

NEW JERSEY COURT OF ERRORS AND
APPEALS.

EMMETT BLACK,	}	On Error.
Defendant in Error,		
vs.		
SUSAN MCQUAID,		
Plaintiff in Error.	}	

BRIEF FOR PLAINTIFF IN ERROR.

The trial of the cause resulted in the Court permitting the jury to pass on the question of agency, as involved in the testimony of plaintiff's case, the defence offering no evidence.

The effect of this judgment is to bind the wife's estate for the husband's debts.

The sole question is, do the facts establish an agency paramount to the force of the statutes? viz: The statute of Frauds and the Married Woman's Act.

The facts are that James McQuaid, husband of Susan McQuaid, without his wife's knowledge or consent, engaged Black to do plumbing and steam-heating in a

house at Gloucester, New Jersey, that the contract, undisputable, was made with the husband alone; that an estimate was submitted to McQuaid; that a charge for the work was entered in Black's books against James McQuaid; that part payment was made by McQuaid; that Susan McQuaid, the defendant, and a witness for plaintiff, testified that she did not attend to the repairs; that the same were done under the direction of her husband; that she and her husband never even talked over the matter.

The only evidence approaching a ratification of her husband's acts were that she would see her husband about putting in a sink (page 26).

Upon this meagre proof of agency the Court permitted a verdict to go against Susan McQuaid.

The Court was, no doubt, impressed with the reasoning in "Bodine vs. Elliott, 30 Vroom, 567," but the distinction is apparent.

In the case at Bar there was no previous authorization nor subsequent ratification. Both of these elements figured in the case above cited, and, no doubt, influenced the Court's findings.

In "Arnold vs. Spurr, 30 Mass., 374," referred to in "Bodine vs. Elliott," it appeared that the husband had the management of the wife's lands, no such fact appears in the case under review, nor was there any proof from which such fact could be inferred.

And in the case of "Bodey vs. Thacher," 22 Atl. Rep., 754, quoted in "Bodine vs. Elliott," it appeared that the wife examined the plans and personally and by letter urged the completion of the work.

In the present case the wife had, and took, no part in

the contract, or its performance, set out on (page 7) printed book.

The sink which she was to see her husband about was an extra, not contemplated in the original contract. Another witness said it was ordered by both Susan McQuaid and her husband (pages 7 and 8), but this would only hold her for the value of the sink.

There is some proof that the wife had knowledge that the work was in progress, but mere knowledge or acquiescence is insufficient to charge the defendant. If knowledge or acquiescence is all that is necessary, then the very object of the Act for the better securing the property of married women may be defeated. Section 15 of that Act provides that the real and personal property of a married woman should not be subject to the disposal of her husband, nor liable for his debts, but if it can be charged for repairs contracted by him without her assent then it may be subject to the disposal of the husband, and made liable for his debts. By making extensive repairs he would subject it to the payment of the debt by him thereby contracted, and to a sale by judgment, and execution, and thus dispose of it at his pleasure.

This only slightly changes the phraseology used in *Johnson vs. Parker*, 3 Dutch, 241.

In that case it was said "The acquiescence of the wife cannot divest her of her real estate. The Act respecting conveyance provides a way in which she may alien or charge her lands and requires not only the solemnity of a deed, but an acknowledgment of its voluntary execution before a proper officer.

"If her mere acquiescence is sufficient, then the provisions of this Act may be defeated, and the protection

of the rights of married women meant to be afforded by the common law may be evaded.

"That acquiescence may have been involuntary, extorted by fear, threats, or compulsion, and should have no weight or influence in the consideration of the question presented.

"A deed of a married woman, signed, sealed, and delivered without due acknowledgement, divests her of no right; and surely her mere verbal assent to the building of a house by her husband should not be allowed as a mode of alienating her lands."

The effect of this procedure would consume the defendant's estate.

It is respectfully urged that the testimony fails to establish that co-hesive trend of conduct, participation in the progress of the work, identification with the original contract and subsequent ratification of the acts done that make the full legal measure of agency.

HOWARD L. MILLER,
FRANCIS D. WEAVER,
Counsel for Plaintiff in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

EMMET BLACK,

Defendant in Error,

vs.

SUSAN McQUAID,

Plaintiff in Error.

ON ERROR TO SUPREME COURT.

BRIEF FOR DEFENDANT IN ERROR.

GEORGE J. BERGEN,
Attorney and of Counsel with Defendant in Error.

The plaintiff, a plumber, agreed to perform certain work at the property of the defendant for five hundred and seventy dollars, and performed other work not specifically contracted for, worth, he claims, eighteen dollars, and for these sums with interest, less twenty dollars paid on account, recovered a judgment. He showed

at the trial that the contract was made with the defendant's husband, who he claimed was her agent in that regard, and to establish such agency showed that the property was the separate estate of the wife, that the title was in her, that she had bought it about four years ago with her own money, that all repairs since that time had been attended to by her husband and ordered by him, that she now lived in the property but previously had lived on the same street about a block away, that the work performed by the plaintiff was part of a general scheme of remodeling the premises, the old house being moved to the rear and a new two-story addition built in front. That the defendant knew of the scheme, was often at the premises to view the work during its progress and she herself ordered the extra work charged for. That immediately upon the completion of the work the defendant and her husband moved, with all their household goods, into the remodeled house, and have lived there ever since.

The defendant put in no testimony and the jury found for the plaintiff.

The defendant seeks to overturn this verdict and makes the following assignments of error:

ASSIGNMENTS OF ERROR NOS. 1 AND 2.

The exceptions upon which the first two assignments of error are based appear in printed book, pages 12, 16, 17, 18, 20 and 21.

In most instances the answers to the questions objected to were unfavorable to the plaintiff. Of these it is obvious the defendant cannot complain.

