and John Foltz, Executors under the will of Paul F. Foltz, by deed dated June 1, 1968, recorded in Franklin County, PA Deed Book 626, Page 685, conveyed to the mortgagors herein, updated as to adjoiners and reference to roads.

TRACT NO. 2: BEGINNING at a point at or near Route 997 at lands of Letterkenny Army Depot and lands of Zeger; thence by Zeger, North 13 degrees East 10.25 perches to an iron pin; thence by the same North 10 degrees West 12 perches to an iron pin; thence by the same North 10 degrees East 8 perches to an iron pin; thence by the same North 32 degrees East 8 perches to an iron pin; thence by the same North 43 degrees East 6 perches to a post; thence by the same North 43½ degrees West 11.5 perches to an iron pin at the side of the aforesaid now or formerly public road; thence by said road North 2½ degrees East 23.96 perches to an iron pin; thence North 17 degrees East 13.76 perches to an iron pin; thence by the creek and lands formerly of Christ Myers, now Charles H. and John M. Myers, North 71 degrees East 44 perches to a point on the bank of the creek; thence by lands of Elwood and Lorraine Bowman, South 29 degrees East 28.8 perches to a post; thence by the same North 51 degrees East 48.5 perches to an iron pin; thence by lands now or formerly of George G. Myers and Florence E. Myers, his wife, and lands of Wilbur S. Alexander, South 68¾ degrees East 105.64 perches to a hickory; thence by lands now or formerly of Forest M. Wilson, Jr. and Kathleen Wilson, South 68 degrees East 25.08 perches to a stone; thence by lands now or formerly of Robert Martin, Zola Richardson, Leroy H. Ebersole and Grace W. Ebersole, his wife, Keith Eyer and Delores Eyer, his wife, Paul Fleagle and Doris Fleagle, his wife, and Raymond B. Helman and Mary Helman, his wife, South 26¾ degrees West 106 perches to an iron pin at corner of lands of Raymond B. Helman and Mary Helman, his wife; thence by the latter lands South 43-1/8 degrees East 30.44 perches to an iron pin in Township Route No. 602; thence in said public road South 45 degrees West ¼ of a perch to a point; thence by lands of Robert E. Gettel and Tract No. 3 herein, North 43-1/8 degrees West 79 perches to an iron pin; thence across a lane by Tract No. 3 described below, North 16½ degrees East 1 perch to a stone; thence by Tract No. 3 herein, and a portion of said lane due West 140.1 perches to the point, the place of beginning. CONTAINING 119 acres and 104 perches as shown by draft of John H. Atherton, C.S., dated November 27, 1942, updated as to adjoiners and reference to roads.

TRACT NO. 3: BEGINNING at an iron pin in Route 997 (formerly Route 340) probably at the beginning point of Tract No. 2 above; thence by Tract No. 2 above, due East 140.12 perches to a stone; thence by the same, South 16¼ degrees West 1 perch to an iron pin at side of lane; thence by a lane and Tract No. 2 above, South 43 degrees East 46.88 perches to a post; thence by Tract No. 1, South 36 degrees 15 minutes West 48.92 perches to a post; thence by Tract No. 1 North 64 degrees 30 minutes West 22.28 perches to a post; thence by the same South 77-1/8 degrees West 48.66 perches to a stake; thence by lands of Garman and then of Myers, North 50 degrees 45 minutes West 39 perches to a locust; thence by Myers, North 30 minutes East 38.28 perches to an iron pin; thence by the same North 76 degrees 45 minutes West 45.36 perches to the iron pin, the place of beginning, CONTAINING 49 acres and 128 perches as shown by draft of John H. Atherton, C.S., dated November 28, 1956, updated as to adjoiners and reference to roads.

EXCEPTING AND EXCLUDING THEREFROM, HOWEVER, those two purparts excepted out of Tract No. 2 herein, containing 8 acres and 112 perches, more or less, and 1.475 acres more or less sold by Joseph A. Myers, et ux to Secrist and Zeger respectively.

