

No. 12819

Supreme Court of Illinois

Prescott & Wife.

vs.

Fisher, et al.

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266

Charles Prescott et ux.
vs.

Joseph W. Fisher et al.

12817

8403

12817

State of Illinois }
Cook County . . . }

Sheweth before the Honorable John M. Wilson Judge
Judge of the Cook County Court of Common Pleas
within and for the County of Cook and State
aforesaid at a Special term of said Cook
County Court of Common Pleas begun and held
at the Court House in the City of Chicago on the
first Tuesday being the fourth day of January
in the year of our Lord one thousand eight
hundred and fifty nine that notice of the time
and place of the holding said special term of
Court having been printed and published in
the "Daily Democrat" the Corporation News
paper of the City of Chicago said notice having
been printed and published twenty days previous
to the holding said special term of Court, in
accordance with the Statute in such case made
and provided and in pursuance of an order
made by the Judge of said Court on the
Thirteenth day of December A.D. eighteen
hundred and fifty eight.

Present.

John M. Wilson Judge
Charles Haven Presenting Attorney
John Green Sheriff

Attest
Halter Chamberlain, Clerk

Be it remembered that heretofore to wit on the three
day of July A. D. Eighteen hundred and fifty eight came
Joseph W. Fisher and Charles S. Plympton, Plaintiffs, by
Rao & Grow their Attorneys and filed in the Office of the Clerk
of said Court, Preceipe for Summons against Charles Prescott
and Mary Ann Prescott, Defendants, together with Bond for
costs; Which said Preceipe & Bond is in the words and figures
following, to wit.

State of Illinois } Cook County Court of Common
Cook County . . . vs. Pleas

Joseph W. Fisher and
Charles S. Plympton }

(vs)

Assumps.

Charles Prescott & Mary Ann Prescott }
Anne Prescott . . . } Damages \$500.

Wile the Clerk issue Summons in the
above Entitled Cause.

Rao & Grow

July 3^d 1858.

Pls Attys "

State of Illinois

Joseph W. Fisher &

Charles S. Plympton }

(vs)

Cook County Court of Common
Pleas.

Charles Prescott and

Mary A. Prescott }

I do hereby enter myself Security

3

Am Costs in this cause and acknowledge myself bound to pay
or cause to be paid all Costs which may accrue in this
action either to the opposite party or to any of the Officers of this
Court in pursuance of the laws of this State.

Dated the 3rd day of July A. D. 1858.

Rao & Gros."

And thereupon accordingly on the said third day of July
A. D. Eighteen hundred and fifty eight summons issued out of
and under the Seal of said Court in the words and figures
following to wit:

And afterwards to wit on the eighth day of January
(being one of the days of the said January Special term of said
Court) A. D. Eighteen hundred and fifty nine, the following
proceedings were had in said Court, and entered of record
in said Court to wit -

Sept. the Father and
Charles Thompson

vs

Not

Charles Percutt and Mary
Ann Percutt his wife

This day comes the said Plaintiff by

Rao & grow their Attorneys and the said defendants by E. Asd.
 Nantburn their Attorneys also come and if need being joined herein
 it is ordered that a Jury come Whereupon comes the Jury of
 good and lawful Men to wit:

J. B. Smith, Henry Willard, W. Rice, B. Nitschman
 by W. Bush, J. Savage, L. Clark, J. E. Crandall -
 John Williams, William Johnson, John Gavelly & John Magier,
 who being duly elected, tried and sworn to try the issues joined
 aforesaid after hearing the allegations and proofs submitted,
 arguments of Counsel and instructions of the Court retire to consider
 their Verdict and afterwards come into Court and say unto the
 Jury find issues for said Plaintiff and that the damages to the
 sum of Four hundred and twenty five dollars and fifteen cents upon the
 said Plaintiff against the sum of One hundred & fifteen dollars
 from the Verdict of the Jury, as aforesaid. And the said
 Defendants submit their Motion herein for a New trial in this Cause
 and Counsel being heard on said defendants Motion and due
 deliberation being thereupon had and the premises fully understood
 it is considered by the Court that said Defendants Motion for a
 New trial be overruled, Whereupon said defendants enter their
 exceptions to the verdict of the Court.

Wherefore it is considered said Plaintiff do have and
 receive of the said defendants their damages of Four hundred
 and twenty five dollars, less the sum of One hundred & fifteen
 dollars by them remitted from the Verdict of the Jury aforesaid,
 being the sum of Three hundred and ten dollars, in favor aforesaid
 by the Jury here aforesaid, together with their costs and charges in

the behalf insured and have execution the following

And afterwards to wit on the twenty second day of January
(being date of the said January Special term of said Court)
A. D. eighteen hundred and fifty nine, the following further
proceedings were had in said cause, and entered of record in
said Court to wit

Joseph W. Fisher and
Charles L. Plympton . . .

(vs)

Charles Prescott and Mary
Ann Prescott his wife . . .

Ass't.

And now at this day again comes
the said Defendants and pray in support of their
Supreme Court of the State of Illinois, that it be allowed
upon filing their Appeal Bond in Five hundred dollars to
be approved by Juage of this Court within ten days.

And thereupon accordingly on the twenty seventh
day of January in the year of our Lord one thousand eight
hundred and fifty nine the said Defendants filed their
Appeal Bond in the Office of the Clerk of said Court; which
said Bond is in the words and figures following, that
is to say.

Know all Men by these Presents That we Charles
Prescott and Mary Ann Prescott his wife and George Chas. Smith

of the City of Chicago, County of Cook and State of Illinois
are held and firmly bound unto Joseph W. Fisher and
Charles L. Plympton in the penal sum of Five hundred
dollars lawful Money of the United States of America for
the payment of which with and truly to be made we bind
ourselves our heirs, executors, administrators and assigns jointly
severally and jointly by these presents.

Witness our hands and seals this twenty sixth
day of January in the year of our Lord one thousand
eight hundred and fifty nine.

