

New Jersey Court of Errors and Appeals.

JOHN TRESCH,	} On Appeal from Decree In Chancery.	10.
<i>Appellant,</i>		
<i>and</i>		
JOHN M. WIRTZ, ET. ALS.,		
<i>Respondents.</i>		

BRIEF OF APPELLANT. 20

The bill sets out an indebtedness of \$300.00 on April 1, 1873, of one Henry Beltz and John M. Wirtz, one of the defendants, as partners, florists, to John Tresch, complainant.

On October 21, 1874, judgment was obtained on said indebtedness for the sum of \$353.04 damages, and \$34.86 costs, making the sum of \$387.90. 30

On October 23, 1874, execution was issued and returned unsatisfied; and that the judgment is still unpaid. Bill pages 2, 3, 4.

The answer admits these facts, pages 22, 23, 24.

The bill then claims that Wirtz has accumulated securities and equitable interests and real estate which ought to be applied to the judgment.

This the answer denies.

The specific claims of the bill through which the complainant seeks relief, are : 40

I.

That certain property in Jersey City, consisting of two lots of land in Jersey City, house on the same, conveyed to John M. Wirtz and his brother, Louis Wirtz, by deed of June 26, 1866, by Johanna Schlich, and Louis Wirtz and wife to John M. Wirtz, by deed of March 5, 1873; and by 10 John M. Wirtz and wife to Charles Lehman, by deed of January 4, 1874; and by Charles Lehman to Minnie Wirtz, wife of John M. Wirtz, by deed dated February 7, 1874; was conveyed and transferred to the said Minnie Wirtz, wife of John M. Wirtz, to defraud the complainant and other creditors, and that the deed to Lehman and from Lehman to Mrs. Wirtz are fraudulent and void.

Bill and answer, paragraphs 16 to 24.

20

II.

That a mortgage for \$1,000.00 dated July 8, 1871, by Fredericka Hufnagle and husband to John M. Wirtz, was cancelled for \$500.00 cash, and a new mortgage for \$500.00 was given to Minnie Wirtz, wife of John M. Wirtz. No new consideration was given for the mortgage, and the transaction was fraudulent as to the complainant and other creditors.

30 Bill and answer, paragraphs 25 to 28.

III.

That Mrs. Wirtz leased property on Palisade avenue, Jersey City, and erected a store and buildings thereon, and pretends to carry on business there in her own name, but that the lease, building and business are in reality her hus- 40 band's, procured with his means and used for his benefit,

and are held by his wife simply to defraud the complainant and other creditors.

Bill and answer, paragraphs 29 to 30.

I.

As to the first claim the answer admits the conveyances, but denies the fraud. The complainant establishes the 10 fraud by the following facts:

1. June 29th, 1866.—Johnna Schlich conveyed to John M. Wirtz and Louis Wirtz, his brother, the Sherman avenue property for \$2,800; \$1,500 cash and \$1,300 mortgage, \$750 of the consideration money being the property of John M. Wirtz.

Bill and answer, 16. Dep., 19, 10.

2. 1867-8.—Defendants intermarried. The husband was in the hair jewelry business in New York. Dep. 18, 40. The wife brought him no property. Dep. 19, 13. He 20 supported his family by his business; she assisting by sewing for A. T. Stewart, doing her work at home. Dep. 19, 19, 33-4-5.

3. April, 1868.—Mrs. Wirts started the human hair business on a capital of about \$100, earned by her from Stewart, and \$150 borrowed, probably by her husband from his brother, Louis. Dep. 18, 35-47; 19, 20-21-25-35; 26, 28. In this business the husband assisted at times; she paid him no salary, but gave him what he needed. Dep. 3, 50; 15, 10; 19, 48; 20, 13-30; 35, 49. What he made went 30 into the general fund. Dep. 20, 24-29; 21, 18.

4. July 8th, 1871.—Hufnagle mortgage, for \$1,000, given to the husband. This money came out of the business, and was all made therein to that date. Dep. 20, 49; 21, 15; 28, 30.

5. March 5th, 1873.—Louis Wirtz conveyed his undivided half to John M. for \$1,000. Bill and answer, 18.

6. At this time Mr. Wirtz claims to have made a verbal agreement with his wife to the effect that she should pay Louis and advance \$2,000 to her husband, as capital for 40

him to start in the florist business with, and that he should convey to her the Sherman avenue property. (She says agreement was in July.) The money was to come out of the hair business. Dep. 21, 30; 22, 35; 23, 40.

7. July 1st, 1873.—Mrs. Wirtz claims to have advanced the capital from her business. Dep. 2, 10; 21, 24; 34, 45. In that business she kept no accounts. Dep. 20, 15-45. Can't tell what she averaged a month. Dep. 20, 43. Says she had about \$1,800 in a bureau drawer, in which she put
 10 her receipts every evening, after closing up, which she never counted, and out of which she took all that was needed for household expenses and her business. Deps. pages 23-4-5. She advanced in all \$3,000, in different amounts, at different times. Dep. 21, 28-40; 23, 30; 13, 30; 34, 35; 35, 15; 39, 30-40; 42, 45; 43, 15. She did not know Louis had conveyed his interest to her husband. Dep. 26, 20. Knew the latter's interest was but \$750, and got no security for the loan beyond his promise. Dep. 26, 10. And expected her husband to earn the money to
 20 pay Louis in the florist business. Dep. 26, 28.

8. July, 1873 to January, 1874.—Wirtz continued in the florist business. Dep. 2, 10; 21, 24; 34, 45. During that time he contracted the indebtedness to the complainant, under an agreement that it was not to be collected until May 1, 1874. Bill and answer 1-10. Dep. 2, 10; 5, 25; 6, 15; 7, 45; 34, 40; 35, 35.

9. During the whole time the record showed Wirtz to be the owner of the property; Wirtz called on Tresch, both in November and December of that year, and represented
 30 that he was a responsible man and could pay the bill if Beltz did not; he said he had a business up in Hudson City. Dep. 8, 10-20-35.

10. December 20, 1873, Beltz and Wirtz gave a chattel mortgage on the florist tools and fixtures to Anton Wirtz to secure \$500. Dep. 13, 33. Ex. T. 2.

11. January, 1874. Wirtz sold his interest in the florist business to Henry F. Eveland for \$1,000, taking a note for the full amount. Eveland also assumed debts to the amount of \$2,000. Bill and answer, 13. Dep. 35,
 40 30. Wirtz had made great improvements on the prop-

erty. Dep. 34, 45. He held the business in the season of preparation. Dep. 6, 45. The capital invested was increasing for profit at the proper time. Dep. 13, 40. Stock alone worth three or four thousand dollars. Dep. 14, 10; 13, 20; 7, 28; 4, 28; 37, 49.

12. January 8th, 1874.—Hufnagle gave a \$500 mortgage to Minnie Wirtz and \$500 cash, in consideration of the cancellation of the old mortgage to John M. Wirtz. Bill and answer 27.

13. The \$1,000 from Hufnagle to John M. Wirtz cancelled for the above consideration January 10, 1874. Bill and answer, 26; dep. 25, 40; 28, 25.

14. January 11th, 1874.—John M. and Minnie Wirtz conveyed to Charles Lehman, their brother-in-law, the Sherman avenue property; consideration, the said agreement. Bill and answer, 19 and 20.

15. February 2d, 1874.—Mortgage to secure \$900, given by Minnie Wirtz and husband to Louis Wirtz, in part consideration of the \$1,000 paid by him for his undivided half. Exhibits W., 1 and 2; dep. 29, 20.

20

16. February 2d, 1874.—Charles Lehman conveyed the property to Minnie Wirtz for the above named consideration. Bill and answer, 21-2-3-4.

17. March 5th, 1874.—John M. Wirtz and wife gave a chattel mortgage to Charles Lehman to secure \$500 on all their store goods, stock and fixtures and household goods. Ex. T. 1. Dep. 5, 15.

18. May 1st, 1874.—Tresch was to have been paid. Dep. 7, 48.

19. October 6th, 1875.—Charles Lehman assigns chattel mortgage dated March 5, 1874, to Louis Wirtz. Louis receives this mortgage and \$400 cash to cancel the \$900 on the Sherman avenue property. Lehman, the brother-in-law, is said to have been paid. Dep. 29, 15.

20. October 11th, 1875.—Louis cancels the \$900 mortgage of record. Dep. 29, 20. Exs. W., 1 and 2.

21. September 17th, 1877.—Louis assigns \$500 mortgage to Stephen Kessler for \$300, \$200 having been paid during '76-7.

22. January 10th, 1877.—Summons in this cause returned.

23. May 12th, 1879.—Kessler paid balance due on mortgage. Dep. 29, 40.

The defendants explain the above transactions by saying:

1. Mrs. Wirtz, since 1868, has accumulated \$3,000 in the human hair business. Answer, 23.

2. July 8th, 1871, she invested \$1,000 in the Hufnagle mortgage, taken in the name of her husband, who held in trust for her, which was all the money she had saved to that date. Answer, 28; dep. 21, 10.

2. That she paid Louis the \$1,000, and her husband held that undivided half in trust for her. Answer, 18.

4. That the husband and wife made the agreement to convey the property as stated; and that the agreement was a trust whereby the property was held for her until its absolute conveyance. Answer, 19-20-21-22.

5. That she advanced \$3,000 upon that agreement. Ibid.

20 6. That Wirtz lost all the money invested in the florist business. Dep. 26, 25; 28, 30; 35, 12.

7. That Wirtz sold out his interest in the florist business so cheaply, because he was tired of it; it did not pay, and Beltz cheated him. Dep. 35, 28.

8. That the Sherman avenue property was conveyed by him to her immediately in execution of the above named trust. Answer, 19-20-21-22.

But the complainant shows:—

30 1. \$3,000 was not earned in the hair business.

1. Mrs. Wirtz kept no accounts, and can't tell what she made. Dep. 20, 15; 20, 43-5; pages 23-4-5.

2. Neither knows how much was advanced for the florist business; she says \$2,000 or more; can't say exactly. Dep. 21, 28-40. He says about \$3,000. Dep. 34, 35; 35, 15.

3. \$3,000 was not advanced. Beltz says something over \$1,000, and \$500 of that was borrowed on mortgage given by him and Wirtz.

Dep. 13, 30. Wirtz says the Sherman avenue property was at its sale worth \$3,000, and that the share of Louis was included in the amount advanced, \$1,300 mortgage being on the property. Dep. 42, 23-48; 43, 12. Both shares, then, were \$1,700, but they call them \$3,000, but Louis was not paid until Wirtz had gone out of business. Dep. 29, 18. The money advanced in consideration of the agreement, \$1,000. 10

4. Wirtz sold his share for \$1,000, florist business.

2. The hair business belonged to the husband.

1. Part of the capital was borrowed of his brother, his wife says probably by him, and was repaid out of the business. Dep. 19, 25.

2. The balance was earned by her in her husband's house while she was supported by him, and was not pretending to do business on her own account. Dep. 20, 30. 20

3. He assisted in the business; got no salary, and what he made went into the general fund. Dep. 3, 50; 15, 10; 19, 48; 20, 13-24-29-30; 21, 18; 35, 49.