THE above described real estate is intended to be the same which Nellie M. Myers, sole, by her deed dated September 15, 1971, recorded in Franklin County Deed Book 665, Page 756, conveyed to the mortgagors herein.

BEING sold as the property of Alfred J. Miller and Helen L. Miller, Writ No. AD 1984-209.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, April 29, 1985 at 4:00 P.M., E.S.T. Otherwise all money previously paid will be forfeited and the property will be resold on Friday, May 3, 1985 at 1:00 P.M., E.S.T. in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff
Franklin County,
Chambersburg, PA
3-22, 3-29, 4-5

BAR NEWS ITEM

Denis DiLoreto, Chairman, Meetings and Social Events Committee of the Franklin County Bar Association, has announced the scheduling of two social events. They are:

May 3, 1985, Spring Social Dinner (members and spouses), at the Waynesboro Country Club

Sept. 5, 1985, Golf Outing, also at the Waynesboro Country Club.

He suggests that members get these events listed on their calendars now, so as to avoid scheduling conflicts later.

consider the necessity, income, separate estate, and earning potential of each party. *Wiegand v. Wiegand,* 242 Pa. Super. 170, 177, 363 A.2d 1215, 1218 (1976). See also *Young v. Young,* 274 Pa. Super. 298 , 302-3, 418 A.2d 415, 417 (1980). Of particular importance here is the fact that it is not only actual earnings which are considered but rather earning potential. *Comm. ex rel. McNulty v. McNulty,* 226 Pa. Super. 247, 250, 311 A.2d 701, 703 (1973). It was undisputed at the previous hearing that defendant would have been offered a permanent substitue position, absent the circumstances leading to her dismissal. See *Walter v. Walter,* supra, p. 4. Therefore, the Master's finding that defendant had sufficient resources after January, 1983, to provide for her own counsel is correct.

The Master properly did not award $495.00 to defendant for the services of a certified public accountant hired by defendant to review the records of the Walter Development Corporation. No testimony was presented with regard to the bill as it was objected to as being hearsay.

Finally, we note that defendant has filed exceptions to the Master's supplemental report, but all of these were answered in our opinion of December 7, 1983, and supplemental opinion filed on February 2, 1984.

ORDER OF COURT

September 7, 1984, defendant's exception to the report of the Master recommending an award of $1,692.50 to the plaintiff for counsel fees is denied.

IT IS ORDERED that the plaintiff shall pay the defendant the sum of $1,692.50 as counsel fees in the divorce proceeding.

TURNER V. LETTERKENNY FEDERAL CREDIT UNION (NO. 2)*, C.P. Franklin County Branch, No. 1982-66

Employment - Wrongful Discharge - Post Trial Relief - Appeal

1. Where a party limits his objection to a jury charge to one area both at trial and in post-trial motions, he may not expand the objections on appeal.

* Editor's Note: Earlier opinion reported, supra., p. 69.

2. The case of *Trainer v. Trainer,* 224 Pa. 45 (1909) provides support for submission to a jury the question of whether there is just cause for an employee's discharge.

SUPPLEMENTAL OPINION

KELLER, J., September 26, 1984:

The above-captioned matter was tried by jury and a verdict for the plaintiff was rendered on February 10, 1984. Motions for judgment n.o.v. and for a new trial were timely filed and arguments were heard on May 3, 1984. This Court on August 14, 1984, filed its Opinion and Order denying the post-trial motions of the defendant. Notice of Appeal to the Superior Court was timely filed and served upon the Court. Pursuant to Pa. R.A.P. 1925(b) an order was entered on August 27, 1984, directing the appellant to file of record and serve on the undersigned judge a concise statement of the matters complained of on appeal with citation of authority relied upon. The appellant complied with the order on September 4, 1984.