The evidence objected to on page 12, that the defendant "told the plaintiff when he went for his money that

"if she had to sell the property he would get his money," certainly is corroborative of his contention that she was acting through the agency of her husband and is evidence of a ratification by her of his act, and is inconsistent with her claims, and so is competent evidence against her.

ASSIGNMENTS OF ERROR NOS. 3, 4, 5, 6, 7, 8 AND 9.

The exceptions upon which these assignments of error are based are found on pages 29 and 31 of the printed book.

The defendant claims that the evidence appearing in the trial is insufficient to support a finding by the jury that the defendant's husband was her agent in the matter and views the case as if the defendant was sued upon her verbal promise to pay the debt of another. This view entirely misconceives the plaintiff's case.

In *Elliott vs. Bodine*, 30 Vr., 567, the facts are almost identical with the case at bar. The Court of Errors affirmed a judgment against a wife for work ordered by the husband upon her separate estate, on the ground that he was her agent, and that such agency could be proved by evidence showing either previous authorization or subsequent ratification of his acts by her.

To the same effect see:

Yates vs. Repetto, 36 Vr., 294.

Greenbury vs. Palmieri, 42 Vr., 84.

It is hardly necessary to call the Court's attention to the fact that the defendant occupies the position of one who has stood by in silence permitting another to expend his labor and money for her benefit and should escape paying therefor only in case she is excused by the clearest rules of law.

I submit that the evidence objected to was clearly admissible, and the charge of the Court correct under these decisions.

GEO. J. BERGEN,
Attorney and of Counsel for Plaintiff,
(Defendant in Error).

NEW JERSEY COURT OF ERRORS AND APPEALS.

EMMETT BLACK,

Defendant in Error

vs.

SUSAN McQUAID,

Plaintiff in Error

ON ERROR TO SUPREME COURT.

PRINTED BOOK.

GEORGE J. BERGEN,
Attorney for Defendant in Error.

HOWARD L. MILLER,
FRANCIS D. WEAVER,
Attorneys for Plaintiff in Error.

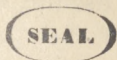
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PLAINTIFF'S WITNESSES:

	DIRECT.	CROSS.
Black, Emmett, - - - - -	3	
Bowe, Lawrence A., - - - - -	19	
Dugan, Edward, - - - - -	22	
McQuaid, Susan, - - - - -	13	
Richner, George, - - - - -	25	
Robinson, William, - - - - -	23	

NEW JERSEY, SS. :



The State of New Jersey to the
Chief Justice and other Justices of
our Supreme Court of Judicature,
Greeting:

Forasmuch as in the record and proceedings, and also
in the giving of judgment in a certain plaint, which was
in our said Supreme Court of Judicature, before you,
between Emmett Black, plaintiff, and Susan McQuaid, 10
defendant, in an action upon contract, manifest error
hath intervened, to the great damage of the said defend-
ant, as it is said, we being willing that the error, if
any there be, should, in due manner, be corrected, and
full and speedy justice done to the parties aforesaid in
this behalf, do command you that if judgment be there-
upon given and affirmed, then you distinctly and
openly send, under your seal, the record and proceedings
aforesaid, with all things touching the same, to our 20
Judges of our Court of Errors and Appeals in the last
resort in all causes, at Trenton, on the third day of
December, next, together with this writ, that the record
and proceedings aforesaid being inspected, we may cause
to be further to be done thereupon for correcting that
error what of right and according to the law and custom
of the State of New Jersey, ought to be done.

Witness, our Chancellor and President Judge of our
said Court of Errors and Appeals, at Trenton aforesaid,
the thirteenth day of December, nineteen hundred and
six.

S. D. DICKINSON,
Clerk.

HOWARD L. MILLER,
Attorney.

RETURN.

The answer of William S. Gummere, Esquire, Chief Justice of the Supreme Court of the State of New Jersey within named.

10 The record and proceedings of the plea whereof mention is within made, with all things concerning the same, we do certify to the Court of Errors and Appeals in the last resort in all causes, within specified, at the day and place within contained, I certify in a certain schedule to this writ annexed, as I am within commanded.

WM. S. GUMMERE, [SEAL.]
C. J.

NEW JERSEY SUPREME COURT—CAMDEN
COUNTY CIRCUIT.

EMMETT BLACK,

vs.

SUSAN McQUAID.

} On Contract.

10

SEPTEMBER TERM, 1906.

Appearances:

For the Plaintiff, GEORGE J. BERGEN, ESQ.

For the Defendant, HOWARD L. MILLER, ESQ.

FRANCIS W. WEAVER, ESQ.

20

Before ENDICOTT, J. and a Jury.

THE CASE FOR THE PLAINTIFF.

EMMETT BLACK, sworn.

30

By Mr. Bergen:

Q. Mr. Black, where do you live?

A. Gloucester City.

Q. What is your business?

A. Plumber and steam fitter and hot water.

Q. How long have you lived in Gloucester City?

A. Well, all my life.

Q. Do you know the defendant in this case, Susan McQuaid?

A. Yes, sir.

Q. And do you know her husband, James McQuaid?

A. Yes, sir.

10 Q. Do you know a property at the northeast corner of Burlington and Essex streets in Gloucester City?

A. Yes, sir.

Q. Did you ever do any work on that property?

A. Yes, sir.

Q. How did you come to do the work and state what work you did?

A. Well, I couldn't just exactly say the date now, but his boy came for me, said his father wanted to see me. I goes up there and he told me what he wanted, to
20 have his place heated and plumbing, asked me to give him an estimate. So a few days after that—

Q. Did you give him an estimate?

A. Yes, sir.

Q. Was that estimate in writing, Mr. Black?

A. Yes, sir.

Mr. Bergen: I call for that estimate.

(A paper is produced and handed Counsel.)

