

Fink v. Standard Bread Co., 110 N.Y.S. 205 (1908)

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110 N.Y.S. 205  
Supreme Court, Appellate Term, New York.

FINK  
v.  
STANDARD BREAD CO. (four cases).

May 15, 1908.

#### Synopsis

Appeal from Municipal Court, Borough of Manhattan, Sixth District.

Four actions by **Louise Fink** against the Standard Bread Company. Demurrers to the respective complaints were overruled, and defendant appeals. Dismissed.

West Headnotes (1)

#### [1] Courts Decisions Reviewable

No appeal lies from an order on a demurrer, but only from the judgment entered thereon; and where no judgment appears in the record, where a demurrer to a complaint was overruled, no appeal will lie, though the notice of appeal recites that it is taken from the judgment rendered against defendant and from an order overruling the demurrer to the complaint therein, upon which the said judgment was entered, and although there is attached to the return a statement by the justice who tried the case, but who is now out of office, that he entered judgment on said order overruling the demurrer.

1 Cases that cite this headnote

#### Attorneys and Law Firms

\*205 Frederick W. Hamberg, for appellant.

George L. Donnellan, for respondent.

Argued before GILDERSLEEVE, P. J., and GIEGERICH and GREENBAUM, JJ.

#### Opinion

PER CURIAM.

The notice of appeal in each of these cases recites that they are taken from “a judgment rendered against it in the above—entitled action in favor of the plaintiff, \* \* \* and from the order overruling the demurrer to the complaint therein, upon which \*206 the said judgment was entered.” Although there is attached to each return a statement by the justice who tried the case, but who is now out of office, to the effect that he “entered judgment on said order overruling the demurrer,” no such judgment appears in the record. It has frequently been held that no appeal lies from an order overruling or sustaining a demurrer, but that a judgment must be entered upon such order, and from the judgment so entered the appeal can be taken. *Sheffield v. Murray*, 80 Hun, 555, 30 N. Y. Supp. 799; *Smith v. Ely*, 46 Misc. Rep. 458, 92 N. Y. Supp. 310.

Appeals dismissed, with \$10 costs in one case.

#### All Citations

110 N.Y.S. 205

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