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AGREED STATE OF THE CASE.

ATLANTIC CITY DISTRICT COURT.

HARRY ROSE,

*Plaintiff,*

vs.

BENJAMIN G. FITZGERALD,

*Defendant.*

ACTION AT LAW.  
STATE OF CASE.

10

As counsel have failed to agree upon a State of Case, and requested the Court to settle the State of Case, I have accordingly, settled and found the following as a State of Case to be used on the appeal. 20

The suit was based upon a book account to collect the balance of a tailor bill—work done for defendant's wife.

The items are as follows:

“Balance due, June 18, 1915	\$33.00	
Remodelling set of furs, October 11, 1915	35.00	
Made fur collar, October 11, 1915	21.00	
Remodelled Broadcloth suit, 1915	25.00”	30

The account was continuing one. There were no regular set of books kept and none were produced.

Defendant refused to pay the bill because he said he had notified the plaintiff not to extend any further credit to his wife and daughter, and that when he

made his last payment to plaintiff, he wrote on the face of the check the following:

“Paid in full and no more credit paid.”

Defendant also said that he supplied his wife with sufficient money to buy the reasonable necessities of life.

10 Plaintiff testified that he had been doing work and furnishing materials to defendant's wife and daughter for four years; that defendant had always paid the bills; that he had never been notified or had any intimation that defendant would not continue to pay their bills; that if the writing above referred to was on the check when handed to him, he did not see it or notice it; that accordingly he continued to work for defendant's wife and expected defendant to pay as he had done theretofore; that the amount of his bill set forth in the State of Demand was correct, just and due.

20 That the work was properly done and the bill correct was undenied. Defendant's wife was not produced as a witness at the trial; that defendant was living with her as man and wife at the time of the trial and at the time the bills in question were contracted, was not denied.

There was no proof on either side on the subject of necessities.

30 From defendant's own testimony in conjunction with that of plaintiff's, it was obvious to the Court and the Court found as a fact that defendant had not notified plaintiff as he claimed, nor did he furnish his wife with sufficient funds to supply her with the reasonable necessities of life.

Accordingly judgment was entered for the plaintiff for the amount claimed.

FRANK SMATHERS,  
*Judge.*

OPINION.

NEW JERSEY SUPREME COURT.

JUNE TERM, 1916.

10

HARRY ROSE,  
*Plaintiff-Appellee,*  
 vs.  
 BENJAMIN G. FITZGERALD,  
*Defendant-Appellant.*

OPINION.

Submitted , 1916. Decided, , 1916.

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APPEAL FROM DISTRICT COURT.

Before JUSTICES GARRISON, PARKER, and BERGEN.

For the Plaintiff-Appellee, MORRIS BLOOM.

For the Defendant-Appellant, J. J. CRANDALL and JAMES A. LIGHTFOOT.

PER CURIAM:

This was a suit against a husband to collect the amount of a bill for tailoring done for the wife. There was a judgment for the plaintiff below. The defense was mainly based upon the claim that the plaintiff had been notified by the husband not to give any credit to the wife and also that the articles furnished were not necessaries. After the suit was begun the wife paid a part of the bill, leaving a balance

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of forty-five (\$45.00) dollars, which was the basis of the judgment.

Appellant has put in what appears to be a stenographic transcript of the testimony taken in the Court below, but there is nothing in the record to show that a stenographer was appointed pursuant to the statute, and unless there was an appointment, the transcript has no value. On the other hand, there is a state of the case settled by the trial Judge which naturally excludes a stenographic transcript. The alleged errors called to our attention are the following:

First: That the Court founded against uncontradicted evidence that the plaintiff did not see a written notice upon the defendant's check that no more credit was to be given to the wife. The burden was on the defendant to show that the plaintiff did see this notice, and the Judge certifies that the plaintiff testified that if the clause was there he did not see it, while the transcript is silent on this point. We think we should not take the silence of the unofficial transcript as impeaching the statement of the Court to the contrary.

The same may be said as to the Court's finding that the defendant did not supply his wife with necessaries. The ruling that evidence as to what were necessaries was part of the defense is complained of in the brief, but was not objected to at the trial and was not specified as a ground of error.

Third and fourth: It is objected generally that the defendant did not have a fair trial. A general objection of this character, of course, counts for nothing.

We find no error of the trial Court properly assigned that should lead to a reversal, and the judgment will, therefore, be affirmed.

**NOTICE OF APPEAL FROM THE SUPREME COURT TO THE COURT OF ERRORS AND APPEALS.**

**NEW JERSEY SUPREME COURT.**

HARRY ROSE,

*Appellee,*

vs.

BENJAMIN G. FITZGERALD,

*Appellant.*

NOTICE OF APPEAL 10  
FROM THE SUPREME COURT TO THE COURT OF ERRORS AND APPEALS.

