

Wait v. Pierce
191 Wis. 202 (1926)

This case marks an important step forward for women in Wisconsin. In a 4-3 ruling, the Wisconsin Supreme Court granted women the right to sue their husbands, reversing the Winnebago County Circuit Court. In so doing, the Court broadly interpreted a 1921 law which gave women the right to vote, finding that the law granted women a number of additional rights. Justice Marvin B. Rosenberry authored the majority opinion and Justice Franz C. Eschweiler wrote the dissent.

In this case, the Wisconsin Supreme Court broadly interpreted a state statute to grant married women the right to sue their husbands.

The case arose when the plaintiff, Mathilda Wait, sued two defendants, Pierce and Borenz, for injuries that resulted from negligent operation of a car. The car was driven by an employee of Pierce and Borenz.

The defendants wanted Wait's husband, George Wait, to be held liable for her injuries because he had also been found to be partly responsible for the accident; however, the circuit court ruled that Wait could not bring legal action against her husband to redress injuries caused by his negligence. The case was dismissed and Pierce and Borenz appealed the summary judgment to the Wisconsin Supreme Court.

The key issue for the Court was whether state law permitted a wife to sue her husband for injuries. The justices noted that this was a novel issue that involved interpreting the scope of the Amendment of 1881^{*} which granted married women the right to legal action in the case of injury.

The Court first noted that there was no exception to the rule outlined in the statute. Citing Chapter 17 (Laws of 1905) and Chapter 529 (Laws of 1921)^{**}, the court concluded that the Legislature intended to place women and men, regardless of their marital status, equal before the law.

In *Thompson v. Thompson, supra*^{***}, the U.S. Supreme Court wrestled with similar issues and reached a different result; however, the Wisconsin Supreme Court found that the reasoning of the U.S. Supreme Court did not apply to the set of facts in this case.

In his dissent, Justice Eschweiler argued that the intent of the law was not to do away with the "firmly established and well recognized common law rule" which prohibited spouses

^{*} Wis. Stat. ch. 99 (Laws of 1881): "And any married woman may bring and maintain an action in her own name for any injury to her person or character the same as if she were sole, and any judgment recorded in such action shall be the separate property and estate of such married woman, provided that nothing herein contained shall affect the right of the husband to maintain a separate action..."

^{**} Wis. Stat. ch. 17 (Laws of 1905) gave married women the right to maintain an action against a third person "for the alienation of her husband's affections and the loss of his society." Chapter 529 of the Laws of 1921 (sec. 6.015 Stats.) states: "Women shall have the same rights and privileges under the law as men in the exercise of suffrage, freedom of contract, choice of residence for voting purposes, jury service, holding office, holding and conveying property, care and custody of children, and in all other respects. The various court, executive and administrative officers shall construe the statutes where the masculine gender is used to include feminine gender unless such construction will deny to females the special protection and privileges which they now enjoy for the general welfare. The courts, executive and administrative officers shall make all necessary rules and provisions to carry out the intent and purpose of this statute."

^{***} 218 U.S. 611, 31 Sup. Ct. 111

from suing each other. He warned that the implications of the majority decision went far beyond what was intended by the statute and argued that Chapter 539 of the Laws of 1921 should have been interpreted not to create new rights for women but rather to remove barriers to the exercise of previously established rights.