In appellant's Statement of Matters Complained of on Appeal, he alleges the Court erred in three separate aspects of its charge to the jury, and then quotes the portions of the charge objected to.

That portion of the defendant's motion for a new trial alleging trial errors states:

> 1. The learned trial Judge erred in charging the Jury that there was a cause of action in Pennsylvania for discharge at will employees that was not the variety of the cases on the exception of the important and well recognized facet of public policy, such as serving on jury duty, or refusing a polygraph test, or in retaliation for filing a workmen's compensation claim, and that this separate cause of action was first, was the manner selected by the employer of effectuating the discharge abusive, and second, had the employer no plausible and legitimate reason for the manner in which it was done, to which the plaintiff made a specific objection.
>
> 2. The learned trial Judge erred in charging on punitive damages, to which the plaintiff made a specific objection.

That portion of the defendant's motion for judgment n.o.v. alleging trial errors states:

> 1. When the Plaintiff's attorney admitted that there had not been a violation of an important and well recognized facet of public policy

BAR NEWS ITEM

To fill the vacancy created by the resignation of the incumbent United States Attorney, the U. S. Attorney Nominating Commission of Pennsylvania has set April 17, 1985, as the deadline for the return of completed questionnaires from candidates for the vacancy.

The commission plans to interview candidates the week of April 22, in Harrisburg.

Further information and the questionnaires can be obtained from Commission Chairman Ronald R. Davenport at (412) 281-6747.

BAR NEWS ITEM

This past Saturday, March 23, 1985, your Managing Editor and Jay H. Gingrich, Esq., Assistant Editor, attended the Spring meeting of the Pennsylvania Conference of County Legal Journal Officers, held near Philadelphia. There, a presentation was made by a representative of MATCO Micrographics, Inc., concerning microfiching processes now available for storage and even for possible publication distribution of legal journal materials. This presentation had been scheduled by Al Leventhal, Conference Secretary, as part of the efforts of a two member study group, comprised of himself and your managing editor, appointed by the Conference Chairperson at the March, 1984, meeting. It was noted that there will be a presentation on new computer technology available to county legal publications, at a later time. There was also a brief discussion of copyrighting protection availability. Also, your managing editor was appointed to the nominations committee, for conference officers, to be elected for the coming year. Jay and he also inspected copies of the weekly issues of various county journals published throughout the Commonwealth.

Although no official position was taken, relative to any of the above, it seemed to be the general consensus that these county publications are entering into a new era of widening usefulness, as a media for publication of information essential to the services of our profession. Increasing technological advances and broadening scope of coverage subjects were especially noted by your attendees.

in the defendants' termination of the plaintiff's employment, the learned trial Judge erred in not granting the defendant's motion for a compulsory non-suit, and the defendants' request for a directed verdict in the defendant's points for charge.

2. The learned trial Judge erred in charging the Jury that there was a cause of action in Pennsylvania for discharged at will employees that was not the variety of the cases on the exception of the important and well recognized facet of public policy, such as serving on jury duty, or refusing a polygraph test, or in retaliation for filing a workmen's compensation claim, and that this separate cause of action was first, was the manner selected by the employer of effectuating the discharge abusive, and second, had the employer no plausible and legitmate reasons for the manner in which it was done, to which the plaintiff made a specific objection.

3. The learned trial Judge erred in charging on punitive damages, to which the plaintiff made a specific objection.

In defendant's excellent and comprehensive brief in support of its post-trial motion, it stated the issue raised and to be addressed by opposing counsel and the Court in the following language:

> In his charge, the Honorable John W. Keller set forth that there was in Pennsylvania a cause of action for an employee-at-will, who was terminated for an important and well recognized facet of public policy, such as serving on jury duty, refusing to take a polygraph test, or in retaliation for filing a workmen's compensation claim, and that there was another exception to the employer's right in terminating an employee-at-will, which was different from, and not the variety of public policy exceptions. The other exception was a new cause of action in Pennsylvania, the burden of proof being a two-part test: first, that the manner of effectuating the discharge selected by the employer was abusive, and second, that the employer had no plausible and legitimate reason for the manner in which the termination was done. (Defendant's brief page 3 which will be ordered included with the record of the case for transmission to the appellate court.)

