Notre Dame Law Review

Volume 48 | Issue 2 Article 7

12-1-1972

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Recommended Citation

William M. Kelly, *The Case for Retention of Causes of Action for Intentional Interference with the Marital Relationship*, 48 Notre Dame L. Rev. 426 (1972).
Available at: http://scholarship.law.nd.edu/ndlr/vol48/iss2/7

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NOTES

THE CASE FOR RETENTION OF CAUSES OF ACTION FOR INTENTIONAL INTERFERENCE WITH THE MARITAL RELATIONSHIP

I. Introduction

The sanctity of marriage as an institution and the functional importance of the family as the primary building block of society have both been brought increasingly into question over the course of the past few decades. Though it is probably impossible to freeze for an instant the flux of popular attitudes in order to extract the present cast of mind toward these sociological phenomena, we might get an inkling of current opinion from the musical *Camelot.* In the finale Lancelot and the faithless Guinevere become, for the audience, heroic figures, symbols of the all-conquering power of love. The cuckolded Arthur is left to reflect on past glories. Popular sensitivities are apparently not offended by the fact that his marriage has been literally put asunder.

The problem of determining the wisdom of giving recognition to a cause of action for alienation of affections and related interferences with the marital relationship is made all the more difficult by the impossibility of ascertaining with any certainty whether or not such a legal support of marriage is compatible with changing social mores. Other facets of the problem, while not lending themselves to cut-and-dry resolutions, are at least approachable in terms of conventional legal analysis. But if *Camelot,* for instance, could be taken as a definitive statement of the manner in which marriage is popularly regarded such a cause of action would to a great extent fail to reflect society and in that sense would be impractical.

In dealing with this particular aspect of the problem, however, objectivity must inevitably succumb, at least partially, to personal predisposition. If respect for marriage and the family are on the wane there is still a vast segment of our society that would consider that fact lamentable. Certainly no final societal judgment on the matter has been rendered. It can be argued moreover that this question, whether the law should continue to be framed in a manner supportive of marriage, need not be directly confronted at all. A more relevant point of departure is the common law tradition of affording a remedy for one who incurs an injury to his person, property or well-being. A more relevant question is whether a family member's interest in the continued harmony of his home is of sufficient magnitude to warrant judicial protection from those who would intentionally interfere with it. Such will be the approach of this Note. After briefly examining the development and present status of alienation of affections and similar torts, the competing policy considerations will be weighed and a suggestion made for the revitalization of the body of tort law dealing with intentional interference with the marital relationship.

II. Common Law Development

The area of tort law concerned with interference with familial relations had its common law genesis in the ancient writ for enticing away a servant,[1] though it can probably be traced back even farther to Roman law.[2] The gist of this early action was for the loss of services and it could be brought only by the head of a household.[3] Although even some rather late cases seem to focus on the value of a wife's services and the husband's proprietary interest therein,[4] it gradually developed that he could recover for a broad array of interests embodied in the term "consortium." Consortium is usually held to include the rights of one spouse to the services, society, companionship and conjugal affection of the other.[5] As the importance of the services element receded with the passing of the early law's conception of the wife as a chattel of her spouse,[6] it was eventually recognized that she too had a protectible interest.[7] Her interest remained virtually unenforceable, however, until the necessity of joinder with her husband was obviated by judicial construction of statutes authorizing married women to sue in their own name.[8]

Most American jurisdictions have delineated three distinct torts involving interference by outsiders with the consortium right, or with the marital relationship generally.[9] These include: (1) adultery or "criminal conversation"; (2) enticement or inducement of a married person to separate from his or her spouse; and (3) alienation of affections.[10]

Of these three types of interference the one that has been dealt with most severely is, as might be expected, criminal conversation. The plaintiff can prevail merely by establishing the marriage and adulterous intercourse between his or her spouse and the defendant.[11] The cases have generally held that a loss of consortium either need not be shown[12] or is to be presumed.[13] An apparent majority of jurisdictions and the Restatement of Torts take the position that neither the

1 W. Prosser, Handbook of the Law of Torts § 124 (4th ed. 1971).
2 *Cf.* Note, 18 West. Res. L. Rev. 621, 623 (1967).
3 3 C. Vernier, American Family Laws § 158, at 86 (1935).
4 Merritt v. Cravens, 168 Ky. 155, 181 S.W. 970 (1916).
5 Hobbs v. Holliman, 74 Ga. App. 735, 41 S.E.2d 332 (1947).
6 The position of the old law is set forth by Blackstone as follows:

> [T]he inferior hath no kind of property in the company, care, or assistance of the superior, as the superior is held to have in those of the inferior: and, therefore, the inferior can suffer no loss or injury.

