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The Extent of a Husband's Obligation to Support His Wife

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something more than a mere contractual right concerning land has been created, for it is difficult to see how a subsequent purchaser of the land can be held liable on a contract to which he was not a party and the obligations of which he has not assumed, unless it may be said that in buying the land he impliedly assumes the contract. It would seem, however, in the latter event that the more logical explanation is that an interest in the land itself has actually been created, and that the purchaser with notice takes subject to such interest.

JOHN L. CONNERS.

THE EXTENT OF A HUSBAND'S OBLIGATION TO SUPPORT HIS WIFE.

As a necessary incident to the marital relation there is imposed on the husband the duty to support and maintain his wife and family in conformity with his condition and station in life.[1] This duty does not rest on any contractual rights but is based on considerations of public policy[2] which demand that the husband, as the legal head of the family,[3] fulfill his obligation to those who are naturally dependent upon him for support and protection. Today, most of the states have strengthened this common law obligation by statute,[4] imposing both

[1] Keller v. Phillips, 39 N. Y. 351, 354 (1868); De Brauwere v. De Brauwere, 203 N. Y. 460, 96 N. E. 722 (1911); Rodgers v. Rodgers, 229 N. Y. 255, 128 N. E. 117 (1920); Shebley v. Peters, 53 Cal. 288, 200 Pac. 364 (1921); Bauer v. Abrahams, 73 Colo. 509, 216 Pac. 259 (1923); State v. Kelly, 100 Conn. 727, 125 Atl. 95 (1924); Thompson v. Thompson, 86 Fla. 515, 98 So. 589 (1923); Forrester v. Forrester, 155 Ga. 722, 118 S. E. 373 (1923); Lyons v. Schanbacher, 316 Ill. 569, 147 N. E. 440 (1914); Davis v. Davis, 208 Ky. 605, 271 S. W. 659 (1925); Fisher v. Drew, 247 Mass. 178, 141 N. E. 875 (1923); *In re* Wood's Estate, 288 Mo. 588, 232 S. W. 671 (1921); Knecht v. Knecht, 261 Pa. 410, 104 Atl. 676 (1918); State v. Bagwell, 125 S. C. 401, 118 S. E. 767 (1923); Clifton v. Clifton, 83 W. Va. 149, 98 S. E. 72 (1919); Garment Co. v. Schultz, 182 Wis. 506, 196 N. W. 783 (1924); (1924) 24 HARV. L. REV. 306.

[2] *In re* Ryan's Estate, 134 Wis. 431, 114 N. W. 820 (1907); *In re* Simonson's Estate, 164 Wis. 590, 160 N. W. 1040 (1916).

[3] Coleman v. Burr, 93 N. Y. 17 (1883); Blaechenska v. Howard Mission, 130 N. Y. 497, 29 N. E. 755 (1892).

[4] VERNIER, AMERICAN FAMILY LAWS (1935) 48: "The statutes of the *District of Columbia, Hawaii, Kentucky, Maryland,* and *Minnesota* merely state that the husband shall be liable for necessaries furnished the wife or contracted by the wife. By implication *South Carolina* and *Texas* reach the same result by providing that the husband shall not be liable for the debts of the wife, except those contracted for her necessary support. *California, Ohio, Oklahoma, Montana, New Mexico, Nevada, North Dakota,* and *South Dakota* all provide that if the husband does not make adequate support for the wife a third person in good faith may supply her with necessaries and recover the reasonable value thereof from the husband. * * * Fifty-one jurisdictions now impose by means of abandonment, desertion, and non-support statutes a criminal or quasi-criminal liability upon the husband who under certain circumstances breaches such duty."

civil and criminal liability on delinquent husbands. The New York statutes are in accord with the majority.[5]