At the conclusion of the Court's charge, an on-the-record side bar conference was held and counsel for the defendant/appellant stated:

MR. DOUGLAS: Your Honor, I take specific exception to that portion of Your Honor's charge in which you stated the law of Pennsylvania states that when we have an employee at-will there is a different variety of cases other than those where an employee is discharged for a violation of public policy such as jury duty, refusal to take a polygraph test and filing a workmen's compensation claim, and that a test where the jury is to determine whether the Board had a plausible and legitimate reason for the manner in which they discharged an employee and whether the manner of effectuating the discharge selected was abusive is not the law in Pennsylvania. (N.T. 462-463).

This is the only objection made to the charge of the Court.

Pa. R.C.P. 227.1 provides inter alia:

(b) Post trial relief may not be granted unless the grounds therefor,

(1) if then available, were raised in pre-trial proceedings or by motion, objection, point for charge, request for findings of fact or conclusions of law, offer of proof or other appropriate method at trial; and

(2) are specified in the motion. The motion shall state how the grounds were asserted in pre-trial proceedings or at trial. Grounds not specified are deemed waived unless leave is granted upon cause shown to specify additional grounds.

It is respectfully submitted:

1. The defendant/appellant limited its exception to the Court's charge to the one limited area above set forth.

2. The post-trial motions of defendant/appellant as above set forth also limited the exceptions to that same specific area of the charge.

3. The post-trial brief and argument of the defendant/appellant limited itself to the broad general issue above set forth; and therefore it may not on appeal belatedly dissect the Court's charge and claim errors which were not timely excepted to, were not raised in post-trial motions and were utterly ignored in the post-trial brief and argument. The post-trial brief of plaintiff which will also be included as a part of the record of the case was limited to responding to the general issue raised by the defendant's

post-trial brief and argument. This Court in an exhaustive opinion addressed itself solely to the general issue raised by the defendant. We, therefore, suggest it is singularly inappropriate and improper for the defendant/appellant to create issues on appeal not raised or considered in the court below.

It is this Court's understanding that Pa. R.A.P. 1925 is intended to save the time of the appellate courts and make their responsibilities less burdensome by providing a rationale for the actions taken and decisions made by the lower court. If such is the purpose of that rule, it will surely be defeated if appellants are permitted to raise issues on appeal which are either substantively different or approached in a different manner so the trial court's opinions are not responsive to the issues presented to the appellate courts.

For the foregoing reason we respectfully decline to invest additional scarce judicial time and resources to a review and justification of this Court's jury charge when it was not made an issue in post-trial briefs and arguments. Since we have not been properly informed of any issue to be raised on appeal other than the general issue which was the subject of the post-trial proceedings and opinion, we do not believe any further elaboration of that opinion is required.

We note counsel for defendant/appellant has cited several cases as authorities he will rely upon on appeal which were not previously presented to this Court. In the interest of making our opinion on the existing body of decisional law in Pennsylvania on wrongful discharge complete, we will analyze those cases.

In *Hansrote v. Amer. Industrial Technologies, Inc.,* 586 F. Supp. 113 (Pa. W.D. 1984), the plaintiff sued for breach of his contract of employment and for wrongful discharge, and a verdict was returned in favor of the plaintiff. On motion for judgment n.o.v. the United States District Court, after concluding the jury could have properly found the parties intended a reasonable period of employment under the contract theory, also concluded the jury could have found that the defendant terminated the employment relationship because plaintiff refused to participate in defendant's unlawful and unethical conduct which would be in violation of an employer's duty to refrain from discharging an employee who refuses to commit criminal acts at the behest of his employer. The

defendant's motion was denied. It does not appear this case would support the appellant's general contention.