3 W. Blackstone, Commentaries * 143.

7 Lynch v. Knight, 11 Eng. Rep. 854, 859 (H.L. 1861) (dictum); Bennett v. Bennett, 116 N.Y. 159, 23 N.E. 17 (1889).

8 Wolf v. Frank, 92 Md. 138, 48 A. 132 (1900); Bennett v. Bennett, 116 N.Y. 159, 23 N.E. 17 (1889); *cf.* Foot v. Card, 58 Conn. 1, 18 A. 1027 (1889).

9 *See* 3 Restatement of Torts §§ 683-685 (1938). The Restatement has abandoned the use of the term "consortium." *Id.* § 683, Special Note following comment b at 469.

10 The phrase "alienation of affections" has frequently been used to refer to what is technically enticement.

11 Fennell v. Littlejohn, 240 S.C. 189, 125 S.E. 2d 408 (1962).

12 *Id.*

13 Parker v. Gordon, 178 F.2d 888, 894 (1st Cir. 1949). If, as has been true in some cases, "consortium" is defined to include an exclusive right to the sexual intercourse of the spouse, it becomes tautological that any adulterous intercourse results in a loss of consortium.

defendant's ignorance of the marriage[14] nor the consent of the faithless spouse[15] is a defense to the action. The defendant can escape liability by showing that the complaining spouse consented to or connived to bring about the adulterous relations.[16]

The second category of invasions of marital interests, variously labeled "enticement" or inducement, is the most clearly reminiscent of the ancient writ for luring away of servants. The action has retained considerable vitality while the right it seeks to protect has evolved from the proprietary interest of the husband in his wife to the broad spectrum of marital interests inhering in both spouses.[17] To successfully maintain an action for enticement the plaintiff must show that the defendant engaged in a course of conduct, with the intention of disrupting the marriage, that resulted in the spouse's separation or refusal to return.[18] Available defenses include: ignorance of the marriage;[19] proof that the plaintiff spouse connived to bring about or consented to the enticement;[20] and the existence of such a relationship between defendant and the abandoning spouse as gives rise to a privilege.[21] The defense of privilege is usually available only to members of the enticed spouse's family who show that they were offering advice strictly with his or her best interests in mind.[22] Kinship does not however afford an absolute immunity. Thus parents, for instance, may be subjected to liability upon a showing that they were motivated by malice toward the plaintiff rather than continued interest in their child's welfare.[23]

The third cause of action in this area, that for alienation of affections, represents the greatest departure from the early law's emphasis on the loss of services. Though this tort in its pure form has never been given recognition in England,[24] virtually all the American courts that have considered the matter have held that an injured husband or wife is entitled to relief if he or she proves that the defendant purposely acted in such a way as to cause a diminution of the spouse's affections.[25] In contrast to the action for enticement, recovery for alienation is

14 McGrath v. Sullivan, 303 Mass. 327, 21 N.E.2d 533 (1939); 3 RESTATEMENT OF TORTS § 685, comment d at 477 (1938).

15 Sebastian v. Kluttz, 6 N.C. App. 201, 170 S.E.2d 104 (1969); 3 RESTATEMENT OF TORTS § 685, comment c at 477 (1938).

16 Comte v. Blessing, 381 S.W.2d 780 (Mo. 1964).

17 *Cf.* 1 F. HARPER & F. JAMES, THE LAW OF TORTS § 8.3, at 610 (1956).

18 Boland v. Stanley, 88 Ark. 562, 115 S.W. 163 (1909); 3 RESTATEMENT OF TORTS § 684 (1938).

19 3 RESTATEMENT OF TORTS § 684 (1938).

20 Patterson v. Skoglund, 181 Or. 167, 180 P.2d 108 (1947).

21 Acchione v. Acchione, 376 Pa. 36, 101 A.2d 642 (1954); 3 RESTATEMENT OF TORTS § 686 (1938).

22 Koehler v. Koehler, 248 Iowa 144, 79 N.W.2d 791 (1956).

23 Bishop v. Glazener, 245 N.C. 592, 96 S.E.2d 870 (1957); Monen v. Monen, 64 S.D. 581, 269 N.W. 85 (1936).

24 Gottlieb v. Gleiser, [1958] 1 Q.B. 267 (1955).

25 An apparent exception is Massachusetts where it has been held that there is no cause of action unless the spouse has been debauched or enticed away. McGrath v. Sullivan, 303 Mass. 327, 21 N.E.2d 533 (1939). Applying Massachusetts law, however, the United States Court of Appeals for the First Circuit has held that an action will lie even the absence of adultery or abandonment of the family home. Parker v. Gordon, 178 F.2d 888 (1st Cir. 1949).