It must be borne in mind that the husband's duty to support his wife is not an unconditional one but is predicated on her willingness to abide by her marital vows and to contribute equally to their domestic felicity.[6] However, since the obligation of a husband to support his wife continues until dissolved or modified by a judgment of separation or divorce, *irrespective* of her actual fault, he may be prosecuted as a disorderly person under the New York Code of Criminal Procedure,[7] where the wife is or is about to become an object of public charity.[8] Thus it appears that in any event the husband is not absolved from his duty to support until he has secured judicial sanction, and since the court action involved is particularly odious, it is apparent that his position is most disadvantageous. At one time it was thought that the Married Women's Acts and subsequent legislation which relieved wives of their common law disabilities and established an almost perfect legal parity between husband and wife also relieved the husband of his common law obligation to support his wife. The courts,

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[5] N. Y. Laws 1933, c. 589, § 914: *Who May Be Compelled to Support Poor Relatives:* "The husband, wife, * * * of a recipient of public relief or of a person liable to become in need of public relief shall, if of sufficient ability, be responsible for the support of such person. * * * If such poor person be insane, he shall be maintained in the manner prescribed by the insanity law. The * * * husband, wife * * * of a poor insane person legally committed to and confined in an institution supported in whole or in part by the state, shall be liable, if of sufficient ability, for the support and maintenance of such insane person from the time of his reception in such institution."

N. Y. CODE OF CRIM. PROC. § 899, subd. 1: "The following are disorderly persons: Persons who actually abandon their wives or children, without adequate support, or leave them in danger of becoming a burden upon the public, or who neglect to provide for them according to their means."

See *In re* Schiffrin's Estate, 152 Misc. 33, 272 N. Y. Supp. 583 (1934), wherein it was decided that the word "abandon" in Section 899 merely addressed itself to the question of whether or not a person within its description has failed to fulfill the other obligation of support which the law imposes on him.

[6] Pearson v. Pearson, 230 N. Y. 141, 129 N. E. 349 (1921); Wirth v. Wirth, 184 App. Div. 643, 172 N. Y. Supp. 309 (1st Dept. 1918); Reardon v. Reardon, 210 Ala. 129, 97 So. 138 (1923); Sholes v. Sholes, 72 Colo. 175, 209 Pac. 1046 (1922); Rutledge v. Rutledge, 177 Mo. 469, 119 S. W. 489 (1909) ("Mere failure to keep house properly does not relieve the husband of his duty.").

[7] N. Y. CODE OF CRIM. PROC. § 899, subd. 1; see note 5, *supra.*

[8] People v. Schenkel, 258 N. Y. 224, 226, 179 N. E. 474, 476 (1932) ("Duty of provision is absolute and regardless of the wife's fault. The public interest, in the opinion of the legislature, requires that the husband, not the taxpayer, shall bear the burden of her support as long as the relationship of husband and wife is not altered or dissolved by decree of court."); People v. Jonsen, 264 N. Y. 364, 365, 191 N. E. 17, 18 (1934) ("Where a judgment of separation has been granted to the husband for her wilfull abandonment, he may not be prosecuted for failure and neglect to support her.").

however, were quick to deny such relief [9] and promptly extended a protective arm [10] to the wife.

To ascertain the degree of support, or, what is commonly called the *necessaries,* to which a wife is legally entitled, one must look to the economic status of the husband.[11] Necessaries, as applied to a wife, are not confined to those articles of food and clothing which are required to sustain life and preserve decency, but include such articles of utility as are suitable to maintain her according to the estate and degree of her husband.[12] Accordingly, wearing apparel,[13] medical attendance,[14] reasonable dentistry,[15] household supplies,[16] furniture,[17] a gold watch and certain jewelry [18] have been held to be necessaries.[19] By the weight of authority in this country, however, legal expenses in suits for divorce have been held not to be necessaries.[20] As was said by the Connecticut court: "The duty of providing necessaries for the wife is strictly marital, and is imposed by the common law in reference only to a state of coverture, and not of divorce. By that law a

[9] Holcomb v. Harris, 166 N. Y. 257, 59 N. E. 820 (1901); Grandy v. Hadcock, 85 App. Div. 173, 83 N. Y. Supp. 90 (3d Dept. 1903); Ruhl v. Heintz, 97 App. Div. 442, 446, 89 N. Y. Supp. 1031, 1033 (2d Dept. 1904) ("A statute authorizing a married woman to contract does not abrogate the common law liability of the husband to support her.").