4. The earnings were invested in his name with her knowledge and consent.

5. He disposed of them, intending to put them beyond the reach of creditors, with her knowledge and assistance. 30

3. If the business belonged to the wife; the money belonged to the husband, if earned in the business.

1. It was earned during coverture, previous to March, 1874, when the husband had a right to take such earnings. Revision, married woman, Sec. 4.

Skillman vs. Skillman, 2 Beas. 403-7.

Persons vs. Persons, 10, C. E. Gr. 259.

Cramer, et al. vs. Reford, 2, C. E. Gr. 367. 40

2. She could only acquire them by his gift which would be void in fraud of creditors.

Skillman vs. Skillman, 2 Beas., 407.

Belford vs. Crane, 1 C. E. Gr., 265.

3. He reduced these earnings into his possession; she knew he was to invest them in a precarious business, in his own name; they were paid at different times, in different amounts; if parts were the consideration for the conveyance of the property, parts were gratuitous; they were commingled. Cases above referred to and others cited.

10

These earnings, if they were made by her alone, were her husband's until March 27, 1874.

See revised Statutes, married women, section 4.

Skillman vs. Skillman, 2 Beasley, 403-7.

Persons vs. Persons, 10 C. E. Green, 259.

In case in 2 Beasley, 403-7, the Chancellor says, page 406:
 20 "At common law the husband is entitled, not only to all
 "the personal property which the wife owns at the time of
 "marriage, but to all she acquires by her skill or labor
 "during coverture."

Cramer, et al., vs. Reford. 2 C. E. Green, 367.

She could only acquire these earnings by his gift, and that would not be good in fraud of present, or intended creditors.

2 Beasley, 403. *Belford vs. Crane*, 2 C. E. Green, 265, &c.

30 To constitute a gift there must be some clear and distinct act by which the husband has divested himself of the property, and engaged to hold as trustee for the separate use of the wife.

2 Beasley, 407-8.

The object of Mrs. Wirtz in advancing the money was to enable her husband to start a business in his own name. The moneys were thus reduced into his possession; he agreed, upon the payment, to convey her the property at
 40 some unfixed time.

Again:—

1. Agreement was never made.
 1. They do not agree upon the time of its making. She says it was made in summer, when she gave him the money. Dep. 21, 30. He says when Louis conveyed to him, March 5th, 1873. Dep. 40, 10.
 2. They can't show conclusively a certain consideration, \$2,000 or more. Dep. 21, 28; 42, 45; 43, 15. Gave him money continually during 10 course of business. Dep. 21, 38. \$1,800. Dep. 23, 20. \$3,000. Dep. 34, 35; 39, 40. Largest sum at a time was \$1,100 or \$1,200, gave it as she had it. Dep. 35, 20.
 3. There was no necessity for the agreement as a complete sale might have been made at the same time.
 4. Neither law nor equity, without the best and particular proof, will consider that to have been done, by means of which innocent creditors 20 would be defrauded.

2. If the agreement was made, it was not made until after the complainant's debt was contracted.

Equity will not presume a resulting trust in favor of the wife; as against the creditors, the agreement was not made until it was executed by a conveyance.

3. If made it was made in fraud of creditors. 30
 1. Wirtz represented to Tresch that he was a responsible man and could pay the debt if Beltz did not.
 2. He contracted the debt after he had made this secret arrangement.
 3. She knew he was going to use the money in a business where he might contract debts, and furnished part of the consideration after she knew it was not prosperous. 40

4. She allowed the record to stand in his name while the debt was being contracted.
5. They, together, put everything beyond the reach of his creditors, by erasing his name from the title, and executing entangling conveyances between near relatives and themselves.

The agreement was made in view of his contracting indebtedness in his business; the conveyance was in consideration of the agreement. *Cramer vs. Reford*, 2 C. E. Green, 10 367; *Beekman vs. Montgomery*, 1 McCart., 106; *National Bank vs. Sprague*, 5 C. E. Green, 13-25; *Metropolitan Bank vs. Durant*, 7 C. E. Green, 35-9, 9 C. E. Green, 556; *Mulford vs. Tunis*, 6 Vr., 256; *Green vs. Tantum*, 4 C. E. Green, 105-574, 6 C. E. Green, 364; *Smith vs. Vreeland*, 1 C. E. Green, 198; *Cutler vs. Tuttle*, 4 C. E. Green, 549; *Sayre vs. Fredericks*, 1 C. E. Green, 205.

“The existence of fraud is often a presumption of law from admitted or established facts, irrespective of motive, and too strong to be rebutted.” *Belford vs. Crane*, 1 C. E. 20 Green, 265.

The agreement was not completed by the execution of the conveyances, until after the complainant's indebtedness was contracted. After the agreement she allowed the property to stand on the record in her husband's name, and aided him in making his property over to other persons.

“No secret equity of the wife, however strong it might be against the estate of the husband could avail against mortgagees, without notice of the equity.”

Brown vs. Richards, 11 C. E. Green, 39.

30

“A wife's claim of a trust, in property conveyed absolutely to the husband, should always be regarded with suspicion and especially when attempted to be asserted against creditors, upon the uncorroborated evidence of the parties themselves, it should be rejected at once, unless the statements are so full, clear and convincing, as to make the fairness and justice of the claim manifest.” *Besson vs. Eveland*, 11 C. E. Green, 468. See also, *Satterthwaite vs. Emley*, 3 Gr., Ch., 489.

40

These conveyances were voluntary and fraudulent.

Annin vs. Annin, 9 C. E. Green, 184; see also the cases cited above.

The case of *Besson vs. Eveland*, probably the same Eveland who figures in this case, in aid of Wirtz, is almost identical in its premises with this. The Vice-Chancellor said :

“No further proof of a fraudulent or dishonest purpose is necessary. Without further inquiry into the causes or motives, the law justly declares a fraudulent design shall be 10 imputed to such conduct by a debtor, until removed by clear and convincing evidence. The defendants have assumed the burden in this case. They attempt to show that these lands were paid for with the wife’s money; that the title was taken in the name of the husband for their more convenient management, with an understanding between the husband and wife he was to hold them in trust for her until she required a conveyance made to herself, and that the conveyances in dispute were made to herself, and that the conveyances in dispute were made in execution of 20 of this trust.” 11 C. E. Green, 470.

Again he says, page 471 :

“It is clear, the debt the complainants are now seeking to recover was contracted, in part at least, on the credit which the debtor obtained as the apparent owner of these lands. She knew he was engaged in a business necessarily attended with hazard, and in the prosecution of which he would incur debts. Having constantly consented he should hold himself out to the world as the owner of the property, and contract debts on the credit of it, up to the very hour of 30 his disaster, it would be against the plainest principles of justice, and utterly subversive of everything like fair dealing, to permit her to step in now and withdraw from the process of the law, put in motion by his creditors, the very property which she had permitted him year after year, to represent to be his, and the apparent ownership of which had given him his business credit and standing.”

As to the second claim :—

The answer admits everything except the fraud. It says 40 the consideration was the wife’s money, and the husband

held in trust for her under a verbal agreement, that upon being repaid by Hufnagle, he would repay her.

Complainant says:—

1. *Prima facie*, the consideration money was the husband's.
2. If not, it was made in the hair business, and he could reduce into his possession. Dep. 20, 48; 23, 45; 28, 28; 41, 20.
3. He did reduce it into his possession. The \$500 repaid
10 was used by him. Dep. 25, 40.
4. It continued in the name of the husband until after the complainant's debt was contracted. The completion of the making and the performance of the agreement were simultaneous.
5. The new mortgage was, admittedly, for no new consideration. It was fraudulent for the reasons given on the first point.

As to the third claim:—

- 20 It will follow the two former. The present business is a continuation of that in which they were engaged. All investments were made out of the premises.

Complainant asks:—

1. That the defendants be required to apply the property and equitable interests of John M. Wirtz to the satisfaction of the judgment.
2. That the deeds from Lehman to Mrs. Wirtz, and from Wirtz and wife to Lehman be declared fraudulent and void, as against complainant.
- 30 3. That Minnie be decreed to hold the property as trustee of complainant.
4. That the Hufnagle mortgage and the lease from Costello to Minnie Wirtz, be decreed to be held by her in trust for complainant, as creditor of John M. Wirtz.
5. That a receiver be appointed to receive the principal and interest due upon said mortgage, and to collect the rents and profits of said real estate, to satisfy complainant's debt.
- 40 6. The complainant asks such other relief as can be given under the circumstances, and such as will be consistent with equity and good conscience.

IV.

The learned Vice-Chancellor in his opinion in this case, assumes two propositions :—

1. That the real estate in question was purchased with the money of the wife, and the deed simply taken in the name of the husband by mistake.

2. That the husband did relinquish or give to the wife 10 her earnings, and never reduced the same to his own possession.

The learned Vice-Chancellor in his consideration of these matters, certainly rested under a grave misapprehension of the facts proved.

It certainly is very clearly proved, that this real estate was purchased by the husband with his own money, and paid for by him, and that, too, before the marriage of the defendants. It certainly remained in his name up to a very short period previous to the entry of the judgement in this 20 case, and until quite a space of time after he had obtained the credit of this complainant, and was just exactly what this complainant relied upon as the security for the credit. In taking the deed of the undivided half of the property from his brother Louis, no thought ever entered his mind of having it placed in the name of his wife. He purchased it outright in his own name and for himself, and whatever the transaction was at that time, it is very certain that the wife furnished no money whatever towards its purchase. From 1866 to 1874 the title remained in him without a thought 30 of its conveyance to his wife.

Now, whatever conclusion the Vice-Chancellor might have arrived at in relation to the Hufnagle mortgage, or the leased property, it seems to me that with a clear perception of the facts of this case, it was not possible to come to the conclusion that the conveyance to the wife of the house and lot was not in fraud of creditors.

A careful reading of the opinion of the learned Vice-Chancellor, leads one to assume that the question of a fraudulent conveyance had not arisen in this case, that question 40

was overlooked, and the only question considered in the cause was the question as to the right of the wife to pursue a separate business and with the husband's consent devote the profits to her own use, by purchasing property for herself, and also the right of the husband to relinquish or make a gift to his wife of her own earnings or profits in preference to his creditors. These are conclusions which were not denied on the argument before the Vice-Chancellor, nor are they denied here. It is, and was, the contention of the
 10 appellant that under the circumstances of this case, that the mortgage of \$500 now held in her name, and the leasehold property which she now holds are held only in trust by her for the benefit of the creditors of her husband.

We have only to look at the transaction in relation to the taking of the new \$500 mortgage to determine its fraudulent character. The mere words of the defendants weigh but little in the face of the facts as proved and not denied.

The mortgage for \$1,000 was made in 1871. She alleges
 20 that it was loaned by her husband from the funds, moneys which she gave him. Here was, in fact, a reduction to possession by her husband. He invested it and took a mortgage in his own name. It so remained until within a few days of the sale of the florist business to Eveland, and till the month of January, 1874, when his general failure came. Just at the same time that he made the other disposition of property to his wife, the mortgage is changed. Then \$500 is paid, not in the usual way, by receipting so much on the bond and mortgage, but by a cancellation and
 30 the giving of a new mortgage to her.