Adams v. The Budd Co., 583 F. Supp. 711 (Pa. E.D. 1984), the court sustained the defendant's motion for summary judgment in the wrongful discharge count of the case holding:

> Pennsylvania has created only a very narrow exception to the employment at will doctrine. It has yet to recognize the cause of action in a case where an employee, like the plaintiff here, alleges wrongful discharge on the ground that he was dismissed for pointing out defects in his employer's product where there is no evidence of specific hazards or injuries caused by the car nor evidence that the employer 'attempted to hide from (the buyer) the defects in the (product) or deny its responsibility for the defects.' Yaindl, 281 Pa. Super. at 579, 422 A. 2d at 621.

This case falls within the parameters of the paragraph in our opinion where we held: "A discharge for attempted interference with the management policies and activities of an employer or for disregard of administrative procedures and disloyalty will not generate the creation of an exception. *Geary,* supra, *LeKich,* supra, *Yaindl,* supra, *Callahan,* supra, *Gurndon,* supra." (Paragraph No. 5, Opinion Page 23). We, therefore, do not find this case applicable to the case at bar.

In *Robert W. Banas v. Matthews International Corp.,* No. 1205 Pittsburgh, 1982 filed June 15, 1984, the issue here applicable was whether an employer's breach of a provision in an employee manual that had been distributed to an employee creates a cause of action in assumpsit. In affirming the jury's verdict of $10,000 for breach of contract, the Superior Court panel stated:

> We, therefore, hold that a manual published or authorized by an employer and distributed to an employee-at-will becomes part of the parties' employment contract except as to the term (length) of employment.

The only issues in the *Banas* case were involving the defense of conditional privilege in defamation actions, and whether an employer's breach of a provision in an employee manual that has been distributed to an employee creates a cause of action in assumpsit. Clearly, this case does not provide any support for the position of the appellant Letterkenny Federal Credit Union in the case at bar. It does, however, demonstrate the terminal illness of

lands now or formerly of Stewart, South 43¼ degrees East 19.84 perches to an iron pin along said private lane; thence along lands now or formerly of Gettel, South 46¾ degrees West 8.78 perches to an iron pin; thence along said lands, South 31 degrees 30 minutes East 14.6 perches to an iron pin; thence along said lands, South 0 degrees 25 minutes East 4.14 perches to an iron pin; thence along said lands North 64 degrees 15 minutes East 6.17 perches to an iron pin along public road, T.R. 602 known as the Orrstown Road; thence in and along said public road, T.R. 602, South 8 degrees 25 minutes East about 36.38 perches to a point in center of T.R. 602; thence in and along T.R. 602, South 52 degrees 35 minutes West 148.93 perches to marble stone in Route 997 at lands of Letterkenny Ordnance Depot, formerly Elam U. Royer, the place of beginning. CONTAINING 122 acres and 102.2 perches, more or less, according to survey of Crosby Tappan, R.E. made August 14, 1947, and revised November 14, 1950 as to a small tract sold off.

EXCEPTING AND EXCLUDING THEREFROM, Lots 1 through 9 inclusive along Township Route 602, approximately 1,020 feet frontage and 175 feet in depth, as well as a proposed public road or street indicated on the Northerly side of Lot No. 1, all as shown and particularly described in an approved subdivision plan for Paul F. Foltz recorded in Franklin County Deed Book 288, Page 28. (This exception and inclusion includes the three conveyances by Foltz to Crouse and Perry specifically referred to in the hereinafter mentioned deed to the mortgagors herein, Lots 1, 6, and 7).

The above described real estate is intended to be the greater part of the real estate which James Foltz and John Foltz, Executors under the will of Paul F. Foltz, by deed dated June 1, 1968, recorded in Franklin County, PA Deed Book 626, Page 685, conveyed to the mortgagors herein, updated as to adjoiners and reference to roads.