[10] Davis v. Davis, 65 Cal. 499, 244 Pac. 478 (1926); Poole v. People, 24 Colo. 510, 52 Pac. 1025 (1898) (nor is he relieved from liability because the wife has adequate means of her own, or a separate estate); State v. Hill, 161 Iowa 279, 142 N. W. 231 (1913); Ribb. v. Flenniken, 32 S. C. 189, 10 S. E. 943 (1899); Israel v. Silsbee, 57 Wis. 222, 15 N. W. 144 (1883).

[11] Pattberg v. Pattberg, 94 N. J. Eq. 715, 120 Atl. 790 (1923).

[12] Wilder v. Brokaw, 141 App. Div. 811, 126 N. Y. Supp. 932 (2d Dept. 1910); Wickstrum v. Peck, 163 App. Div. 608, 148 N. Y. Supp. 596 (1st Dept. 1914).

[13] Hardenbrook v. Harrison, 11 Colo. 9, 17 Pac. 72 (1888); Fitzmaurice v. Buck, 77 Conn. 390, 59 Atl. 415 (1924); Feiner v. Boynton, 73 N. J. L. 136, 62 Atl. 420 (1906).

[14] Schneider v. Rosenbaum, 52 Misc. 142, 101 N. Y. Supp. 529 (1906); Thrall Hospital v. Caren, 140 App. Div. 171, 124 N. Y. Supp. 1038 (2d Dept. 1910); *In re* Babcock, 185 App. Div. 906, 171 N. Y. Supp. 1078 (4th Dept. 1918).

[15] Clark v. Tenneson, 146 Wis. 65, 130 N. W. 895 (1911).

[16] Fischer v. Brady, 47 Misc. 401, 94 N. Y. Supp. 25 (1905); Perkins v. Morgan, 36 Colo. 360, 85 Pac. 640 (1906).

[17] Jordan Marsh Co. v. Cohen, 242 Mass. 245, 136 N. E. 350 (1922). But see Caldwell v. Blanchard, 191 Mass. 489, 77 N. E. 1036 (1906) (as to purchase by wife on her own credit).

[18] Cooper v. Haseltine, 50 Ind. 400, 98 N. E. 437 (1912); Johnson v. Briscoe, 104 Mo. 493, 79 S. W. 498 (1904).

[19] Elder v. Rosenwasser, 238 N. Y. 427, 144 N. E. 669 (1924) (Legal services rendered in successfully defending a married woman against a criminal prosecution may be necessaries). See Porter v. Briggs, 38 Iowa 166 (1878) (Protection of a wife's character in a suit against her by employing counsel is as much a necessary as food, etc. within the rule requiring one to provide his wife with necessaries suitable to their station in life).

[20] Sumner v. Mohn, 47 Cal. 142, 190 Pac. 368 (1920); Meaher v. Mitchell, 112 Me. 416, 92 Atl. 492 (1914); Grimstad v. Johnson, 61 Mont. 18, 201 Pac. 314 (1921); Zent v. Sullivan, 47 Wash. 315, 91 Pac. 1088 (1907); Clarke v. Burke, 65 Wis. 359, 27 N. W. 22 (1886).

valid contract of marriage was and is indissoluble, and therefore by it the husband could never have been placed under obligation to provide for the expenses of its dissolution." [21]

It must not be supposed that the wife or a jury determine the standard upon which the husband shall support his wife. A husband must support his family according to his station in life but he always retains a wide latitude of discretion as to how much of his income it is advisable to spend and is entitled to dictate the manner in which the money shall be spent.[22] Thus it has been held that the purchase of a gold watch upon her husband's credit could not be based upon an agency by necessity merely by proving that the women of her neighborhood, of her social and economic standing, generally had gold watches.[23] The husband may, to a great extent, lose his discretionary powers where he abandons his wife or gives her cause to live apart from him [24] since the jury, in an action for support and maintenance must, of necessity, judge objectively.

II.

