Washington University Law Review

Volume 15 | Issue 3

January 1930

Husband and Wife—Authority of Wife to Pledge Credit of Husband

pear as candidates in their places. The decision is in accord with the principle enunciated in *State v. Circuit Court of Marathon County* (1922) 178 Wis. 468, 190 N. W. 563. In that case the question in issue was whether the court could enjoin the county clerks from placing on the official ballot the name of a regularly nominated candidate for state senator on the ground that he was ineligible. It was held that the eligibility of a nominee to office could not be judicially determined until after election, even though non-eligibility were plainly disclosed. Prior to an election voters have no interest in the eligibility of candidates which entitles them to file any sort of action. P. S. A., '31.

HUSBAND AND WIFE—AUTHORITY OF WIFE TO PLEDGE CREDIT OF HUSBAND.—In a suit by a mercantile establishment against defendant whose wife was furnished by him with ample means to pay cash for articles of clothing, it was held that the wife was without right to purchase a fur coat on her husband's credit and that the husband was entirely absolved from liability. *Saks v. Huddleston et ux.* (D. C. 1929) 36 F. (2d) 537.

The decision undoubtedly follows the almost universal holding. *McCreery and Co. v. Martin* (1913) 84 N. J. L. 626, 87 Atl. 433; *Wickstrom v. Peck* (1914) 136 App. Div. 608, 148 N. Y. S. 596; *Eder v. Grifka* (1912) 149 Wis. 606, 136 N. W. 154. The leading case of *Wanamaker v. Weaver* (1903) 176 N. Y. 75, 68 N. E. 135, enunciated the theory that marriage and cohabitation do not constitute a holding out of the wife as an agent to purchase necessaries. Although a presumption of such agency may exist, it is only *prima facie*, and may be rebutted by proof that the husband either furnished the necessaries himself or gave the wife ample allowance. It is true that some early English cases held a *contra* view, chiefly expressed in dicta, as in *Johnson v. Sumner* (1858) 3 Hurlst. & N. 261, 157 Eng. R. 469, but the modern doctrine is in accord with the principal case. *Morel Bros. v. Westmoreland* (1903) 1 K. B. 64; note (1903) 65 L. R. A. 529, 542.

In the principal case the court, after citing authority, thus justifies its decision: "Its tendency will be to check extravagance (one of the most pronounced of modern evils), and at the same time protect husbands, who in good faith have made such provision for their wives as their means and station in life warranted, from debts thoughtlessly and needlessly contracted, and often beyond the capacity of the husband to pay." And as to the merchant, "The present-day means available to merchants for the ascertainment of the moral and financial responsibility of patrons and customers are such that little apprehension need be indulged on account of the rule we have just announced."

In view of the imposing array of authority it is with some hesitation that one ventures the criticism that the doctrine is not one well adapted to modern usage. Unfortunately the mercantile practice is not what the courts wish or think it to be, and apparently it will not be changed. In the city of St. Louis, as disclosed by the credit department of a large department store, it is the practice *not* to question the wife's authority when she opens an account in her husband's name. It is found to be embarrassing, often to the point of losing trade, to ask too many questions. The princi-

pal case relies on the safeguard of credit information to protect the merchant, but this does not meet the problem. The question is not the financial responsibility of the husband, but the authority of the wife to pledge such credit. Further, in most cases the wife has the authority, and it is not an unreasonable presumption on the part of the merchant that such authority is given in all cases. Since the husband is liable for necessaries, the merchant assumes that he is safe in selling what would be necessaries were it not for the allowance. The rule enunciated in the cases is perhaps indicative of the inability of the courts to keep abreast with economic practice. R. W. B., '31.

LATERAL SUPPORT—DUTY TO PROTECT ADJOINING BUILDINGS.—In *MacMillan Co. v. Massell Realty Improvement Co.* (Ga. 1929) 147 S. E. 38, the court held that where a proprietor desires to make an excavation up to the line of his lot for the purpose of constructing a building, and the adjacent proprietor has an existing building the wall of which extends along the property line, it is the duty of the party desiring to make the excavation to give the adjoining proprietor reasonable notice of his intention and also to take reasonable precautions to sustain the land of the other, so as to avoid injury to the land and the building thereon. In accordance with this ruling the Massell Realty Improvement Co. were enjoined from proceeding with an excavation until they had taken reasonable precautions to secure the building of the MacMillan Co.

The holding in this case is directly in conflict with the common law on this subject, which is still in effect in nearly all jurisdictions. The right to lateral support has always been considered to apply to land in its natural state only, and it was considered the duty of the adjoining owner, upon notice of impending excavations, to shore or prop up his own building. The excavator would be liable for damages to the adjoining building only if he were negligent in excavating. 1 R. C. L. 385; *Transportation Co. v. Chicago* (1878) 99 U. S. 635; *Home Brewing Co. v. Thomas Colliery Co.* (1922) 274 Pa. 56, 117 Atl. 542; *Davis v. Sap* (1926) 20 Ohio App. 180, 152 N. E. 758.

The decision in the principal case was based on a statute which previously had been construed favorably to the owners of buildings by the Georgia court. "The owner of adjoining land has the right, on giving reasonable notice of his intention so to do, to make proper and needful excavations even up to the line for purpose of construction, using ordinary care and taking reasonable precautions to sustain the land of the other." Ga. Code of 1926, sec. 3620. This seems merely to state the common law rule and to overlook completely the possibility of superimposed structures on the land. The Georgia court in *Bass v. West* (1900) 110 Ga. 698, 36 S. E. 244, assumes that "land" means "land and building," as it does in the later case of *Wilkins v. Grant* (1903) 118 Ga. 522, 45 S. E. 442, holding that the judge's instruction "that it was duty of the defendant to use ordinary care to sustain 'the land' of the plaintiff" without instructing in the same connection