30 Q. Is that the estimate that you gave to Mr. McQuaid?

A. No, sir, that has been tampered with?

Q. Is that it?

A. Yes, sir.

Q. Is that one estimate?

A. Yes, sir.

Q. What was the other estimate for?

A. For hot water heating, \$400.

Q. And what is this for?

A. That is for plumbing.

Mr. Bergen: I offer this plumbing estimate in evidence.

(Said paper is marked Exhibit P. 1.)

Q. Well, did you also estimate for doing hot water heating as well as plumbing? 10

A. Yes, sir.

Q. In writing, did you make your estimate?

A. Yes, sir.

Q. And what was your estimate?

A. \$420.

Q. Well, go on and tell us what happened after you made these estimates and handed in the bids.

A. Well, I didn't bother with anything until after except to get like \$5 on account— 20

Q. No, but you gave him an estimate; you said you would do the work. Now, what happened after you said you would do the work?

A. He accepted it, told me to go ahead.

Q. Told you to go ahead and do the work?

A. Yes.

Q. And did you go ahead and do the work?

A. Yes, sir.

Q. Did you at the time you did the work or until you finished know who was the owner of the property? 30

A. Only when I went and tried to get my money.

Q. When was that?

A. Well, in between the time after the work was done, both of them.

Q. What do you mean by that?

A. Why, I went there and I saw Mrs. McQuaid and she would say, "Well," she says, "in another week." Another time I would go there and would see him and he would say the same thing, kept putting me off from time to time.

(Exhibit P. 1 was then read to the jury by Mr. Bergen.)

Q. Did you do that work, Mr. Black?

A. Yes, sir.

10 Q. Now, what did you agree to do in the way of hot water heating?

A. I contracted to heat his house for \$420.

Q. Did you agree to put any specific amount of radiation or anything of that kind? What were the specifications that you agreed to do?

A. Well, it is on that there paper.

Q. This paper (indicating paper)?

A. Yes, 580 feet of radiation, 950 foot boiler, Spence water boiler.

20 Q. Is this what you agreed to do, this paper here?

A. Yes.

(Said paper is offered in evidence, marked Exhibit P. 2, and read to the jury.)

Q. Now, did you do that hot water heating plant also?

A. Yes, sir.

Q. Have you your book of entry there?

30 A. Yes, sir.

Q. What is that book you have there?

A. Well, that is my entry book for the work, what I had.

Q. Have you any other book?

A. No, sir.

Q. Is that where you originally enter the charge against any person?

A. Yes, sir.

Q. Have you a charge there against James McQuaid for this bill, or have you any charge against anybody for the bill?

A. No, just—

Q. On page 162?

A. Yes.

Q. Is that entry on page 162 the original entry of this account? 10

A. Yes, sir.

(Said entry is offered in evidence and read as follows: There seems to be no name at the head of it at all. "October 16, to plumbing saloon of James McQuaid, low down tank closet, urinal in bar, 1 1/4 water main, five soil pipe in cellar, hopper in yard, contract \$150. Hot water heating contract \$420.")

Q. Now then, was there any other work than that, Mr. Black? 20

A. Yes, sir.

Q. What other work was there?

A. Putting in a sink and repairing his coils.

Q. How did you happen to do that work?

A. Through Mrs. McQuaid and James McQuaid.

Q. Well, just tell us. Was it ordered at the same time this other work was?

A. It was while this work was going on.

Q. While this work was going on, what happened? Just tell us how you happened to do it? 30

A. Well, he had an old sink there that was of no account, and they didn't like the idea of this here sink there, and they asked me what I would put a new one in for.

Q. Who didn't like the old sink?

A. Both Mrs. McQuaid and James McQuaid.

Q. Well, tell us what happened.

A. And I set a price on it and he told me to go ahead and do it.

Q. Who told you?

A. Mrs. McQuaid and James McQuaid, both was a party to that sink.

Q. That was after you had gotten pretty well on
10 with the work?

A. Yes, sir.

Q. Now, who did this work, Mr. Black, who worked with you?

A. Mr. Robinson.

Q. Who else?

A. Mr. Edward Dugan; Mr. George Rittner.

Q. Yes—you four did the work?

A. Yes, sir.

Q. Were there any other people who did the work
20 beside you four?

A. Well, except a little bronzing.

Q. Now, how much of the time did you actually employ in doing this work while the work was going on?

Mr. Weaver: I object on the ground that the work appears to have been done by contract and it can make no difference what amount of time he spent there if the contract was accepted.

30 Mr. Bergen: I don't mean to introduce it for the purpose of proving day's time; I merely wanted to show in a general way how much Mr. Black was there in the house himself.

The Court: I will admit it then.

A. Well, I never took my exact time down, what it took me.

Q. I don't mean the exact time, but how long.

A. Oh, three or four weeks.

Q. The work lasted three or four weeks?

A. Yes.

Q. How much of that three or four weeks were you personally there?

A. Well, I will say I was there maybe a week.

Q. A week yourself?

10

A. Off and on; I was not there exactly steady, but I was up there off and on, for I had other business to attend to.

Q. Was your week that you were there all confined to any particular period of the three weeks, or just off and on during—

A. Off and on.

Q. During the time that you were there personally did you ever see Mrs. McQuaid come in to inspect the work?

A. Yes, sir.

20

Q. How often have you seen her there?

A. Oh, a dozen times.

Q. What did the improvement that was done upon this property consist of, Mr. Black, at this time? What was done upon the property? Just tell us what it was before the improvement was begun and what it was afterward.