In Maine the action would appear to be maintainable only by the husband. Doe v. Roe, 82 Me. 503, 20 A. 83 (1890).

not precluded by the fact that the spouse has continued to reside in the family home.[26] The relief granted is not merely for the loss of affections but for the resulting loss of all other aspects of the consortium right.[27] The defenses of connivance,[28] ignorance of the marriage[29] and privilege[30] are available on the same basis as in a suit for enticement.

The interest which these three causes of action are designed to protect—whether it be labeled a right to services, the continued harmony of the marriage, certainty as to the legitimacy of offspring, or the all-inclusive "consortium"—is undeniably substantial. Due in part to the fact that it is largely a nebulous, emotional or psychic interest, however, it has, in several legislative quarters, been deemed not of sufficient gravity to outweigh the problems thought to be created by its judicial protection.[31] Nevertheless, it is evident from the attempts of courts to circumvent statutes abolishing these causes of action that situations inevitably arise in which the interest has been so wantonly invaded as to demand a remedy.[32] Much can and has been said about the inefficacy of any remedy as a deterrent of marital interferences.[33] But any deterrent function is strictly ancillary to the major purpose of providing a means by which an injured party may be recompensed. The matter for determination has in reality nothing to do with the deterrent effect of these laws, but rather consists of the question whether the forces compelling judicial recognition of the right outweigh any resulting undesirable consequences.

III. The Arguments for Abolition

Although it is still a numerical majority of states that will entertain causes of action for the three types of interference with domestic relations, several legislatures have abolished one or more of them.[34] The immediate cause of this legis-

26 Orr v. Sasseman, 239 F.2d 182 (5th Cir. 1956); Parker v. Gordon, 178 F.2d 888 (1st Cir. 1949).

27 Tice v. Mandel, 76 N.W.2d 124 (N.D. 1956).

28 Fuller v. Robinson, 230 Mo. 22, 130 S.W. 343 (1910).

29 Madison v. Neuberger, 130 Misc. 650, 224 N.Y.S. 461 (1927).

30 Carrieri v. Bush, 69 Wash.2d 536, 419 P.2d 132 (1966).

31 See note 34 *infra*.

32 *See* Daily v. Parker, 152 F.2d 174 (7th Cir. 1945), permitting recovery in name of child for alienation of affections of father despite fact that statute foreclosed suit by mother; Devine v. Devine, 20 N.J. Super. 522, 90 A.2d 126 (1952), suggesting that a suit for injunctive relief as opposed to one for money damages was not prohibited by the N.J. statute; *accord*, Henley v. Rocket, 243 Ala. 172, 8 So.2d 852 (1942); *cf.* Wilder v. Reno, 43 F. Supp. 727 (M.D. Pa. 1942), expressing doubt as to such a statute's validity under the Federal Constitution; Heck v. Schupp, 394 Ill. 296, 68 N.E.2d 464 (1946) holding the Illinois statute violative of a state constitutional provision that every injury should have a remedy.

33 *See, e.g.*, Feinsinger, *Legislative Attack on "Heart Balm,"* 33 Mich. L. Rev. 979, 992 (1935).

34 Nine states have abolished all three actions: ALA. CODE tit. 7, § 115 (1958); CAL. CIV. CODE § 43.5 (West 1954); COLO. REV. STAT. ANN. § 41-3-1 (1963); FLA. STAT. ANN. § 771.01 (1964); IND. ANN. STAT. § 2-508 (1967); MICH. COMP. LAWS § 551.301 (1967); N.J. REV. STAT. § 2A:23-1 (1952); N.Y. CIV. RIGHTS LAW § 80-a (McKinney Supp. 1972); WYO. STAT. ANN. § 1-727 (1957).

