 930, 7 So. 56 (1890); Greene v. Miller, 102 Fla. 767, 136 So. 532 (1931).

28. Ala. Code Ann. tit. 34, §§ 69-70 (1940); Ill. Ann. Stat. c. 68, § 4 (1934); Ind. Ann. Stat. §§ 38-105 (Burns 1933); Iowa Code § 597.19 (1946); Me. Rev. Stat. c. 153, § 38 (1944); Md. Ann. Code Gen. Laws art. 45 § 5 (1939); Mass. Gen. Laws c. 209 § 8 (1932); Mich. Comp. Laws § 612.7 (1948); Minn. Stat. Ann. § 519.05 (1947); Mo. Rev. Stat. Ann. § 3680 (1939); Mont. Rev. Code Ann. § 36-109 (1947); N.J. Stat. Ann. tit. 37:2-8 (1940); N.Y. Cahill's Consol. Laws c. 14 § 57 (1941); N.C. Rev. Stat. § 52-15 (1943); N.D. Rev. Code § 14-0708 (1943); Ohio Gen. Code Ann. § 8001 (1939); Okla. Stat. tit. 32 § 9 (1941); R.I. Gen. Laws c. 417 §§ 9-12 (1938); Utah Comp. Laws § 2528 (1888); Vt. Stat. Rev. § 3169 (1947); Va. Code Ann. § 55-37 (1950); W. Va. Code Ann. § 4750 (1949).

29. D.C. Code § 30-208 (1940).

30. Alaska Comp. Laws Ann. § 21-2-9 (1949).

31. Law Reform (Married Women and Tortfeasors) Act of 1935, § 1(b)(c). Laws

nated the husband from all such liability. Many statutes have abolished the husband's liability by express provisions.[32] Some statutes, by their terms, relieve the husband from liability for torts of his wife in which he does not participate or take part.[33] And others provide that neither spouse is answerable for the acts of the other.[34] The court said in *Brazilee v. Scott*,[35] "It is archaic to insist on holding the erstwhile head of the family responsible for the acts of a woman equal to him at the polls, in the race for political preferment, and in all avenues of business and commerce and force him to respond in damages for her crimes and misdemeanors." The above quoted passage seems to typify the opinions of the courts on this subject. Under the majority of these statutes the husband is still liable if the tort was committed under his direction, coercion, or if he in any way participates. However, there shall be no presumption of his direction as at the common law, but direct proof of such coercion must be offered and proved.[36]

Under the various Married Women's Property Acts which have generally removed the woman's common law disabilities, it has been usually held that they also abrogated the common law rule in regards to a husband's liability for his wife's torts. The husband's vicarious liability for his wife's torts has been held to have been abrogated under statutes providing that the husband has no estate or interest in his wife's property [37] and under statutes removing the general disabilities and privileges of coverture. Under statutes enabling the wife to become a sole trader the husband is not liable for torts committed by the wife in the course of her own business or arising from the management and control of her separate property.[38] Statutes enabling a married woman to contract generally, to deal with property, and to sue and be sued as a feme sole or any person *sui juris*, are construed to make the wife alone, and not her husband, liable for her separate torts. The reasons for the common law rule—the merger of the wife's legal existence in that of her husband, his right to her property, and the fact that she could not be sued alone—having ceased to exist, the husband's liability also has ceased.[39] In eleven states,[40] and in

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OF ENGLAND (Replacement) SUPP. 1153-1158 (1949). Prior to this law, England had held under the general married women's property act that the husband remained liable.

32. Mich., *supra;* Mass., *supra.*
33. Me., *supra.*
34. Ohio, *supra.*
35. 273 S.W. 1013, 1015 (Tex. Civ. App. 1925).
36. Tanzer v. Reed, 160 App. Div. 584, 145 N.Y. Supp. 708 (Sup. Ct. 1st Dept. 1914).
37. Schuler v. Henry, 42 Colo. 367, 94 Pac. 360 (1908).
38. Harrington v. Jagnetly, 83 N.J.L. 548, 83 Atl. 880 (1912).
39. Harris v. Webster, 58 N.H. 481 (1878).
40. ARK. ANN. STAT. § 55-401 (1947), Bourland v. Baker, 141 Ark. 280, 216 S.W. 707 (1919); COLO. STAT. ANN. c. 108 § 2 (1935), Schuler v. Henry, 42 Colo. 367, 94 Pac. 360 (1908); DEL. REV. CODE c. 87 § 3541 (1935), Wolf v. Keagg, 33 Del. 362, 136 Atl. 520 (1927); GA. CODE ANN. § 4413 (1946), Durden v. Maddox, 73 Ga. App. Rep. 491, 37 S.E.2d 219 (1946); KAN. GEN. STAT. § 23-201 (1935), Norris v. Corkill, 32 Kan. 409, 4 Pac. 862 (1884); KY. REV. STAT. § 404.010 (1949), Lane v. Bryant, 100 Ky. 138, 37 S.W. 548 (1896); N.H. REV. LAWS c. 340 § 2 (1942), Coplan v. Coplan, 83 N.H. 310,

Alberta,[41] Australia,[42] Ontario [43] and Quebec [44] the courts have interpreted the married women property acts as abrogating the common law liability of the husband for the torts of his spouse.