A. There wasn't anything there at the beginning.

Q. Do you mean to say there wasn't any house there?

A. Oh, there was a house.

30

Q. What kind of a house was it?

A. A frame house.

Q. How many stories—what kind of a house was it?

A. It was an A roof at first then they made a French roof in the front.

Q. What did they do with the old house that was in front?

A. Moved it back.

Q. They moved the old house back?

A. Yes.

Q. What did they put in front of that?

A. This saloon and another addition, another room.

Q. A saloon and addition—what did the saloon and addition consist of, how many stories?

10 A. Two.

Q. Two stories?

A. Yes.

Q. Was it brick or frame?

A. Frame.

Q. A frame two-story addition in front?

A. Yes.

Q. Have you any idea how big that was?

A. No, I never measured it exactly right to the inch.

20 Q. And after they had finished doing that, or during the time that they were doing that your work of plumbing and steam heating was done—is that right?

A. Well, the carpenter and plasterer and the like of them was done, I guess; I wouldn't say that the carpenter was done, but the building was in shape for us to go in there and put our work in.

Q. Who performed the work of the building and remodelling the addition, &c., who did that?

A. The carpenter work?

Q. Yes.

30 A. Lawrence A. Bowe.

Q. Now, up to the time that this property was remodelled in this way where had Mrs. McQuaid lived?

A. On the next street.

Q. What street is that?

A. Morris and Burlington.

Q. Did she live on the corner?

A. Yes, sir.

Q. How far is that away from this property here?

A. I should judge about 100 yards—not 100 yards, 50 yards.

Q. Is it the next street?

A. Yes, sir.

Q. This property is at the corner of Burlington and Essex—is that right?

A. Yes, sir.

Q. And the property where she lived is at the corner of Burlington and Morris? 10

A. Yes.

Q. And is Morris the next street to Essex?

A. Yes, sir; going south.

Q. That is where she lived up to that time?

A. Yes.

Q. Did her husband live there with her?

A. Yes, sir.

Q. They lived there?

A. Yes. 20

Q. How much have you received on account of this bill?

A. \$20, about \$20.

Q. Will you turn to your book of entry as to the second charge that you made there, the sink, &c.—page 167 that is charged.

A. The sink, and \$1.50 for repairing coils.

Mr. Bergen: I will read it to the Jury: "November 29. To putting 18x30 iron enameled sink in back and drain board, James McQuaid—sink, \$16.50; extra for coils, \$1.50, total \$18." 30

Q. Now, those three items that we have mentioned are the amount of your bill, are they?

A. Yes.

Q. Did you ever have any conversation with Mrs. McQuaid after or toward the end of the time that you had done this work as to its being paid for?

A. I went there for my money afterward and she says, "You need not worry," she says—

Mr. Miller: I object to conversations to bind another person.

10 The Court: This is the defendant, declarations against interest; I will take it.

The Witness: She told me that I would never lose a cent, and she said if she had to sell the property that I would get my money.

Whereupon the defendant, by her Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,

20 Circuit Court Judge.

No cross-examination.

By Mr. Bergen:

Q. Mr. Black, when was this work done, when was it finished?

A. Well, it was finished around the latter part of November.

30 The Court: What year?

The Witness: 1905.

Q. It was finished in the latter part of November, 1905?

A. Yes.

SUSAN MCQUAID, sworn.

By Mr. Bergen:

Q. Mrs. McQuaid, certain interrogatories or questions were served upon you in this case which you answered under oath—isn't that the case?

A. Yes, sir.

Q. Where do you live?

A. In Gloucester City.

Q. Do you live now in the property in which this work was done?

A. Yes, sir.

Q. How long have you lived there?

A. About a year, as nearly as I can tell.

Q. Who is the owner of that house?

A. I am.

Q. When was it purchased?

A. About four years ago.

Q. Since you purchased it, who has occupied it?

A. A gentleman by the name of Joseph Lawson.

Q. From what time did he occupy it and up to what time?

A. He was living in it when it was occupied.

Q. When you bought it, you mean?

A. Yes, sir; when I bought it.

Q. And up to what time did he continue to live there?

A. Well, I can't just exactly say.

Q. Up to the time that you started to make these repairs?

A. Yes, sir.

Q. Now, there was no other tenant then otherwise than Mr. Lawson during that period?

A. No, sir.

Q. Who collected the rent?

A. I did.

Q. Did you collect it personally?

A. Yes, sir.

Q. In these interrogatories you were asked, in the tenth interrogatory: Did you personally attend to the repairs of the property?

A. No, sir.

Q. And in the eleventh interrogatory you were asked:
10 If you did not do so personally who did so? Your answer is, James McQuaid. Is that correct?

A. Yes, sir.

Q. In the twelfth interrogatory you are asked: Name some repairs on the property that you have personally attended to, if any, and the persons who did the work, and you answer, Not any. That is correct, is it.

A. That is right; yes, sir.

Q. In the twenty-first interrogatory you are asked:
20 How much of the rent of said property have you personally had in your own custody?

A. Had it all.

Q. All of it?

A. Yes, sir.

Q. In the twenty-fifth interrogatory it is asked: Who were the tenants and state the occupancy of each? There is no answer made to that interrogatory. Why didn't you answer that interrogatory then?

A. I don't know.

Q. Didn't you know that this Mr. Lawson or what-
30 ever it is, was the tenant, had been?

A. Yes, sir.

Q. The forty-fourth interrogatory is: Have any repairs other than those made by the plaintiff been made to the property since you have owned it? And you say, Not any. Is that true?

A. Yes, sir.

Q. Do you mean to say that this man here is the only man who has done any repairs on that property since you owned it?

A. Excepting Mr. Bowe, the carpenter, who did the work.

Q. Mr. Bowe did some work, did he?

A. Yes, sir; he did the carpenter work.

Q. The forty-fifth interrogatory is: If so, state by whom and by whose direction those repairs were made? 10
What is your answer to that?

