

Case No. 6,252.  
[6 Chi. Leg. News, 256.]

IN RE HAY.

District Court, N. D. Illinois.

1874.

HUSBAND AND WIFE—RIGHT OF WIFE TO EARNINGS—ILLINOIS STATUTE.

- [1. A married woman is entitled, under the Illinois statute of 1869, to retain as her own, commissions earned in making sales for her husband, under a contract of agency with him.]
- [2. The provision in the statute that it shall not be construed, to give the wife any right to compensation for any labor performed for her husband or minor children, is inapplicable to cases where there is a special agreement between the husband and wife.]

In the matter of the bankruptcy of Jonathan Hay, of Freeport, 111. On the petitions of Elizabeth and Ada Hay, wife and daughter of the bankrupt, for a return of an upright Steinway piano and several articles of personal property, which they claim as their private property, and which were taken under a warrant of seizure against the estate of the bankrupt.

Alta M. Hulett, for Mrs. and Miss Hay.

John M. Bailey represented the bankrupt's assignee.

Held by BLODGETT, District Judge:

That it appears clearly and conclusively from the evidence that Elizabeth Hay had been doing business separate and apart from the business of her husband for several years; that that business depended for its success upon Mrs. Hay's individual skill and energy, and consisted principally in the sale of sewing machines and musical instruments; that she had been remarkably successful in business, and by her energy, enterprise, and business tact acquired credit in her business; that it was notorious that she was carrying on an independent business, and that she had supported not only herself and children, but her husband also, her husband having shown no remarkable ability in any direction except in the way of contracting debts. Mrs. Hay had also been for several years the owner of the homestead occupied by her family, and the title stood in her name. In the beginning of the year 1869 Jonathan Hay was indebted in large amounts, and all of Mrs. Hay's private property, acquired by her individual skill and labor, was sold to satisfy the claims of her husband's creditors, as prior to the year 1869 the earnings of the wife belonged absolutely to the husband.

In 1869 the law was passed giving to married women their earnings absolutely. And Mrs. Hay again went to work. Her husband had no property whatever, and had made a failure of every business which he had undertaken. In the fall of 1871 Mr. Hay desired to open a music store, and to enable him to do so Mrs. Hay furnished him \$1,000—money which she had borrowed, giving a trust deed on her house to secure its payment. When Mr. Hay went into business, Mrs. Hay acted as his agent in the sale of sewing machines

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and musical instruments; and there was an express understanding and agreement that she should receive a specified commission on each sale made by her. The court remarked that this understanding was unnecessary, as the law gave her earnings with or without the husband's consent, and that the transactions must be regarded as if made by Jonathan Hay with a third party. The court also held that the proviso to the act of 1869, "This act shall not be construed to give the wife any right to compensation for any labor performed for her husband

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or minor children," did not affect the questions in this case, but was only applicable to cases where there was no special agreement between a husband and wife as to her compensation, but that she having the right to her earnings could agree to work for her husband about, his business as well as for a stranger. In July, 1873, Mrs. Hay purchased of her husband ten sewing machines, paying him there for \$500 in cash, the money paid being borrowed on Mrs. Hay's individual credit, of a relative. The court said that, as there was no fraud alleged, none could be presumed, and that the purchase was fair and open, made in the usual course of business, and must be so regarded. He, therefore, was of opinion that the property belonged to Mrs. Hay, and an order was entered directing the assignee to return it to her. This decision is important, as the question whether a married woman was entitled to compensation for services performed for her husband as agent has never before been judicially passed upon.