Under the Spanish Community Property system the property of one spouse, whether it was the separate property or a respective share of the community property, was not liable for torts committed by the other spouse.[45] The community property law of the states which have adopted that system, follows, with some modification, the system of community property of Spain. The common law view of the disabilities of the wife did not exist in the Spanish community property idea, for the wife not only was a separate person in her own right, but also she had or could have her own separate property and owned an existing half share in the common property. Therefore, she could be held responsible for her own tortious acts, and recovery could be had from her own separate property or property interests. Neither the separate property of the husband nor his share of the common property was liable for the wife's torts.[46] In the eight community property states [47] and in Hawaii,[48] the community is liable only for the torts of a spouse while on a mission for or in benefit of the community. Husbands are not responsible solely upon the basis of marriage and their separate property is not liable for suit or judgment for the torts of the wife unconnected with the community interests of both. The theory of agency could be stretched by judicial interpretation, in order to hold almost all acts done by the spouse within the scope of benefiting the community property; but the courts have not done so. The tendency is, rather,

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142 Atl. 121 (1928); PA. STAT. ANN. tit. 48, § 111 (1931); S.C. CODE ANN. § 8572 (1932), Bryant v. Smith, 107 S.C. 453, 198 S.E. 20 (1939); S.D. CODE §§ 14.0206-14.0207 (1939), Bibant v. Pense, 35 S.D. 14, 150 N.W. 289 (1914); TENN. CODE ANN. § 8459 (1934), Foster v. Ingle, 147 Tenn. 217, 246 S.W. 530 (1923).

41. Stat. of 1875 gave married women right to sue and be sued. Held in Quinn v. Beales, 20 Alberta L.R. 620, 4 D.L.R. 635 (1924), husband not liable for torts of wife.

42. Brown v. Halloway, 10 C.L.R. (Aust.) 89 (1909). In construing the exact act which England held did not abrogate common law rule, this court held that the married women's property act did.

43. Lee v. Hopkins, 20 Ont. Rep. 666 (1890). Liability is limited to the extent of property of his wife acquired by him subject to certain deductions.

44. Theoret v. Allen, Rap. Jud. Quebec 43 C.S. 401 (1913). Husband not liable for torts of wife when not commanded, authorized or participated in by him.

45. 1 DE FUNIAK, PRINCIPLES OF COMMUNITY PROPERTY § 181 (1st ed. 1943).

46. 1 DE FUNIAK, *op. cit. supra* note 45, § 183. A Florida statute, FLA. STAT. 708.01 (1941) reserved to all persons married while East and West Florida was under the civil laws of Spain all property rights acquired thereby.

47. ARIZ. CODE ANN. § 63-303 (1939), Hogeman v. Vanderdoes, 15 Ariz. 312, 138 Pac. 1053 (1914); CALIF. CIV. CODE § 171a (1949), McClain v. Tufts, 83 Calif. App. 176, 181 P.2d 818 (1947); LA. CIV. CODE REV. art. 2317-art. 2320 (1945), Aetna Casualty and Surety Co. v. Simms, 200 So. 34 (La. App. 1941); NEB. SESS. LAWS c. 156 (1947), Goher v. Dallugge, 72 Neb. 16, 99 N.W. 818 (1904); NEV. COMP. LAWS § 3371.01 (Supp. 1941), Slack v. Schwartz, 63 Nev. 47, 161 P.2d 345 (1945); ORE. CODE ANN. § 33-214 (1930); TEX. REV. CIV. STAT. ANN. § 4613 (1940), Seinsheimer v. Burkhart, 132 Tex. Civ. 336, 122 S.W.2d 1063 (1939); WASH. REV. STAT. § 6904 (1940), Sandgren v. West, 9 Wash. 2d 494, 115 P.2d 724 (1941).