TRACT NO. 2: BEGINNING at a point at or near Route 997 at lands of Letterkenny Army Depot and lands of Zeger; thence by Zeger, North 13 degrees East 10.25 perches to an iron pin; thence by the same North 10 degrees West 12 perches to an iron pin; thence by the same North 10 degrees East 8 perches to an iron pin; thence by the same North 32 degrees East 8 perches to an iron pin; thence by the same North 43 degrees East 6 perches to a post; thence by the same North 43½ degrees West 11.5 perches to an iron pin at the side of the aforesaid now or formerly public road; thence by said road North 2½ degrees East 23.96 perches to an iron pin; thence North 17 degrees East 13.76 perches to an iron pin; thence by the creek and lands formerly of Christ Myers, now Charles H. and John M. Myers, North 71 degrees East 44 perches to a point on the bank of the creek; thence by lands of Elwood and Lorraine Bowman, South 29 degrees East 28.8 perches to a post; thence by the same North 51 degrees East 48.5 perches to an iron pin; thence by lands now or formerly of George G. Myers and Florence E. Myers, his wife, and lands of Wilbur S. Alexander, South 68¾ degrees East 105.64 perches to a hickory; thence by lands now or formerly of Forest M. Wilson, Jr. and Kathleen Wilson, South 68 degrees East 25.08 perches to a stone; thence by lands now or formerly of Robert Martin, Zola Richardson, Leroy H. Ebersole and Grace W. Ebersole, his wife, Keith Eyer and Delores Eyer, his wife, Paul Fleagle and Doris Fleagle, his wife, and Raymond B. Helman and Mary Helman, his wife, South 26¾ degrees West 106 perches to an iron pin at corner of lands of Raymond B. Helman and Mary Helman, his wife; thence by the latter lands South 43-1/8 degrees East 30.44 perches to an iron pin in Township Route No. 602; thence in said public road South 45 degrees West ¾ of a perch to a point; thence by lands of Robert E. Gettel and Tract No. 3 herein, North 43-1/8 degrees West 79 perches to an iron pin; thence across a lane by Tract No. 3 described below, North 16½ degrees East 1 perch to a stone; thence by Tract No. 3 herein, and a portion of said lane due West 140.1 perches to the point, the place of beginning. CONTAINING 119 acres and 104 perches as shown by draft of John H. Atherton, C.S., dated November 27, 1942, updated as to adjoiners and reference to roads.

TRACT NO. 3: BEGINNING at an iron pin in Route 997 (formerly Route 340) probably at the beginning point of Tract No. 2 above; thence by Tract No. 2 above, due East 140.12 perches to a stone; thence by the same, South 16¼ degrees West 1 perch to an iron pin at side of lane; thence by a lane and Tract No. 2 above, South 43 degrees East 46.88 perches to a post; thence by Tract No. 1, South 36 degrees 15 minutes West 48.92 perches to a post; thence by Tract No. 1 North 64 degrees 30 minutes West 22.28 perches to a post; thence by the same South 77-1/8 degrees West 48.66 perches to a stake; thence by lands of Garman and then of Myers, North 50 degrees 45 minutes West 39 perches to a locust; thence by Myers, North 30 minutes East 38.28 perches to an iron pin; thence by the same North 76 degrees 45 minutes West 45.36 perches to the iron pin, the place of beginning, CONTAINING 49 acres and 128 perches as shown by draft of John H. Atherton, C.S., dated November 28, 1956, updated as to adjoiners and reference to roads.

EXCEPTING AND EXCLUDING THEREFROM, HOWEVER, those two purparts excepted out of Tract No. 2 herein, containing 8 acres and 112 perches, more or less, and 1.475 acres more or less sold by Joseph A. Myers, et ux to Secrist and Zeger respectively.

THE above described real estate is intended to be the same which Nellie M. Myers, sole, by her deed dated September 15, 1971, recorded in Franklin County Deed Book 665, Page 756, conveyed to the mortgagors herein.