To Morris Bloom, Esq., Attorney for Plaintiff-Appellee:

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Take notice that BENJAMIN G. FITZGERALD, in the above-stated cause, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause in this court on the following grounds:

*First.*

The Supreme Court committed error in this case by ruling that no report of the testimony will be considered unless the record exhibits that a stenographer was appointed pursuant to the statute and the testimony reported by him, and then to further rule, that a state of the case made by the Judge excluded all testimony. This is contrary to the views of the

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Court expressed in *Hill vs. Express Co.*, 77 L. 19. No objection was made to the report of this testimony, except the one in the brief of the appellee at the argument, wherein it is not in any wise alleged that there is any error or mistake in the testimony reported. It is omitted that specifically wherein the District Court exercises the function of a jury, his findings are conclusive, but when the Judge makes controlling deduction against uncontradicted evidence, it is error.

10

*Second.*

As to check admitted in evidence, p. 12 of the case—referred in the findings of the Judge, p. 2, "Paid in full, and no more credit paid." This was admitted as undisputed evidence. The Judge does not find that this language was not in the check when delivered. The utmost of his findings is that if it was there the plaintiff did not see it.

20

Suppose the check had contained the following, to wit: "Paid in full on condition that no more of the bills of my wife will be paid by me." Could the plaintiff be then heard to say, "I did not see this element of the check." I saw all the other terms but these, "but overlooked that"? At any rate, would it not raise the question whether these terms were actually there when the check was used? Does it negative the force of the notice in the check for the plaintiff to say and the Court to find that plaintiff did not see it? Suppose plaintiff had said and the Court found the plaintiff could not read writing? In the absence of all fraud or trick must it not be held that defendant-appellee had given notice to quit crediting the wife with the expectation that defendant would voluntarily pay? The notice was sufficient and pre-

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sumptively barred all recovery unless allegation and proof be exhibited that the claim was for such necessities as the husband refused to furnish.

*Third.*

In the third assignment of error to the Supreme Court, p. 6, it will be noticed on p. 2, that the District Court controverted its own findings on the subject of "necessaries."

It is explicitly found in a separate paragraph of the findings that there was no proof on either side touching the question of necessaries, and a few lines further down the Court finds that "The defendant did not furnish his wife with sufficient funds to supply her with the reasonable necessities of life." Without any attempt to explore the mental mood of the District Court, it may safely be affirmed that on first principles plaintiff could not recover without allegation and proof that the bill was for such necessities of life as the husband refused to furnish, but

(a) As to allegation see p. 16. The case as it stood was for "goods ordered and delivered" see case p. 7 before any evidence taken, the demand was changed from book account to "Goods sold and delivered" when counsel attempted to cross-examine plaintiff, he suggested the variance between the proofs which was for work done, but the claim for goods sold and delivered.

He was at once suppressed by the Court by the sagacious exclamation, "What difference does it make to Mr. Lightfoot? Has he not a right to his money for labor promised?" This must be taken to mean that defendant is not entitled to be informed as to the cause and nature of the claim. This error is sufficiently raised by the third assignment of error, p. 6, for "Necessaries in some form should be al-

leged and proved according to allegation." The effect of the ruling of the Court was that there was no occasion for specifications of the claim. But suppose the report of the evidence be excluded then,

*Fourth.*

10 The assignment is "The items in the statement of demand fully disclose as matter of law that they are not such necessities" in quality as import an agency of the wife to "pledge the credit of her husband." In the state of the case by the Court, p. 1, the Court says, "The suit was based upon a book account to collect a balance of a tailor bill, work done for defendant's wife." The finding is that they were living together as husband and wife. The items speak for themselves. The Court finds no books were kept and none were produced. But, on the important element of the case touching necessities, the Court finds "nor did he furnish his wife sufficient funds to supply her with the reasonable necessities of life."

20 Suppose the wife had been supported in the home by the ways and means independent of cash, the finding is sufficient, unless it cover the actual condition of the wife, to wit: That because of her want and distress the work done for her worked necessary relief. Hence, there is no finding of fact that justifies the husband simply from that relation was liable, hence the judgment must be reversed.

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J. J. CRANDALL and  
JAMES A. LIGHTFOOT,  
*For Appellants.*

Service of the above acknowledged  
Dec. 18th, 1916.

Morris Bloom,  
Atty. for Appellant.

STATE OF DEMAND.

IN THE  
DISTRICT COURT OF ATLANTIC CITY.

10

STATE OF NEW JERSEY, }  
ATLANTIC COUNTY, } ss.

HARRY ROSE,

Plaintiff,

vs.

BENJAMIN G. FITZGERALD,

Defendant.

Demand, \$200.00  
Real Debt, \$78.50

20

Morris Bloom, Att'y of Pt'ff.  
James A. Lightfoot, Att'y of Def't.

State of Demand filed and

A summons was issued in the above-stated cause,  
December 18, A. D. 1915, returnable December 24th,  
A. D. 1915, at ten o'clock A. M. and was returned 30  
by the Sergeant-at-Arms as follows:

I served the within summons December 18, 1915,  
on the defendant by reading it to him and giving him  
a copy.

D. S. BROWN, *Sergeant-at-Arms.*

December 24th, 1915, Adj. to Jan. 7th, 1916.

January 7th, 1916, Not moved.

February 25, 1916, Case put on list for trial on this date on motion of attorney for plaintiff and consented to by attorney for defendant.

10 Feb. 25th, 1916, the plaintiff appeared ready for trial. The defendant appearing, and it further appearing by the return endorsed thereon that the summons was duly served, the Court proceeded to hear and determine the cause: Harry Rose, and Benjamin G. Fitzgerald, sworn and testified on the part of the plaintiff.