The mortgage for these years remained with her consent and knowledge in the name of her husband.

In January, 1874, he contemplated a failure. He had grown tired of his business as a florist, although he had but commenced and it still was in a state of preparation. He excuses himself on the ground that his partner was defrauding him, but of that he offers no proof. He certainly was not indebted to his partner, and his partner declares that the dissolution and sale was because the business did not
 40 suit him.

He had obtained credit upon the faith of his property. He was indebted to various parties. Now let us examine and ascertain what this man and wife do in a short space of time, and remember, this was after the credit was obtained from the complainant. He had continued in the florist business up to January 16, 1874, and had incurred debts in that business to some amount, say about \$2,000, which were yet unpaid.

December 20, 1873.—Beltz and Wirtz in preparing this fraud gave a chattel mortgage to Anton Wirtz. 10

January 16, 1874.—Wirtz sells his florist business to Eveland without a penny of cash. He, without being paid anything, sold a stock worth three or four thousand dollars. More than sufficient to pay all their indebtedness for absolutely nothing, and that, too, just as his season for business was to commence.

January 8, 1874.—He cancels his one thousand dollars mortgage, and gives his wife a new one in her name for \$500, and did it, too, not in the usual method of business. The mortgage was cancelled January 10, 1874, and new 20 mortgage recorded.

January 11, 1874.—He and his wife convey to the brother-in-law, Charles Lehman, his Sherman avenue property for an expressed consideration of \$2,000. Lehman does not at once convey to his wife. They prefer that it shall remain in appearance as a bona fide sale to Lehman, to deceive his creditors.

February 2, 1874.—He and his wife give a mortgage to Louis on the property for \$900. What for? To cover up its value; to make it appear valueless to the creditors. 30 Remember there was a \$1,300 bona fide mortgage on the property, add \$900 to it, and the real substantial value of the property is exhausted.

February 2, 1874.—Lehman conveys to Mrs. Wirtz the Sherman avenue property.

March 5, 1874.—They give a chattel mortgage to Lehman on their household goods, store fixtures, &c., and even this mortgage finds its way back into the hands of the brother, Louis Wirtz, and afterwards Louis Wirtz assigns it to Stephen Kessler. 40

Within about two months then the whole of the property of Wirtz is disposed of, and put away beyond the reach of his creditors. One transaction following another in quick succession, as if in haste to get rid of his debts.

The conveyance on its face, and in the face of the creditors is fraudulent, and the presumption of fraud must be disproved.

The burden is on the defendants, and in no single instance have they relieved themselves of that burden.

10 Every fact they allege or attempt they make to exculpate themselves from this fraud, is specious.

Her husband borrowed the money from her to start business with, he always exercised control over it, if not over its management, then over its proceeds. He did indeed allow her to work, but he from time to time took the profits to invest in his own business with her consent, he lost it in his own business with her knowledge and it was not till he was in failing circumstances that she induced him to make transfers to her; not until he had become indebted to others
20 upon the credit of property standing in her own name, did he and she make these transfers. Whether these moneys were his, or hers, is matter of extreme doubt. It is easy though for him and her to say that the moneys belonged to her, and that the mortgage was made to him by mistake. It is a general assertion and one which can be easily made under any state of circumstances.

It is true that both husband and wife swear that there was an understanding that they were loans and that the wife was to have a conveyance of the property for it.

30 But the facts of these transfers must be remembered. The understanding was couched in the loosest terms. It was indefinite as to time. It was indefinite as to amount.

Then she swears it was in July. He swears it was in March. One says it was when the undivided share of Louis Wirtz was conveyed to John M. Wirtz. Why then was not the deed made to her? She says it was in July when or after the loans were made for the florist business. The question at once arises why the deed was not then made, the transfers made? Are not the circumstances such as to
40 lead us to conclude that if these loans were made at all,

they were made without any "distinct understanding" that they were ever to be repaid, except from the business of the husband. The property of the husband was purchased with his own money. The money which the wife advanced to him was sunk in the business by his own neglect. And now without any reason she desires to withdraw from his creditors his estate. When she passed money to him it was without any definite intention whatever. She gave it. He took it and spent it as his own.

It is conceded by the learned Vice-Chancellor that the 10 rule by which this case must be determined is the rule that the earnings of the wife belong to the husband, but says that the question is, could the husband relinquish his common law right to the earnings of the wife so as to give her a valid title to them against his creditors.

The case of *Cramer vs. Reford*, 2 C. E. Green, 380, determines that he could not. Certainly he would not after having absolutely reduced them to his own possession, and gained credit upon the strength of his title to them. He certainly could not turn around and relinquish to her in 20 the face of her creditors.

If at the time the earnings were made she had invested them in her own name with the consent of the husband, the case would be different. It might be held that this was such a gift and relinquishment which he had the right to make his wife, and this I understand is as far as the case of *Peterson vs. Mulford*, 7 Vr., 489, decided in this court, goes, and that is construed to be a gift or relinquishment which he had before the recent statute a right to make.

But the mistake is made by the Vice-Chancellor in say- 30 ing that the property which the complainant is seeking to reach, had been surrendered by the husband long before the relation of creditor and debtor existed between them.

This assertion is certainly based upon some mistaken impression which the Vice-Chancellor has received. The fact is that the real estate, the house and lot on Sherman avenue, was owned by him and his brother in undivided portions long before his marriage, and he owned it wholly in his own name on March 5, 1873, the date of the deed from Louis Wirtz to him, and that was previous to any relation of 40

debtor and creditor existing between the complainant and Wirtz. No such relation existed between them at that time.

And this is true also as to his \$1,000 mortgage.

The relation of creditor and debtor was created in the summer, autumn and winter of 1873.

In January, 1874, he gives this property to his wife in fraud of his creditors.

A portion of this property, according to all the testimony, 10 was, at that time, his own, and he made the gift to his wife after the relation of debtor and creditor was created.

The other portions came to his hands, perhaps from his wife, he reduced it to his own possession, kept it for years in his own name until he was in failing circumstances and then gave it to his wife.

The fact as to the reduction of possession could not well be stronger.

He took the money himself.

During the course of many years he never permitted her 20 to invest one dollar in her name.

He took the money, used it in his own business, and in the most unmistakable manner he told all the world that what he had in his own name was his.

He had all she got and she was powerless to get it from him.

If she ever accumulated sufficient to make an investment it is very certain she never made one.

His house and lot on Sherman avenue was not bought in his name by mistake, whatever might be said of the 30 \$1,000 mortgage.

She herself does not say that the mortgage to her was made by mistake.

And while it will be admitted, perhaps, that it would upon the part of the husband be a fraud upon her to deceive her and get her money and invest it in his own name, the law certainly permitted him to take the money, reduce it to his possession and do just what he pleases with it, this he did, she agreed to it, he obtained credit, and after the credit was obtained he attempts to give the pro- 40 perty back to her.

But this is only to part of the property, the \$1,000 mortgage, and perhaps the leasehold property.

So far as the real estate is concerned, she furnished no money to purchase it. It was his property, absolutely his, and owned by him in his own name, a part of his estate and credit, upon which his credit as a business man was sustained. He obtained credit upon the strength of his property and his responsibility as a property owner.

She lends money to him which he loses in the very business in which she loaned him money to start. She loaned 10 him money to expend in that business.

When it fails he turns and gives her his other property upon which he had obtained credit, and defrauds his creditors.

This cannot be the law.

In this connection I cite the cases of—

Tuers *vs.* Briggs, 7 Stewart, 19.

City Nat. Bank *vs.* Hamilton, 7 Stewart, 158.

J. H. LIPPINCOTT,
Counsel for Appellant. 20

COURT OF ERRORS AND APPEALS.

Between

JOHN TRESCH,

Appellant,

and

JOHN M. WIRTZ *et al.*,

Respondents.

*On Appeal
from Decree in
Chancery.*

Brief.

I.

In this State the law was settled before the late Revision, that the husband could relinquish his common law right to the earnings of the wife, so as to give her a valid title to them even as against his creditors, if he had not reduced the earnings to his possession.

Peterson *et ux. vs.* Mulford, 7 Vroom, 481.

Stall *vs.* Fulton, 1 Vroom, 430.

Luse *vs.* Jones, 10 Vroom, 707.

Johnson *vs.* Vail, 1 McCarter, 423.

The rule of law laid down in Peterson *vs.* Mulford, 7th Vroom, at page 489, was intended to settle the question in this State. All the cases that could by any construction offer a basis for an opposite contention were gone over and criticised, and, looking the whole range of decisions over, this Court said: "It may therefore be held, as the settled law of this State, that a husband may permit his wife to labor for herself and appropriate to her own use the proceeds of her labor, and may give to her to appropriate to her own use the proceeds of her labor when received by her, and that such per-

“ mission or gift is good and valid as against his creditors, “ if such proceeds have not actually been reduced into his “ possession.”

The decision had the unanimous approval of the Court.

In this case three parcels of property are claimed to be subject to complainants' right: The Sherman avenue house, the Huffnagle mortgage of \$500, and the shop and leased lot on Palisade avenue.

As to the Sherman avenue house and the mortgage for \$500, the relinquishment by the husband was prior to the right of creditors intervening.

There is no serious dispute about the facts. The answers and proofs establish clearly that the holder of the property claimed, Mrs. Wirtz, began the business of hairdressing in Jersey City in 1868, upon \$250 of her own money. The business consisted in dressing ladies' hair, making braids and switches in a small way, and selling occasionally some articles of hair jewelry. Almost the whole of the business was the dressing of ladies' hair, which was done mainly by Mrs. Wirtz. The husband was in business in New York, and had no interest in or control over the business or work of the wife, but wholly assented to her carrying on the business in her own name, and to her taking and appropriating the proceeds. In 1871 the husband failed in business in New York, and after that, being about the house till he went into the florist business, in which complainant's debt was contracted, he assisted his wife in her business to the extent of making some articles of hair jewelry, which she sold in connection with her hairdressing, and which she amply paid the husband for.

The complainant's claim was not incurred until after July, 1873, in which month the florist business was commenced, and the nearest he fixes it is, that it was for 14,000 flower pots, 8,000 before January 15th, and 6,000 after that date.

The \$2,000, the consideration for the Sherman avenue house, the wife had accumulated before July, 1873,

and before that date had agreed to advance it to her husband to go into the florist business, upon his agreement to convey her therefor the Sherman avenue house, and she advanced the \$2,000 before the debt with complainant was contracted; and although the house was not conveyed to Mrs. Wirtz until January 7th, 1874, through a third person, and after part of complainant's claim had been incurred, her rights relate back to the time of the agreement and advance, which was prior to the complainant becoming a creditor.

By allowing her to control her earnings, he had relinquished his claim. By agreeing to convey her the house for them, he ratified that relinquishment (and this was at a time the right of the creditor did not intervene), and by his conveyance to her he simply carried out his agreement upon which he had received full value.

