

1922.

*Present : Schneider J.***BULNER v. KRELTZHEIM et al.***43—C. R. Kandy, 28,640.*

Husband and wife—Debt contracted by wife for carrying on her separate business—Liability of husband—Joint liability of husband and wife—Principal and agent.

A husband is liable for debts contracted by his wife for such necessities as are required for the household or for her legitimate maintenance. Where a wife contracted a debt for carrying on her separate business as a dressmaker without her husband's authority, held that the husband was not liable.

Where the husband is liable for the wife's debt, both husband and wife are not jointly liable, as it is not possible for both principal and agent to be liable on the same contract.

THE facts appear from the judgment.

Arulanandan, for appellant.

June 2, 1922. SCHNEIDER J.—

The plaintiff claimed a certain sum of money as having been lent to the first defendant for the purpose of her business as a dressmaker which she was carrying on. She joined the second defendant in the action as being the husband of the first. The second defendant pleaded that he was not liable, and that he had no knowledge of the transaction whatever. He also pleaded that he had been separated from his wife for some time. The only evidence in the case is that of the plaintiff, who says that the first defendant was living with her husband and had the dressmaking establishment in his house, and that she borrowed the money for the purpose of her business, and that the defendants fell out after that. The learned Commissioner has given judgment for the plaintiff for the sum claimed against both defendants. Now, if the money was borrowed by the first defendant as the wife of the second, and the second defendant is liable for that loan, it is evident that the first defendant also cannot be liable, because the liability of the second defendant arises upon the assumption that the first defendant was his agent in contracting that debt. It is not possible for both principal and agent to be liable on the same contract. It seems to me that the facts in this case do not warrant the assumption that the money was borrowed by the first defendant in her capacity as the agent of her husband. There are no facts from which the existence of an agency can be inferred. The plaintiff's own evidence shows that the first defendant carried on the business of a dressmaker as a business which belonged to herself. The plaintiff nowhere states that the second defendant had any share in that

business. Therefore, it cannot be said that the second defendant in any manner held himself out either personally or otherwise as a person who would be liable for the business debts of the first defendant. All that the common law would allow us to assume is that a wife would be the agent of her husband for such necessaries as are required for the household or for her legitimate maintenance. I do not think that the common law would justify the inference being drawn in the circumstances of this case that the first defendant acted as the agent of the second in borrowing this sum of money. I would, therefore, set aside the judgment in so far as the second defendant is concerned, and would dismiss the action against him, but I am not disposed to grant the second defendant his costs, either in the lower Court or in this Court, for the reason that he might have made it known more publicly that he was not liable for the debts of his wife incurred for her business. The first defendant has not appealed, and, therefore, this appeal leaves untouched the decree in so far as it relates to her.

1922.

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 SCHNEIDER
 J.
*Bulmer v.
 Kretzheim*

Set aside.