Benjamin G. Fitzgerald and John R. Pratt, sworn and testified on the defendant. Check admitted in evidence, marked Exhibit D1.

The evidence being closed and submitted to the Court, judgment was given by the Court in favor of the plaintiff, and against the defendant, for the sum of Forty-six dollars and fifty cents debt, and Seven  
20 dollars and fifty cents cost of suit, to wit:

Defendant's cost:

Summons	\$2.10 60
Entering Judgment	\$1.50
Attorney's fees	\$3.93

February 26th, 1916, upon the demand of plaintiff and execution was issued to D. S. Brown, Sergeant-at-Arms, against the goods and chattels of the defendant for the aforesaid debt and cost, the execution being endorsed as follows:  
30

Judgment	\$46.50
Costs	\$ 7.53
Execution	\$ 1.35
S.-at-A. Commission, 5 per cent.	\$ 2.70
	<hr/>
	\$58.08

Feby. 29th, 1916, Notice of Appeal filed.  
Mar. 14, 1916, Appeal Bond filed.  
\$1.00.

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THE STATE OF NEW JERSEY

COUNTY OF ATLANTIC.

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I, W. L. Risley, Clerk of the District Court for the City of Atlantic City in the County of Atlantic, Do Certify that the foregoing is a true copy of the whole record in the case wherein Harry Rose is plaintiff and Benjamin G. Fitzgerald is defendant, Case No. 25724 as full and complete as the same remains on file in said court in the case there stated.

In Testimony Whereof I have hereunto set my hand and seal of the said court this 14th day of March, in the year of our Lord one thousand nine hundred and sixteen. 20

(SEAL)

WM. L. RISLEY,  
*Clerk.*

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**REASONS FOR REVERSAL.**

NEW JERSEY SUPREME COURT  
 On Appeal from the District Court for the City of  
 Atlantic City.

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	HARRY ROSE,		REASONS FOR
	VS.		REVERSAL.
10	BENJAMIN G. FITZGERALD,		

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First: The finding that the defendant had not notified the plaintiff to cease furnishing goods or service to the wife of defendant on the credit of defendant was error as a finding against uncontradicted evidence.

20 Second: The finding of the Court that defendant did not furnish his wife with all the money she needed for support was error, as the evidence of the defendant stood uncontradicted and unimpeached in any way by the State of the Case.

Third: In the absence of any evidence on the subject of necessities the presumption of law is that credit was not of such necessity as to endow the wife with agency of the husband to pledge his credit as matter of law.

30 Fourth: The items in the Statement of Demand fully disclose as matter of law that they are not such necessities in quality as import an agency of the wife to pledge the credit of the husband.

Wherefore, defendant prays that the judgment be reversed with costs.

J. J. CRANDALL, and  
 JAMES A. LIGHTFOOT.

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**EVIDENCE.**

DISTRICT COURT OF THE CITY OF ATLANTIC  
CITY.

\_\_\_\_\_

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HARRY ROSE,

*Plaintiff,*

vs.

BENJAMIN G. FITZGERALD,

*Defendant.*

EVIDENCE.

\_\_\_\_\_

20

MORRIS BLOOM, attorney for plaintiff.

JAMES A. LIGHTFOOT, attorney for defendant.

\_\_\_\_\_

Mr. Bloom: May it please the Court, I move to  
amend the State of Demand in this case, changing it  
from a book account to goods ordered and delivered.

30

The Court: It will be so amended.

\_\_\_\_\_

Mr. Bloom: Mr. Rose, take the stand.

MR. ROSE is sworn.

Mr. Bloom: Mr. Rose, did you a different date deliver goods to Mr. Fitzgerald?

Mr. Rose: I delivered them to Mrs. Fitzgerald.

Q. Did he pay you for them?

10 A. Not for these last goods.

Q. What is the bill for?

A. There was a balance due in June of \$33.00, then I remodelled a set of furs for \$35, made a fur collar for \$21, and remodelled a broadcloth suit for \$25.

Q. How much is owing to you now?

A. \$45.00.

Q. Did Mr. Fitzgerald ever pay you any money?

20 A. Yes. At different times for his daughter and wife. Once when we (Altman & Rose) had a place together, he paid a bill of \$80; at another time, \$35, and different payments. They have been my customer for the last four (4) years.

Cross-examination.

By Mr. Lightfoot:

Q. Mr. Rose, did Mr. Fitzgerald ever order any goods from you?

30 A. No, Mrs. Fitzgerald.

Q. Up to and during 1914 you and one H. Altman conducted a tailoring firm of Altman and Rose, did you not?

A. Yes.

Q. Mr. Fitzgerald has not paid you any bill since that time, has he?

A. He paid different bills then.

Q. How much was this bill when you first started your suit on Dec. 18th, last?

A. Seventy-seven dollars. It was a hundred and fourteen dollars.

Q. How much is your bill now?

A. Forty-five dollars.

Q. Who made these payments since the suit started?

A. Mrs. Fitzgerald.

10

By the Court:

Q. Did you keep a book account of goods ordered?

A. Yes.

Q. How was it headed?

A. Fitzgerald.

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20

MR. B. G. FITZGERALD, called and sworn.