The earnings represented in the Huffnagle mortgage were relinquished in 1871—two years before the debt with complainant was contracted—and although the mortgage was taken in his name by mistake it was afterwards corrected and made to him. He had never intended to claim it, and he accepted it from her to invest it for her, and his possession of it was not a reduction to possession in the sense of the rule.

Mere manual possession of the wife's earnings will not prevent the husband's relinquishment if such possession were taken upon a trust to the wife, or as her agent, or under any such circumstances as recognized her separate and individual right to them.

Nicholas *vs.* Higby, 35 Iowa, 401.

Tarbox *vs.* Tonder, *et ux.*, 1 Tenn. Ch., 163.

Feller *vs.* Alden, 23 Wisc., 401.

~~Bridgford *vs.* Reddy, 55 Ill., 261~~

English vs Law 27 Kansas 242

In 35 Iowa, Ch. J. Beck says, at page 404: "The husband certainly could be empowered by the wife to act as her agent. His possession as such would be considered by the law as her possession, and while acting

“for her the notes would not be considered under his control.”

As regards the shop and leased lot on Palisade avenue, it may be claimed that some part of the wife's earnings realized before the last Revision went into effect—by which the married woman's earnings from her labor and business are secured to her free from the debts of the husband and without his consent—went towards the purchase of the lease and shop. How much did is not shown or pretended to be shown. But as indicating that very little if any did, the evidence shows that besides the advance of the \$2,000, which was the basis of the agreement to convey the house, she still advanced her husband in the florist business as much as \$1,000 up to January 16th, 1874, when he went out of business. But under the rule in *Peterson vs. Mulford*, the husband could relinquish his common law right to these, although complainant's debt had in the meantime been contracted, and the proofs show he did relinquish them.

II.

The fact that a husband voluntarily assists his wife in her separate business, by his labor as a mere worker, and that she accepts the same, does not enable the husband's creditors to reach either her business or its earnings.

Kelly on Contracts (1882), p. 149, § 13.

Abbey *vs.* Deyo, 44 N. Y., 343.

Russell *vs.* Long, 52 Iowa, 250.

Knapp *vs.* Smith, 27 N. Y., 277.

Buckley *vs.* Wells, 33 N. Y., 518.

Sage *vs.* Dauchy, 34 N. Y., 293.

Hodges *vs.* Cobb, 8 Rich. (S. C.), 50.

Hoot *vs.* Sorrill, 11 Ala., 386.

Aldridge *vs.* Muirhead, 11 Otto, 399.

The statute in this State, providing for discovery in aid of execution (Revision 393, § 24), expressly with-

holds from creditor's reach claims due the debtor "for his labor or personal services, or the labor or personal services of any member of his family."

Kelly on Contracts, p. 149, § 13, says: "Creditors have no power to reach the fruits of the services of the husband, bestowed by him gratuitously in good faith, for his wife, in the management of or concerning her property." * * * * "Under the same principles and for the same reasons, it follows that his personal services, skill, ability and labor, may be bestowed gratuitously and in good faith, in whole or in part, in her business, or in her transactions, and his creditors can not, therefore, interfere and reach the fruits and profits derived therefrom."

In *Buckley vs. Wells*, 32 N. Y., at page 521, the Judge says: "A different view very commonly prevailed at the time this cause was heard and decided, and it derived support from the tendency of some of the earlier cases, but this question has since been disposed of, in the case of *Knapp vs. Smith* (27 N. Y., 277). It was there held, upon full consideration, that under the statutes of 1848 and 1849, and independent of the act of 1860, a woman acquiring property from a third party during coverture could manage it through the agency of her husband, and hold the profits and increase to her separate use. In that case, as in this, the husband derived his support from the property of the wife, and received no other consideration for his services."

The business which the husband managed in that case was a mercantile business.

In *Abbey vs. Deyo*, 44 N. Y., at page 346, Judge Hunt says: "In arguing this point, the appellant's counsel insists that the services, the time and talents of the husband, are valuable, and he has no more right to give them to his wife, as against his creditors, than to give to her his property, to their prejudice. The one, he says, is as much their property as the other. This argument is entirely unsound. The property of a debtor,

“ by the laws of all commercial countries, belongs to his
 “ creditors. He must be just before he is generous. He
 “ must pay before he gives. Not so with his talents,
 “ and his industry. Whether he has much, or little, or
 “ nothing, his first duty is the support of his family. The
 “ instinctive impulse of every just man holds this to be
 “ the first purpose of his industry.” In this case the
 husband managed her business, and received his sup-
 port out of the income of the business.

In *Russell vs. Long*, 52 Iowa, 250, where the husband's creditors sought to reach the increase of the wife's stock, because the husband's labor, skill and care produced the increase, the Judge says: “ The record shows that the
 “ husband voluntarily expended his labor and products
 “ thereof in the care and keeping of his wife's property,
 “ and it does not appear that there was any agreement
 “ for compensation, either in the increase or otherwise.
 “ We think the property was not liable for the payment
 “ of the husband's debts. And he there quotes the follow-
 ing from *Webster vs. Hildreth*, 35 Vt., 457: “ Equity
 “ has no jurisdiction to compel men to work for their
 “ creditors, who may perversely prefer to work for the
 “ benefit of their wives and children and leave honest
 “ debts unpaid.”

If the husband expends merely his personal labor in the improvement of his wife's estate, the estate is not thereby made liable to the husband's debts; nor can the husband's creditors charge it with the value of his labor.

Hoot vs. Sorrell, 11 Ala., 386.

A husband may agree to work for a third party, and stipulate beforehand, that the proceeds of his labor shall be appropriated to the sole and separate use of his wife, and such stipulation is no fraud upon his creditors.

Hodges vs. Cobb, 8 Rich., 50.

In this case *Wirtz* says he assisted his wife sometimes three hours a day, sometimes four hours a day, sometimes ten hours a day, and sometimes not for weeks at a time

(see testimony, p. 36, line 10 to 30). It was but the work of a girl, and she paid him for it.

No rule of law will require of the wife the forfeiture of her title to her earnings, because she suffers her husband to work in her business, to an amount of less value than the board she furnishes him.

The utmost that in reason a creditor can demand, is, that if the debtor be earning more than sufficient fairly to support himself, his wife and family, the surplus be applied to his claim.

If the wife, in her separate business, accepted from the husband a voluntary application of such industry and business skill and talent as would, if applied in a business of his own, fairly afford a basis for gains, after supporting himself and family, it might with some reason be urged that, as against the husband's creditors, such acceptance would work a moral fraud at least, and that not only that proportion of the earnings resulting from the husband's industry, skill and business talent, over and above a fair allowance for his family's support, to be appropriated to the creditor's claim; but that as the wife had participated in the moral fraud of keeping such surplus from his creditors, and had confused it with her own earnings and property, they also should be subjected to the creditor's claim. But the cases do not go even to this extent in favor of the creditor, however just it might be considered morally.

No obligation rests upon the debtor to work for his creditors, as against earning bread sufficient for himself and his family. Nor does the wife, by accepting his labor or skill, in any shape, in her separate business, if *she pays him fairly* for his labor and skill in board and money or either—or by accepting his *voluntary* bestowal of labor and skill, in and about her separate business, if such labor and skill are that of a mere workman, or such as would not fairly lead to or afford a basis for an accumulation of property, above his own and his family's claim for actual maintenance—in any way or degree aid in working a

fraud upon the rights of creditors, or place her in a position from which her claim to his earnings, or her own, should be forfeited.

Quidort's administrators *vs.* Pergeaux, *et ux.*, 3 C. E. Green, 472, is not authority for complainant's claim. The Chancellor expressly bases his decision in that case upon two grounds; the

1st, That there existed a distinction in this State, by his interpretation of Skillman *vs.* Skillman, 2 Beasley, 403, and Johnson *vs.* Vail, 1 McCarter, 423, between the wife's right to the *earnings of her labor*, and her right to the *proceeds of her business or trade carried on by her with her separate property*; and that as she was not protected in carrying on a separate business, therefore the business, although hers *in fact*, was the husband's in law, and the profits his profits (see page 480). This notion is now cleared away.

2nd, That the evidence clearly showed, that the business was in fact the *business of the husband transferred to, and carried on in the name of the wife*, for the purpose of delaying creditors. And on this point Chancellor Zabriskie says: "There is no evidence in this case that the wife originally, or in 1860, put any of her separate property in this business, or that she had any separate property, beyond the sum of \$500 paid to Churchard. The only proof is in the answer, and beyond that sum it is not responsive; and there must be proof. And besides, the fact that the government license, the only means by which the business could be carried on, was taken out in his name, there is much other evidence to lead to the belief that the business was really *the business of the husband transferred to and carried on in the name of the wife* for the purpose of delaying creditors in recovering their debts. *I do not doubt that such was the fact.*"

Under these circumstances, there was no room in that case for the consideration of the question of whether a wife, carrying on a *bona fide separate business*, might, as

against creditors, permit her husband to labor for her like any other workman she might employ. And the conclusion come to in that case, and the remark made by the Chancellor while reasoning on the first ground of his decision, can have no application to this case, for the distinction there claimed was not law, as we shall show.

III.

The protection extended to the wife's earnings is not restricted to her earnings by her labor, in the narrow sense, in distinction from her earnings by her labor, in the broader sense, of carrying on a separate business with her own means, and with the consent of her husband.

Peterson *vs.* Mulford, 7 Vroom, 481.

Luse *vs.* Jones, 10 Vroom, 707.

This point is important, only, in case the earnings from the labor of Mrs. Wirtz should not be considered so nearly the whole earnings, as to be classed practically as the earnings of her labor in the narrow sense.

The first case recognizing a distinction between the married woman's status, in relation to the *earnings of her business* and the *earnings of her labor*, was Quidort's Adm'rs *vs.* Pergeaux *et ux.*, and that case founds such distinction upon Skillman *vs.* Skillman, 2 Beasley, 403, and Johnson *vs.* Vail, 1 McCarter, 423. But in Skillman *vs.* Skillman no such distinction was attempted. The earnings in that case were from keeping boarders, and from washing and ironing, covering both classes of earnings. What the Chancellor there says, is: "And even where a married woman carries on business in her own name, the avails of her business are not protected by *statutes similar to our own*, in relation to married women, but they remain the property of the husband, liable to be seized and taken in execution for the payment of his debts." Citing Freeman *vs.* Orser, 5 Duer, 476, as authority for the rule under the New York Statutes. But the latter case decided

at the same time that "the time, services, talents and industry of the wife belong to the husband, and are valuable in themselves. He has, therefore, as against creditors, no more right to part with them without a valuable consideration, than to make a voluntary settlement of any other property belonging to him, in fraud of his creditors." And, therefore, attempted no distinction between the two classes of earnings. And, further, the whole doctrine of *Freeman vs. Orser* has since been repudiated by decisions under the same statutes in the Court of last resort in New York, as we have already seen. And still further, the above extract from Chancellor Green's opinion was not at all necessary to the case he was deciding; for the decision was put squarely upon the ground that there was no evidence that the husband *intended* to give the earnings to the wife. (See pages 407 and 408.) And Chancellor Runyon, in distinguishing in *Peterson vs. Mulford*, the case of *Skillman vs. Skillman*, in Chancery, and in this Court, says: "In both courts the case was decided, on the ground that there was no evidence that the husband gave her earnings to the wife, or assented to her earning money and appropriating it to her separate use. In both courts, the fact that her earnings were expended on property of which the title was in her husband's name, without any understanding that it was for her benefit, was the turning point of the case."

