purpose as similar as possible to that stated by him rather than that the trust which he attempted to create should fail altogether.

In the fourth item of her will, the testatrix stated that she looked upon her possessions as gifts from God to provide for her old age and to be used for human betterment. She selected the education of young men for the ministry as the vehicle for providing human betterment. We do not believe that these intentions had anything to do with a continuing preference for men in the ministry. We discern no such prejudice in the will. But when she died women were not permitted in the ministry in the Lutheran Church. So she labeled her funds for young men's theological education. However, since 1970, women have been permitted to enter the Lutheran ministry.

In *City of Philadelphia v. Heirs of Stephen Girard*, 45 Pa. 9, 27-28 (1863), the Court said:

> "When a definite charity is created, the failure of the particular mode in which it is to be effectuated does not destroy the charity, for equity will substitute another mode, so that the substantial intention shall not depend on the insufficiency of the formal intention."

Since we believe that it was the intention of the testatrix to thank God and benefit humans generally, and not to benefit one particular person by her generosity, we find that this intention does not depend upon the fund's being used to educate just young men, for a young woman trained in the ministry is equally capable, by her life and service, of benefitting humans generally. To render her charitable purpose less indefinite or impractical of fulfillment, we will order that the fund may be applied to the theological education of a needy young person of Waynesboro at the Gettysburg Theological Seminary.

ORDER OF COURT

AND NOW, this 26th day of June, 1979, it is ordered pursuant to Section 6110 of the Probate, Estates and Fiduciaries Code, that the First National Bank and Trust Company of Waynesboro, Pennsylvania, trustee of a testamentary charitable trust created in Item IV of the Last Will and Testament of Atha Creager, a/k/a Athalinda Belle Creager, distribute funds from the said charitable trust to a worthy and needy young person of Waynesboro, Pennsylvania, without regard to the sex of that person but otherwise pursuant to the terms of the said trust.

BUMBAUGH v. KISSNER, C.P. Franklin County Branch, No. A.D. 1977-586

Trespass - Motion for New Trial - Inconsistent Verdict - Loss of Consortium Awarded to Spouse but Victim Denied Damages for Pain and Suffering, Inconvenience, Physical Impairment and Loss of Life's Pleasures - New Trial Awarded

1. Once a jury places liability on a responsible party, they may not wilfully or capriciously withhold payment of an item which is inextricably interwoven in the pattern of the liability.

J. Dennis Guyer, Esq., Attorney for Plaintiff

George F. Douglas, Esq., Attorney for Defendant

OPINION AND ORDER

EPPINGER, P.J., July 12, 1979:

Is it possible for a man to become disabled as a result of an accident so that his wife is entitled to a sum of money for loss of consortium but he is not entitled to a sum of money for pain and suffering, inconvenience, physical impairment and the loss of life's pleasures? That is the question that is presented in this motion for a new trial.

Delmer Bumbaugh, husband, was injured in an accident. He appeared in court wearing a cervical collar and claimed to have suffered a great deal as a result of the accident. Without objection, prior to the closing arguments, the jury was told in this No-Fault case that they were not to concern themselves with Delmer's medical bills or lost income, as he was compensated for them by another source. They were only to concern themselves with what amount, if any, they were going to award to the husband for his alleged pain, suffering, inconvenience, physical impairment, loss of life's pleasures and property damage. They were told that they were to consider an award to Delmer's wife, Sarah, for her alleged loss of consortium.

The jury returned a verdict awarding the husband the previously stipulated sum of $407.20 for property damages and $500.00 to his wife for her loss of consortium.

We believe the answer to the question posed in the first paragraph is no. In *Thompson v. Iannuzzi*, 403 Pa. 329, 169 A.2d 777 (1961), a husband and wife sued for injuries the wife received in a car collision. The jury's verdict was that the

NOTICE TO THE BAR

Effective August 1, 1979 several changes will be made in the Federal Rules of Appellate Procedure. The rules affected are Rules 1 (a), 3 (c), (d) and (e), 4 (a), 5 (d), 6 (d), 7, 10 (b), 11 (a), (b), (c) and (d), 12, 13 (a), 24 (b), 27 (b), 28 (g) and (j), 34 (a) and (b), 35 (b) and (c), 39 (c) and (d), and 40. Among the changes which will immediately affect attorneys filing appeals are the following:

1) The Court of Appeals docket fee of $50.00 will be paid to the District Court Clerk along with the notice of appeal fee of $5.00. Both fees are due upon the filing of the notice of appeal.
2) If a notice of appeal is mistakenly filed with the Court of Appeals, it will be returned to the District Court.
3) Under Rule 4 (a)(4), a notice of appeal filed before the disposition of motions under 50 (b), 52 (b) and 59 to alter or amend a judgment or for a new trial shall have no affect and a new notice of appeal must be subsequently filed.
4) Rule 7 requiring a bond for costs on appeal in civil cases has been changed to where it now merely states that the District Court may require an appellant to file a bond or provide other security.
5) Appellants are required to file an order with the reporter for any transcript within 10 days after filing the notice of appeal. A copy of that order is to be filed with the Clerk of the District Court. If no transcript of parts of the proceeding is to be ordered, the appellant is to file a certificate to that effect. See changed Rule 10 (b) (1).
6) The Clerk of Court is to transmit the notice of appeal to the Court of Appeals forthwith. He is also to transmit the record on appeal forthwith.

DONALD R. BERRY,
Clerk

defendant was responsible to the plaintiff-husband for his wife's medical expenses, but not for any other damages. When the plaintiff in *Thompson* made a motion for a new trial on the ground of inconsistent verdicts, the lower court refused but on appeal, the Supreme Court granted it. The court said that since the jury returned a verdict for the plaintiff-husband it was extremely strange the jury did not make an award to his wife for the injuries which required the medical attention and said:

> It is inevitable that [she] was subjected to pain and inconvenience as a result of her injuries. The doctor so testified. The plaintiff so testified....
>
> It is true that the jury is the final arbiter of facts but it may not, in law, ignore what is patent to the eye, obvious to the mind and clear to the normal processes or ordinary computation. By failing to account for what [the wife] lost through her injuries, while awarding to [her husband] certain monies for therapeutic attention to those same injuries, the jury returned an inconsistent verdict. This court has declared in many cases that where a verdict is inconsistent, a new trial is imperative. 403 Pa. at 331, 332, 169 A.2d at 778, 779.

The Court said further:

> "Once a jury imposes legal liability on a responsible party they may not wilfully or capriciously withhold payment of an item which is inextricably interwoven in the pattern of the liability," 403 Pa. at 333, 169 A.2d 779.

See also *Pascarella v. Pittsburgh Railways Company*, 389 Pa. 8, 131 A.2d 445 (1957); *Little v. Jarvis*, 219 Pa. Super 156, 280 A.2d 617 (1971); *Meyer v. Austin*, 45 D & C 44, 35 Luz. L.R. 396 (1942); and 66 A.L.R. 3d 472 at 481-86.

ORDER OF COURT

NOW, July 12, 1979, a new trial is ordered.

RELIANCE INSURANCE COMPANY v. SHAFFER, C.P. Franklin County Branch, No. A.D. 1978-144

Assumpsit - Petition to Open Default Judgment - Untimeliness

1. A petition to open judgment is a matter of judicial discretion which may be exercised only when the following exist:1) The petition is promptly filed; 2) a meritorious defense is stated; 3) the failure to appear can be excused.