

Term, 1867.]

Lewis and wife v. Moore.

LEWIS AND WIFE *v.* MOORE.

The declaration, in a suit by the husband and wife, must distinctly disclose the interest of the wife in the subject-matter of the suit.

*Appeal from Crawford Circuit Court.*

HON. THOMAS BOLES, Circuit Judge.

JESSE TURNER, for appellant.

WALKER, C. J.

This is an action of replevin, brought by Lewis and wife against Moore. The title or interest which the wife had in the property in suit, if any, is nowhere disclosed. It is simply alleged in the declaration that the plaintiffs delivered the property to the defendant, to be by him, thereafter, re-delivered to them, which defendant refused to do, to their damage, &c.

A demurrer was sustained to the declaration, because it disclosed no separate interest or estate of the wife in the property. This, we think, should have been shown; because, in the absence of such interest in the wife, she should not have been made a party to the action. It is only when the wife is the meritorious cause of action, or has an interest in or title to the property, that she should be joined with her husband in the suit; and in such case the declaration must distinctly disclose her interest, and show in what respect she had an interest in or is the meritorious cause of action. 1 *Chitty Pl.*, p. 30; *Saunders' Pl. and Ev.*, vol. 2, p. 770. The declaration, in this case, makes no such disclosure, but is, in all respects, such as would be proper if the plaintiffs had been joint owners of the property. The demurrer was, therefore, properly sustained.

Judgment affirmed.