By Mr. Bloom:

Q. Mr. Fitzgerald, you are the defendant in this case?

A. I am.

Q. You own Fitzgeralds' Auditorium on North Kentucky Avenue?

A. My brother and I do.

Q. How much is it worth?

30

Mr. Lightfoot: I object to this line of examination.

The Court: Yes, Mr. Bloom, what are you trying to show?

Mr. Bloom: That for a man's wife in Mr. Fitzgerald's station of life these things are necessities.

The Court: That's a part of the defense.

(Mr. Fitzgerald excused by plaintiff.)

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10 Mr. Lightfoot: May it please the Court, our defense is, that Mr. Fitzgerald, the husband defendant in this case, is liable for necessities only, provided, he did not furnish his wife with necessities. The plaintiff has not proven that the goods delivered or the work done was necessities. We will prove to your Honor that the defendant not only furnishes his wife all necessities and pays all the family expenses of the home wherein he and his wife live together, but gives her a regular allowance. Besides  
20 we will show that in 1914, when this plaintiff conducted a tailoring firm of Altman and Rose, Mr. Fitzgerald, when paying a bill by check, gave notice that his wife was to be given no more credit to be charged to him, and so made out his check in payment of the bill with such a notice on it. I also have some law on the matter I wish to submit to the Court.

The Court: Put in your case and then introduce your law.

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MR. FITZGERALD, called, was formerly sworn.

By Mr. Lightfoot:

Q. You are the defendant in this case?

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A. I am.

Q. Did you ever order any goods of plaintiff?

A. Never.

Q. You are the husband of Mrs. Laconia Fitzgerald?

A. I am.

Q. Did you ever have occasion to pay Mr. Rose here any bills?

A. When Mr. Rose and Altman were in business together I paid them bills.

10

Q. Did you ever have occasion to forbid them giving your wife credit and charge goods to you?

A. Yes, several times.

Mr. Bloom: I object.

The Court: Yes, Mr. Lightfoot, the questions are leading. I had rather Mr. Fitzgerald tell me just what he told them.

20

By Mr. Lightfoot:

Q. Tell them what, and when it was, you spoke to the firm about charging things to you.

A. It was over a year ago. I had been sent different bills made by my family and had paid them. So the last bill I paid I took the check down to their place and Mr. Rose and Mr. Altman were in there, and a young lady was sitting there, so I said, "Gentlemen, it would please me very much if you will send me no more bills made by my family and don't give them any more charges on me."

30

Q. Did you pay them at that time?

A. I gave them a check.

Q. What did you write on it?

A. "Paid in full and no more charges paid."

Q. I show you a check dated Sept. 4, 1914, and ask you if this is the check.

(Witness is shown check.)

A. It is.

Mr. Lightfoot: I offer this check in evidence.

10 (Check admitted in evidence.)

“Atlantic City, N. J., Sept. 4th, 1914. No.....  
 Marine Trust Company  
 Pay to the order of H. Altman \$32 00/100  
 Thirty Two dollars only Dollars  
 For acct. of Bill in full and no more charges paid  
 Benjamin G. Fitzgerald”

Q. Did you ever on any other occasion and when  
 20 tell them not to give your wife credit on you?

A. Once on the porch of my home in Ohio Avenue, when Mr. Rose came there to collect a bill, once at the office of my place on Kentucky Avenue, and down to his place when I gave him the check over a year ago.

Q. Have you told him so recently?

A. When he came to collect this bill some time early in December, I told him I would not pay it because I had told him not to charge any more bills of  
 30 my wife to me.

Q. Was any one present?

A. John Pratt was in the office at the time.

Q. Mr. Fitzgerald, how much were you originally sued for?

A. Seventy-five dollars, or something like it.

Q. You heard Mr. Rose say the bill is now \$45? Have you paid the difference?

A. I have not paid him any money since 1914.

Q. Do you know who paid him?

A. I don't.

Q. Do you provide your family with all the necessities of life?

A. I do.

Q. Do you provide and pay all the family bills for living expenses?

A. I do.

Q. Does your wife have an allowance?

10

A. I give her money whenever she wants it.

The Court: Just what do you mean by giving her money?

A. I generally have fifteen or so dollars when I go home at night, and because often a woman needs money in the house and for herself I allow her to take what she wants, but tell her to tell me. Then, when I get up and count over my money and if any was gone and she had not told me, I'd ask her if she had taken any. 20

The Court: How is it you always happen to have just \$15.00?

A. Oh, no, sometimes it's more; sometimes a little less.

Cross-examination.

30

By Mr. Bloom:

Q. Mr. Fitzgerald, did you tell Mr. Rose you wouldn't be responsible for debts your wife made?

A. I did, on three different occasions, as I stated.

Q. You have paid former bills he had against you, haven't you?

A. Not since I told him not to charge me with any more bills made by my wife, that I gave her all she needed, and that they took advantage of women who didn't know how to buy.

Q. When do you say that was?

A. When I paid them down at their place on Pacific Avenue, near Illinois.

10 Q. Are you sure you told Mr. Rose?

A. Mr. Rose and Mr. Altman both. I don't know them personally except coming to collect bills, but they were both there, and a young lady was sitting in there was why I tried to speak as courteous as possible.