Mary Ann Prescott (Seal)

Charles Prescott (Seal)

Geo: Charlesfield

The Condition of the above Obligation is such, that
whereas the said Joseph W. Fisher and Charles L. Plympton
above named did on the Eighth day of January in the year
of our Lord one thousand eight hundred and fifty nine in
the Cook County Court of Common Pleas in the County of
Cook and State of Illinois: The Honorable John M. Wilson
Judge of the said Court render a judgment against the above
named Charles Prescott and Mary Ann Prescott his wife
for the sum of Three hundred and ten dollars and costs of suit
from which judgment the said Charles Prescott and Mary
Ann Prescott his wife prayed an Appeal to the Supreme
Court of the State of Illinois, said appeal prayed for by
the Defendants was by the Honorable John M. Wilson

attained Now if the said Charles Prescott and Mary Ann Prescott his wife shall present their said Appeal with Effect and shall unto and truly pay whatever judgment, costs interest and damages which may be rendered by the said Supreme Court upon the dismissal or trial of the said Appeal, the above obligation to be void and if no effect otherwise to remain in full force and Effect.

(Mary Ann Prescott (Seal))

Charles Prescott (Seal)

George Blackspita (Seal)

Approved by me

John M. Wilson

Judge R.

And afterwards to wit on the eighth day of February
A.D. eighteen hundred and fifty nine the said Defendants
filed their Bill of Exceptions in the Office of the Clerk of said
Court, to which said Bill of Exceptions is in the words and
figures following to wit:

State of Illinois

Cook County, ss.

Joseph W. Fisher and Charles L. Plympton	Cook County Court of Common Pleas. Of the January Term <u>Nov. 1859.</u>
(72)	
Charles Prescott and Mary Ann Prescott his wife	

Be it remembered that on the fifteenth
day of July in the year of our Lord one thousand eight
hundred and fifty eight at the City of Chicago in the County
of Cook State of Illinois, came Joseph W. Fisher and Charles
L. Plympton by their Attorneys Roe and Sprow and filed in
the Cook County Court of Common Pleas their Narration against
Charles Prescott & Mary Ann Prescott his wife in the words &
figures following to wit:

State of Illinois

Cook County Court of Common Pleas,
Cook County, ss.

Joseph W. Fisher and Charles L. Plympton
Copartners and doing business in the City of New York in the
State of New York under the firm name style title & description
of Fisher & Plympton by their Attorneys Roe & Sprow complains

of Charles Prescott & Mary Ann Prescott his wife being & who
have been summoned to answer a plea of trespass in the case
on promise for that whereas the said Mary Ann whilst she
was sole and unmarried to wit on the twenty eighth day of
August in the year of our Lord one thousand eight hundred &
thirty one at the County of Cork aforesaid, was indebted to the said
Plaintiffs in the sum of Five hundred & eleven pounds lawfull money
for divers goods wares & merchandize chattels by the said Plaintiffs
before that time sold and delivered to the said Mary Ann and
whilst being so ^{sole} and unmarried and at her special instance
and request and being so indebted to the said Mary Ann in
consideration thereof afterwards and whilst she the said Mary
Ann was sole and unmarried to wit on the day & year last
aforesaid, at the County of Cork aforesaid, she then &
there faithfully promised the said Plaintiffs to pay them the last
mentioned sum of money when she the said Mary Ann should
be thereunto afterwards requested.

And whereof afterwards & whilst the said Mary Ann
was sole & unmarried to wit on the day & year last aforesaid
at the County aforesaid in consideration that the said Plaintiffs
at the like special instance and request of the said Mary Ann
had before that time sold and delivered divers other goods, wares
& merchandize & chattels to the said Mary Ann, the said Mary
Ann undertook and then and there faithfully promised the
Plaintiffs to pay them so much money as they the said last
mentioned goods, wares, merchandize and chattels at the time
of the said sale and delivery thereof were reasonably worth when

the said Mary Ann should be thereunto afterwards requested. And the said Plaintiffs aver that the said last mentioned goods wares, Merchandizes & Chattels at the time of the said sale and delivery thereof & whilst the said Mary Ann was sole and unmarried were reasonably worth the further sum of Five hundred dollars of legal lawful Money, to wit at the County of Cork aforesaid whilst the said Mary Ann whilst she was so sole and unmarried afterwards, to wit, on the day and year aforesaid then had notice.

And whereas also afterwards & whilst the said Mary Ann was so sole and unmarried to wit on the day and year last aforesaid at the County of Cork aforesaid she was indebted to the said Plaintiffs in the further sum of Five hundred dollars lawful Money, for moneys before that time last aforesaid advanced to the said Mary Ann and whilst she was so sole & unmarried as aforesaid by the said Plaintiffs at the said Mary Ann's request And also in the like sum for moneys before that time paid, laid out & expended for the said Mary Ann and by the said Plaintiffs at the like special instance and request of the said Mary Ann in the like sum for moneys had and received by the said Mary Ann to and for the use of the said Plaintiffs And also in the like sum then and there since to be due & owing to the said Plaintiffs on an account stated between them and being so indebted said Mary Ann in consideration thereof then and there undertook and promised to pay said Plaintiffs said several sums of money above mentioned when thereunto afterwards requested, yet the said Mary Ann whilst she was sole and

unmarried, and the said defendants since their intermarriage not regarding the said several promises and undertakings of the said Mary Ann but contriving to deceive and defraud the said plaintiffs in this behalf have not nor hath either of them as yet paid the said several sums of money or any or either of them or any part thereof to the said plaintiffs (although the requesters do so desire to pay the same or any part thereof to the said plaintiffs the said Mary Ann whilst she was sole and unmarried, wholly refused, and the said Defendants have ever since their intermarriage, hitherto wholly refused and still doth refuse so to do To the damage of the said plaintiffs of Five hundred dollars and therefore they bring this suit &c.