A. By Mr. McQuaid.

Q. Mr. McQuaid ordered Mr. Bowe to do that?

A. Yes, sir.

Q. What were the repairs that Mr. Bowe made to that property?

A. He had the house moved back and put an addition on the front.

Q. What did the addition consist of?

A. Consisted of a two-story building. 20

Q. A two-story building?

A. Yes, sir.

Q. Do you know whether any of the bills for doing all of that have been paid for?

Mr. Miller I object; that has nothing to do with this controversy at all. Here is an effort to collect a bill from this defendant, and it certainly cannot be pertinent what other repairs were put on the property and whether the bills were paid or not. It is no part of this controversy at all. 30

The Court: What is purpose of the question.

Mr. Berger: The object of the question is to find out what Mrs. McQuaid's relationship was to these repairs.

The Court: Were these repairs ordered by the husband.

The Witness: Yes, sir.

The Court: Then I will allow it.

Q. They were ordered by Mr. McQuaid, those repairs by Mr. Bowe, weren't they?

A. Yes, sir.

10 Whereupon the defendant, by her Counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

Q. Now, will you answer the question: Have any of the bills for doing these repairs been paid and if so by whom?

Mr. Miller: I object again to the question in the form
20 it is in.

The Court: The question is allowed.

Whereupon the defendant, by her Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

A. By Mr. McQuaid.

Q. How far did you live from this property?

30 The Court: Whose money paid for them?

Q. Whose money did he pay for them with?

A. Mr. McQuaid's money.

(Objected to.)

The Court: I think it is competent for two reasons; it is permissible, I think, to try to show agency and then permissible, I think, on the ground of ratification of the acts of the husband.

Whereupon the defendant, by her Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

Q. You say whatever has been paid has been paid by Mr. McQuaid?

A. Yes.

Q. How much has he paid?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. Do you know of your own knowledge of any bills that he has paid?

A. No, sir.

Q. Now, how far did you live from this property at the time these repairs were originally begun?

A. About one square, the next street.

Q. Did you ever go out of your house?

A. Occasionally.

Q. Did you or did you not know that repairs were being made upon your property a square away?

A. Yes, sir.

Q. You knew they were being made?

A. Yes, sir.

Q. Did you know by whom they were made?

A. I knew who was working there; yes, sir.

Q. Did you and your husband ever talk over the making of these repairs before they were made?

A. No, sir.

10

20

30

Q. You never did?

A. No, sir.

Q. When you saw the repairs beginning and you and your husband had not talked over the making of these repairs, did you make any effort to find out how it was that they were being made?

A. No, sir.

Q. Didn't it strike you as rather peculiar for those repairs to be going on upon your property—

10

(Objected to as not proper.)

Mr. Bergen: Wait until I finish my question—and you know nothing about it?

(Question allowed.)

Whereupon the defendant, by her Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

20

ALLEN B. ENDICOTT,
Circuit Court Judge.

A. No, sir.

Q. You didn't think there was anything strange about that, eh?

A. No, sir.

Q. Who did you think was causing repairs to be done?

A. Mr. McQuaid.

Q. What made you think that?

30

A. Why, I couldn't think otherwise?

No cross-examination.

LAWRENCE A. BOWE, sworn.

By Mr. Bergen:

Q. Will you just tell us whether you know the property at the north-east corner of Burlington and Essex streets belonging to Mrs. McQuaid?

A. I do.

Q. Did you make some repairs there?

A. Yes, sir; I did.

Q. Just state what the repairs were that you made?

10

(Objected to.)

The Court: That is outside of this contract, is it?

Mr. Bergen: Yes, that is outside of this contract.

Mr. Miller: It is immaterial and irrelevant.

Mr. Bergen: I wish to show, if your Honor please, that while Mr. Bowe contracted to do some work which was entirely outside of this contract yet that the repairs as made by Mr. Black and the repairs as made by Mr. Bowe were a part of one general scheme for the improvement of this property in an elaborate way, and I think what the repairs were that were done at and about the same time when Mrs. McQuaid said she knew nothing about it and all that kind of thing is rather material as showing the nature of the general scheme. 20

The Court: I can hardly see how it is competent unless it be to show the agency of the husband. If this man was employed by the husband to do work on the wife's property and she paid him, or if she sanctioned his work in any way, or ratified it, adopted it, I think would make it competent. 30

Mr. Bergen: Well, I will withdraw that question then.

Q. Did Mr. McQuaid employ you to make any repairs upon this property at the north-east corner of Burlington and Essex?

A. He did.

(Objected to. Question allowed.)

Whereupon the defendant, by her Counsel, prays a bill
10 of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

Q. When was that, Mr. Bowe?

(Objected to.)

The Court: Your objection may stand to this line of questions and answers. You may note an exception.

20 Whereupon the defendant, by her Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

Q. When was it?

A. About a year ago.

Q. Did you ever have any conversation with Mrs. McQuaid as to the general repairs that were made upon the ground?

30 (Objected to. Question allowed.)

Whereupon the defendant, by her Counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

A. No, I dealt always with Mr. McQuaid in regard to the contract.

Q. All your dealings were with Mr. McQuaid?

A. Yes.

Q. Did Mrs. McQuaid ever pay you any of the bills for your work?

(Objected to. Question allowed.)

Whereupon the defendant, by her Counsel, prays a bill of exceptions which is allowed and sealed accordingly. 10

ALLEN B. ENDICOTT,
Circuit Court Judge.

A. Mr. McQuaid paid me all the money I received.

Q. Was Mrs. McQuaid ever present at any of the occasions when you and Mr. McQuaid had any dealings with respect to these repairs?

(Same objection. Same ruling.)

Whereupon the defendant, by her Counsel, prays a bill of exceptions which is allowed and sealed accordingly. 20

ALLEN B. ENDICOTT,
Circuit Court Judge.