Assuming that the husband is remiss in furnishing needful support, and apart from criminal liability,[25] how may the wife assert her legal rights? The common law doctrine makes the ground of the husband's liability for his wife's necessaries that of agency. This agency is stated as an agency of necessity where a deserving wife stands in want of supplies because of her husband's misconduct, but since at common law the wife could possess no property and was legally dependent upon her husband it is obvious that the agency of necessity was a legal fiction indulged in by the courts to protect the wife's position. Disregarding the disability of the wife to contract and disregarding the fiction of "marital unity", the common law did not disable the wife from entering into a contract as the agent of her husband where he had given her express authority to bind him, or had impliedly held her out as having such authority.[26]

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[21] Shelton v. Pendleton, 18 Conn. 423 (1885). In Lanyon's Detective Agency v. Cochrane, 240 N. Y. 274, 148 N. E. 520 (1925), the New York Court of Appeals held that a wife suing her husband for separation could not employ, upon her husband's credit, a detective to discover his infidelities, unless such services were actually necessary to protect her or to obtain a decree of separation which would give her support.

[22] Pattberg v. Pattberg, 94 N. J. Eq. 715, 120 Atl. 790 (1923).

[23] Johnson v. Briscoe, 104 Mo. 493, 79 N. W. 498 (1924).

[24] Kirk v. Chinstrand, 85 Minn. 108, 88 N. W. 422 (1901).

[25] Where a husband is prosecuted under CODE OF CRIM. PROC. § 899, subd. 1, he may be compelled to pay a sum of money sufficient only to keep his wife from becoming an object of charity. The sum awarded is not commensurate with the amount the husband can afford to pay, as in an action for separation or support and maintenance.

[26] Frank v. Carter, 219 N. Y. 35, 113 N. E. 549 (1916) (Though the marriage is bigamous and void, the husband may be liable if he places the "wife"

As has been said above, the articles or services for which a wife is allowed to pledge her husband's credit as his presumed agent are designated at common law as necessaries. There is a broad presumption of assent to the agency which cohabitation, of itself, furnishes. The simple circumstance that husband and wife are living together has been generally held sufficient, when nothing to the contrary intervenes, to raise a presumption that the wife is rightfully making such purchases of necessaries as she may deem proper.[27] Whoever then supplies her in good faith, as the law has usually been understood, need inquire no further, but may send the bill to her husband, for it is not to be supposed that a husband will go in person to buy every little article of dress or household provision which may be necessary for his family. As Lord Abinger observed, "A wife would be of little use to her husband in their domestic arrangements if his interference was always deemed to be necessary." [28] Accordingly, if an action is brought against the husband for the price of goods or services furnished under such circumstances, it must be taken *prima facie* that those goods were supplied by his authority, and he must show either that he is not responsible or that the materials purchased were not necessaries.[29] This presumption, however, is one of fact and not of law. Cohabitation does not conclusively, but only *prima facie,* empower the wife to render her husband liable, even for those things which are suitable for the household in question. He may rebut this presumption by showing that she was properly supplied and was not

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in charge of his household). See Stevens v. Hush, 172 N. Y. Supp. 258 (1918) (Where a husband authorizes his wife as his agent to purchase household furniture on credit, and in doing so it was necessary that she contract with the mortgagee to insure the property, the making of such agreement was within the scope of her authority); James McCreery & Co. v. Martin, 84 N. J. L. 626, 87 Atl. 433 (1913) (Where a husband authorized his wife to hire necessary board and lodging for herself and family, the husband is bound as if he personally made the contract).

[27] Bradt v. Shull, 46 App. Div. 347, 61 N. Y. Supp. 484 (2d Dept. 1899); Dixon v. Chapman, 51 App. Div. 542, 67 N. Y. Supp. 540 (1st Dept. 1900); Baccaria v. Landers, 84 Misc. 396, 146 N. Y. Supp. 158 (1914); Graham v. Schleimer, 28 Misc. 535, 59 N. Y. Supp. 689 (1899); Geiger v. Blockley, 86 Va. 329, 10 S. E. 43 (1889) (The implied power of a wife to bind her husband for necessaries, where it exists, is for her own benefit, and not for the benefit of those with whom she may deal); Zent v. Sullivan, 47 Wash. 315, 91 Pac. 1088 (1907).

