

the wife is upon the credit the law gives her by implication, in respect of cohabitation, and is like credit given to a servant. The wife here was an agent *de facto*. They also cited *Manby and another v. Scott*, 1 Lev. 4; 1 Sider. 109; 1 Mod. 124; Bac. Abr., tit. "Baron and Feme;" 2 Sm. L. C. 445.

*Willis*, Q. C., and *McColl*, for the defendant.

BRAMWELL, L. J. The question here is, whether the defendant is bound to pay for goods supplied to his wife without his authority or knowledge. The goods were articles of dress, and were necessaries in the sense of being suitable for the wife in her station, but not in the sense of her standing in need of them, for she had either a sufficient supply already or sufficient funds from her husband to supply herself with them. The action used to be one of *assumpsit*, and it was necessary to show, if possible, that the wife was the agent of her husband, and therefore a case of this kind always presents a technical appearance in arguments. There are cases in which the wife as an agent has authority to bind her husband; for instance, if he conducts himself so that she is obliged to leave him, or if he turns her out of doors, he is bound to maintain her, and she can pledge his credit for necessaries; and I can understand that there may be other cases, where the husband and wife are cohabiting, and persons in the same class in society, and living in the same neighborhood are accustomed to have certain articles on credit, or by weekly bills, as for instance in the case of butcher's meat. In such cases it seems to me that the wife would have a presumed authority to pledge the husband's credit, and the husband would have to negative it. This would apply, not only to a wife, but also to a sister or a house-keeper, or any other person who might be in the position of managing the establishment. That consideration was the foundation of the judgment in *Ruddock v. Marsh*, 1 H. & N. 601. But that is not the case here; it cannot be pretended that there is any practice which is binding in this case; the court cannot take judicial notice of a practice to pledge a husband's credit for dresses, and I should hope that no such practice does exist in fact. The question here is whether the wife has authority to pledge her husband's credit; it is not the same as authority to spend ready money, for if

she did spend ready money the husband could not refuse to accept the article which she had bought. The question here is, whether the wife can pledge her husband's credit and make him liable. Why should she against her husband's orders? If he desires that she should have authority, he can give it. Then take the case of the tradesman, he is not bound to give credit; or he may say to the wife, before he trusts her, "Have you your husband's authority?" and he has this security, that if she falsely says she has, she would be liable to an indictment for obtaining goods by false pretences. I do not say there would be any great probability of a conviction. Or he may say, "I must have the husband's assurance that the wife has authority." It may be said that by doing so the tradesman would offend his customers; that may be a good reason why he should not ask the question, but it is no reason why we should make the husband pay. I am of opinion that there is no reason of convenience or usage for the law being as the plaintiffs would have it, and there is no authority for that view. I think the law is the other way, and that the judgment ought to be affirmed. As to the question of expediency, it would be most mischievous to enable a foolish woman and a tradesman to combine to make the husband liable.

BAGGALLAY, L. J. I have had an opportunity of considering the judgment which Thesiger, L. J., is about to deliver, and I entirely agree with it; at the same time I do not dissent from the observations of Bramwell, L. J.

THESIGER, L. J. The state of facts upon which the judgment of the court is to proceed I take to be as follows: A husband and wife living together; the husband able and willing to supply the wife with necessaries or the means of obtaining them; an agreement between them, not made public in any way, that the wife shall not pledge her husband's credit; a tradesman, without notice of that agreement, and without having had any previous dealings with the wife, supplying her upon the credit of the husband, but without his knowledge or assent, with articles of female attire suitable to her station in life; an action brought against the husband for the price of such articles. The question for us is, whether the action is maintainable. I agree with the other members of