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in the instant case. If this is so, then the Wyoming statute is very restrictive. What would be the result if a workman was assaulted by a third person because he was a strikebreaker? What decision if a policeman was shot by a person because he didn't like cops? Surely that is one of the risks of a policeman's job, but the statute indicates that such an injury would not be compensable. Did the legislature really intend for the statute to have this effect? The Wyoming Constitution provides in part: "As to all extra hazardous employment the legislature shall provide by law for the accumulation and maintenance of a fund or funds out of which shall be paid compensation as may be fixed by law according to proper classifications to each person injured in such employment or to the dependent families of such as die as the result of such injuries, except in case of injuries due solely to the culpable negligence of the injured employee."[12] In *Fuhs v. Swenson*[13] the court stated: "It is apparent from the constitutional clause and the several provisions of our state law . . . that the accident which places the employee beyond the pale of the law for the purposes of making awards must be due solely to the 'culpable negligence' of the injured employee." Also in *Zancanelli v. Central Coal and Coke Co.*[14] the court said: "the compensation law is not intended to give compensation as damages, but is more in the nature of accident insurance."

In view of the references of the Wyoming court to a liberal construction of the compensation law and the constitutional provision previously referred to, it appears that the court has the attitude of the liberal view. Does the statute referred to obstruct the carrying out of the court's view and the declared spirit of the Wyoming compensation law? That question will have to remain unanswered until the meaning of the statute is clarified.

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SHALL CHILDREN BE DENIED OPPORTUNITY TO MAINTAIN ACTION AGAINST ONE WHO ENTICED THEIR PARENT?

Two minor children through guardian ad litem brought suit against a third party who allegedly enticed their father,, thus depriving them of his bounty, love and affection.[1] Defendant's motion to dismiss was based on the theory that since the gravamen of the complaint was one for alienation of affections it was prohibited by the state's heart-balm legislation.[2] The

12. Article 10, Sec. 4.
13. 58 Wyo. 293, 131 P.2d 333 (1942).
14. 25 Wyo. 511, 173 P. 981 (1918).

1. The mother as guardian, brought this suit in her own name as well. It was held her cause of action was barred by interdiction of the heart-balm which abolished suits for alienation of affection.
2. Fourteen states have specific provisions dealing with alienation of affection actions: Alabama, Ala. Code tit. 7, Sec. 114-117 (1940); California, Cal. Civ. Code, Sec. 43.5 (1951); Colorado, Colo. Ann. Stat. C. 24A, Sec. 1-10, Michie Cum. Supp. (1952); Florida, Fla. Ann Stat. Sec. 771.01-771.08 (1951); Illinois, Ill. Ann. Stat. Chap. 68, Secs. 34-47 (1951), this statute supplanted the one interpreted by the court in

motion was granted, not on the ground that the statute had abolished this alienation type action but because of practical difficulties that would result if the children's claim were recognized. The Court adopted the principle laid down in the leading case of *Taylor v. Keefe,*[3] in which the following objections were enumerated: (a) possibility of a multiplicity of suits, (b) possibility of extortionary litigation by virtue of the relative tenuousness of the child's relationship, (c) inability to define the point at which status of a child ceases, (d) inability of a jury adequately to cope with the question of damages, particularly because damages thus assessed are apt to overlap, in view of the number and different ages of the children. *Held,* that the infants had no cognizable cause of action. *Klienow v. Ameika,* 19 N. J. Super 165, 88 A.2d, 31 (1952).

Examination of fourteen reported cases[4] (representing the federal courts and nine different states) wherein the facts were comparable to those evidenced in this most recent case revealed three barriers, any one of which, if utilized by the courts, deny plaintiff the opportunity to obtain redress. When the events occurred in jurisdictions whose legislators had not abolished actions for alienation of affections, some courts,[5] after making an appraisal of the benefits and burdens to be derived if such suit were allowed, dismissed the complaint. Others[6] referred to common law principles, and finding no precedent for the maintenance af this type of litigation, denied their power to indulge in judicial empiricism to create a new remedy. If the statutory law of the State abrograted alienation suits, it