A. Not as I can remember; I don't think she was.

Q. Did you ever see Mrs. McQuaid in the building during the time that you were making the repairs?

A. Oh, yes, yes, I saw her.

Q. She was in the building, was she? 30

A. Yes.

Q. How many times have you seen her in the building?

A. Well, I couldn't state.

Q. Well, once or twice?

A. Oh, yes, seen her once or twice.

Q. Have you seen her any more times than that?

A. Well, probably I have; I am not positive how many times I saw her there.

Q. What was the nature of the repairs that you made?

(Objected to. Question withdrawn.)

Q. Did she ever protest or expostulate with you or direct you to discontinue work upon the property?

10

(Objected to as irrelevant and immaterial.)

The Court: I think the inquiry is here whether she said anything about the work or the improving of it and so on; I think you may ask that, if he ever had any conversation with her about the work.

Mr. Bergen: I believe he said he had not; you said you had not, didn't you, Mr. Bowe?

20 The Witness: Yes.

No cross-examination.

EDWARD DUGAN, sworn.

By Mr. Bergen:

Q. Mr. Dugan, were you one of the workmen who did work for Mr. Black in this building?

30 A. Yes, sir.

Q. How long did it take to do the work?

A. Well, in the neighborhood of three or four weeks.

Q. How much of the time were you there?

A. I was there, I judge, about three days.

Q. About three days?

A. About three days, somewhere in that neighborhood.

Q. During the time that you were there, did you see Mrs. McQuaid there at all?

A. Yes, sir.

Q. How many times did you see her there?

A. Well, I seen her there at least three times.

Q. At least three times?

A. Yes.

Q. What did she do when you saw her there, what was she doing? 10

A. She looked to me as if she was cleaning house, getting ready to move upstairs.

Q. Getting ready to move?

A. Yes.

Q. Did she say anything to you about this sink?

A. No, sir.

Q. Did you ever hear her say anything about that sink?

A. I never did. 20

Q. At what portion of the time were you there? Was it near the beginning or the end of the job?

A. Well, it was the winding up of the job.

Q. And she was there apparently cleaning up ready to move in?

A. Yes, sir.

No cross-examination.

WILLIAM ROBINSON, sworn. 30

By Mr. Bergen:

Q. Were you employed by Mr. Black in this job on this residence of Mrs. McQuaid?

A. Yes, sir.

Q. How long were you there?

A. Well it was over three weeks.

Q. A little over three weeks?

A. Yes.

Q. Where do you live?

A. Gloucester City.

Q. How long have you lived there?

A. About 16 years.

10 Q. You are a plumber by trade?

A. Yes.

Q. You were there about three weeks—was that during the whole time of the job?

A. The whole time. I might have been away one or two days between.

Q. Did you ever see Mrs. McQuaid in and out of the property?

A. Yes, sir, she was living there before I was through.

Q. She was living there before you were through?

20 A. Yes, sir.

Q. Do you know anything about the putting in of the sink?

A. Yes, sir.

Q. What do you know about that?

A. Why she mentioned to me about the sink; she said, "You are not going to leave that old sink there, are you?" I said, "I don't know anything about it." She said, "I would like to have a new sink." I said, "You will have to see Mr. Black," so she sent her
30 husband, I believe, and ordered it put in.

Q. You got orders anyhow from Mr. Black to put the sink in?

A. Yes.

Q. Did you hear any conversation with any one

about the sink except the one you stated here of Mrs. McQuaid?

A. No, sir.

No cross-examination.

GEORGE RICHNER, sworn.

By Mr. Bergen:

10

Q. Where do you live?

A. Gloucester City.

Q. How long have you live there?

A. About 18 years.

Q. Do you know the property that Mrs. McQuaid is now living in at the northeast corner of Burlington and Essex streets?

A. Yes, sir.

Q. Do you know the property where she used to live? 20

A. Yes.

Q. How far are they away from one another?

A. About one square.

Q. Can you see the one from the other?

A. Yes, sir, if you stand outside, you can.

Q. Were you employed in this job?

A. Yes.

Q. Putting in the plumbing work?

A. Yes.

Q. How much of the time were you there? 30

A. From the start to the end of it.

Q. You were there the whole job?

A. Yes.

Q. Do you know anything about the sink, putting in the sink?

A. I stood there when Mrs. McQuaid spoke to Mr. Robinson about the sink?

Q. You heard that conversation?

A. About having a new sink; she said she was going to see her husband about it. The rest of the transaction, about what transaction Mr. Black and they had, I don't know about that.

Q. Now, did you ever see her in and out of there beside that one time that you mention?

10 A. Yes, sir.

Q. How many times have you seen her in and out?

A. Oh, a dozen times or more.

Q. Was she there before you got the work done?

A. Yes, sir, they were living there?

Q. What was she doing there?

A. Why, cleaning and fixing up the house.

Q. Did they move in before you got your work done?

A. Yes, sir.

20 No cross-examination.

PLAINTIFF RESTS.

30 Mr. Weaver: I move for a non-suit, if your Honor please, on the ground that this is an effort to hold one person for the debt or default of another person. The proof here is that Mr. McQuaid contracted this debt, the goods were charged to him and this book of original entries shows that the charge, not only for the original goods which Mr. Black estimated on, amounting to \$420 were charged to him and the estimate made to him, but

the second charge of \$150 is made directly to Mr. James McQuaid, and the estimate is made to him. The last charge of \$18 is made to Mr. McQuaid and the estimate was made for him. The proof is uncontradicted on that point. Now, this debt, having been originally incurred by McQuaid, we hold that Mrs. McQuaid notwithstanding she is the owner of the property cannot be held for this debt unless she is bound in writing under the Statute of Frauds. That Statute distinctly provides that one person shall not be held for the debt or default of another person unless it is in writing. Now, an effort has been made here to show some character of agency which would make the debt an original debt of Mrs. McQuaid because she is the defendant here, but I say the proof has failed on that entirely. There is no proof that she ever contracted the debt, there is no proof that she ever authorized the repairs to be made, and there is no proof that she ever ratified it to any extent. There is a slight bit of proof here that she said a sink should be put in, but that should not be done without first consulting McQuaid. Now, in the absence of that contract in writing or that ratification on her part to pay for this debt, under the Statute of Frauds, she cannot be held. The Married Woman's Act here has no application because it is over-reached by the Statute of Frauds, which requires the contract to be in writing. They have attempted to make some point in the matter of her acquiescence, of her being around the property and seeing the work go on, which may have had some influence on your Honor's mind. This situation here is exactly as the situation was before the Mechanics' Lien Act required a married woman whose property was being put in repair or whose property was being built on to dissent in writing, otherwise her property could be held under the Mechanics'