There is nothing in *Johnson vs. Vail* which can be taken as a basis for the distinction in *Quidort's Administrators vs. Pergeaux et ux.* It is true, Chancellor Green there says: "It is not claimed that the statute has given the wife any right to deal with her separate property in the way of trade as a feme sole, *without the assent or agreement of her husband.* It has been so decided that it does not. (*Freeman vs. Orser*, 5 Duer, 476.)"

The rule of *Freeman vs. Orser*, as above modified by Chancellor Green, is not at variance with our contention. It was simply upon the question of assent that the sentence was used, for the Chancellor at once goes on to say: "Under the facts stated in the complainant's bill, the assent of the husband to the cultivation of the land by

“the wife, he living in the house and being engaged in other employments, will be implied.” And he grants the injunction, restraining the husband’s creditors from taking the crops raised by her and her minor children. This case certainly recognizes the right of the wife, with her minor children, to carry on the *business* of farming with the assent of the husband.

There can be no foundation in reason for the distinction in *Quidort’s Adm’rs vs. Pergeaux*. The reason given in that case, that there were certain restrictions upon her power to bind herself by contract in her business, is no reason why, if she did carry on such business with her separate property, and with his assent, that the business as well as the profits should be his in law. The statute of 1862 expressly contemplated her carrying on business, by providing a remedy against her on her contracts in transacting business. As to restrictions upon her power to contract, some of these remain even under our late Revision.

The rule laid down in *Peterson vs. Mulford* was intended to be a fair foundation, upon which the wife might, with the consent of her husband, be permitted to use her labor in the broadest sense of the term, for the interest of herself and her family, as against the claims of creditors of her husband.

It did not intend to inform the wife that she might labor at the wash-tub, the ironing board, in scrubbing, and in picking berries; but that she could not use her mind, as in teaching, or her management and tact as in carrying on a business. It did not mean that she might labor with her hands, but not with her brains, to keep herself and children from want.

It gave her the right to appropriate her earnings to her own use. It did not restrict the use. It did ^{not} intend that she might not, with a few dollars she might earn, buy a stock of papers and sell them, or buy ladies’ hats and trim and sell them, or buy a few apples and some candy and sell them, or learn the trade of a dressmaker, and buy materials, make them up in dresses, and sell them, or learn the trade of a ladies’ hairdresser and follow

it, and if her patrons became so numerous she could not attend to all herself, hire assistants; without forfeiting all to her husband's creditors.

In the case of *Luse vs. Jones et al.*, 10 Vroom, 707, the rule laid down in *Peterson vs. Mulford* has had an authoritative application, in its liberal and fair sense, by this Court.

In this case, the plaintiff, a married woman, carried on the business of keeping boarders, separately, for her own benefit, and with the consent of her husband. Her furniture was taken by the defendant under a writ of *fi. fa. de bon.* against her husband, and her business injured.

Plaintiff sued in trespass. The case came into this Court on a writ of error to the Supreme Court, and among the exceptions was one to the allowing the plaintiff to show that she carried on the business separately, for her own benefit, and with her husband's consent. Judge Dixon, in writing the opinion, says on this point: "The next exception was, because the plaintiff was "allowed to prove the arrangement between herself and "her husband, as to the proceeds of the boarding-house "business, which she claimed to be carrying on separately, "for her own benefit, with his consent. It is difficult "to see how more direct evidence of the hus- "band's consent could be adduced, than by showing "his actual arrangement, that she might conduct the "business separately, and take the proceeds to her own "use, and the propriety of establishing such consent, and "its legal effect in preventing the claims of his creditors "upon such proceeds, are conclusively settled by the case "of *Peterson, et ux., vs. Mulford*, 7 Vroom, 481. Since "the Married Women's Act of March 17th, 1874 (Rev., "p. 468, § 4), the husband's consent has not been requi- "site, but the business in controversy was largely or "wholly prior to that act."

M. T. NEWBOLD,
Counsel of Respondent.

IN CHANCERY OF NEW JERSEY.

Between

JOHN TRESCH,
Complainant,

and

JOHN M. WIRTZ *et ux.*,
Defendants.

} On Bill, &c.

20

Examination of Witnesses, &c.,

On the side of the complainant, taken before me, George Van Horn, one of the Masters and Examiners of the Court of Chancery of said State, at my office, No. 602 Newark avenue, Jersey City, New Jersey, on Saturday, May 11th, 1878, at 2 o'clock in the afternoon, in presence of Lippincott & Deacon, solicitors of complainant, and M. T. Newbold, solicitor of defendants, pursuant to notice. 30

JOHN TRESCH, a witness on the side of the complainant, being duly sworn on oath, was examined by Mr. Deacon, and gave evidence as follows: I am the complainant in this case; I reside at No. 405 West Fiftieth street, New York City; that is also my place of business; I live also in the same house; my business is a potter; April 1, 1873, I did business at Nos. 405, 407 and 409 West Fiftieth street, New York City; I was then in the same business, and have continued it to the present time; I know both Henry Beltz and John M. Wirtz; John M. Wirtz is one of the defendants in this cause; April 1, 1873, Mr. Beltz owed me money, but it was not on account of the partnership; I commenced afterwards to furnish to the partnership of Beltz & Wirtz; so far as I know 40

10 it was in July 1, 1873, that Beltz commenced their partnership; they continued in business as partners till January 15 or 16, 1874; I know these facts from the statement of John M. Wirtz; they were in the florist business; in that business they contracted a debt with me to the amount of over \$300; I sued them and got judgment for it in the Hudson Common Pleas; I had execution issued on the judgment, and it was returned unsatisfied; the money, nor any part of it, has been paid me; during the time Beltz &

20 Wirtz were in partnership their business must have been good; in my business I deal a good deal with florists; most of my business is with florists; I know something about the business of florists; about their profits; I know a good deal about it; I have been engaged in the pottery business thirty years in this country; the establishment of Beltz & Wirtz was located on Paterson street, Jersey City, on the Heights, just west of Summit avenue; their capacities for doing

30 business there was large; they had twelve lots of ground, with two dwellings on them, and eighty or more green-houses; they had room enough to set about 20,000 or more flower pots with plants in the green-houses; they had some hot-beds outside, with glass frames over them; they had two rows of hot-beds both together, about sixty feet long by about four feet wide; all the outer grounds in summer was planted with flowers; in the winter time they could only use the green-houses and hot-beds; while they

40 were in partnership they seemed to use the place to the extent of its accommodations; in the latter part of the summer of 1873, I know I was there twice, if not more; florists have their seasons; I can tell the extent of their business at the proper time of year by going there and looking round; I generally go around among most all of my customers about the first part of March every year; florists generally dispose of their stock from April 1st to the 1st of July; that is their best season; they prepare, after the end of one season, for the next—that is, for the fall of the year—

and after that they generally prepare for the whole 10
year; from this knowledge of their business, I am
convinced Beltz & Wirtz did a good business;
during that season while they were in business I
sold and delivered to them over 14,000 pots; they had
some pots on hand from the year before; some of
these they got from me; I had only known Wirtz a
month or two before he went in partnership with
Beltz; I had known Beltz six years or more; Mr.
Wirtz stated to me he had been in the hair jewelry 20
business in New York before he went in partner-
ship with Beltz; after he was in business in New
York, he went in business on Jersey City Heights;
he stated he did not do well in New York; after Jan-
uary 15th or 16th, 1874, Beltz was in possession of the
business; Henry F. Eveland bought out the business
from Mr. Wirtz—that is, Mr. Wirtz sold out his
share; I heard Wirtz swear to this; he said he
sold out for \$1,000; he said he sold out January 16,
1874; Beltz & Wirtz, while they were in business
together, erected a dwelling and some new green- 30
houses, and altered a barn to a dwelling-house, and
Mr. and Mrs. Wirtz moved into it; Mr. Eveland did
not pay me anything on my judgment; nor I never
accepted him as my debtor; at the time the firm of
Beltz & Wirtz contracted this debt, Mr. Wirtz had
other real estate in Jersey City, on the Heights; that
property was located on Sherman avenue; I heard
Mr. Wirtz say that he and his brother together paid
\$2,800 for the Sherman avenue property, and then
he bought his brother's share and paid his brother a 40
thousand dollars for it; he said he paid \$100 cash and
gave a mortgage for \$900; he said his wife gave him
the \$100; he said she gave him the \$100 with the
condition that he should give her that property
to repay her for the money that he got from
her for to go in the florist business; he said
he got \$3,000 to go into the florist business;
he said she carried on the hair-dressing busi-
ness and earned the money there; he stated
that he worked in the hair business, and assisted in it,

10 and said he got no money except his food and clothing; the Sherman avenue property is now in the hands of Mrs. Wirtz—Mr. Wirtz's wife; she has it in her name; it went into her name after my debt was contracted.

The last above question and answer objected to by defendant.

20 I heard Mr. Wirtz say that he held a mortgage on property at Union Hill for \$1,000; he stated that the maker of the mortgage paid \$500, and his wife, Minnie Wirtz, afterwards took a mortgage for \$500 in her own name; that is the way he said it was paid; he stated that he used that in the florist business; he stated that that florist business was worth \$5,000; he stated that he sold his interest for \$1,000; he stated that each of them had one-half interest in the business; I heard him make all of the above statements in this room
30 before one Van Horn in his last testimony on an order for discovery taken on October 2d and 9th, 1877, about the time and after this debt was contracted; I know Mr. Wirtz took other steps to dispose of his property; he tried to dispose of his business establishments, his stock and fixtures; the green-house, stock and fixtures he tried to dispose of too; he gave chattel mortgages on them to his brother, and chattel mortgages on the hair establishment, stock and fixtures to his brother-in-law, Mr. Lehman; the amount of the chattel mortgage
40 on the hair establishment is \$500, to his brother-in-law, is paid; I have seen that chattel mortgage.

Objection is made to the last above question and answer.

May 15, 10 A. M., Mr. Beltz and Mr. Wirtz together gave the chattel mortgage on the green-house, stock and fixtures to Mr. Anton Wirtz; Mr. Wirtz and his wife, Minnie Wirtz, gave the chattel

mortgage on the hair, stock and fixtures ; this mort- 10
gage given to Charles Lehman.

This last above objected to by counsel
for defendant.

Witness being shown two certified copies of
chattel mortgages, says they are the mortgages
above referred to by me [said mortgages are marked
Exhibits T 1 and T 2, on the part of the complainant
in this cause].

These mortgages are objected to by coun- 20
sel for defendant.