[28] Emmet v. Norton, 8 Car. & P. 506, 509 (1844).

[29] Wanamaker v. Weaver, 176 N. Y. 75, 68 N. E. 135 (1903) (If the husband has fully fulfilled his duties, his wife has no power to pledge his credit, and a merchant or other third person deals with her at his peril, unless the husband has given his wife implied authority to act as his agent); May v. Josias, 159 N. Y. Supp. 820 (1916) (That the husband is not liable "upon any contract made by his wife in her own name and upon her own responsibility" of course does not apply to a contract made by a wife as agent, or on his credit for necessaries); Watts v. Moffet, 12 Ind. 399, 40 N. E. 533 (1895); Steinfield v. Gerrard, 103 Me. 151, 68 Atl. 630 (1907); Noel v. O'Neil, 128 Me. 202, 97 Atl. 513 (1916); Howell v. Blesh, 19 Okla. 260, 91 Pac. 893 (1907).

authorized to pledge his credit.[30] And since his liability, where he suitably maintains her, is based on the theory of an agency in fact, the tradesman's ignorance of the fact that the wife had been forbidden to pledge his credit is altogether immaterial, provided of course, the husband has not so held out his wife as authorized to pledge his credit as to be estopped to deny her agency.[31] The existence of the marital relationship and the household do not create an appearance of agency such as will conclusively estop the husband from denying it to the prejudice of one who has acted upon the appearance. There is no such universal custom for wives to pledge their husband's credit as to justify such a rule of law. But the custom is sufficiently prevalent to justify a presumption that it exists in any particular case, until evidence to the contrary is forthcoming, and hence to place upon the husband the burden of proof of its nonexistence in fact.[32]

It should be noted that the word "necessaries" as has been heretofore discussed refers merely to those goods suitable to the household, not absolute necessaries; for in the latter case there is a liability by the husband regardless of actual authority. Where a husband neglects to provide for or to support his wife, *even if they are cohabiting,* the wife has an *absolute* right to pledge his credit for necessaries. She has

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[30] Keller v. Phillips, 39 N. Y. 351 (1868); Wickstrum v. Peck, 155 App. Div. 523, 140 N. Y. Supp. 570 (2d Dept. 1913) (A shopkeeper, who has notice that the husband claimed to be providing for his wife, and had forbidden credit, sells to the wife on the credit of the husband at the risk of being able to show that the husband failed to perform his duty, and that the goods furnished were actually necessary for the then present or immediate future use of the wife); B. Altman & Co. v. Durland, 185 App. Div. 114, 173 N. Y. Supp. 62 (3d Dept. 1918).

[31] Debenham v. Mellon, 5 Q. B. 403 (1878) ("If a man and his wife live together, it matters not what private arrangements they make, the wife has all the usual authority of wife," applies only to the case where an appearance of authority has been created by the husband's acts or by his assent to the acts of his wife).

[32] *Per* Thesiger, L. J., in Debenham v. Mellon, 5 Q. B. at 405 (1878): "It is contended that there is a presumption that a wife living with her husband is authorized to pledge her husband's credit for necessaries; that the goods supplied by the plaintiffs were, as it is admitted they were, necessaries; and that, as a consequence, an implied authority is established. This contention is founded upon an erroneous view of what is meant by the term 'presumption' in cases where it has been used with reference to a wife's authority to pledge her husband's credit for necessaries. There is a presumption that she has such authority in the sense that a tradesman supplying her with necessaries upon her husband's credit, and suing him, makes out a *prima facie* case against him upon proof of that fact and of the cohabitation. But this is a mere presumption of fact, founded upon the supposition that wives cohabiting with their husbands ordinarily have authority to manage in their own way certain departments of the household expenditure, and to pledge their husband's credit in respect to matters coming within those departments. Such a presumption or *prima facie* case is rebuttable and is rebutted when it is proved in the particular case, as here, that the wife has not that authority. If this were not so, the principles of agency, upon which, *ex hypothesi,* the liability of the husband is founded, would be practically of no effect."

this right although no agency in fact exists, for the agency is implied in law without regard for the fact.[33]

III.