BEING sold as the property of Alfred J. Miller and Helen L. Miller, Writ No. AD 1984-209

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, April 29, 1985 at 4:00 P.M., E.S.T. Otherwise all money previously paid will be forfeited and the property will be resold on Friday, May 3, 1985 at 1:00 P.M., E.S.T. in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff
Franklin County,
Chambersburg, PA
3-22, 3-29, 4-5

the old rule that an employer may discharge an employee-at-will for any or no cause.

Parenthetically, it is interesting to note that the Pennsylvania Law Journal Reporter for August 20, 1984 Vol. VII, No. 32 carries an article titled "Forgotten Case May Be Key To At-Will Law," and notes the Supreme Court "75 years ago addressed both the issue of the 'just cause' standard of termination and the employment contract question decided by the Superior Court in *Banas v. Matthews International.*" The case referred to is *Trainer v. Trainer Spinning Co.,* 224 Pa. 45, 73 A.8 (1909) which was a suit in assumpsit to recover salary claimed to be due under a contract of employment which was either an oral agreement or one implied from corporate minutes and resolutions. The employer defended on the grounds that it was justified in discharging plaintiff. The trial judge charged the jury inter alia:

> Now, it will be for the jury to say whether or not this company was justified in discharging him for any reason that took place, either at the first interview by the president after the passage of the resolution of August 6, or the second. If the jury find that there was nothing in that that justified the company for discharging him, then he is entitled to recover . . . ." *Trainer,* supra at page 49.

The jury returned a verdict for the plaintiff and defendant appealed.

The Supreme Court of Pennsylvania concluded the issues were all questions for the jury and in affirming the judgment held inter alia:

> Under the circumstances the jury could very properly take into consideration the resolutions of August 6 and 9, and all other facts developed at the trial in order to determine whether there was *just cause for the discharge. Trainer,* supra at page 51. (Italics ours.)

The case at bar is unlike *Trainer,* supra, in that there is no contract issue. However, there are analogies in that both cases were submitted to juries on disputed issues of fact, the issue whether there was just cause (plausible and legitimate reason) for the employee's discharge was submitted to those juries, and both juries returned verdicts in favor of the plaintiff. We respectfully submit *Trainer,* supra, does not only represent an early willingness

on the part of our highest court to withdraw from the harsh and arbitrary "old rule" but also partial authority for the substantive law decisions made by this court.

We have carefully considered the reasons for appeal stated and authorities cited by defendant/appellant, and remain persuaded that no error was committed in the trial of this case.

FUNK v. FUNK, C.P. Franklin County Branch, F.R. 1983 - 472-S

Support for Spouse - Adulterous Conduct - Indignity

1. Any conduct on the part of one spouse which would be grounds for divorce will also justify denying spousal support.

2. Adultery may be found when the parties to the alleged adulterous conduct are so disposed or inclined and an opportunity existed for the satisfaction of such inclination.

3. A spouse's relationship with a member of the opposite sex, other than his or her own spouse, may constitute an indignity even where the evidence is insufficient to sustain a charge of adultery.

George E. Wenger, Esquire, Counsel for Plaintiff

John R. Walker, D.A., Counsel for Defendant

OPINION AND ORDER

KELLER, J., September 26, 1984:

The parties in this support appeal are Darlin M. Funk, hereinafter wife, who currently resides at 14195 Buchanan Trail West, Mercersburg, Pennsylvania and James A. Funk, hereinafter husband, who currently resides at 1056 Bear Valley Road, Fort Loudon, Pennsylvania. They were married on May 29, 1971 and are the parents of two children. On August 6, 1983 marital difficulties precipitated the separation of the parties and on August 11, 1983 wife filed a complaint for child support. The Honorable George C. Eppinger, P.J. scheduled a hearing on the matter for September 9, 1983 at 9:00 o'clock a.m. before Robert J. Woods, the Domestic Relations Hearing Officer. The hearing