CROSS-EXAMINED :

April 1, 1873, Mr. Wirtz did not owe me any-
thing; about June or July, 1873, was the first I ever
seen Mr. Wirtz, at my store in New York; Mr.
Beltz and Mr. Wirtz came there to pay me a bill for
pots; the bill was over a hundred dollars, about
\$127, I think, or about that; they paid me in full up 30
to that date what Mr. Beltz did owe me; I believe I
delivered them pots in July, 1873, but I don't know
how many; my book will show; I don't know when
I delivered the next lot of pots after that; during
the period when Beltz & Wirtz were in partner-
ship I delivered to them a few over 14,000 pots; my
books show that 8,000 pieces were delivered before
January 15, and 6,000 afterwards; I remember the
amount because I looked in my book over 14 days
ago; I could not tell the amount without having 40
looked at my book.

Objected to on part of complainant, be-
cause the debt and judgment are admit-
ted by the defendant's answer.

I base my judgment as to the capacity of the green-
houses and hot-beds to hold 20,000 on the size of the
pots; 2½-inch pots we can set 196 in a square yard; 3-
inch pots 144; 3½-inch, 100 pots; 4-inch, 81 pots; 4¾-
inch, 64 pots; 5-inch, 42 pots; 5½-inch, 36 pots; 7¼-
inch, 25 pots ; 7¼-inch pots are the biggest size

10 that florists generally use; this is what I have
based my judgment on; in September, 1873, I saw
from four to five thousand pots, small and large, on
and under the benches in the green-houses, and on
the premises; these were over and above the 14,000
that I delivered; I commenced to deliver the 14,000
pots in July, 1873; I don't know when I delivered
the last lot of the 14,000, but think it was in Feb-
ruary, 1874; my books, however, will show; when
I was on the premises in September, 1873, I can't
20 tell how many pots there were on the premises; I
knew the pots they got from me; I can tell my pots;
they are press pots, and I know them from that;
when I was on the premises in September, 1873, I
don't know how many of the pots were filled with
plants; the contents of the two rows of hot-beds
contained nothing that I knew of in September,
1873; I don't know whether they had plants in them
any other time; I don't know and can't tell, because
I made no estimate of the number of plants in the
30 other ground; it was very nearly all planted; I
judged of the extent of the business of Beltz & Wirtz
by being there and looking around; I saw the quantity
of plants they had in, and the size of the green-
houses, and the amount of pots which they bought
from me; I call it a good florist business if they
make money; I don't know how many of those
plants I saw in September, 1873, were sold by Beltz
& Wirtz before January, 1874; from September,
1873, to January, 1874, there was not much sale of
40 plants, but cut flowers; I don't know what quantity
of cut flowers were sold by Beltz & Wirtz during
that period; don't know whether they sold any; I
know nothing about this; the best season for florists
is from April to July; according to Wirtz's own
statement, they, Beltz & Wirtz, went into partner-
ship in 1873, and went out in January 16th or 17th,
1874; there is not, that I know of, much sale for
plants from July 1, 1873, to September 1, 1873; they
sell some, but not much; the sale for cut flowers
during this period is not much; from December 1
to 15th of January is the most profitable period for

the sale of cut flowers; there is some demand for 10
 cut flowers during the period last named, because of
 the holidays and New Year's; there is quite a de-
 mand for cut flowers even up to April 1st, but the
 most profitable season is from Dec. 1st to January
 15th; I have not been looking over my direct testi-
 mony, as written down by the Master this morning;
 Wirtz did not tell me the hair business was his
 wife's, but he stated so in his testimony; I don't
 know anything of my own knowledge as to Wirtz
 going into the hair business, except only what he 20
 stated in his testimony, and I don't know that
 Wirtz received any of the profits of the business; I
 think that the florist business of Beltz & Wirtz, in-
 cluding the leased green-houses, the whole business
 and all their rights and interests on January 15th,
 1874, was worth between four and five thousand
 dollars, in my judgment; my judgment is that
 Wirtz acted like a foolish man, and sold out his in-
 terest greatly below its real value; this is my judg-
 ment about it. 30

Q. Should you judge, from the price for which
 Mr. Wirtz sold his share in this florist business, that
 he had made money or was making money at the
 time therefrom, or that he had lost money or was
 losing money therein, January 15th, 1874?

Objected to.

A. If Mr. Wirtz would have waited to the season
 for the sales of the plants would have come, then he 40
 would have made money, because the business is a
 season business; I infer, then, that at the time he
 sold the business he must have lost money, because
 he acted like a fool; he did throw away his money;
 I did not try to collect my bill from Beltz & Wirtz
 between September, 1873, and January 15, 1874,
 because I did not sell them on that condition; I sold
 them the pots on condition to collect the money on
 the following May 1, 1874. (Mr. Wirtz called on
 me twice personally, and represented that he was a

10 responsible man, and could pay the bill if Mr. Beltz did not; Wirtz called on me November and December.)

The above, inclosed in parentheses, objected to.

Mr. Beltz has never paid any part of this claim of mine; I have never made any terms in the least, whatever, with Mr. Beltz, as to settling or releasing him of my claim against him; I knew Mr. Wirtz
20 at the time this debt was contracted owned other real estate on Sherman avenue; I know this from his own testimony; I identify the other two chattel mortgages because I saw the originals on record in the Register's office.

Q. Do you know whether Mr. John M. Wirtz had any interest in the hair establishment at the time he gave that \$500 mortgage to Lehman?

A. I believe it was his.

Q. Do you know of your own knowledge it was
30 his?

A. I believe it was his.

Q. Do you know beyond your belief?

A. He told me so himself in November or December, 1873; he said he had a business up in Hudson City; I believe he said upon the hill, and real estate; he did not say what the business was; I don't know beyond what he has stated whether Mr. Wirtz had any interest in the hair business or not.

40 RE-DIRECT:

At that time Mr. Wirtz was not in any other business than the hair and florist business that I know of; I heard him state in his examination before Mr. Van Horn that he was in the hair business.

Q. You have stated that plants come to their chief value at certain seasons for sale; have they no value before the arrival of these seasons?

A. The value is the same, but they can't sell if in the middle of the winter; at the end of one season they provide the young plants to be grown for sale at

the next season; I heard Mr. Wirtz state, or swear 10
that he sold his interest in the business for \$1,000;
the chattel mortgage (Exhibit T 2) was on the stock,
green-house stock and fixtures at the time Mr. Wirtz
sold.

Objected to as incompetent.

RE-CROSS-EXAMINED:

I know the money was still due on the chattel
mortgage at that time; I know it because they had 20
a lawsuit about three or four months afterwards.

J. TRESCH.

Sworn before me, May 11,)
1878, and subscribed to)
May 22, 1878.

GEO. VAN HORN,
Master in Chancery.

EDWARD HASTMANN, a witness on the side of the 30
complainant, being sworn, testified as follows:

I reside at No. 385 Garden street, Hoboken; I have
resided there six months; about four years ago I re-
sided on the Hill; I am a drawing teacher; my occupa-
tion four years ago was drawing teacher and flor-
ist at the same time; I know John M. Wirtz; I have
known him since 1872 or 1873; I had one business
transaction with Mr. Wirtz; that was, I went secu-
rity for Mr. Beltz for \$50; Mr. Beltz wanted \$50
from me, and I say I could not spare the cash for 40
some weeks; Mr. Beltz told me to go only security;
then we came to Mr. Wirtz; Mr. Wirtz was satis-
fied when I told him I would pay him; that's all;
\$50 was the sole amount that I went security for;
Mr. Wirtz was in the hair store at the time; I did
not see the money pass; Mr. Beltz did not pay the
money to me.

CROSS-EXAMINED:

Q. Who did you go security to?

10 A. I don't know; I was fooled.

Q. Did you pay any money to any one at that time?

A. That's what I don't remember; I don't recollect what Mr. Beltz said he wanted the \$50 for; I did not owe Mr. Beltz money at that time; I don't recollect what I told Mr. Wirtz I would pay him; I can't recollect anything about the transaction.

RE-DIRECT:

20 I did not pay the money to Mr. Beltz; I paid the money it was in Mr. Wirtz's store; but I don't recollect to whom I paid it; after I paid it I got a paper; that is my impression.

Objected to.

I know Mrs. Wirtz now; I have known her since Beltz and Wirtz separated; I only saw her once before they separated; I don't recollect whether I paid this
30 money, this \$50, to Mrs. Wirtz; I don't recollect who was in the store when I paid the money; I had never been in the store till I came there to pay this money; Mr. Beltz took me to Mr. Wirtz; so Mr. Wirtz was there when I went security; I intended to go security to him.

E. HASTMANN.

Sworn and subscribed before }
me, this May 22, 1878, at }
40 Jersey City.

GEO. VAN HORN,
Master in Chancery,
New Jersey.

PHILIPINA GEFFINGER, a witness on the side of complainant, being duly sworn on oath, saith: I reside at 44 Manhattan avenue, Jersey City; I have resided there sixteen years; I know John M. Wirtz, and have known him about five years now; I know Mrs. Minnie Wirtz, his wife, about same length of time; I am a hair-dresser, and learned the trade

with Mrs. Wirtz, the defendant; I learned the trade 10
with her on Palisade avenue, in Jersey City, about
four years ago; at that time there were employed
in the hair-dressing establishment on Palisade ave-
nue, three persons, viz., Mr. and Mrs. Wirtz and
myself; I started to work at eight o'clock in the
morning each day, and generally worked till six
o'clock, but left whenever I felt like it; I was there
in the house all the time each working day; Mrs.
Wirtz was not always there at work, she went out
to do hair-dressing, and I stayed in the store while 20
she was out; Mrs. Wirtz did the household work,
cooking, etc.; if she had no time to do it, I did
it; Mrs. Wirtz had five rooms and a store fur-
nished in the house; Mrs. Wirtz was most of the
time engaged on hair work; Mr. Wirtz, while
he was in the florist business, did nothing at
all in the house; Mr. Wirtz before he went into the
florist business worked at the hair business; after
he came out of the florist business he worked at the
hair just as he felt like it; I was paid for my ser- 30
vices there; Mrs. Wirtz paid me for my services;
she always paid me; Mr. Wirtz never gave me any
orders about my work; I always took the orders my-
self; Mrs. Wirtz controlled the house there; I don't
know what Mr. Wirtz's position was there; whether
he was employed by his wife or not; the fight al-
ways was about the money; he always wanted
more than he got; I could not say whether I ever
see him take any money from the drawer; I could
not say anything about that; when money came in 40
the store I took it and put it in the drawer; I never
saw Mr. Wirtz keeping any accounts there; I don't
know that any accounts were kept; we were all
three of us employed there steadily all the year
round; I couldn't say who bought the stock; I never
heard Mrs. Wirtz say who bought her the business;
I never saw Mr. Wirtz selling goods to customers,
because I always did that myself; I never heard Mr.
Wirtz give any directions about the business to Mrs.
Wirtz; I never heard Mrs. Wirtz give any direc-

10 tions to him about the business; I never heard her
 order him around; I am on friendly terms with the
 Wirtzes; always go to see them; have not worked
 for them for a year; I do not now occasionally work
 for them, except that I go there if I am idle, see
 that she has a great deal to do, then I help her out;
 I do know John Tresch, the complainant in
 this cause; I seen him once, and that is about all; I
 have received no pay from either of the Wirtzes for
 any work done this year; whatever I did I did with
 20 my own free will; they have given me no presents.