Respectfully Plaintiff's Attorney

Mr. M. A. Stone

To Robert Thompson

1st. To Goods sold and delivered	\$500
" Money lent and advanced	\$500
" " paid out and expended	\$500
" " had and received	\$500
" " the amount stated	\$500

And in said Court aforesaid afterwards to wit on the tenth day of September in the said year aforesaid came the said Charles Prescott and Mary Ann his wife together with E. A. Van Buren and filed in the said Court their plea to the said plaintiffs Narration to wit the general issue in the words

and figures following

" Charles Prescott and

Mary A. Prescott

vs.

Cook County Court of Common
Pleas.

Joseph W. Fisher and

Charles S. Thompson

September Term A.D. 1858.

And the said Defendants by C. A. V.
Vanduren their Attys come and defend the wrong & and
say they did not undertake & promise in manner & form as the
said plaintiffs hath above thereof complained against them
and of this they put themselves upon the Country &c

C. A. V. Vanduren

Defendants

And afterwards to wit on the first day of January A.
D. 1859 again come the said plaintiffs and filed their petition
to the said Defendants plea in the words and figures following

" State of Illinois

Cook County . . . vs.

Cook County Court of
Common Pleas.

Joseph W. Fisher & Charles S. Thompson

vs.

Charles Prescott and Mary Ann Prescott

And the above plaintiffs in the above
entitled cause whereof the above entitled defendants put
themselves upon the Country, the said plaintiffs doth the like

Ray & Green

Plaintiffs

And thereupon afterwards to wit on the said day and year last aforesaid and before of the Court aforesaid at the Court House in Chicago in the County of Cook aforesaid came as well the said plaintiffs by their Attorneys aforesaid as also the said defendants by their Attorneys aforesaid and then and there came a Verdict by the jury joined between the parties as aforesaid.

And the said plaintiffs by their said Attorneys to maintain the issue on their part called as their first witnesses.

Robert Rae - who being duly sworn testified as follows, that he was one of the Attorneys in this Cause where the suit was brought, but that since the commencement of the suit he had discontinued his connection with the same through the dissatisfaction of plaintiffs because he had not pressed forward the same. That he called upon the said Mr & wife at their place of business in this City previous to the introduction of the marked Exhibit "A" and the other Exhibit "B" this was a short time previous to the commencement of this suit and Mrs Prescott admitted she had purchased the Articles at the time in said Bill mentioned. She was speaking about the Bill marked Exhibit "A" and that this was a balance due thereon of \$309.50. I also presented at the same time the other bill (a copy of which is also hereto annexed marked Exhibit "B" as aforesaid) which she also admitted was correct and that she had purchased & received the goods therein mentioned and defendants both acknowledge the accounts to be correct and Charles Prescott promised to pay

for the same in one month thereafter. But at the said term he failed to pay either of said Bills. The said Mrs Prescott was before and had been since her Marriage engaged in the Millinery business in the City of Chicago, that Defendant Prescott stated before the Court that he had not come into the Court after the first Bill of the said Mrs Prescott was purchased during the year A. D. 1855 and further said that Defendant was known as Mrs Lloyd previous to her Marriage with Prescott.

The Bills above mentioned were read in evidence as follows.

'A'

"New York August 20. 1856

"Mrs M. A. Lloyd

Bought of Fisher and Ryerson

Dr. W. Fisher

Importers of Goods,

Chas. F. Ryerson

Wholesale Dealers

Yours Cash,

81 Chambers St. New York

Broadway.

100	Reds Bonnets	50	50	"
100	" "	1	100	"
92 1/2	" "	70	61	140
50	Yucca	17 1/2	8 1/2	50
50	Spice Straw	12 1/2	6 1/2	"
50	Glass & Trimming	40 1/2	2 1/2	55
50	" "	50	15	"
9	Red Yucca	12 1/2	11	25
3	Drab Garters	17 1/2	5	25
1 pr	Chenille Lace		18	"
3	" "	3	9	"
5	Brs & White	150	12	"

21 pr B + W. Bonnets

125 26 25

43 " Swimming "

20 9 "

31 Sew B + W Braid

75 23 28

1 Box Flowers

13 50

1

~~45~~ 15 "

1

18 "

1

24 "

2 doz Arab Feathers

75 15 "

1 " Braid "

18 "

6 306 Buttons

10 "

1 " Gold "

1 50

2 Spec Straw Bonnets

125 3 50

3 Flowers "

75 5 25

623 20

New York August 27. 1857.

Mrs M. A. Priest

Bought of Fisher & Symptom.

As M. Fisher & Symptom Importers & Sellers in Straw Goods
 " B. L. Symptom Artificers Flowers

Same Cash at Chambers & 63 No 2d Street near Broadway.

1 6 Land (Capra) Bonnets

1 6

2 6 Arab Spec Straw

1 6

3 24 Yucca

2 48

4 12 "

75 9

5 12 "

150 18

6 24 Red

625 15

7 18 "

75 13 50

And here Plaintiff noted.

115 50

The Defendants then called as a witness to maintain the issue on their part

Mrs Barker. who being duly sworn, testified as follows, that she was present at the Marriage of Bartholomew J. Lyons and Mary Ann Lyons one of the Defendants in this cause now known as Mary Ann Prescott, that the Marriage was in London, England, at St. Lambeth Church, that Bartholomew J. Lyons is still living, he went to California. I never heard of his death, & the time he left sometime in the Spring of 1850. He and his wife carried on the Millinery business, at the time he left, he left part of his business, he left Fifty dollars worth. he left her with the rest of the business he was to return, it was mutually known that he was going to California.

John Solist was also called as a witness by the Defendants and being duly sworn. said He knew Bartholomew J. Lyons the husband of Mrs. Mary Ann Prescott one of the Defendants in this cause. that Mr & Mrs Lyons lived in this City and carried on Millinery business, that they lived as Man and wife & were regarded as such, passed as such, & habitually as Man & Wife. Mr Lyons went to California sometime in 1850, it was well known when he was going and what he went for, he left his business and what he had with his wife. She carried on the business after he left, he wrote to her and me on his way out. I paid him fifty dollars in money at his and also at his wife's request, while on his way to California.

