

There will be a decree for the plaintiffs, with a reference to the registrar to take the accounts, and tax to the plaintiffs the costs of the action and reference.

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CARTWRIGHT, MASTER.

JANUARY 11TH, 1909.

CHAMBERS.

WESTON v. PERRY.

*Pleading—Statement of Claim—Motion to Strike out as Embarrassing — Enticing Plaintiff's Husband to Leave her—Cause of Action.*

Motion by defendant to strike out paragraph 2 of the statement of claim as prejudicial and embarrassing.

T. N. Phelan, for defendant.

J. B. Mackenzie, for plaintiff.

THE MASTER:—A comparison of the paragraph in question with paragraphs 5 and 6 of the statement of claim in the previous action between these parties seems to shew that there is no substantial difference. In the present action the plaintiff alleges that the defendant enticed and persuaded her husband to leave her and go and live with defendant. In the former action (which was against defendant and her husband) the plaintiff alleged that both defendants conspired to alienate her husband's affections, and thereby prevailed on him to live apart from her. In the earlier case these paragraphs were struck out as embarrassing, and no appeal was taken from this. In the present case the alleged ground of action is not identical, as it is against the wife alone, and is based on enticing. There is no precedent for any such action. Mr. Mackenzie relied on Bullen & Leake, 6th ed., p. 412, n. 1, by analogy, and the judgment of the Court of Appeal in *Lellis v. Lambert*, 24 A. R. 653, at p. 664, per Osler, J.A. He also cited *Whitaker v. Kershaw*, 45 Ch. D. 320, and *Weldon v. Winslow*, 13 Q. B. D. 784, as authority that a married woman can now sue or be sued alone for torts done to or by her.

As the matter is novel, I do not think it can be properly disposed of on interlocutory application. This view is sup-