

NEW JERSEY COURT OF ERRORS  
AND APPEALS

<p>ANNA M. BUTLER, <i>Defendant in Error,</i> VS. HANNAH SWEITZER, <i>Plaintiff in Error.</i></p>	}	<p>ON APPEAL BRIEF</p>
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1. This case is an appeal from the New Jersey Supreme Court, Burlington County Circuit, in which the plaintiff sued the defendant for alienation of affections and the jury rendered a verdict in favor of plaintiff on June 26, 1924, in the sum of Ten thousand (\$10,000) Dollars.

2. Notice of appeal and reasons were served upon counsel for defendant in error, but no brief has been served to this date.

3. The first reason set forth by plaintiff in error as to why verdict should be set aside is because the verdict was against the weight of the evidence.

4. On the question of setting aside a verdict against the weight of the evidence that is a subject matter of the trial Court and not the Court of Errors and Appeals.

5. In civil cases the Court of Errors and Appeals is not empowered to set aside a verdict as against the weight of the evidence; the setting aside of the verdict being exclusively the province of the trial Court.

Byrne v. Snead, 118 Atl. 841  
Savino v. Goldberg, 92 L. 617, 106 Atl. 815  
Smith v. Brunswick Laundry Co., 93, 436,  
198 Atl. 184

6. On the question of setting aside a verdict against the weight of the evidence that matter is not reviewed on an appeal, but only on rule to show cause.

10 On question of weight of evidence or credibility of witnesses they are not the subject matter of grounds of appeal. They will not be reviewed.

Neison v. Goldsmith, 123 Atl. 752  
Director Genrl. of R. 95 L. 538, 112 Atl. 816, 861

7. On the second reason because the amount of the verdict was excessive the only reply is that the jury after hearing all the facts in this case were the best judges.

20 Where a loss of consortium between husband and wife is caused by wilful conduct of a third party, there is a legal injury for which damages are recoverable, irrespective of the prior existence of actual affection between the spouses.

If a husband and wife be living separate there is always a possibility of their coming together, which the law encourages, and an actionable wrong is committed by unlawful interference preventing a reunion.

Dey v. Dey, 110 Atl. 703.

30 On question of damages, the right of award of exemplary damages rests upon the single ground of wrongful motive, and when the personal intent to injure is shown, the penalty may be inflicted.

Dreimuller v. Rogow, 107 Atl. p. 144  
Haines v. Schultz, 50 Law 481, 14 Atl. 488

In a suit for damages for alienation of affection of plaintiff's husband, the measure of her damages is such sum as would reasonably compensate her for the injury to her feelings and for the loss of her husband's comfort, society and support.

Where defendant's conduct causing alienation of the affections of plaintiff's husband is wanton and malicious towards plaintiff, plaintiff may recover punitive damages. 10

Lupton v. Underwood, 85, Atl. 966  
Delaware case.

If express malice (i.e. a wrongful personal intent to injure) on the part of the defendant is shown, punitive damages are proper in a suit for slander.

Weiss v. Weiss, 112 Atl. 184

Evidence of financial standing of the defendant is admissible upon the question of damages in an action for slander. 20

Weiss v. Weiss, 112 Atl. 184

8. Counsel for plaintiff in error has assigned nineteen questions and answers as reasons for granting an appeal to which no exceptions were taken, then one exception was taken and counsel for plaintiff in error assigns thirty other questions and answers to which no exceptions were taken and there being no exceptions to the objections, counsel for plaintiff in error is in no position to have the same reviewed by this Court. 30

On questions to which no exceptions have been taken on objections.

The settled practice of this Court is to leave unconsidered alleged errors to which no exceptions have been taken at the trial.

Neison v. Goldsmith, 123 Atl. 752

Court of Errors case.

Davis v. Little, 664 L. 495, 46 Atl. 631

Conrad v. Brocker, 70 L. 823, 58 Atl. 1019

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9. On the fourth reason because the verdict was against the charge of the Court, there is no error in that reason at all. The charge of the Court is hereby set forth in this brief verbatim:

“Ladies and gentlemen of the jury: Pat Butler and his wife, the plaintiff in this case, were married in April, 1917. Their matrimonialship seems to have been in the breakers a great part of the time from its launching. There  
20 has been testimony in this case, admitted concerning the conduct of the husband toward his wife, for the sole purpose of exhibiting to you his mental attitude toward her. You are not trying an action between Mrs. Butler and her husband; you have been permitted to consider the testimony of his conduct toward her for the purpose of showing his mental attitude toward her, and that is all.

Now, that mental attitude is alleged, in this case, to have been caused by the defendant, Miss Sweitzer; and this is an action between Mrs. Butler and Miss Sweitzer in which Mrs. Butler alleges that Miss Sweitzer alienated the affections of her husband.

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The testimony in the case is for you. The weight of credence which you will give to the witnesses is entirely for you; and you will resolve into the truth, as you see it, the discrepancies between the testimony of the various

witnesses in this case. I think it is not necessary for me to comment on the testimony, so I shall charge you the rules of law within which you will consider your verdict.

An action for damages lies in behalf of a wife against one who has enticed away or alienated the affections of the husband. Express malice need not be proved, intentional, unjustifiable and wrongful alienation being sufficient from which to imply the requisite malice.

Intention and design on the part of the defendant to effect an alienation are essential, though an actual intent to alienate is not necessary if defendant's acts are inherently wrong and seductive and tend to and do have the effect complained of. 10

It is essential that the defendant should directly interfere between the spouses, to the extent of causing a loss of consortium, that is a loss of conjugal society.

The mere fact of the husband's infatuation with defendant is insufficient and the burden is on the plaintiff, the wife, to show such interference.

The Court has stated the law correctly so there can be no error in the Court's charge. 20

The Defendant in Error respectfully submits that judgment of the Court below should be affirmed.

ROBERT PEACOCK,  
Counsel for Defendants in Error.