The statutes of five other states abolish all but criminal conversation: CONN. GEN. STAT. ANN. § 52-572b (Supp. 1972); MD. ANN. CODE art. 75c, § 2 (1969); NEV. REV. STAT. § 41.380 (1969); PA. STAT. ANN. tit. 48, § 170 (1965); W.VA. CODE ANN. § 56-3-2a (Supp.

lative attack on "heart balm" was probably "the prevalence in the twenties and early thirties of extortion and blackmail based on a charge or the threat of a charge connoting sexual irregularity."[35] There are however several other arguments that have been suggested in support of the abolition of the causes of action under consideration. These must all be given due consideration in an attempt to determine whether or not they outweigh the social utility to be gained from the retention of the actions.

Turning first to the argument that this area of the law provides a fertile field for extortion, it can hardly be gainsaid that by their very nature such suits are subject to abuse. Collusion between husband and wife presents not only the danger of outright blackmail but also the possibility of actual recovery of damages followed by a "reconciliation" of differences that never in fact existed. There is no reliable evidence as to the prevalence of such abuse, however. In the words of one commentator at the time of the most intense agitation for abolition:

> [N]ewspaper emphasis has created an illusion of universality as to the evils of unfounded actions, coercive settlements or excessive verdicts which concededly exist in particular cases.[36]

Moreover, procedural limitations and judicial discretion have been deemed adequate safeguards against abuse in other areas of the law vulnerable to bogus claims.[37] There is no reason to assume that they cannot be used to similar advantage in this area. In any case, is not total abolition due to the possibility of abuse a case of discarding the baby with the bath water? In the words of Prosser:

> [The anti-heart balm statutes] reverse abruptly the entire tendency of the law to give increased protection to family interests and the sanctity of the home, and undoubtedly they deny relief in many cases of serious and genuine wrong.[38]

In sum, though the extortion argument might suggest the advisability of some form of limitation, it is not a sound basis for total rejection and has probably been given undue weight.

A second source of hostility toward the actions for interference with the marital relationship appears to result from their fictional common law underpinnings, particularly the notion of the husband's proprietary interest in his wife.

1972). The Pennsylvania statute permits actions for alienation and, apparently, enticement against members of the spouse's immediate family.

Louisiana has rejected the actions of alienation and enticement by court decision. Moulin v. Monteleone, 165 La. 169, 115 So. 447 (1927).

35 F. Harper, Problems of the Family 169 (1952).

36 Feinsinger, *supra* note 33, at 1008-09.

37 In Wilder v. Reno, 43 F. Supp. 727 (M.D. Pa. 1942), the court responded to the abuse argument in the following language:

> First, the very purpose of courts is to separate the just from the unjust causes; secondly, if the courts are to be closed against actions for . . . alienation of affections on the ground that some suits may be brought in bad faith, the same reason would close the door against litigants in all kinds of suits, for in every kind of litigation some suits are brought in bad faith; the very purpose of courts is to defeat unjust prosecutions and to secure the rights of parties in just prosecutions . . . .

Id. at 729.

38 W. Prosser, *supra* note 1, at 887-88.

A distaste for this anachronistic aura surrounding the actions for enticement and criminal conversation pervades a recent report of the Ontario Law Reform Commission which concluded that such actions should be abolished.[39] Criticism of this sort may in a real sense be misdirected. Even though the actions were originally designed to protect a fictive right and reflected a now-antiquated view of the relation between the sexes, they have in the modern era taken on a very different and worthwhile function—that of providing a remedy for injuries of a highly sensitive nature while discouraging intentional disruptions of families.

A third type of argument that must be considered treats of certain sociological traits, supposedly characteristic of the kind of fact situation out of which interferences with marriages normally arise. The focal point of these arguments is, broadly, the personalities of the parties involved. Thus it is said that such interferences ordinarily do not arise as the result of any conscious plan; rather, they "just happen."[40] It is not altogether clear what this argument is supposed to demonstrate. To say that one who meddles in another's marriage does not do so by design is not to say that he does not know what he is doing at all. It can be argued in fact that the tendency of casual acquaintances to blossom into marital disruptions of one form or another is a very good reason for retaining the causes of action as warnings of the magnitude of the possible consequences.