Q. Did you tell them you would not pay any more bills of your wife?

A. I asked them not to charge any more bills of hers to me, that I wouldn't pay any more.

20

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JOHN PRATT, called and sworn.

By Mr. Lightfoot:

Q. Mr. Pratt, do you know the defendant?

A. I do.

30 Q. Were you in his place the early part of December and heard a conversation between the defendant and Mr. Rose?

A. I don't know if it was Mr. Rose, but a man came in and gave Mr. Fitzgerald a bill, and Mr. B. G. cursed and said "Damn it, Mr. Rose, I told you long ago never to give my wife any more credit and charge it to me."

Q. But you don't know the man?

A. No, when they started to talk I got up and went on out of the office.

Cross-examination.

By Mr. Bloom:

Q. Are you related to Mr. Fitzgerald?

A. No.

10

Q. Do you work for him?

A. No. I am a truant officer in the public schools.

Q. How do you remember the statement so well?

A. Because I was there and heard it, but I didn't pay any attention to the man. I went on out.

DEFENSE RESTS.

20

Mr. ROSE, called.

By Mr. Bloom:

Q. Did Mr. Fitzgerald ever tell you not to charge any more of his wife's bills to him?

A. No, he never did.

Q. Were you ever told so at his place or on his porch?

A. No, I did not see him.

30

By the Court:

Q. Do you know if Mrs. Fitzgerald has any property in her own name?

A. No, I don't know.

Q. If Mr. Fitzgerald had told you not to charge any more bills to him, would you have given his wife credit?

A. No.

Cross-examination.

By Mr. Lightfoot:

10

Q. As a matter of fact, this bill is not for goods ordered and delivered, Mr. Rose, but for work you did on Mrs. Fitzgerald's own goods, isn't it?

A. I did the work.

The Court: What difference does that make, Mr. Lightfoot? Hasn't he a right to his money for his labor performed?

20 Mr. Lightfoot: I recognize that, your Honor, provided the defendant ordered the work done.

The Court: Mr. Fitzgerald, take the stand again. What you have said is not sufficient notice to creditors. I want you to tell me again just what you told Mr. Rose.

30 The Court: Mr. Bloom, you are a stenographer, aren't you? Now, take down just what Mr. Fitzgerald says. I want to compare it with his former statement.

---

(Not sworn.) Mr. Bloom prepares to and takes notes as Mr. Fitzgerald speaks.

A. I told Mr. Altman and Mr. Rose at their place,

when I paid them and gave them the check in 1914, that I did not want them to charge any more of my wife's bills to me. That I gave my wife all it was necessary for her to have, and that I would not pay any more bills.

Mr. Fitzgerald: You want to know just what I told him when he came to my office?

The Court: Repeat just the whole transaction.

A. I told him, "Damn you, I told you never to give my wife any more credit and charge it to me, and if you do I'll break your damn neck out of here." 10

The Court: Mr. Fitzgerald, do you realize you have told three different stories of the conversation? That's all.

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**ARGUMENT OF COUNSEL.**

20

(Mr. Lightfoot offers and reads to the Court Section 10 of page 3235 Revised Statutes, Vol. 3, as follows:

"10. Husband Not Liable For Debts of Wife Contracted Before or After Marriage; suit Against Wife Therefor—That a husband shall not, by reason of any marriage which shall take place after this Act has come into operation, be liable for the debts of his wife, contracted before marriage; nor shall a husband be liable for any debts of his wife hereafter contracted by her, in her own name, after marriage; but the wife shall be liable to be sued in her own name, separately therefor, and any property belonging to her shall be liable to satisfy such debt, in the same manner as if she were unmarried." (Rev. 1877, p. 638.) 30