48. HAWAII REV. LAWS § 12391.13(c) (1945).

to restrict the liability of the community for the tortious acts of either the husband or wife.[49]

Three states, Connecticut, Florida and Wyoming, either have construed their married women's property acts as still holding the husband liable for the torts of his wife, or the acts carry express provisions to that effect. The Connecticut statute [50] allows a wife to sue and be sued in her own name in tort, but it would seem that the husband is still liable, since such a statute alone is usually not construed to free the husband from the common law burden. There are no decisions under this statute. Florida now has by court decision decided that its Married Women's Property Act does not abrogate the common law rule of liability without fault.[51] In Wyoming [52] the husband is not liable for torts committed in regards to his wife's separate estate where there is no question of agency, ratification, participation or consent. However, when any judgment is rendered against a husband and wife for the tort of the wife, execution on the judgment shall first be levied on the separate property of the wife, if she has any, and then on the husband's property. So, the husband still remains liable if the wife is without any assets.

There are four states which have no definite statutory provisions in regards to tort liability of the husband and which also do not have any court decisions on the subject. In Idaho,[53] a community property state, neither husband nor wife is liable for the other's previous debts; but the question of torts is left unanswered. New Mexico,[54] another community property state, says that a husband shall not be liable for his wife's premarital debts. Wisconsin,[55] has a Married Women's Property Act, but it is silent as to removing the husband's common law liabilities. Mississippi [56] also has removed the disabilities of coverture but whether the act would be construed to cover the husband's vicarious liability must await a court decision. Since the modern trend in all of these states is to raise the woman to an equal plane with that of the man, most courts hold that such an act as Mississippi's would release the husband from liability as well as grant to the wife privileges she did not enjoy before. And whereas the other community property states have adopted the Spanish theory of the spouse's separate liability by judicial interpretation, it is supposed that Idaho and New Mexico will do so if the need arises.

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49. McClain v. Tufts, 83 Cal. App. 176, 178-179, 187 P.2d 818, 819 (1947) in which the court said, "In fact, to hold the community property for the wife's torts would be not only an unwarranted interference with, and infringement upon, the husband's right to management and control, but it would also permit his property to be taken for what is, to him, a non-existent liability."
50. CONN. GEN. STAT. § 7307 (1949 Rev.).
51. Rogers v. Newby, *supra*.
52. WYO. COMP. STAT. ANN. § 50-208 (1945).
53. IDAHO CODE ANN. § 32-911 (1948).
54. N.M. STAT. ANN. § 65-308 (1941).
55. WIS. STAT. § 246.07 (1947).
56. MISS. CODE ANN. § 451 (1942).

IV. Conclusion

The Florida court could have construed § 708.08[57] as giving equal liabilities as well as equal rights to the married woman. Many courts have interpreted essentially the same language in their statutes as is in Florida's, to free the husband from the vicarious liability for the torts of his wife which the common law imposed upon him. The foundation for such an interpretation in Florida was laid in 1932 when the court decided the case of *Banfield v. Addington*,[58] in which it was said:

> At common law the husband had almost absolute control over the wife's person; was entitled as the result of their marriage, to her society, services, and earnings, to have her goods and chattels; had a right to reduce her choses in action to possession during her life, could collect the rents and profits of her real estate, and had entire control over her property. She was bound to obey her husband, was incapable of making contracts except for necessities, so that in law they were regarded as but one person. As a necessary consequence he alone was liable, and could be sued, for her torts and frauds committed during coverture in his presence or by procurement; otherwise they were jointly liable and must be so sued. The only torts for which a wife could be sued at common law, and judgment rendered against her, were torts unmixed with any element of contract, or, in other words, her pure torts.
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> *But the foregoing view of the legal relationship of husband and wife is no longer warranted,* when by modern conditions and through modern statutory provisions the wife has been emancipated with respect to her personal wages and earnings. *Where the reason for a rule of the common law, which is the soul and spirit of that law, fails, the rule itself fails.* It is only logical and just therefore that the courts take cognizance of those new conditions, which, by their necessary implication, have modified the factors necessary to support pre-existing restrictions on the legal liabilities under the common law. The court itself has just recently declared itself in line with a judicial recognition of such changed conditions, statutory implications, and necessary modifications as affecting the rights and liabilities of married women. See the case of Hoover v. Hoover, 138 So. 373, 374 (1931), lately decided by the court, when Mr. Justice Terrell, in delivering the opinion of the court, referred to the fact that 'the modern rule in almost every state in this country has relaxed the old common law doctrine of coverture.' (Emphasis added).

The court, in upholding the husband's liability for his spouse's torts, said that if the husband was not jointly liable with the wife for her torts, the injured party would not be able to collect on a judgment against the wife alone since so often she has no separate property. However, how many judgments go unsatisfied because the defendant, not a married woman, has no property on which execution can be levied? If a married woman is to be given equal rights and civil privileges she should also accept the equal responsibilities which are the reciprocal part of the legal status.

Eileen Ellis Murphy

57. Fla. Stat. § 708.08 (1941).
58. 104 Fla. 661, 663, 140 So. 893, 895 (1932).