

It is sufficient to hold for the purposes of this case, that when a husband and his wife have lived together in the ordinary family relation, each performing the usual duties incident thereto, the husband may maintain an action against one for the loss of her services and comfort as a wife, proximately caused by the defendant's act. *Kelley v. Railroad*, 168 Mass. 308; *Brooks v. Schwerin*, 54 N. Y. 343, 348; *Reynolds v. Robinson*, 64 N. Y. 589; *Southern Ry. v. Crowder*, 135 Ala. 417; *Baltimore etc. R. R. v. Glenn*, 66 Ohio St. 395; *Mewhirter v. Hatton*, 42 Ia. 288, 291; *Cullar v. Railway*, 84 Mo. App. 340; Rodg. Dom. Rel., s. 267; Cool. Torts 226, 227. Presumably, such was the state of facts referred to in the declaration, and it is not advisable to determine the legal effect of unusual and exceptional circumstances before they are alleged in the pleadings or presented by the evidence.

Exception overruled.

PARSONS, C. J., and CHASE and BINGHAM, JJ., concurred: YOUNG, J., concurred in the result, but was of the opinion that no recovery could be had for the loss of the wife's services.

Hillsborough, }
April 3, 1906. }

STATE v. NAUD & a.

A person who has been arraigned upon a criminal charge and is awaiting the action of the grand jury has no right to take depositions under section 13, chapter 225, Public Statutes.

PETITION, for the correction of alleged error in the ruling of a justice of the peace. Transferred from the September term, 1905, of the superior court by *Peaslee, J.*

The defendant Naud was arraigned before the police court of the city of Manchester upon a charge of larceny, and was bound over to await the action of the grand jury at the January term, 1906, of the superior court. His counsel gave the state notice of the taking of depositions under section 13, chapter 225, Public Statutes. At the return of the caption it appeared that the defendant proposed to take the deposition of the principal witness for the state, and the solicitor objected. The justice ruled that the deposition be taken, and continued the caption pending a decision upon this petition. It was ruled in the superior court that the defendant had no right under the statute to take the deposition, and he excepted.

Edward H. Wason, solicitor, for the state.

Cyprian J. Belanger and *David W. Perkins*, for the defendant.

BINGHAM, J. When the notice to take depositions was served upon the solicitor, no criminal case was pending against the defendant in which depositions could be taken or used, and the justice of the peace acted without authority of law in ordering the caption to proceed. At that time the defendant had simply been bound over to await the action of the grand jury. No indictment had been found against him, and whether one ever would be was a question about which nothing could then be known. Section 13, chapter 225, of the Public Statutes, contemplates the pendency of a criminal action in which depositions are to be taken and used, the same as section 1 contemplates the pendency of a civil action when notice is given under it. *Bundy v. Hyde*, 50 N. H. 116, 120; *Kingsbury v. Smith*, 13 N. H. 109; *Ela v. Rand*, 4 N. H. 54. Until the defendant was indicted no criminal case was pending against him (*People v. Restell*, 3 Hill 289, 294); and as no indictment had been found when the notice was given, the proceeding was void.

Exception overruled.

All concurred.

Grafton, }
April 3, 1906. }

RICHARDSON v. THORPE.

Where the words of an alleged libel are capable of more than one meaning, it is the office of the inuendo to point out the sense in which it is claimed they were used; and if as matter of law they are susceptible of the construction so placed upon them, the question whether they were used in the sense charged is one of fact for the jury.

A declaration setting forth a newspaper article which charges the plaintiff with fraud and dishonesty in his business transactions is not demurrable because no special damage is alleged.

CASE, for libel. The declaration alleges, in substance, that the plaintiff is an honest man and a good citizen, and that the defendant, well knowing these facts and intending to injure the plaintiff, maliciously published in his newspaper the following false and