Defendants rested.

And Plaintiffs then took from the files of this Court papers purporting to be a Petition and decree and introduced and read the same in evidence to the Jury.

To the introduction and reading of which the defendants objected, after examination by the Judge of this Court, said objections respectively to the introduction of each was overruled by the Court and the Defendants then and there excepted. Said Petition and Decree are as follows.

" To the Honorable John M. Wilson Judge of the Cook County Court of Common Pleas.

In Chancery sitting.

The Petition of Mary Ann Lane formerly Mary Ann Bull.

Sheweth, That your Petitioner in the year of our Lord One thousand eight hundred and thirty three in the County of Surrey in England, in the Kingdom of Great Britain was lawfully married to her present husband Bartholomew H. Lloyd, and thereafter there continued to live with him and Cohabit as wife and husband until your Petitioner and the said Bartholomew removed to the City of Edinburgh in Scotland, where they resided for the period of about seven years until they arrived there and arrived in the City of Chicago in the County of Cook and State of Illinois A.D. 1849 in which City your Petitioner has ever since resided and still resides; that from the last mentioned year until the Month of April A.D. 1852 your Petitioner and the said Bartholomew resided & cohabited as man and wife and husband in the said

City of Chicago when the said Bartholomew without any reasonable cause whatsoever, and while your Petitioner was in feeble health and recovering from a severe attack of sickness, wilfully deserted and abandoned himself from your Petitioner and has ever since wilfully remained absent from her and has not during the period of such absence afforded her any information verbal or written as to his whereabouts, nor has the said Bartholomew during all that time, ^{time} in any way contributed to the support and maintenance of your Petitioner. The surviving children of the said Marriage, the names of whom are as follows, Frederick of the age of twenty one years, Mary Ann of the age of twenty years, Horace Thomas of the age of eighteen years, Agnes of the age of thirteen years and Emily of the age of thirteen years.

And your Petitioner further sheweth unto your Honor that in the year 1852 your Petitioner (who had long previously been obliged to labor for her own and her childrens support) was obliged in order to provide for herself and family and also for the support of her said husband to undertake, and did undertake and commenced and carry on in the said City of Chicago the occupation and business of a Victualler, which business your Petitioner has ever since carried on and conducted in said City and from the profits of which she maintained her said husband until his desertion of her as aforesaid and also maintained clothed and educated her said Children.

And your Petitioner further sheweth unto your Honor that by means of her own industry and attention to

her said business of Milliner she is now the tenant of a
Millinery Store in Randolph Street in said City of Chicago and
pays therefor the rent of seven hundred dollars per annum
under a lease to your Petitioner which expires on the 1st of
May 1869.

And your Petitioner further sheweth unto your
Honor, that from the profits of her said business she has not
only maintained herself and children but has purchased and
is the owner of three lots of land and the buildings thereon
situated in Ann Street near the corner of Randolph Street in
said City of Chicago, and also five acres of land situated at
Brighton in said County of Cook a description of which said
lots and land more fully appears from the Exhibitions thereof
herewith produced marked "A" and "B" and taken and
made a part of this Petition.

And your Petitioner further sheweth that she has also
from the profits of her said business purchased the whole
household furniture now within her Dwellinghouse in said
City, with the exception of a Piano, which was owned by
her said husband prior to his said desertion and that in the
Months of October and November A.D. 1866 she will be
possessed of a stock of Goods suitable to her said business
of the value of Five thousand dollars.

May it therefore please your Honor to cause a
Summons to be issued to the said Bartholomew, Jr. and
Commanding him to appear before the Cook County Court of
Common Pleas on the first Monday of November next then

and then to answer the allegations in this Petition and in default of such answer, or the said allegations being proven to grant to your Petitioners a divorce and a dissolution of her said Marriage with the said Bartholomew and that your Honor do give to her the exclusive care, Custody and Control of her said son Horace Howard Lonsa and Emily Lonsa, and that your Honor also confirm to your Petitioner the title to the said lots and land and exclude and bar the said Bartholomew from any Control over the rents or profits of the same and from any rights therein as tenant by Curtesy, and do further in the Premises as to your Honor shall deem just.

And your Petitioner prays

P. Ballingale, Solicitor

Mary Ann Lonsa

State of Illinois

Cook County ss.

Horace H. Lonsa being duly sworn deposes and says, that Bartholomew J. Lonsa the Defendant named in the within Petition is not a resident of the State of Illinois. Subscribed and sworn to this

27 day of September A.D. 1856

Horace H. Lonsa.

before me

Walter Kimball, Clerk

18510. Filed September 27th 1856

Walter Kimball Clerk.

And the said Plaintiffs also read in evidence to the said Jury, the following Deed, to wit:

State of Illinois
Cook County . . .

Came before the Honorable John M. Wilson Judge
of the Cook County Court of Common Pleas, within and for
the County of Cook and State of Illinois, at a Vacation term
of said Cook County Court of Common Pleas, begun and held
at the Court House in the City of Chicago in said County and
State on the first Monday being the third day of November
in the year of our Lord one thousand eight hundred and fifty
six and of the Independence of the United States the Eighty first.

Present the Hon. John M. Wilson . . . Judge

James L. Beach, Coroner & Acting Sheriff

Attest, Walter Kimball, Clerk.

Court opened by proclamation.

Be it remembered that on the fourth day of November in
the year aforesaid the following proceedings were had, to wit,

Mary Ann Lenz

vs

Petition for Divorce.

Bartholomew H. Lenz &

And now comes Mr. Boleingale Solicitor
for the Petitioner and here in this Cause the Report of L. C. P.
shows the matter to which the matter was referred to take proof.