Thus far we have given consideration only to those instances where the wife's agency could be inferred from the fact of cohabitation. Where a wife is living apart from her husband, there is *no* presumption that she has *any* authority in fact to pledge his credit, even for necessaries.[34] On the contrary, the presumption is that she has no such authority. The person who sells to her under such circumstances either sells to her as a *femme sole,* or, if he knows that she is married, he is given reason to suspect from the fact of her living apart from her husband that her relations with him are such that she has not been authorized to pledge his credit. Thus it is incumbent upon the tradesman, in order to hold the husband liable, to rebut the presumption by showing authority in fact or else to bring the case within the rule of an agency by necessity, giving the wife an absolute power to bind her husband where he neglects to provide for her.[35] The rule referred to applies all the more forcibly, if possible, where the husband unlawfully separates from his wife without making suitable provision for her, or if he, by his conduct, causes her to leave him.[36] A husband is bound to support his wife, and if he leaves her without the means of subsistence she becomes "an agent of necessity to supply her wants upon his credit." [37] This right arises where the husband has driven the wife away, or where she has left him in consequence of ill treatment and reasonable apprehension of further vio-

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[33] Keller v. Phillips, 39 N. Y. 351 (1868); W. & J. Sloane v. Boyer, 95 N. Y. Supp. 531 (1905); Beigh v. Warner, 47 Minn. 250, 30 N. W. 77 (1886); Dorrance v. Dorrance, 257 Mo. 317, 165 S. W. 783 (1914).

[34] Manufacturers Trust Co. v. Gray, 278 N. Y. 380, 16 N. E. (2d) 373 (1938) (A wife who uses her own money to pay household expenses, or while living apart from her husband, to pay for her own support, may seek reimbursement from her husband only where he has promised such reimbursement either expressly or by implication of law); Hass v. Brady, 49 Misc. 235, 96 N. Y. Supp. 449 (1906); Annis v. Manthey, 234 Mich. 347, 208 N. W. 453 (1926) (Where a husband and wife are living apart, it devolves upon a physician giving credit to the wife for medical services to show that the wife was not at fault, or that the husband authorized or assented to the performance of the services).

[35] Sturbridge v. Franklin, 160 Mass. 149, 35 N. E. 669 (1893); Vusler v. Cox, 53 N. J. L. 516, 22 Atl. 347 (1891).

[36] Wolf v. Schulman, 45 Misc. 418, 90 N. Y. Supp. 363 (1904); Sultan v. Misralu, 47 Misc. 655, 94 N. Y. Supp. 519 (1905); Wisnom v. McCarthy, 48 Cal. 697, 192 Pac. 337 (1920); State v. Newman, 91 Conn. 6, 98 Atl. 346 (1916); Clothier v. Sigli, 73 N. J. L. 419, 63 Atl. 865 (1906); Mihalcoe v. Holub, 130 Va. 425, 107 S. E. 704 (1921).

[37] Eastland v. Burchell, 3 Q. B. 436 (1877); *cf.* Charles M. Decker & Bros. v. Moyer, 121 N. Y. Supp. 630 (1900); Harrigan v. Cahill, 100 Misc. 48, 164 N. Y. Supp. 1005 (1917).

lence,[38] or because her husband has rendered his home an unfit place for her to live in, as by introducing women of profligate habits,[39] or in consequence of the commission by him of such acts as would entitle her to a divorce.[40] If the wife leaves her husband without justifiable cause, she forfeits the right to obtain her necessaries at his expense.[41] In case she returns and is received by her husband the right revives, but only as to future necessaries,[42] this being true where she offers to return and he refuses to accept her.[43]

It is when the husband and wife separate by mutual agreement that difficulty is encountered in reconciling the authorities with regard to the power of the wife to pledge her husband's credit for necessaries. The early cases are generally agreed that under such circumstances the husband's liability for necessaries furnished her continues in the absence of any provision for her support.[44] It also continues where he has agreed to make her an allowance, if he does not pay it.[45] When, however, he furnishes her with an adequate allowance, she cannot

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[38] Baker v. Orighton, 130 Iowa 35, 106 N. W. 272 (1906); *In re* Newman's Case, 222 Mass. 563, 111 N. E. 359 (1916); Beaudette v. Martin, 133 Me. 310, 93 Atl. 758 (1915).