PHILIPINA GEFFINGER.

Sworn and subscribed before }
 me, May 22, 1878, at Jer- }
 sey City.

GEO. VAN HORN,
 Master in Chancery,
 New Jersey.

30 MONDAY, May 27, 1878, at 11 o'clock A.M., exam-
 ination on the side of complainant resumed.

HENRY BELTZ, a witness on the side of complain-
 ant, being duly sworn on oath, saith: I reside at
 Bayonne City, New Jersey; I have lived at Bayonne
 City about four years; in the year 1873 I lived at
 Hudson City; I was in the florist business at Hud-
 son City in 1873; before 1873 I was in business on
 my own account, and then went into partnership
 40 with John M. Wirtz; I went in partnership with
 Mr. Wirtz in August, 1873, I believe; I continued
 in partnership with him from August till January,
 1874; while in partnership with Mr. Wirtz we con-
 tracted a bill with complainant; that bill was con-
 tracted for pots and pipes; I don't recollect the
 amount of it exactly; it was for from ten to fifteen
 thousand pots; I don't recollect the amount by the
 bill what they cost; at the time Mr. Wirtz went
 into partnership with me it was in the summer, and
 there was not much doing; we commenced at that

time to prepare for the fall and winter trade; 10
we built green-houses, frames, propagated flow-
ers; we did not at that time fill in stock
to grow for the season; we would begin at the
end of September—to do that; we would begin in
September to fill up our green-houses; our stock
from that time would begin to increase in value; it
is hard to tell what was the value of our stock that
we had in our green-houses on January 1, 1874; it
was worth then several thousand dollars; it was not
worth four thousand dollars; it may be near three 20
thousand dollars or less; I only include the stock
alone, not the green-houses and fixtures; part of the
green-houses were on the place when I took posses-
sion of the place, and before we went into partner-
ship; the rest of the green-houses me and Wirtz
built; the most part of the money that was put into
the business Wirtz brought when we went into
partnership, and some we borrowed, and I believe
the rest we owe yet; I can't recollect how much
Wirtz brought and put in it; I can't come near it; 30
he put in more than \$1,000; I think it was more; he
did not put in as much as \$3,000; we gave a chattel
mortgage for the part we borrowed to a brother of
Mr. Wirtz; I believe his name is Louis; we gave that
chattel mortgage for \$500; this mortgage might have
been given to Anton Wirtz; I think it was Anton
Wirtz; we altered the barn into a house; Mr. Wirtz
and wife occupied that building that was changed
into a house; we had, while in partnership, most all
the green-houses filled; we raised plants under 40
frames outside; we used all the grounds lying around
outside of the greenhouses for other purposes; the
capacity of our green-houses, I believe, we could set
about from twenty to twenty-four thousand pots in
all the houses; the capacity of our frames outside of
the green-houses, I believe, they were six by one
hundred and twenty-five feet, more or less; the
whole ground that we had there under cultivation
must have been nearly a whole acre—twelve lots; I
can't say that we derived any profit from our busi-

10 ness while Mr. Wirtz was in partnership with me; it was not the proper season is the reason why we did not derive any profit; we never have much profit at that season; there was a value on the stock on hand at the time Mr. Wirtz sold out to be realized at some future season; I should calculate that everything was worth \$4,000, more or less; I should think that value of the establishment at the time Mr. Wirtz came into partnership with me was worth at least half that amount—
20 more than half; the spring of the year would be the time I would sell those plants that were on hand at the time Mr. Wirtz went out of the business; I don't recollect what I sold them for in the spring; I can't come anywhere near it; Wirtz kept the books of the firm while we were in partnership; afterwards went out of the partnership; Mr. Eveland got possession of the books; Mr. Eveland is the man to whom Mr. Wirtz sold his share; I had known Mr. Wirtz about a year before I went into partnership with him; Wirtz was in the hair business at
30 that time on Palisade avenue, Jersey City; he was not in any other occupation, to my knowledge, than the hair business at that time; I had business transactions with Wirtz before I went into partnership with him; it was a money matter; I had money of him; I borrowed money of him at different times; it would altogether amount to several hundred dollars; once in awhile I gave notes for those moneys borrowed of him; I gave those notes to Mr. Wirtz;
40 I never, to my recollection, borrowed any money of Minnie Wirtz, his wife; I never gave her any notes.

Q. Do you know of his having any other moneys?

A. I know he helped a friend here and there when he could; I mean by helping a friend, that he did not make it a business of loaning money; I know he did not derive any profit out of the moneys he loaned to me; I don't know whether he charged anyone else anything for loans; I went to Mr. Wirtz's house on Palisade avenue before he went into business with me; I went frequently; passing the house,

I went in; I found Mr. Wirtz at work there; he was 10
 working at hair, his business; I was in friendly re-
 lations with him; I found him generally steadily
 employed at his work most of the time; I had known
 Mrs. Wirtz, his wife, about a year before I went
 into partnership with Mr. Wirtz; when I went to
 the house I used to see Mrs. Wirtz there; she was
 employed on the same business; I saw Mrs. Wirtz
 always attending to the household affairs; when
 Wirtz and I went out of partnership, I collected the 20
 books and accounts; there was very little or no
 money to collect; the money that was taken in the
 business was used to pay bills with; I had to use
 some; Mr. Wirtz took very little, on account of
 having enough of his own.

Q. What do you mean by saying that Mr. Wirtz
 had enough of his own?

A. Well, I seen he had money and drawed very
 little out of the business, not enough to keep him up;
 Mr. Wirtz did not go out of the business while I
 was in debt to him. 30

Q. How did you settle with Mr. Wirtz, if he did
 not draw his share out of the business, and you were
 not indebted to him when he went out?

A. Well, he sold out as the business stood to
 George F. Eveland; that's all I know.

Q. Do I understand you to mean that he sold to
 Eveland the moneys he was entitled to receive out
 of the business, if any?

A. I don't know what contract they made; what
 paper they made out; I had no accounting with Mr. 40
 Wirtz at the time of the sale; I never had any
 trouble with Mr. Wirtz about not paying him his
 share out of the business; he never asked for an ac-
 counting from me; Wirtz kept the books and access
 to them; he did the whole writing; I went out of
 the business about July or August, 1874; I sold out
 to Eveland; I don't know how long Eveland con-
 tinued in business; I don't recollect the day I
 sold out to Eveland; while we were in busi-
 ness together Mr. Wirtz devoted some of his time

10 to the business; he did not devote all of his time to the business; he was not engaged in any other business except the hair business; he was working quite some at that; I don't know why Wirtz sold out the florist business; in a few words, I wanted him to attend a little more to business; he asked me to buy him out; I asked him to buy me out; I did not buy, and so he sold to Eveland; I told him to attend more to the business, because he wasn't much there at the time he was needed; he did not give me any
20 other cause of complaint; I heard the testimony of Edward Horstmann the other day.

Q. You heard him speak of a loan made to you, in which he went security for you; explain the transaction.

Objected to as incompetent and immaterial.

A. On the 15th of November, 1872, to January
30 6th, 1873, he run up a bill with me of \$52.76, and from January 6th, 1873, to February 26th, a bill of \$7.84; he gave me a note for \$50; that was December, 1872, which note Mr. Wirtz cashed; that's the whole transaction I had with Mr. Horstmann; Mr. Wirtz discounted that note.

Q. When you were borrowing money of Mr. Wirtz, where did he get that money from?

Objected to as incompetent.

40 A. I can't say where he got the money from; all I can see he had it in the pocket; I don't know if he ever went to anybody else and asked for the money.

CROSS-EXAMINED:

I used to sit on a chair when I went to see Mr. Wirtz on Palisade avenue; sometimes I sit in the front room, and sometimes in the kitchen; I went to see Mr. Wirtz; I sat in the store; the front room

was the store; I used to, once in awhile, when I 10
 went there, play cards with Mr. Wirtz; I don't
 know that I bought anything at the store; my wife
 did; I saw her buy; I don't remember now what it
 was; Mrs. Wirtz at that time, I believe, sold it to
 her; it was previous to my going into partnership
 with Mr. Wirtz; I believe my wife had some hair
 fixed; while Wirtz and I were in the business to-
 gether, Wirtz used to come up to the place of busi-
 ness every day faithfully at the start, I must say;
 he generally remained there the whole day till we 20
 stopped at night; as soon as the houses and frames
 were finished, which was in September or October,
 I noticed he began to get slack; in November he
 was there every day, and did not stay long; he was
 there sometimes the whole day; in December, he
 was living on the place; I was there every day in
 December; I had to stay sometimes day and night,
 during the time I was in partnership with Mr.
 Wirtz; I can't tell how much was sold; I did not
 sell all that was sold; Wirtz sold too; there was not 30
 much sold, but I can't state how much; I sold out
 to Eveland for the same price; Mr. Wirtz sold
 \$1,000; Eveland gave me a note, and he didn't pay
 it; he gave Wirtz a note for his \$1,000, and he didn't
 pay that, so I hear.

Objected to.

I was the maker of the notes—some of them—on 40
 which I borrowed money of Wirtz previous to our
 going into partnership, I borrowed of him pre-
 vious to going into partnership; altogether, \$200
 or so; the partnership was a losing operation for
 both of us, and we lost considerable, both of us, by
 being in it; I had four cents left when I left Hudson
 City after coming out of it.

RE-DIRECT:

I can't say whether it was two or three hundred

10 dollars that I borrowed of Wirtz; I can't say; don't remember.

HENRY BELTZ.

Sworn and subscribed)
before me, this May)
27th, 1878.

GEO. VAN HORN,
Master in Chancery.

Adjourned to June 6, 1878, at 10 o'clock A. M.,
20 at which time and place the examination was resumed.

