

HOLLEY *v.* LAWRENCE, WARDEN.

APPEAL FROM THE SUPREME COURT OF GEORGIA.

No. 600. Decided January 18, 1943.

The decision of the state court that failure to offer the testimony of a wife at the trial of her husband barred a later claim of the unconstitutionality of a state statute making such testimony incompetent, held a non-federal ground adequate to support the judgment.

Appeal dismissed.

*Mr. Benjamin E. Pierce* for appellant.

PER CURIAM.

The motion for leave to proceed in forma pauperis is granted. The Court has examined all the federal questions raised by appellant. In so far as the appeal challenges the validity of Georgia Code § 38-1604, which makes incompetent the testimony of a wife at the trial of her husband, the judgment of the court below rests upon a non-federal ground adequate to support it, namely, that the failure to tender such testimony at the trial barred any later claim of the alleged constitutional right (*Atlantic Coast Line R. Co. v. Mims*, 242 U. S. 532, 535). The Court finds that no other federal question presented by the appeal warrants review by this Court. The appeal is accordingly dismissed.

*Dismissed.*