[39] Descelles v. Kachmus, 8 Iowa 51 (1848).

[40] Rea v. Durkee, 25 Ill. 503 (1834).

[41] Constable v. Rosener, 178 N. Y. 587, 70 N. E. 1097 (1904); Elder v. Rosenwasser, 238 N. Y. 427, 144 N. E. 669 (1924); Johnson v. Coleman, 13 Ala. 520, 69 So. 318 (1915); Kessler v. Kessler, 2 Cal. 509, 83 Pac. 257 (1905); Denver Dry Goods Co. v. Jester, 60 Colo. 290, 152 Pac. 903 (1915); State v. Newman, 91 Conn. 6, 98 Atl. 346 (1916); Brown v. Durepo, 121 Me. 226, 116 Atl. 451 (1922); Audrain County v. Muir, 297 Mo. 499, 249 S. W. 383 (1923) (holding that the tradesman's ignorance of the separation did not affect the rule); Belknap v. Stewart, 38 Neb. 304, 51 N. W. 881 (1892); Walker v. Laighton, 31 N. H. 111, 113 (1876) ("The husband who has causelessly deserted his wife may in good faith seek a reconciliation, and if the wife, under such circumstances, refuses to live with him again, without good cause, she becomes from that time the party in the wrong, and has no longer any authority to pledge his credit, even for necessaries, more than she would have had if she had herself originally left him without cause. * * * And it makes no difference that he desires her to change her residence, and to go live with him at some other place, not unsuitable for her residence, since he has the right to choose his own residence, and it is the duty of the wife and children to conform to his wishes in this respect."); Morgenroth v. Spencer, 124 Wis. 564, 102 N. W. 1086 (1905).

[42] Reese v. Chilton, 26 Mo. 598 (1858).

[43] McCutchen v. McGahay, 11 Johns. 281 (N. Y. 1814); McGayhay v. Williams, 12 Johns. 293 (N. Y. 1815).

[44] Lockwood v. Thomas, 12 Johns. 248 (N. Y. 1815); Kimball v. Keyes, 11 Wend. 33 (N. Y. 1833); McKee v. Cunningham, 2 Cal. 684, 84 Pac. 260 (1906); McCarter v. McCarter, 10 Ga. 754, 74 S. E. 308 (1912); *In re* Newman's Case, 222 Mass. 563, 111 N. E. 359 (1915).

[45] Nurse v. Craig, 2 Bos. & P. 148 (1832), wherein the husband, to defeat liability for necessaries furnished his wife for support of herself and her children, on the ground of an agreement with the wife whereby such necessaries were to be purchased with an amount given the wife weekly, was required to show that the wife had been furnished with sufficient money to pay cash for all such necessaries.

bind him [46] and the fact that the person who furnishes her with goods has no knowledge of the allowance is immaterial, for in supplying her he acts at his peril.[47] The allowance must be sufficient for the wife's necessaries, and whether it is so or not is a question of fact for the jury,[48] except where she agrees to accept a stipulated allowance and not to apply to her husband for more. In that case the question of sufficiency is not for the jury, since it is excluded by the express terms of the settlement.[49] The difficulty referred to was inspired by a recent New York case, *Rochester General Hospital* v. *Ingstrum,*[50] which held that the plaintiff could not recover from the husband for services rendered to the wife who was separated from the husband by mutual consent. The court assented to the view that the services rendered by the plaintiff were necessary to the health of the defendant's wife, but based its judgment on the ground that there was no legal justification for the separation. In other words, the court frowns on separation by consent insofar as it permits the wife the privileges of the "agency by necessity" doctrine. The court further found that credit was extended solely to the wife and that at no time was the plaintiff aware of the husband's existence. It is obvious that if the court had ruled against the plaintiff on the strength of this last finding, there could be no criticism of the decision; but such is not the case. It is clearly emphasized that a wife may not leave her husband even with his consent, justifiably, so as to make him liable for her necessary expenditures. No reason is assigned for this departure from the earlier cases. The ruling appears to be arbitrary and unsound.