Lien Act for the necessary repairs or any erection or construction on the premises. That Act was passed in 1870. The situation prior to that is the same as it is today in relation to acquiescence; that has not been changed. (Citing cases). Even though Susan McQuaid was there and saw this work going on, unless she contracted the debt, unless it is brought home to her that the charge was made to her directly, her acquiescence will not bind her unless they bring something that will hold her under

10 the Statute of Frauds, that is, an order in writing saying she will pay for these repairs. Take the position of a tenant in a house, and the tenant goes along and orders a merchant or mechanic to make certain repairs on the property, and the mechanic without making any investigation as to who the real owner is, says, "I will trust you for those repairs," and he goes in and makes the repairs. Now, can it be possible that that merchant or mechanic, after the repairs have been made and the bill is not paid as promptly as he would like to have it, could

20 hold the owner because they have been put on his property? Not for an instant, because the owner has not contracted the bill and to hold him you must have an order in writing. If this proposition is to be maintained any tenant can go out and order any quantity of repairs and all the mechanic has to do is to ignore the tenant entirely and bring a suit, as is done in this case, against the real owner and say, "Well, you were around there; you passed by; you saw these repairs going on, you acquiesced, and therefore you are liable." But that is not

30 the law and I therefore think that as this case stands there can be no recovery.

The Court: The motion is refused.

Whereupon the defendant, by her Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

DEFENDANT RESTS.

10

The Court: The question will go to the jury on the question of confirmation of the act, whether there was a ratification. You may address the jury.

Mr. Weaver: Do I understand your Honor to say that it would be left as a question of fact to the jury whether there was a ratification?

The Court: Yes, you may address the jury on that subject if you desire.

20

Mr. Weaver: No, I think we rest here.

Mr. Bergen: Do I understand you do not wish to address the jury after I am through?

Mr. Weaver: Yes, we are through.

Mr. Bergen: Is there any occasion for any address to the jury? It just comes down to the Court directing the jury what to do.

30

The Court: Oh, no; the Court is not going to direct the jury; the Court will leave it to the jury what to do.

CHARGE OF THE COURT.

ENDICOTT, J.

Gentlemen:—The defendant has not desired to introduce any testimony in this case; it will therefore be submitted to you upon the question of whether James McQuaid was acting as the agent of Susan McQuaid
10 when he ordered this work done and whether Mrs. McQuaid, with full knowledge of what had been done, accepted the benefit of it—in other words, whether she ratified and confirmed what her husband had done in this matter. If she did, then you would be justified in finding that she is liable for this bill just the same as though she had originally made the contract herself, because when the principal accepts the benefits of an agent's action, when he ratifies it in any way with full knowledge
20 of the situation he makes himself liable. You may remember also in this connectoin the promise which Mrs. McQuaid made this man that she would pay the bill, and consider that along with the questions submitted to you, whether she ratified the action of the husband. If you find that she did, that the husband was her agent or that possibly acting without authority she afterward with full knowledge ratified his action, then you should find a verdict for the plaintiff for the amount of the bill, \$568, with interest from December 1st, 1905.

DEFENDANT'S EXCEPTIONS.

The defendant, by her Counsel, prays a bill of exceptions to the charge of the Court in each of the following particulars, viz:

1. To that part of the charge of the Court concerning agency and the establishment of it by the testimony; and a bill of exceptions is allowed and sealed accordingly. 10

ALLEN B. ENDICOTT,
Circuit Court Judge.

2. Also to what the Court said as to defendant's participation in the contract and her liability thereunder; and a bill of exceptions is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

3. Also to what the Court said about the assumption of the principalship; and a bill of exceptions is allowed and sealed accordingly. 20

ALLEN B. ENDICOTT,
Circuit Court Judge.

4. Also to what the Court said about defendant's promise to pay the bill, telling the jury that they may consider that; and a bill of exceptions is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge. 30

NEW JERSEY SUPREME COURT.

	EMMETT BLACK,	}	
	Plaintiff,		
	vs.		On Contract.
10	SUSAN MCQUAID,		On Postea.
	Defendant.	}	

GEORGE J. BERGEN,
Attorney.

As yet of the twenty-eighth day of May, A. D. nineteen hundred and six.

20 Witness, WILLIAM S. GUMMERE, ESQUIRE,
Chief Justice.

WILLIAM RIKER, JR.,
Clerk.

CAMDEN COUNTY, SS.