Another argument of this sort is presumably directed towards maligning the character of the plaintiff in such an action. In simplest form it says no more than "decent people don't call attention to their marital difficulties," the implication being that the plaintiff's motive is strictly mercenary and vindictive. A quick answer to this *ad hominem* is that if a plaintiff has a right to the continued harmony of his marriage there is no reason why he should not have an opportunity to vindicate an intrusion upon it. There is however a more subtle form of the argument attacking the plaintiff's character which is not so easily dismissed. It is hinted at in the following excerpt from an English case which rejected the cause of action for alienation of affections: "If a husband is to keep the affection of his wife he must do it by the kindness and consideration he shows her."[41] Implicit in this proposition is the thought that if an individual's marriage is so shaky that it is vulnerable to the attacks of outsiders it is his own fault and he should have no standing to complain. There is a grain of truth here, at least in the sense that it can be said that the disruption of a marriage already beset with difficulties is probably a lesser harm than the disruption of a hypothetical, perfectly harmonious marriage. But the argument is nevertheless deficient because it considers the personality of the complaining spouse as the only variable in the problem. It ignores the fact that the malice and intensity of the outsider's assault upon the marriage may also vary. Even a relatively "good" marriage may be susceptible to, for instance, a Don Juan. Rather than denying any remedy at all on the grounds that the harmony of the marriage is solely the responsibility of the parties, it would appear a wiser course to take account of any pre-existing

39 ONTARIO LAW REFORM COMM'N, REPORT ON FAMILY LAW, PART I TORTS, 86-98 (1969).
40 Feinsinger, *supra* note 33, at 995.
41 Gottlieb v. Gleiser, [1958] 1 Q.B. 267, 268 (1955).

friction or discord as factors to be considered in mitigation of damages.[42] While such a solution would itself present difficulties, it is to be preferred to the foreclosure of all remedies in cases of actual harm on the basis of questionable assumptions as to the character of complaining spouses as a group. It can be argued, moreover, that even where the parties to the marriage have become totally estranged each has a right to seek a rapprochement that should be protected against those who would cut it off.[43]

The reference to damages leads to a consideration of a final facet of the attack that has been leveled against the area of the law purporting to protect marital relations. The damages-related argument can be broken down into three often interrelated postulates: (a) that it is difficult at best to valuate emotional and mental distress—major elements of the damages in this area; (b) that as a result of (a) juries tend to penalize the wrongdoer on the basis of their perception of the egregiousness of his conduct rather than on the basis of the actual resultant injury to the plaintiff; and (c) that even if the valuation problem could be overcome, it would be undesirable to place the relationship between husband and wife on a commercial basis.[44] Each of these will be considered in turn.

The difficulty-in-valuation thesis can no longer be taken as grounds for complete rejection of a right to damages. The suggestion that it is takes an unnecessarily restrictive view of the capacity of courts and juries to do justice. An analysis of cases dealing with the emerging tort of intentional infliction of emotional distress provides ample evidence that monetary valuation of strictly psychic injuries can be made.[45]

Even if damages can be determined it cannot be denied that the nature of the wrong done in these cases is such that juries will be apt occasionally to make awards of a punitive nature. Clearly this would not comport with the basic theory of tort damages when the defendant has not acted with the requisite degree of malice.[46] Once again however it should be asked whether this problem dictates the abolition *in toto* of such causes of action. In light of the mitigating effect appropriate jury instructions would have, and the court's power to require remittitur, the necessary answer is "no."[47]

The objection that such damage awards would have the effect of commercializing the marital relationship is little more than a makeweight. To begin with it is probably unrealistic to assume that marriage or any other form of human endeavor is completely immune from the pervasive commercial world. Many contend that man is first and foremost economic man. It isn't necessary,

42 This was the approach taken in Fennell v. Littlejohn, 240 S.C. 189, 125 S.E.2d 408 (1962).

43 Miller v. Gruenwald, 65 Wash.2d 189, 396 P.2d 554 (1964); *but cf.* Trainor v. Deters, 22 Ohio App.2d 135, 259 N.E.2d 131 (1969).

44 *See* Moulin v. Monteleone, 165 La. 169, 115 So. 447 (1927).

45 *See, e.g.,* State Rubbish Collector's Ass'n v. Siliznoff, 38 Cal.2d 330, 240 P.2d 282 (1952).

46 Though "malice" is sometimes said to be an element of the plaintiff's case in an action for alienation or enticement, the "malice" referred to is used, apparently, in a different sense than it is used as a standard for the award of punitive damages. For a discussion of this dual usage see 16 S. Dak. L. Rev. 139 (1971).

47 Damages were limited by resort to these traditional judicial tools in Tice v. Mandel, 76 N.W.2d 124 (N.D. 1956).

however, that one be a complete cynic in order to appreciate the fallacy of the "fear of commercialization" argument. No one has ever claimed that damage awards, especially tort damages, were designed to fully and perfectly compensate for injuries. They can at best serve as approximate compensation, as something offered in lieu of preventing an injury that has already taken place. This is the only function required of money damages in the realm of interferences with marital relations.