And the Court being satisfied from the proof in this
case made in open Court that due publication has been made
of the pendency of this suit, and that the said Petitioner was
heretofore lawfully married to the said Defendant Bartholomew
H. Lenz and that she has resided in the State of Illinois

for one whole year at least immediately preceding the filing of her petition herein and was then and still is a resident of the County of Cook in said State and that the Defendant Bartholomew F. Lloyd has for two years and upwards next preceding the filing of the said Petition wilfully deserted and abandoned himself without any reasonable cause from the Petitioner at the said County of Cook. And it further appearing from said proof that the said Petitioner Mary Ann Lloyd since the desertion of the said Bartholomew F. Lloyd has acquired and lawfully possessed and is now possessed of the following property purchased by her by her own exclusive means, to-wit: lot three in Ogden's subdivision of the East half of the South east quarter of Section one in Township thirty six North Range 13 in the County of Cook and State of Illinois.

And lots fifteen, sixteen and twenty three in the subdivision of Block Forty four in Carpenter's Addition to the City of Chicago, in said County and State.

Also a stock of Millinery Goods of the Value of about seven thousand dollars at present in that Store in said City numbered one hundred and fifty nine Randolph Street occupied by the said Petitioner.

Also three Dwellinghouses situated on said Lots in said Block. And also now holds a lease of said Store in Randolph Street.

And it further appearing to the Court that the said Petitioner has ever since the said desertion of her said husband Bartholomew F. Lloyd maintained herself and her five children

of said Marriage, three of whom are ^{now} living namely
 Horace Howard Lloyd of the age of ^{eighteen} years. Agnes Lloyd
 of the age of sixteen years and Emily Lloyd of the age of
 thirteen years by her own labor and exertions and without
 any aid or assistance from her said husband and she has
 conducted and still conducts a Millinery Establishment in the
 city from the profits of which she has hitherto main-
 tained herself and children.

Therefore it is Considered Ordered and adjudged and
 decreed that the said Marriage between the said Mary Ann
 Lloyd and the said Bartholomew H. Lloyd be and the same
 is hereby dissolved and annulled and for aught hereinafter
 that the said Mary Ann Lloyd have the sole and exclusive Care Custody
 and control of each of the said Horace Howard Lloyd, Agnes
 and Emily until each arrives at Majority.

And it is further Ordered and decreed that the said
 Petitioner Mary Ann Lloyd be and is hereby confirmed in
 and have the sole and exclusive right and title to the said
 land in said Ogden's Subdivision and the said lots in
 said subdivision of said Block Forty four and the dwelling
 house on said lots, as also the Household furniture in the said
 dwelling house occupied by her, And the said Stock of
 goods in the said Store, together with the said base Household
 interest thereof.

And it is further Ordered and considered that the
 Defendant pay the Cost herein."

()

To the reading of the above Petition and Verdict to the said Jury the said defendants by their said Attorneys objected which objection was by the said John M. Wilson Judge overruled.

To which ruling of the said Court the said defendants then and there accepted.

And the said Plaintiffs then rested, and offered no further or other evidence.

And defendants called as next witness

Wm. Dammhoffer— who being duly sworn in open Court testified as follows, to wit:

I know Mr Lloyd having him speak of Mary Ann as his wife, when Lloyd left for California he gave his Stock of Stationery to me, for the sum of twenty hundred dollars, to be paid to his wife Mary Ann in four installments of five hundred dollars each, which was duly paid, and he intended to return to his family.

Here the said Defendants rested and offered no further or other evidence. and the foregoing is all the testimony given on the trial of said cause.

And thereupon then and there the said Plaintiffs by their said Attorneys moved to writing the following instructions to wit:
That if the Jury find from the evidence that the defendant Mary A. Lloyd was at the time the Plaintiffs debt was contracted trading, and that her husband had before that time permanently deserted her and afterwards intermarried with the defendant Charles Purcott, then said Defendants are liable for whatever upon the Jury find due Plaintiffs upon said account.

2nd That if the Jury believe that Defendants admitted that there was due and unpaid Plaintiffs the sum of \$440⁰⁰ and offered to pay the same for and on account of Goods sold and delivered by Plaintiffs to Defendants wife, whilst a trader and doing business, after she was permanently deserted by her first husband at his special instance and request, then the Plaintiffs are entitled to recover.

And requested the Honorable John M. Wilson Presiding Judge to so charge the Jury, which the said Judge then and there did so charge the Jury as requested by Plaintiffs Attorney to each of said instructions and the giving of the same the Defendants excepted.

And thereupon the said Defendants by their said Attorneys then and there moved to withdraw the following instructions, to wit,

1st If the Jury believe that the Defendant Mary Ann Forest at the time the account in question accrued, part if it accrued was a married woman, the Plaintiff cannot recover as to such part, unless the Jury believe that her then husband had deserted her without an intention to return.

2nd The Petition read in evidence is not conclusive upon that subject, and the Defendants are not precluded from disproving the facts set up in the Petition. The Jury are to judge from all the evidence whether he had abandoned her without intending to return.

3rd If the Jury believe that any part of the account accrued after her divorce from Lloyd and after she was married to the said

Prescott, then the Plaintiffs cannot recover for that part of the account.

11th If the Jury believe that she was a married woman at the time of this account or any part of it accrued then the Plaintiffs cannot recover, although if she lived after her husband had abandoned her, she might be sued as a feme sole, but no action can be maintained against her and Prescott.

5th This action cannot be maintained unless the Jury believe from the Evidence, that she was when this suit was commenced lawfully married to the Defendant Prescott.

And requested the Hon^{ble} Judge Wilson to charge the Jury which the said Judge then did. He did so charge the said Jury, except giving the fourth instruction which he then and there refused to do.

To which ruling, as a refusal of the said Court, to give the said fourth instruction, the said Defendants then there excepted.

And upon said evidence and after hearing arguments of Counsel on both sides the said Jury retired to consider of their Verdict, and after being absent a short time returned into Court, with the following Verdict, to wit:

That the Jurors award to Plaintiffs four hundred and twenty five dollars.

Geo. W. Barth. Foreman.

