

aforegoing Report of Sales in the above entitled cause, be and the same is hereby finally ratified and confirmed, no cause to the contrary having been given, although due notice appears to have been given as required by the preceding Order Nisi on sales, as shown by the printer's certificate filed herewith, and the case is hereby referred to the Auditor to state an account.

Ammond Urner
Judge of the Circuit Court for Frederick County.

(Filed April 19, 1934)

OPINION AND ORDER OF COURT

Walter Johnson	:	No. 11,821 Equity.
	:	
Vs.	:	In the Circuit Court for
	:	
Albert Stine, et al.	:	Frederick County.
	:	
	:	----- In Equity.

On October 16, 1934, Dr. Hamilton Slusher, alleging that he is a creditor of Ada M. Johnson, deceased, filed a petition in his own behalf and in behalf of all other creditors of the said decedent who come in and contribute to the expense of this suit, for the purpose of having the suit converted into a creditors suit in order to have their claims against her estate paid out of the proceeds of real estate sold under a bill for partition filed by her surviving husband.

The two sons of Ada M. Johnson and their respective wives filed a joint answer to said petition denying the material allegations of their mother's indebtedness to the petitioner, and averred substantially that all the claims mentioned in the third paragraph of said petition as having been filed against her estate in the Orphans Court, like the alleged claim of the petitioner, are the indebtedness of her husband, Walter Johnson. The case being at issue testimony was taken orally before the Court and duly considered.

At the time of her marriage in 1925 to the plaintiff in this case, the decedent, then Ada M. Stine, owned the real estate sold in these proceedings and conducted thereon a boarding house, contracting bills in her own name for all of her necessaries and paying them when due. She had been conducting this business for sometime, and, according to the evidence, after her marriage to Johnson, continued to conduct it in the same manner practically up to the time of her death. According to the evidence she continued to assume individual responsibility for payment for goods and medical attention such as a husband would ordinarily be responsible for, exclusive of the liability of the husband, and payment was made by her;

"In *Wilson v. Herbert*, 41 N. J. Law, 461, it is held; 'When husband and wife are living together, and the wife purchases articles for domestic use, the law imputes to her the character of an agent of her husband, and regards him as the principal debtor. She may contract for such articles as principal, and assume the responsibility of a principal debtor. But to fix upon her a liability, it must affirmatively appear that she made the purchase on her individual credit. There must be either an express contract on her part to pay out of her separate estate, or the circumstances must be such as to show clearly that she assumed individual responsibility for payment, exclusive of the liability of her husband.'"

Noel vs. O'Neill, 128 Md. 202-205

In my judgment the evidence in this case rebuts the presumption of agency on the part of the wife in dealing with the following named parties, to-wit: Community Finance Company, Charles Anders, Community Hardware Company, Markell and Ford to the extent of \$60.35, Charles E. Harshman, Superior Market, C. G. Baker, C. W. Lockard, Falk Grocery, J. E. Bussard, Dr. U. G. Bourne and Dr. Hamilton Slusher, and that their respective claims, if properly authenticated and filed, should be allowed in the audit, subject to exception. The claim of W. B. Boileau for granite marker and lettering ordered by Cecil Stine, and the claim of the