30 Susan McQuaid, the defendant in this suit, was summoned to answer unto Emmett Black, the plaintiff therein, in an action upon contract; and thereupon the said plaintiff by George J. Bergen, his attorney, complains for that whereas the said defendant on the twenty-fifth day of April, in the year of our Lord one thousand nine hundred and six, in the County of Camden aforesaid, was indebted to the plaintiff in the sum of twelve

hundred dollars, for the price and value of goods sold and delivered by the plaintiff to the defendant at her request; and in the like sum of money for the price and value of goods bargained and sold by the plaintiff to the defendant at her request; and in the like sum of money for the price and value of work done, and materials for the same provided by the plaintiff for the defendant at her request; and in the like sum of money for money lent by the plaintiff to the defendant at her request; and in the like sum of money for money had and received by the defendant for the use of the plaintiff; and in the like sum of money for money paid by the plaintiff for the use of the defendant at her request; and in the like sum of money for interest due from the defendant to the plaintiff for the plaintiff having forborne moneys due from the defendant to the plaintiff at the defendant's request for a long time then elapsed; and in the like sum of money for money found to be due from the defendant to the plaintiff on an account then and there stated between them; and the defendant afterwards (to wit) on the day and year last aforesaid in the county aforesaid, in consideration of the premises respectively promised to pay the said several last mentioned moneys respectively to the plaintiff on request; yet the defendant disregarded her said promises, and has not paid any of the said moneys, or any part thereof; to the plaintiff's damage twelve hundred dollars, and thereupon he brings his suit, &c.

NOTICE TO DEFENDANT.

The following is a bill of the particulars of the demand and copy of the account whereupon the annexed declaration is founded:

Susan McQuaid to Emmett Black, Dr.

To plumbing and heating residence of Susan McQuaid
on N. E. Cor. of Burlington & Essex Sts., Gloucester.

Heating	-	-	-	-	-	\$420.00	
Plumbing	-	-	-	-	-	150.00	
							\$570.00
Extra over contract for putting in iron							
enameled sink and back	-	-	-	-	-	16.50	
Extra for repairing coils	-	-	-	-	-	1.50	
							\$588.00
10 Paid on account	-	-	-	-	-	20.00	
							\$568.00
						Bal. due	- \$568.00

Judgment will be demanded for the sum of five hundred and sixty-eight dollars with interest thereon from December 1, 1905, to date of final judgment.

And the said defendant, Susan McQuaid, by Howard L. Miller, her attorney, comes and defends the wrong and injury when, &c., and says that she did not undertake or
20 promise in manner and form as the said plaintiff hath in his said declaration above thereof alleged against her; and of this she puts herself upon the country, &c.

Therefore let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Camden, in and for the County of Camden on the second Tuesday of September, in the year of our Lord, one thousand nine hundred and six, by whom, etc., and the same day is given to the parties aforesaid there, etc.

30 And now at this day, to wit, the twenty-third day of October, A. D., nineteen hundred and six, before our said Supreme Court at Trenton comes the said plaintiff by his attorney aforesaid, and the Justice before whom, etc., having first sent hither his record had before him in these words, to wit:—

Afterwards, to wit, at a Circuit Court holden at Camden, in and for the County of Camden, before his Honor, Allen B. Endicott, a Judge of the Circuit Court to whom was referred by the Justice of the Supreme Court holding said Circuit on the fifteenth day of October, in the year of our Lord one thousand nine hundred and six, according to the form of the statute in such case made and provided, comes as well the said plaintiff as the said defendant, by their respective attorneys within mentioned, and the jurors of the jury, between the parties aforesaid, in the plea aforesaid, being summoned, also come, who, to speak the truth of the matters and things within contained, being chosen, tried and sworn say upon their oath that the said defendant, Susan McQuaid, did undertake and promise in manner and form as the said plaintiff, Emmett Black, hath in his said declaration alleged; and they assess the damages of the said plaintiff, by reason of the not performing said promises and undertakings, over and over the costs and charges by him about his suit in this behalf expended, at the sum of five hundred ninety-seven dollars and eighty-two cents and for those costs and charges.

Therefore it is considered that the said plaintiff do recover against the said defendant his said damages by the jury in form aforesaid found to five hundred ninety-seven dollars and eighty-two cents, and also forty-five dollars and three cents for his costs and charges aforesaid, by the Court now here adjudged to the said plaintiff and with his assent, which said damages, costs and charges in the whole amount to six hundred and forty-two dollars and eighty-five cents.

Judgment signed the twenty-third day of October, A. D. nineteen hundred and six.

WM. S. GUMMERE,
C. J.

I, William Riker, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this 7th day of December, A. D. nineteen hundred and six.



WM. RIKER, JR., Clerk.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

EMMETT BLACK,	}		
Defendant in Error,			
vs.		On Error to	10
SUSAN MCQUAID,		Supreme Court.	
Plaintiff in Error.	}		

And now, on this day the plaintiff in error assigns the following causes in error:

1. Because the Trial Judge admitted illegal and incompetent evidence to go before the jury. 20
2. Because the Trial Judge permitted the plaintiff to testify that the defendant had promised to pay the debt of another, such promise not being in writing.
3. Because the Trial Judge refused to non-suit the plaintiff.
4. Because the Trial Judge permitted the case to be passed upon by the jury.
5. Because the Trial Judge charged the jury that they might find that James McQuaid was acting as agent for the defendant. 30
6. Because the Trial Judge charged the jury that they would be justified in finding the defendant "liable for the

bill just the same as though she had originally made the contract herself."

7. Because the Trial Judge charged the jury "you may remember also in this connection the promise which Mrs. McQuaid made this man that she would pay the bill, and consider that along with the questions submitted to you whether she ratified the action of the husband."

10 8. Because the Trial Judge charged the jury that they might find for the plaintiff if the defendant ratified the action of her husband.

9. Because the proceedings and judgments are in divers other respects irregular, illegal and oppressive to the plaintiff in error.

HOWARD L. MILLER,
Attorney of Plaintiff in Error.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

EMMETT BLACK,	}	
Defendant in Error,		On Error to
vs.		Supreme Court. 10
SUSAN MCQUAID,		Joinder in Error.
Plaintiff in Error.	}	

And afterwards, the said Emmett Black by George J. Bergen, his attorney, comes into Court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays here that the Court here may proceed to examine the record and proceedings aforesaid, as the matter 20 aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, etc.

GEORGE J. BERGEN,
Attorney for Defendant in Error.