And thereupon then and there the said Defendants entered a Motion for a New Trial on the ground that Verdict was contrary to law and evidence, and the Court had erred in overruling the Defendants' Exceptions above mentioned: Which

Motion was overruled by the said Judge.

To which decision the Defendants then and there excepted. And judgment entered against the said Defendants for the sum of Four hundred and twenty five dollars and three and three fourths and a promissory was entered of One hundred and fifteen dollars.

To which ruling of the said Honorable Judge Wilson the said Defendants then and there excepted and prays an Appeal to the Supreme Court of this State of Illinois and tenders this their Bill of Exceptions to which the said Judge John M. Wilson has set his hand and seals this Eighth day of?

January A.D. 1859. In January Term A.D. 1859. of said Court of Common Pleas at the Court House in the City of Chicago aforesaid.

Charles Prescott and Mary
Ann Prescott his wife . . .

vs

Joseph H. Foster and Charles
L. Plympton . . .

Supreme Court

In error. Of the term of
April 1859.

Attorneys to wit in the said April Term before the Judges of the Supreme Court of the State of Illinois at the Court House in the City of Ottawa comes the said Plaintiff in error by S. M. Foster their Attorney and says that in the Records and proceedings aforesaid and also in giving the judgment aforesaid there is manifest error in this to wit, That in the

Declaration aforesaid and the matters therein contained are not sufficient in law for the said Fisher & Thompson to have maintained their aforesaid action there^{2ndly} against the said Prescott and wife; there is also Error in this to wit that the Petition and Decree of Mrs. Lloyd was admitted in evidence against Prescott & wife; there was also Error in this to wit, That the said general instructions of the Plaintiffs were by the Court given to the Jury; and there is also Error in this to wit, That the said general instructions of the Defendants to the Jury were refused and excluded by the Court from the said Jury; and there is also error in this to wit, That the Motion of the Defendants for a New Trial was overruled by the Court; there is also Error in this to wit; That the Evidence in Judgment of law was and is insufficient to authorize the Plaintiffs to recover in judgment against the Defendants in the Court below; there is also Error in this to wit, That by the record aforesaid it appears that the judgment aforesaid in favor aforesaid given, was given for the said Fisher & Thompson against the said Prescott and wife, whereas by the law of the land said judgment ought to have been given to the said Prescott & wife, and the said Plaintiffs in error pray that the Judgment aforesaid for the errors aforesaid, and other errors in the records & proceedings aforesaid may be reversed, annulled and altogether taken for nothing and that they may be restored to all things which they hath lost by occasion of the said Judgment &c.

S. M. Felker

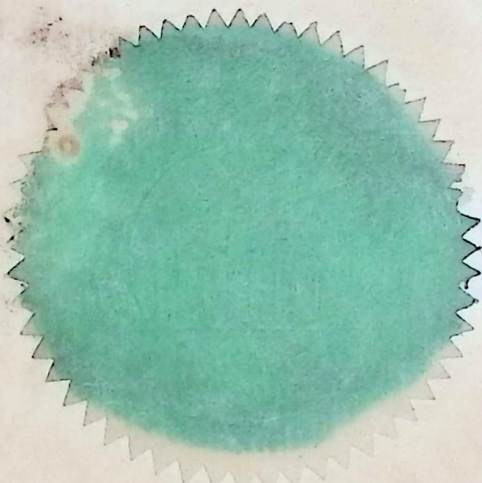
Deft's Attorney.

State of Illinois
Cook County, . . . ss.

I Walter Kimball, Clerk of the Cook County Court of Common Pleas within and for the County and State aforesaid Do hereby Certify the foregoing to be a True and Correct Transcript of the papers now on file in my Office, together with all orders entered of Record in said Court in a certain Suit therein wherein Joseph W. Fisher and Charles E. Sympton are Plaintiffs and Charles Prescott and Mary Ellen Prescott his wife are Defendants.

In testimony whereof I the said Walter Kimball have hereunto set my hand and affixed the Seal of said Court at Chicago in said County this second day of April in the year of our Lord one thousand eight hundred and fifty nine.

Walter Kimball Clerk



Joseph W. Fisher
Charles L. Plympton

Charles Phipps
Mary Ann Phipps
or
Joseph W. Fisher
Charles Phipps } Supreme Court
of the State of
Illinois

And now comes the
above named defendant by
their attorneys Groves & Storrs and
say that that there ~~are~~ no such
errors have entered and are
complained of above and that
they pray may be ignored into
by the Court.

Groves & Storrs
their attys

256

Supreme Court

Charles Prescott

vs
Appellant

Joseph W. Fisher
et al

Record & Appellate
Errors

Filed April 26, 1859
Leland
Clerk

1859

Self Fetter

atty

A. Garrison

of Counsel

State of Minnesota
Cook County
Court of Common Pleas

Joseph W. Fisher et al

vs

Charles Prescott et al

Record

Transd \$8.50

Costs 1859 .50

\$9.00

Paid William

SUPREME COURT,

STATE OF ILLINOIS.

CHARLES PRESCOTT, and
MARY ANN PRESCOTT,
his wife, appellants,
ads.

JOSEPH W. FISHER and
CHARLES L. PLYMPTON,
Appellee.

*Appeal from the Cook County Court of Com-
mon Pleas.*

ABSTRACT.

Suit commenced by Summons, July 3d, 1858.

NARR.

(Pages.)
8, 9, 10.

The declaration of plaintiffs consists of three Counts in assumpsit, for goods, wares and merchandise, sold and delivered to the said Mary A. Prescott, before she married to Charles Prescott, in the year 1856, charging that the same was sold and delivered to her while she was a *feme sole*. Damages claimed, \$500.

12. Defendants plead the general issue, and issue was joined.

TRIAL.

3. The trial was before a jury, and had in said Court, January, 1859.

EVIDENCE FOR PLAINTIFFS BELOW.

