

MIDDLETON, J.

FEBRUARY 16TH, 1914.

BECK v. LANG.

Solicitor—Action for Bill of Costs—Husband and Wife—Action Brought in Name of Wife—Liability of Husband—Absence of Written Retainer—Credit Given to Wife—Finding of Fact.

Action to recover the amount of a bill of costs.

H. T. Beck, the plaintiff, in person.

A. B. Armstrong, for the defendant.

MIDDLETON, J.:—The action is upon a bill of costs incurred in an action of Lang v. Williams. It appears that some time prior to the transactions giving rise to this action, Mr. R. S. Lang was in financial difficulty. He had undertaken to carry on business in his wife's name. A declaration had been registered under the Partnership Act by which the wife was put forward as the sole member of the firm of R. S. Lang & Co. With the merits or demerits of this device it appears to me I am not concerned.

The situation was known to Mr. Beck. The attention was brought in the name of R. S. Lang & Co.; and, later on, some objection being taken to the right of an individual to sue in the firm name, Mrs. Lang was added in her own name as a plaintiff. The action appears to have been long drawn out and expensive. In the result it was unsuccessful, the counterclaim succeeding to an amount largely overtopping the claim of the plaintiff. This disaster put an end to the wife's trading. All the business was in fact carried on by the husband under a power of attorney from the wife. The healing hand of the Statute of Limitations has now removed Mr. Lang's financial troubles, and, if anything, he is a better financial mark than his wife. Mr. Beck now sues the husband; and the husband, no doubt with his wife's consent, takes the position that the liability is hers, not his.

There was no retainer in writing for that action, although there had been a retainer in writing, in respect of other actions in which Lang, and possibly his wife, were parties defendant. That was the personal retainer of Lang, and he contends that it refers to his business only. The question is, upon whose credit was this work done? If on the credit of the wife, there is no pretence that the husband guaranteed payment, quite apart from any defence that the Statute of Frauds would afford.