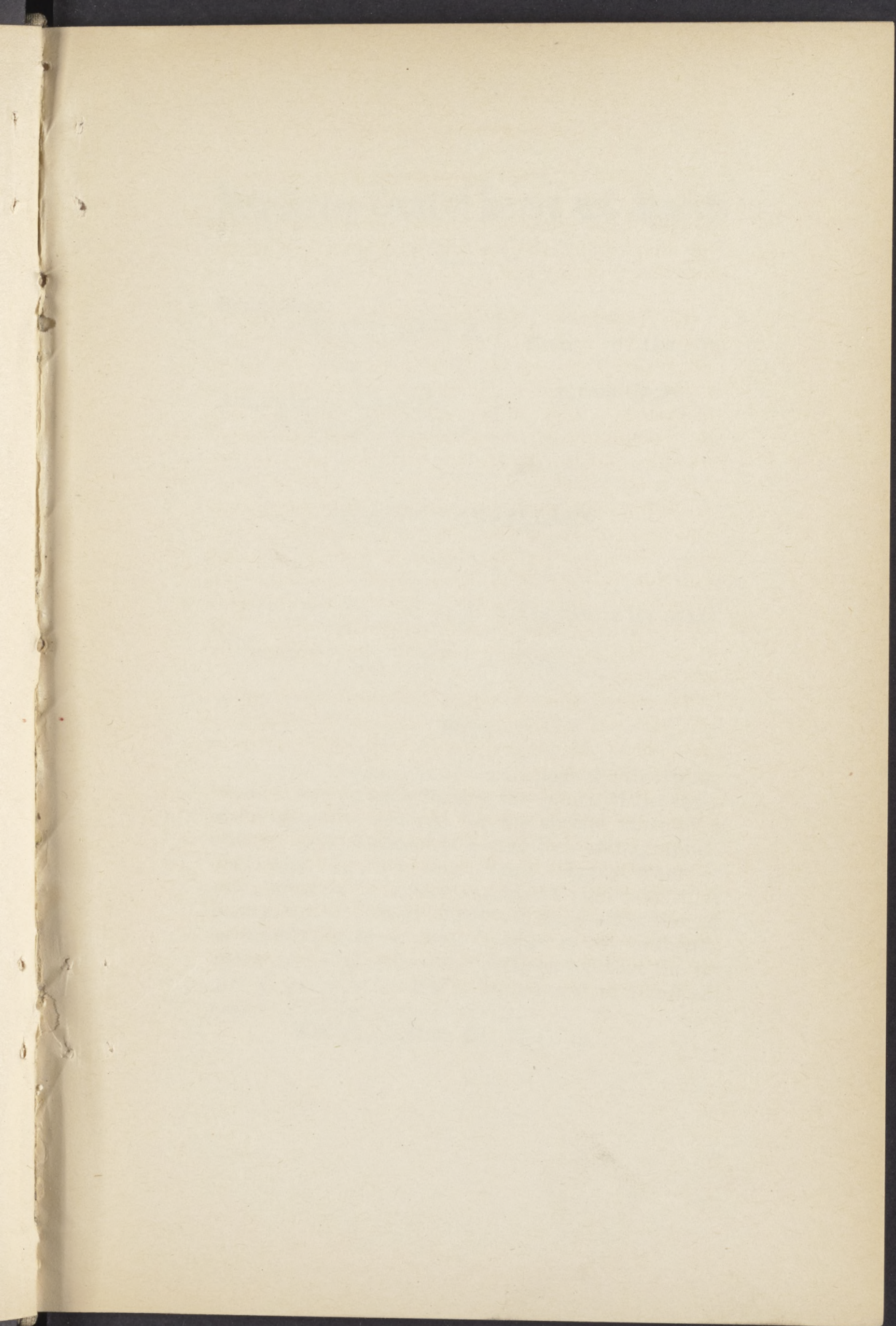
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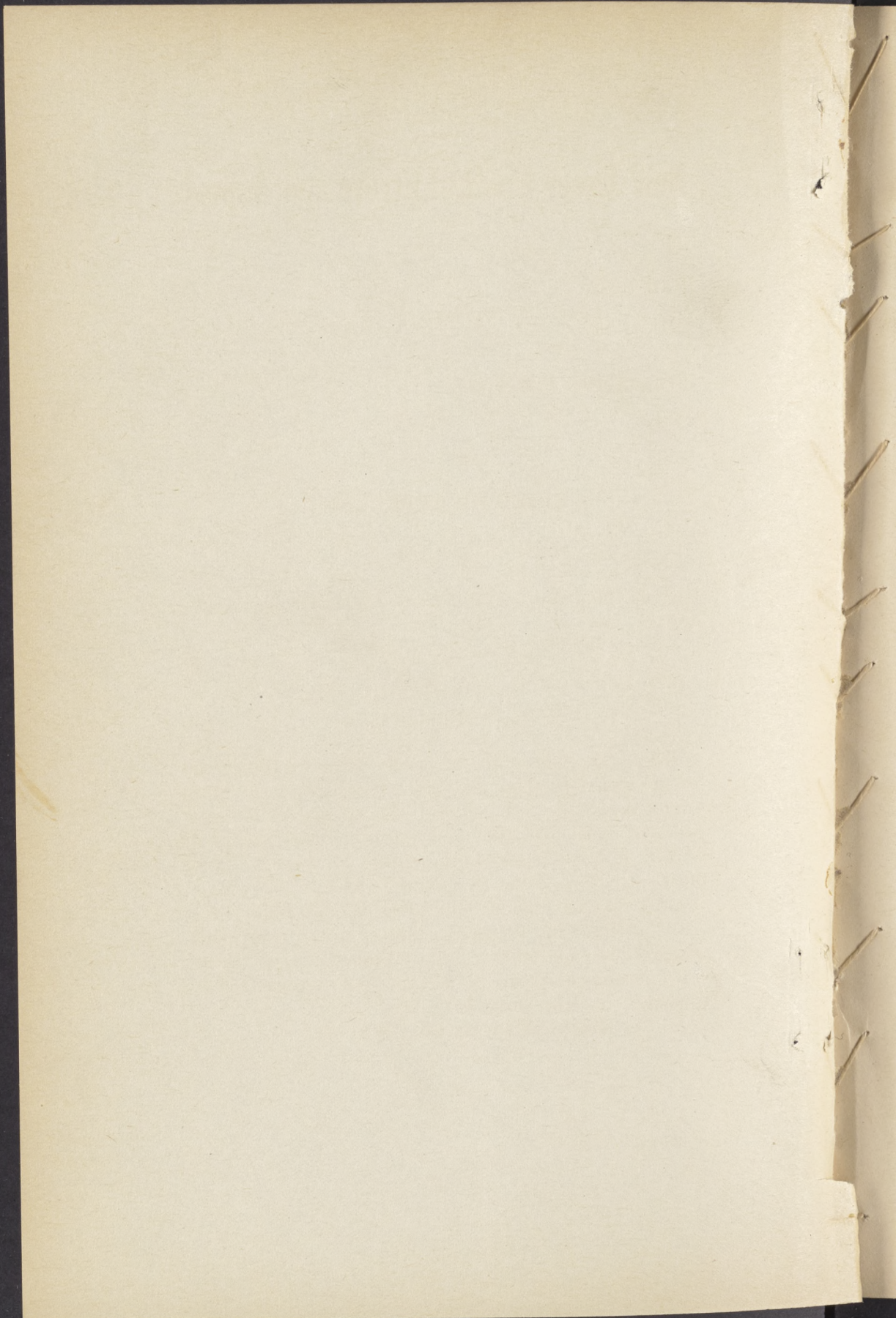
The Court: Aren't you presuming pretty far to make this law fit your case? These goods were bought in her husband's name, and they are living together. Why hasn't a wife the power to bind her husband in such a case?