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Daily v. Parker; Indiana, Ind. Ann. Stat., Sec. 2-508—2-517 (Burns 1946); Maryland, Md. Ann. Code Gen. Laws, Art. 75C, Sec. 1-8 (Cum. Supp. 1947); Michigan, Mich. Comp. Laws, Sec. 551.301-551.311 (1948); Nevada, Nev. Comp. Ann. Laws, Sec. 4071.01-4071.07 (Supp. 1943-1949); New Jersey, N. J. Stat. Ann., Sec. 2:39A1-2:39A9 (1939); New York, N. Y. Civ. Prac. Act, Sec. 61a-611; Pennsylvania, Pa. Ann. Stat. tit. 48, Sec. 169-177 (Cum. Supp. 1950); Tennessee, Tenn. Code Ann. Sec. 9720.5-9720.10 (Williams Cum. Supp. 1951); Wyoming, Wyo. Comp. Stat. Ann., Sec. 3-512—3-516 (1945). Additionally, Maine, Me. Rev. Stat. Chap. 99, Sec. 91 (1944); Massachusetts, Mass. Ann. Laws Chap. 207, Sec. 47A (Cum. Supp. 1950); New Hampshire, N. H. Rev. Laws, Chap. 385, Sec. 11 (1942) presently have some form of heart-blam legislation.

3. Taylor v. Keefe, 134 Conn. 156, 56 A.2d 768 (1947).

4. Marrow v. Yannantuono, 152 Misc. 134, 273 N. Y. S. 912, (Sup. Ct. 1934), 20 Cornell L. Q. 255 (1935), 83 U. of Pa. L. Rev. 276 (1935);; Daily v. Parker, 152 F.2d 174, 162 A.L.R. 819 (7th Cir. 1945); McMillam v. Taylor, 160 F.2d 221 (D.C. Cir. 1946); Johnson v. Luhman, 330 Ill. App. 598, 71 N. E.2d 810 (1947), 1 Wyoming Law Jounral 194 (1947), 15 U. of Chi. L. Rev. 400 (1948); Taylor v. Keefe, 134 Conn. 156, 56 A.2d 768 (1947), 1 Vand. L. Rev. 461 (1948); Garza v. Garza, 209 S. W.2d 1012 (Tex. Civ. App. 1948); Rudley v. Tobias, 84 Cal. App.2d 454, 190 P.2d 984 (1948); Miller V. Monsen, 228 Minn. 400, 37 N.W.2d 543 (1949), 48 Mich. L. Rev. 242, 34 Minn. L. Rev. 63 (1950), 63 Harv. L. Rev. 541 (1950); Russick v. Hicks, 85 F. Supp. 281 (W. D. Mich. 1949); Henson v. Thomas, 231 N. C. 173, 56 S. E.2d 432, 12 A.L.R.2d 1171 (1949), 28 N. C. L. Rev. 397 (1950); Edler v. MacAlphine-Downie, 180 F.2d 385 (D. C. App. 1950); Katz v. Katz, 197 Misc., 412, 95 N. Y. S.2d 863 (Sup. Ct. 1950); Nelson v. Richwagen, 326 Mass. 485, 95 N. E.2d 545 (1950); Gleitz v. Gleitz, 88 Ohio App. 337, 98 N. E.2d 74 (1951).

5. Morrow v. Yannantuono, McMillam v. Taylor, Taylor v. Keefe, Nelson v. Richwagen, see note 4 supra.

6. Garza v. Garza, Henson v. Thomas, Elder v. MacAlpine-Downie, Gleitz v. Gleitz, see note 4 supra.

was sometimes held that this legislation prevented plaintiff from instituting legal proceedings.[7]

In only four of these decisions[8] (from Minnesota, Illinois and two federal courts) were the three obstacles disposed of by the judiciary and the lawsuit resolved on its merits. These tribunals concur in their ability to establish this right of action in absence of common law precedent, and all propound the theory of the family as a cooperative enterprise with correlative rights and duties. Consequently, when an outsider by his wrongful act invades this relationship and entices a parent each individual member sustains actionable injury. The Minnesota court[9] in rejecting as unconvincing the practical obstructions raised in *Taylor v. Keefe,*[10] stated: (a) redress should not be denied merely because of difficulties in defining the child's right or his damages, (b) the frequent occurence of a wrong is no valid reason against allowing a remedy for it, (c) the argument of multiplicity of suits is factually untrue because, since 1945 when an American Court for the first time recognized a child's right to sue under these circumstances, there has been no flood of litigation . The obvious conclusion is that there are not enough such enticements to produce a multiplicity of suits.[11]

Two[12] of the four forums were faced with heart-balm legislation delimininiting alienation actions. In *Daily v. Parker*[13] it was flatly stated that nothing in such statutes denied a minor child the right to sue for damages against a woman who enticed the father. The other court in applying a Michigan Statute[14] which contained a proviso allowing suits to be instituted against certain named defendants by a plaintiff spouse, construed the act to be applicable only to the traditional alienation of affections suits by one spouse against the enticer of the other spouse.