Conclusion.

From the foregoing analysis of the husband's obligation to support his wife, it would appear that the law was and continues to be

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[46] Baker v. Barney, 8 Johns. 72 (N. Y. 1811).

[47] *Ibid.*

[48] Pearson v. Darrington, 32 Ala. 227 (1858).

[49] Eastland v. Burchell, 3 Q. B. 432 (1877) ("The authority of a wife to pledge the credit of her husband is a delegated, not an inherent authority. If she binds him, she binds him only as his agent. This is a well established doctrine. If she leaves him without cause and without consent, she carries no implied authority with her to maintain herself at his expense. But if he wrongfully compels her to leave his home, he is bound to maintain her elsewhere, and if he makes no adequate provision for this purpose she becomes an agent of necessity to supply her wants upon his credit. In such a case, inasmuch as she is entitled to a provision suitable to her husband's means and position, the sufficiency of any allowance which he makes under those circumstances is necessarily a question for the jury. Where, however, the parties separate by mutual consent, they may make their own terms; and so long as they continue the separation these terms are binding upon both. Where the terms are, as in this case, that the wife shall receive a specified income for maintenance and shall not apply to the husband for more, how can any authority to claim more be implied? It is excluded by the express terms of the arrangement.").

[50] Rochester General Hospital v. Ingstrum, 164 Misc. 148, 298 N. Y. Supp. 603 (1937).

most zealous in its protection of the wife's marital rights. The husband may be compelled to answer not only to his wife, but to the state,[51] and even to total strangers [52] where he is remiss in the performance of his legal obligations. The *Ingstrum* decision, however, may be significant of a new attitude which the courts will adopt in their jurisdiction over "non-support" cases. If sustained, the case may influence further judicial opinion to the extent that third-party actions against the husband will be curtailed entirely. The thought that the husband is entitled to choose the persons with whom his wife has pledged his credit is not without merit and is appealing to one's sense of justice and fair dealing. It would seem more appropriate that the wife secure a judicial separation wherein her maintenance is provided for, rather than be permitted to pledge indiscriminately her husband's credit with persons who, very conceivably, he might object to. Strangers who deal with a wife should do so on her own credit, or if she is believed to be financially irresponsible, should not extend credit at all. It should be noted that this new application of the law would be valid only in those instances where the spouses have separated by consent. There is no doubt as to the right of an abandoned spouse to pledge her husband's credit. We do not believe that the legislature would sanction a proposal to abolish third-party actions against the husband, but it is not entirely improbable that courts will by the weight of judicial decree relieve the husband of this not infrequent nuisance.

RAYMOND J. MARGLES.

STATUTORY LIMITATION FOR FRAUD ACTIONS.

One of the outstanding problems that confront us in a consideration of the Statute of Limitations may be stated thus: Does the statutory period in actions founded in fraud run from the time of the perpetration of the fraud or the discovery thereof? [1]

The New York Legislature had apparently solved this problem by the clear and unmistakable wording of Section 48, subdivision 5, of the New York Civil Practice Act.[2] The decision in *Brick* v. *Cohn-*

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[51] See note 7, *supra.*
[52] See note 27, *supra.*

[1] BALLANTINE, LIMITATIONS (1829) 86 n.1; BANNING, LIMITATION OF ACTIONS (3d ed. 1906) 2; Troup v. Smith Ex'rs, 20 Johns. 43 (N. Y. 1822); Leonard v. Pitney, 5 Wend. 30 (N. Y. 1830); First Mass. Turnpike Corp. v. Field, 3 Mass. 201 (1807).

[2] N. Y. CIV. PRAC. ACT § 48, subd. 5, "The following actions must be commenced within six years after the cause of action has accrued: * * * Any action to procure a judgment on the ground of fraud. The cause of action in such a case is not deemed to have accrued until the discovery by the plaintiff, or the person under whom he claims, of the facts constituting the fraud." (This section will hereafter be referred to as the fraud Statute of Limitations.)