10 Mr. Lightfoot: Mr. Rose testified that the account in his book was entitled simply "Fitzgerald." We contend that the plaintiff carries the burden to prove that what the defendant's wife bought were necessities. This he has not done. We hold that the warning of Mr. Fitzgerald was sufficient notice for Rose not to charge him with any more of his wife's bills—and if not certainly the check of Sept. 4th, 1914, upon which was written "Bill paid in full, and no more charges will be paid," is sufficient notice. Then, we ask the Court to consider the fact that this bill was \$114, upon which payments were made that reduced it to \$77; when suit was brought, 20 then since suit was brought payments—all by Mrs. Fitzgerald, as stated by plaintiff—have reduced the bill to \$45.

Defendant states he warned plaintiff three different times not to give his wife credit to be charged to defendant—once before John Pratt, who testifies to hearing the warning.

30 Mr. Fitzgerald's warning was over a year ago, and he has not been bothered with a bill since, though he learned today that Mrs. Fitzgerald has continued to trade with plaintiff. It is not curious that he cannot remember the exact words of his warning. Nor can we see why because he did not tell the plaintiff that he would give his wife credit at his peril does not relieve this defendant of liability. We ask for a judgment for the defendant.





# New Jersey Court of Errors and Appeals

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Harry Rose,  
*Plaintiff-Appellee,* } Error to the Su-  
vs. } preme Court.  
Benjamin G. Fitzgerald,  
*Defendant-Appellant.* }

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## BRIEF OF APPELLANT.

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J. J. CRANDALL and JAMES A. LIGHTFOOT for appellant.

MORRIS BLOOM, Esq., for appellee.

### First.

The first assignment of error, page 2c, the ruling of the Court on page 2b, that the return of the testimony must be ignored for the special cause of a want of authentication of a statutory stenographer.

If that be the only fault—simply want of authentication, it is not enough to eliminate it, if unobjected to. There should be some allegation of substantive fault or error, simply to say authentication does not appear, is no allegation that the report is not correct—and is tantamount to a full admission that the same is verity.

**Hill vs. Express Co., 77 L. 19.**

It must be borne in mind that there was no objection to the report of the proceedings as served upon counsel for appellee.

The only place or time of any appearance of objection is in the brief of counsel. This is not enough and also is evidence of acquiescence or waiver.

The Supreme Court could have stricken out the report upon notice and at the hearing of such a motion there would have been two questions before the Court, one is, was objection made according to the rules, and if not, then the other is touching the verity of the report. But the ruling of the Supreme Court is directly against the spirit of Rule 151c of the Supreme Court, as well as Rule 141.

### Second.

The check, page 12 of the case, and spoken of in the return, page 1, was fully before the Court—"Paid in full and no more credit," page 2.

The District Court Judge returns, page 2, l. 30, as a fact found that defendant had not notified plaintiff as he claimed, but did not find that the check did not contain the notice. There was not the appearance of evidence that this notice did not form part of the written check. The evidence by plaintiff that if it was there he did not notice it. This is purely subjective a mental condition and incapable of contradiction. The Court did not intimate the custom among merchants, required vocal notice, but he found the equivalent which was error. After the Court found a fact—it is error to torture it out of its normal legal significance.

It raised and established a presumption of business legal notice. So as the case stood the plaintiff was notified, see evidence on pages 12 & 13.

But the conspicuous fault of the Supreme Court was committed, line 30, page 2a, they said, "*the defense was mainly based upon the claim that the defendant has been notified by the husband,*" &c., and also "*that the articles furnished were not necessaries.*" Now, these two elements of proof were mere shots in the air.

The plaintiff had established no case calling for a defense. Until there be a *prima facie* case made by plaintiff no defense can be ever contemplated. The case, page 1, returns the following terms, "The suit was based upon a book account to collect a balance of a tailor bill—work done for defendant's wife." The Supreme Court assumes the same hypothesis, page 2a, "This was a suit against the husband to collect the amount of a bill for tailoring done for the wife." No evidence that the goods sold or work done for anybody but the wife. No account books offered. They were sold to her.