The principal case is unique because dismissal of the complaint was upon a basis other than one involving the prevailing heart-balm act. In those prior cases in which the child's suit was disallowed, heart-balm legislation when available, was always employed to aid in defeating the claim.[15] A New York court[16] confronted with substantially similar alien-

7. Rudley v. Tobias, Katz v. Katz, see note 4 supra
8. Daily v. Parker, Johnson v. Luhman, Miller v. Monsen, Russisk v. Hicks, see note 4 supra.
9. Miller v. Monsen, see note 4 supra.
10. Taylor v. Keefe, see note 4 supra.
11. For a more complete rebuttal of the policy factors stated in Taylor v. Keefe, see see 20 Cornell Law Quarterly 257 (1935).
12. Daily v. Parker (Illinois Federal Court) and Russick v. Hicks (Michigna Federal Court), see note 4 supra.
13. This was the first case recognizing the child's right of action. Comments are to be found in 13 U. of Chi. L. Rev. 375 (1946), 46 Col. L. Rev. 464 (1946), 59 Harv. L. Rev. 297, 41 Ill. L. Rev. 444, 30 Minn. L. Rev. 310, 19 So. Calif. L. Rev. 455 and 32 Va. L. Rev. 420 (1946).
14. See note 2 supra.
15. Rudley v. Tobias and Katz v. Katz, see note 4 supra.
16. Katz v. Katz, see note 4 supra.

ation provisions[17] as faced the court in the principal case, held that all suits of this gendre were abolished, and not solely those brought by a spouse.

In 1941, Wyoming adopted a heart-balm statute akin to the New York and New Jersey Acts.[18] Whether these statutory restrictions would prevent an infant from suing a third party paramour of his parent in Wyoming must of necessity be speculative inasmuch as no attempt has at any time been made to bring such action. Helpful dicta is virtually non-existent.[19] If a Wyomnig court were to utilize the alienation of affections provision[20] as did the New York courts, the action would be barred. If, as in the instant case, the legislation were thought inapplicable, then an examination of the practical objections which make recognition of the child's suit undesirable[21] would have to be undertaken. Since these questions, as well as the right of the judiciary to sanction a cause of action unknown at Common Law have never been decided in Wyoming[22] it is impractical to predict what holding would be forthcoming. It can only be observed that there is substantial precedent to allow Wyoming judges to rule either way.

M. MICHAEL HOCH

17. See note 2 supra.
18. See note 2 supra.
19. Worth v. Worth, 48 Wyo. 441, 49 P.2d 649 (1935); 51 Wyo. 488, 68 P.2d 881 (1937). Dictum perhaps indicates that the traditional alienation suit in Wyoming was a type of derivation action, the spouse suing in behalf of the children as well as for its own benefit. A child's suit would therefore fall into the same category as an action by a spouse for alienation of affection, and accordingly be prohibited by the Wyoming heart-balm statute.
20. Wyo. Comp. Stat. 1945 Sec. 3-512 provides as does the N. Y. Civ. Prac. Act 61-a and N. J. Stat. Ann. Sec. 2.39A-1 the following: "The remedies heretofore provided by law for the enforcement of actions based upon alleged alienation of affections, criminal conversation, seduction and breach of contract to marry, having been subjected to grave abuses, causing extreme annoyance, embarrassment, humiliation and pecuniary damage to many persons wholly innocent and free of any wrongdoing, who were merely the victims of circumstances, and such remedies having been exercised by unscrupulous persons for their unjust enrichment, and such remedies having furnished vehicles for the commission or attempted commission of crime and in many cases having resulted in the perpetration of frauds, it is hereby declared as the public policy of the state that the best interests of the people of the state will be served by the abolition of such remedies. Consequently, in the public interest, the necessity for the enactment of this article is hereby declared as a matter of legislative determination."
21. See 20 Cornell L. Q. 257 (1935); contra, 83 U. of Pa. L. Rev. 276 (1935).
22. McKinney v. McKinney, 59 Wyo. 204, 135 P.2d 940 (1943). The opinions intimate that members of the Supreme Court would be willing to acknowledge a cause of action, unrecognized at either common law or by appropriate legislation.