13. Robert Rae, who testified that he had been one of the attorneys in this cause; that he called upon Prescott and wife, and presented two bills for millinery goods which Mrs. Prescott had purchased of plaintiffs, and Mrs. Prescott admitted she had purchased the articles in the bill mentioned, and that upon the first bill marked Exhibit "A," there was a balance of \$309,50 due to Plaintiffs, and upon the second bill marked Exhibit "B," she admitted it was correct, and that she had received the goods therein mentioned. And Charles Prescott, the defendant, promised to pay in one month thereafter. But he failed to pay either of the bills. That Mrs. Prescott had been engaged, both before and since her marriage with Prescott, in the millinery business. That they were married shortly after the first bill of goods was purchased, during the year 1857, and that she was known as Mrs. Lloyd previous to her marriage with Prescott.

14. Bill of goods marked Exhibit "A," bought August 20th, 1856; amount, \$623,20.

15. Bill of goods marked Exhibit "B," bought August 27th, 1857; amount, \$115,50.

DEFENDANTS' EVIDENCE.

16. Mrs. Barker. That she was present at the marriage of Mrs. Prescott, one of the defendants, when she married Bartholomew F. Lloyd in England, That Mr. Lloyd was still living; went to California in 1852; at the time he left, he left his clothes, his stock and business with Mrs. Prescott, then his wife, and that he intended to return.

16. John Tollitt was also sworn. That he knew Lloyd, and that he and Mrs. Prescott lived as man and wife, and were regarded as such in this city. They carried on millinery business. Lloyd went to California in 1852. It was publicly and well known when he left, and where he was going; Lloyd left his business and what he had with the defendant, Mrs. Prescott, and that she carried on the business after he left. That witness sent Lloyd fifty dollars after he started, at his and his wife's request.

And defendants rested.

And plaintiffs below,

17. Then took from the files of the Cook County Court of Common Pleas, papers purporting to be a petition for a divorce, and also a decree, and introduced and read the same in evidence without other proof, both of which respectively were objected to, and objections were overruled, and defendants excepted.

18. In which, the petitioner, Mrs. Lloyd, (Mrs. Prescott,) stated she was married in 1833, in England, to B. F. Lloyd; lived with him there and then until 1852, when she charges that he deserted her, and has not lived with her since.

The petition also charges against said B. F. Lloyd, that she was in equity the owner of the property she had then on hand, as she had to support three children, and had commenced the said business in 1852, (the time as then alledged of the desertion,) and had carried on the millinery business since.

19. The petition then alleges that Mrs. Lloyd had three lots, stock, household furniture, &c., except a piano, which was owned by her said husband Lloyd.

20. Asks a decree of divorce, and that property be declared hers.

Petition was signed as it purports to be by P. Ballingall, Solicitor, and Mary Ann Lloyd.

To which was attached an affidavit of non-residence of said B. F. Lloyd, sworn to by one Horace H. Lloyd, and filed September 2d, 1856.

20. The paper purporting to be the decree, decreed a divorce, and that
22. this property be hers, and she have the care and custody of the children. *results*
23. *the desertion for 2 years*
And plaintiff again rested.

Defendants then called.

23. W. W. Danenhower. That he knew Mr. Lloyd. When he left for California, he sold his stock of stationery to me, and I paid the sum of four hundred dollars to Mrs. Prescott, his wife, thereafter, in four instalments. Witness, said B. F. Lloyd intended to return.

Cause was submitted to the jury, under the following instructions on
24 & 25. the part of plaintiff, both of which were objected to by defendants.

1st. That if the jury believe, from the evidence, that the aforesaid Mary Ann Lloyd was, at the time the plaintiff's debt was contracted, trading, and that her husband had before that time, permanently deserted her, and afterwards into [redacted] with the defendant Charles Prescott, then, said defendants are liable for whatever you, the jury, find due plaintiffs upon said account.

2d. That if the jury believe that the defendants admitted there was due and unpaid plaintiffs, the sum of \$425, and refused to pay the same for
25. and on account of goods sold and delivered by plaintiffs to defendant's wife, whilst a trader, and doing business after she was permanently deserted by her first husband, at her special instance and request, then the plaintiffs are entitled to recover.

25. DEFENDANTS' INSTRUCTION NO. 1, 2 AND 3.

4th. Instruction refused, and defendants' excepted.
26. If the jury believe that she was a married women at the time of the account, or any part of it accrued, then the plaintiffs cannot recover, although if she traded after her husband had abandoned her, she might be sued as a *feme sole*, but no action can be maintained against her and Prescott.

26. VERDICT FOR PLAINTIFFS \$425.

27. Defendants filed their motion for new trial, because the verdict was
4 contrary to law and evidence, and the court had erred in overruling defendant's objections and exceptions above mentioned. Motion overruled.

Judgment entered for \$425, and a remittance entered of \$115.

6. Appeal Bond.

24. Certificate that the above is all the evidence given on the trial.

A. GARRISON,
Counsel.

S. M. FELKER,
Attorney for Appellants

206/ ~~208~~ 266

STATE OF ILLINOIS.
—♦♦—
SUPREME COURT.

CHARLES PRESCOTT and
MARY PRESCOTT, his wife,
Appellants.

vs.

JOSEPH W. FISHER and
CHARLES L. PLYMPTON,
Appellee.

—♦♦—
Abstract of Appellants.

S. M. FELKER,
Attorney for Appellant.
A. GARRISON, Counsel.

Filed April 29, 1884.
L. L. Dana
Clerk

STATE OF ILLINOIS.

POINTS AND AUTHORITIES FOR APPELLANTS.

1st. The Court erred in permitting the paper, purporting to be a petition for a divorce, to be read in evidence. The signature thereto should have been proven to be the hand writing of Mrs. Mary Ann Prescott, one of the defendants, to *identify* the petitioner therein, with the defendant in this suit. 1 Greenleaf's Ev. Sec. 575.

It could not be received under the Statute dispensing with

proof of signature, as the same was not an "instrument declared upon or plead in the cause. R. S. 1845, page 415, Sec. 14.