Now, in a common sense there could be no defense till the plaintiff established something that had the semblance of a cause of action.

Our Statute, page 3235, Sec. 10—quoted on page 17 of the case contains negation of liability in the following terms, "Nor shall a husband be liable for any debts of his wife hereafter contracted by her in her own name after marriage." Now, the case for the plaintiff disclosed not only that there was no case—and none could be made—but that the talk about necessaries was wholly extraneous because the District Court found, line 26, page 2, "That there was no proof on either side on the subject of necessaries."

But on a finding of an entire absence of any evidence on the subject the District Court certifies, page 2, l. 30.

“Nor did he furnish his wife with sufficient funds to supply her with the reasonable necessities of life,” and this without any evidence whatever to contradict or in any wise modify his finding that the defendant testified page 2, l. 6. “That he supplied his wife with sufficient money to buy the reasonable necessities of life.” But as said before this evidence was wholly insignificant in the absence of all allegation and proof that the claim was of such quality as to import an agency on the part of the wife to charge her husband.

### Third.

The Court is respectfully referred to the third assignment of error, page 2e, and the reasons and arguments thereunder.

J. J. CRANDALL, and  
JAMES A. LIGHTFOOT,  
*for Appellant.*

# New Jersey Court of Errors and Appeals

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HARRY ROSE, <i>Plaintiff-Appellee,</i>	}	<i>On Appeal from</i> NEW JERSEY SUPREME COURT.
vs.		
BENJAMIN G. FITZGERALD, <i>Defendant-Appellant.</i>		

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## BRIEF OF APPELLEE

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JOHN J. CRANDALL, and JAMES A. LIGHTFOOT, for  
appellant.

MORRIS BLOOM, for appellee.

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This appeal brings up for review a judgment of the Atlantic City District Court, affirmed by the New Jersey Supreme Court. Judgment was for work done in the alteration and repair of wearing apparel of the defendant's wife, in the sum of \$45.00.

Counsel could not agree on a State of the Case on Appeal, and the same was accordingly settled by the trial Judge, in manner following: 1st, the work was properly done, and the bill therefor correct; 2nd, defendant and his wife were living together at the time the bill was contracted, and at the time of trial; 3rd, defendant did not notify plaintiff to stop further credit to his, defendant's, wife and daughter, as he claimed; and 4th, defendant did not furnish his wife with sufficient funds to supply her with the reasonable necessities of life, as he claimed. Defendant's wife was not produced as a witness.

## FIRST.

The first assignment of error urged, is that the so-called "evidence" on pages 7-18 inclusive, should not have been stricken out, or ignored:

Plaintiff's attorney did not know that any stenographer was present; the so-called record does not state who did make the transcript, or take the notes; the record of the District Court does not show that a stenographer was applied for, or appointed, or sworn, and the so-called "testimony" which the appellant is attempting to foist on the Court, is not certified by the trial Judge; all of which is required by section 13b of the District Court Act, Compiled Statutes, volume 2, pages 1957-58.

Appellant cites

Hill v. Express Co., 77 L. 19, also

Supreme Court Rules, No. 141, and 155, c.

Hill v. Express Co. *supra*, deals with the technical point as to whether the transcript of evidence, taken at the trial, should be stricken from the record, when not served in 15 days, although correct in all other details. Rule 155, c, provides that "..... unless the adverse party gives notice of his objections within five days, it (state of the case) shall be deemed complete, *unless the Court orders otherwise*. The evident intention of the rule is to reserve to the Court the right to say whether the same shall be deemed complete, as a matter of discretion. The ruling of the Supreme Court in disregarding the evidence, so-called, as incomplete, incorrect and even spurious, is a proper exercise of that discretion, and is not error.

## SECOND.

The next assignment of error urged is that the Court below should have been bound by the notation on the check, to wit: "Paid in full and no more credit paid,"

even though plaintiff testified that he did not see same. This is a question of fact, and when there is any evidence to support the finding of the trial Court, same is not reviewable on appeal.

### THIRD.

The next objections urged are that there was no proof that the work done was necessary, and that for this reason, the wife had no authority to bind the husband, the defendant herein.

In *Feiner v. Boynton*, 73 Law 136, 62 Atlantic Reporter, 420, Garretson, J., speaking for the Supreme Court says:

“A debt incurred for the necessary clothing of a married woman is presumably the debt of the husband, and if incurred by the wife, it is presumed she is acting as the agent of her husband, unless there is *affirmative* evidence to show that she intended to charge her separate estate.”

See also

*Wilson v. Herbert*, 41 Law 461.

*J. McCreedy & Co. v. Martin*, 87 Atlantic Reporter 433.

21 Cyc. 1218-19, and cases cited.

The question as to whether this work was necessary was a matter of defense, and no evidence having been offered by defendant to rebut the presumption, the trial Court did not commit error in making this finding. The same is true with respect to the question as to whether the wife intended to bind her own, separate estate.

Plaintiff-appellee respectfully submits that the appeal of the defendant-appellant has no merit, and the same should be dismissed, with costs.

MORRIS BLOOM,  
For Plaintiff-Appellee.