IV. Some Suggestions

The several arguments that can be arrayed in favor of the abolition of the actions for interference with marital relations do not, either individually or taken together, demonstrate the necessity of actually doing so. None of them overcomes the force of the basic tenet of our jurisprudence that one who suffers a substantial injury at the hands of another is entitled to a remedy if one can be rationally framed. But while the various objections may not on balance allay the inclination to afford some form of relief they do underscore certain inadequacies in the law as it now stands and point to possible reforms.

Damages in this emotion-laden area are unquestionably prone to be excessive. Some measures for safeguarding the defendant have already been alluded to. These include comprehensive jury instructions setting out damage guidelines, and the ready use by judges of their power to require remittitur. It might also be advisable to formulate direct statutory limitations on jury discretion in the matter of damages. General provisions such as those found in wrongful death statutes,[48] requiring that damages awarded bear some relation to the actual injury shown might at least serve to prod courts to exercise the aforementioned remittitur power.

A more fundamental reform measure that appears to be necessary is in the nature of a concession to society's changing moral attitudes. There is growing evidence that extramarital sexual activity is becoming not only more common but more acceptable, apparently even to the partners to the marriage.[49] In this state of affairs the action for criminal conversation as it now stands is largely outdated. As has been indicated the defendant's ignorance of the marriage does not constitute a defense against a charge of adultery; nor does proof that the faithless spouse encouraged the adulterous act. To allow recovery on the basis of the sexual conduct alone without proof of a resulting diminution of affections or similar loss would leave the door open to flagrant injustices. In other words, the rights of the spouse flowing from the marital relationship should no longer be conclusively presumed to include a monopoly interest in his or her partner's sexual intercourse.

There is a reason in addition to changing mores for abolishing (or not reviving) the action for criminal conversation. The propensity of juries to award damages of a punitive nature has been mentioned. This propensity is reinforced

48 *E.g.*, CAL. CIV. PRO. CODE § 377 (West Supp. 1972).

49 *See, e.g.*, E. Hall and R. Poteete, Do You Mary, and June, and Beverly, and Ruth, Take These Men . . . , 5 Psychology Today, Jan., 1972 at 57.

in actions for criminal conversation due both to the nature of the offense itself and the unavailability of any meaningful defense to the defendant.

It is still true of course that adultery will undermine most marriages. Injuries to the marital relationship resulting from the sexual indiscretion could however still be recoverable in a suit for either alienation of affections or enticement. The real impact of abolishing the adultery action therefore is merely to increase the plaintiff's burden of proof by making him demonstrate either abandonment or a loss of affections objectively manifested by conduct other than the adulterous act itself. This in effect takes away from a complaining husband or wife the benefit of a presumption that no longer appears warranted and has in the past worked a hardship on defendants. By channeling plaintiffs into an alienation or enticement action the way would be clear for a defendant to escape liability by proving his ignorance of the marriage.

V. Conclusion

Changes short of total abolition can significantly revitalize this area of the law and charge it with protecting an important interest of the family and society as a whole. The revamped actions for alienation and enticement can provide the type of remedy for married parties that is so strongly called for.

It must be conceded that no procedural or minor substantive changes can completely eliminate the possibility of fraudulent abuse. It is unwise however to exaggerate that possibility by lumping these actions together with suits for breach of promise to marry and discarding the whole. This is the pattern of most of the anti-heart balm statutes. According to one notable authority:

> It would appear that the action for breach of contract to marry is more readily perverted to improper use than the action for alienation of affections. Usually the evidence in the latter type of suit is more objective and convincing and jury verdicts more reliable.[50]

Much of the suspicion of actions protecting the marital relationship may very well be due to this artificial association with a type of suit that is clearly subject to abuse.[51] The potential for abuse that does inhere in such actions is not sufficiently weighty to balance away the interests of offended husbands and wives.[52] Those victimized by blackmail have often willingly put themselves between Scylla and Charybdis by an illicit act of their own. It must be remembered, moreover, that if they have in truth been injured by fraud or extortion the law also provides them with a remedy.

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50 1 F. Harper & F. James, *supra* note 17, § 8.7 at 629.
51 *See* Fearon v. Treanor, 272 N.Y. 268, 5 N.E.2d 815 (1936).
52 *See* Heck v. Schupp, 394 Ill. 296, 68 N.E.2d 464 (1946).