The *facts* alleged in a bill of chancery are not evidence against the petitioner in another suit.

The allegations therein are but suggestions of counsel.

And if the signature had been proved, still the bill was not evidence of a fact therein mentioned. 7 Dunford & East, Do. on Dem, of Bowerman vs. Syburn. 1 Greenleaf Ev., Sec. 212, says, *slight evidence* and cites above authority.

The paper purporting to be a decree, was not shown to be a decree in fact—no proof was made, it was not signed by the Judge, or appeared to have been granted. If the Court should have considered it a decree, then it was not evidence of any other fact, than that a divorce had been decreed, and identification was still necessary. Greenleaf Ev.

SECOND.

The verdict is unwarranted by the evidence.

The plaintiffs sought to maintain their suit by showing that Mrs. Prescott was a trader, abandoned by her husband Lloyd; and to do so, introduced no other evidence beside the petition and decree above mentioned. The allegations therein are not sufficient, if the Court should deem the same evidence. They do not show that Lloyd abandoned his wife without the intention of returning or living with his wife again; neither does it show that he left her unprovided for, as required by 16 Ill., 277, Love vs. Moynahan. On the contrary (see petition) she was left in the same business, and that she then had in her possession, at the time of the filing of the petition, a *piano* of Lloyd.

The defendants proved by three witnesses, undisputed by any

testimony, that Lloyd left his wife to go to California, and that he expected to return; that he left her with all the stock of trade, furniture &c.; that \$400 was paid to her after he left; and that she conducted the business the same after as before he left.

Where a verdict is clearly contrary to the evidence and the law of the case, the court should grant a new trial. 2 Gil. 595, Scott vs. Blumb. 11 Ill. 586, Man vs. Russell. Anthony's Digest, 377. It was unwarranted. 2 Gil. 32, Stahl vs. Ansley.

THIRD.

Plaintiffs allege the goods were purchased by Mrs. Prescott while she was a *feme sole*. Proof is they were purchased while she was the wife of B. F. Lloyd, and before her divorce. There is no proof to sustain the declaration. 1 Greenleaf's Ev., Sec. 51.

FOURTH.

"A married woman has in general no power or capacity to contract so as to sue or to be sued with or without her husband on her contracts, made during coverture." 9 Am. Ed. Chitty on Con. 180. "At Common Law a married woman has no power to bind herself by contract." 1 Parsons on Con., 286.

The exception to the above in this State is made and shown as in the case of Love vs. Moynehan. 16 Ill. 277.

And then unless it appears that she represented herself to plaintiffs to be *feme sole*, or they dealt with her believing her to be *feme sole*, she will not be personally liable. 9 Am. Ed. Chitty on Con. 183.

FIFTH.

B. F. Lloyd is liable for said bill of goods purchased while Mrs Prescott was his wife—she was his agent. She, after he left, conducted the business as before—he knew her business, and the law presumes she acted as his agent; he was and is liable

therefor. 9 Am. Ed. Chitty on Con. 172; 3 Wheaton, 369; 2 Conn. 638.

Where a husband deserted his wife and children, left her keeping boarding house, he was held liable for her contracts made in the business for years. 2. Conn. R. 638.

SIXTH.

Court erred in giving plaintiff's instruction. No. 1 and 2.

The propositions asked in the two instructions and given by the Court to the jury as law, were:

"That if the jury believed that Mary Ann Lloyd was at the time plaintiff's debt was contracted, trading, and that her husband had before that time permanently deserted her," then these defendants were liable.

This certainly is not such an exception as required by the rule in 16 Ill. 277. It should have said in addition—Lloyd had left her "without the means of support," and that he had "deserted without the intention of returning."

And it should also have been left to the jury, to find that the goods were purchased by Mrs Lloyd as a *feme sole*, and not as the wife or agent of Lloyd; and it also should have been left to them, to determine whether B. F. Lloyd was not liable to plaintiff for the same. Under the Statutes of fraud, Prescott cannot be made liable for B. F. Lloyd's debt, but by an instrument of writing, &c. Scates' Statutes, page 541.

The present husband cannot be made liable for his wife's prior debts on the ground of receiving her property, but on the ground of her disability of being sued alone.

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(Printed omitted)

2^d Instruction in addition

Says if the jury believe defendant admitted the indebtedness they must find for plaintiff - if the jury believe Defendant purchased the same "while a trader"

Record 25 - 2 Instructions

Second Instruction here.

1. The declaration is for goods sold to her *feme sole*.

2. Mrs. Prescott's admission is no proof of contract. She then being married, she could do nothing to bind her husband, and Prescott's promise was a nullity, not having received any consideration therefor, *neither was he sued alone*.

SEVENTH.

Defendants ask the Court to look at the testimony of Rae, who alone speaks as to the debt.

Whether the mere admission of Mrs. Prescott, *proves the fact of the purchase*. She being a married person, cannot do anything to bind her husband, except as his agent, or for necessities he wrongfully refuses to supply, &c. 1 Greenleaf's Ev., Sec. 185.

A. GARRISON, of Counsel.

I guess the decree was evidence against
Defendants because of the fact of divorce & the
fact recited justifying the decree of
divorce - If so then she was in a
condition, before the decree & after the
decree to have sued for a debt or
trespass as a *feme sole* & if this was
so then she was liable to be sued for
her debts as such. She was capable
of having individual rights & incurring
individual liabilities. Then her sub-
sequent husband is liable as far

any other personal debt contracted
before marriage-

The Court could take notice of
its own ~~decree~~ records & its own cases
in other cases. This ~~was~~ the court
took notice of as its own record

This would affirm the
Judgments

266-204

STATE OF ILLINOIS.

SUPREME COURT.

CHARLES PRESCOTT AND WIFE,

vs.

JOSEPH W. FISHER, et al.

POINTS & AUTHORITIES for APPELLANTS.

A. GARRISON,

of Counsel.

Carter, Page & Hoynes, Chicago.

Filed May 16. 1859

L. Deland
Clerk