MINNIE WIRTZ, one of the defendants, was called on the side of the complainant, and being duly sworn on oath, testified as follows: Am one of the defendants in this case, and wife of John M. Wirtz; I was occupying the same house with my husband in 1873; at that time we resided at 404 Palisade
30 avenue, Jersey City; I am living opposite now, at 403; two years last May was when we removed from 404 to 403; we lived about two years before 1873 at 404; before we lived at 404, we lived on same block on Palisade avenue, but further down the block; I lived there three years; previous to that, we lived on Sherman avenue; I resided on Sherman avenue about two years; previous to moving to Sherman avenue, I lived at home; it was before I was married; while I lived on Sherman avenue, my husband
40 was in the hair jewelry business in New York in partnership with his brothers; that was when I was first married; I was married about eleven years ago; my husband continued in the hair jewelry business about one year after I had started business on Palisade avenue; I moved to Palisade avenue when I started business; I moved from Sherman avenue to Palisade avenue; it was in April, 1868, when we moved from Sherman avenue to Palisade avenue; my husband at that time owned the house on Sherman avenue with his brother, Louis Wirtz; there

was a mortgage on the house for \$1,300; I believe 'tis standing; the property was bought then for \$2,800; my husband paid \$750 on this Sherman avenue property; he had no other property at that time; he had no stock in his store in New York to my knowledge; they worked for wholesale stores; I did not bring any money or property to my husband when I was married; at the time I started in business I had no property; I started business on some money that I earned from Stewart's, on Broadway, and some that I borrowed from Louis Wirtz; it was about a hundred dollars or so, that I earned from Stewart's, on which I started business; it was about that; I wouldn't say exactly; I borrowed about \$150 from Louis Wirtz; it was about that; I couldn't say exactly; I can't say whether my husband asked the money from Louis Wirtz, or whether I did; if he did ask it, it was for me, and I paid it back to Louis Wirtz; I borrowed it in April, and repaid him in January, right after New Year's, with interest; I repaid it out of the profits of the business; while I lived on Sherman avenue my husband supported his family; we both worked for the support of the family while on Sherman avenue; I was employed in sewing for Stewart, on Broadway, at that time; I did my work at home, and not at Stewart's place of business; I had not worked at the hair business of any account before I started in business on Palisade avenue; I spent three months in learning this hair business in New York; Mrs. Rosenthal taught me business on Eighth avenue; my husband, during that first year that I was in business on Palisade avenue, worked continually at his business in New York; he did not assist me any; I lived at that first place on Palisade avenue about three years; after quitting business in New York my husband was not engaged in any business; he assisted me at home when he could; I maintained him during that time; the last year of the three while in business at the first place on Palisade avenue; help,

10 a young lady; I did a good business during these three years; I done a good business from the commencing; during that time I paid my husband no salary for his services; I gave him what he needed; he did not keep my accounts for me; I had no accounts to keep; if he wanted any money he had not the privilege of taking it without asking me for it; my husband had no experience at all in the business that I was at; he was in another branch of the business—hair jewelry, a different kind from mine entirely; in my business no gentleman can do that; he
20 had worked at his branch of the business quite a number of years; he did very little in his branch at my place on Palisade avenue; when he did anything in my line the profits went into the general fund; the first year I gave the orders to them in New York for the hair jewelry, whatever was ordered, although it was very little, and paid them for it; after he went out of business, whatever he done for, and in the hair jewelry the proceeds went
30 into the common drawer; we had no account; when he needed money I gave it to him; the hair jewelry was never of much account *when* in my business; the line of my business was ladies' hair dressing and ornamental hair work for ladies only; by hair dressing I mean dressing hair on the head; the most of my business consisted of that work; by ornamental hair work I mean such as switches, curls, puffs, &c.; I don't know of any establishment where ornamental work is done exclusively by gentlemen; I could not say what I made a day in that
40 business; some days I would only make a dollar, and some days I would make twenty; I never counted what my business averaged a month; I never kept any book; I kept no book account during those three years; I first made an investment in that mortgage to Mrs. Huffnagle; that was while I was in business at the first place, on Palisade avenue; I believe that was the last year before I moved to 404; I believe I paid on that mortgage \$1,000; I believe, I couldn't say; I had earned all that money in my

business during the three years; I had no other 10
 money as profit over and above my expenses; re-
 ceived no part of the \$1,000 from my husband; I don't
 think he could give me any; I have always paid
 cash for all I bought, always; I was not in debt at
 that time, but was even with the world; I had been
 at the sole expense of the household during that
 time; from there I went to 404 Palisade avenue, and
 I continued there four years; my husband remained
 idle until he went into the florist business in July,
 1873; up to the time he went into the florist business 20
 he continued working as before in the same man-
 ner as before, from time to time; most of his time
 was not taken up; he remained in the florist busi-
 ness till January, 1874; I did not by reason of the
 sale made by my husband of the florist business in
 1874 get any of the money; when he went into the
 florist business I advanced him money; I advanced
 him about \$2,000, or more; I couldn't say exactly;
 he never paid me that money; he made an agree-
 ment with me that he would sell me the house on 30
 Sherman avenue, his part and Louis' part; that
 agreement was made in the summer of the year he
 went into the florist business; it was when I gave
 him the money; I suppose it was before he went
 into the business; I couldn't say; at that time
 he was not the sole owner of the prop-
 erty; Louis still owned it with him; during
 the course of the business I gave him money
 continually; but to what amount altogether I could
 not say; I gave him from \$5 up to \$50, at 40
 times; he did not bring to the house, for the use of
 the house, any money from his business; he never re-
 paid me any of these amounts; that agreement that
 I have spoken of to convey the house on Sherman
 avenue to me, was not in writing; my husband got
 the money from me that he paid Louis for his share
 of the property; it was \$900 mortgage, and
 \$100 cash; I couldn't say to whom that mort-
 gage was given, whether to me or my husband;
 that mortgage has been paid; I think I paid the last

10 of it last year; it was before New Year's, 1873, that I gave the \$100 for the mortgage; I couldn't say what time in the year it was; it was in the fall; the \$150 I gave him was to pay a bill for windows in flower-house; when I gave him the \$100 I could not say that I told him it was for that particular purpose; I know he received it.

Objected to as not responsive.

20 I did not, during that period of four years, loan any particular sum of money; before my husband went into the florist business I gave him some money for Mr. Beltz; before that time I did not give him any money for any other person; I did not, during these four years, have any other moneys except the moneys I had on mortgage and the moneys I gave him; the Sherman avenue property was conveyed to Charles Lehman, and he conveyed it to me; I did not pay Charles Lehman any
30 money on the property; there was no other consideration; there was no other consideration for the conveyance from my husband to Lehman and from Lehman to me than the agreement made between my husband and me that he would convey to me his interest in the property on account of the money I advanced to him in the florist business—the \$900 mortgage I paid Louis, and the \$100 cash; I got no money out of any place but my business, except the \$500 I borrowed from my brother, Charles Lehman,
40 on a chattel [marked Exhibit F on side of complainant]; I repaid this mortgage out of my own money, but when, I couldn't say; the papers will show this \$500 that I obtained on this mortgage; I gave some of it to my husband to pay bills—his bills; they were his debts after he left the florist business; I used the balance for my business; I could not say exactly how much profit I made in my business from July 8th, 1872, to July, 1873; I have no idea; I kept my money at home most generally; I did not deposit any of it in bank not until later; I commenced to deposit it in bank in 1873—at the end of 1873—in the New York Sav-

ings Bank; I deposited in that bank after that 10
 continually; I will produce my bank-book here at
 the next examination if I can find it; I had
 \$2,000 altogether, in different places, and I drew
 it in and paid over to him; Mr. Taube had \$75, I
 think, but he only paid me \$40; the others I
 could not say; these were the largest amounts; Mr.
 Beltz had \$300, but he did not pay, and this went
 into the account of \$2,000, that was all; the rest
 I had in the house; I had about \$1,800 in the
 house at that time, besides what I last asserted 20
 about these; I didn't have the \$1,800 right away;
 I couldn't say exactly how long; I had not had it a
 year; the whole amount I had about one month; I
 had it about June 1st.

Q. Did any one pay you any portion of that
 \$1,800 about that time—June 1st?

A. I couldn't say.

Q. Where did you get it?

A. I had it at home, and took in money contin- 30
 ually, and couldn't say from whom particularly.

Q. How much money had you in the house six
 months before that date?

A. I couldn't say.

Q. Did you have any?

A. Yes, I had some.

Q. Did you have \$1,000?

A. I cannot swear to anything of that kind.

Q. Had you invested any money since Mrs. Huff-
 nagle gave the mortgage?

A. No, sir; the date of the Huffnagle mortgage 40
 was July 8, 1871.

Q. Had you been saving your earnings from the
 date of the Huffnagle mortgage to July, 1873, with-
 out investing them before that time?

A. I didn't invest any; I didn't invest any on in-
 terest excepting that mortgage.

Q. Did you let anybody have any without paying
 interest for it?

A. Those that I mentioned.

10 Q. In what shape was this money, bank notes or coin?

A. Bank notes.

Q. Where did you keep it, in a drawer?

A. In a drawer.

Q. Did you ever count it over?

A. No, sir.

Q. Did you put it in the drawer just as you received it from your customers?

A. No, sir; I put it in every evening after closing up.

20 Q. Did you take out what you needed for your household expenses and your business?

A. Yes, sir.

Q. Did you ever, on these occasions, look to see how much you had saved up?

A. No, sir.

Q. How large was your drawer?

A. It was in one of those large bureaus, in a small drawer at the top, it was.

30 Q. How wide was that small drawer?

A. About eight inches wide, by fifteen inches in length and six inches in depth; there was a lock on the drawer; the drawer was never full of money; a \$20-bill was the largest bill I had in it; when I paid the \$17 to my husband, I counted it out to him; all this money came from my business; I received none from any other quarter; my husband during that time did not, to my knowledge, receive money from any other quarter; I made most of this money
40 from dressing hair on the head; to a great many of my customers I had to go, and a great many of them came to me; some of my customers were occasional, and some were steady; they were from Hoboken, West Hoboken, South Bergen, Jersey City, and all round here; my charge for dressing a head of hair was, if they came to the store, fifty cents, and if I went out it was a dollar a head; I dressed from one head up to thirty or forty heads a day; I think I have dressed more than thirty heads of hair for more than ten days in a year; I did

more hair dressing in certain seasons of the year than 10
 in others; there were not many days in the year that
 I did not dress any heads; my busy seasons were
 from the commencing of November until the end of
 April, and sometimes May; during those seasons I
 could not say how many heads of hair on an average
 I dressed; I often had to commence early in the
 morning and continue till late at night, till 12 o'clock;
 I did my housework on these occasions, and a young
 girl that I kept; I can't give an idea how much
 money I made on an average in a month or a week; 20
 I couldn't say if I made \$200 a month at my business,
 as I kept no account; I couldn't say how much I did
 make.

Q. You might have made that amount ?

A. I couldn't say.

Q. Can you not judge from your circumstances at
 different times how much you were making ?

A. Around New Year's I often had \$200 of
 a Saturday night; I had made that in a single week;
 that is, the money that would come in in a single 30
 week, including switches and all; I did as good a
 business as that more than one week in a year; not
 a great many weeks.

Q. Was the neighborhood in which you did busi-
 ness a poor or wealthy neighborhood?

A. I couldn't say whether it was poor or wealthy;
 the appearance of the people is, that they all seem
 to be very nice; it is what is called Washington vil-
 lage; Frederika Huffnagle repaid a portion of that
 mortgage; the mortgage was \$1,000; she repaid 40
 \$500 of it; she repaid \$500 of it to me; I
 couldn't say whether it was the end of 1873, or the
 commencement of 1874, that she repaid it; that
 money I gave to my husband to pay his debts about
 this nursery business, I guess; it was at the time at
 least; five or six hundred dollars worth at least was
 the amount of the stock I carried in my store;
 I had no other property at that time, except
 that on Sherman avenue; the house I now live
 in I own, but 'it is built on leased ground; at

10 the time I loaned my husband this \$2,000 he did not offer to secure me in any other way than by giving me a deed of the Sherman avenue property; I did not intend to give him that \$2,000 without his giving me anything back for it; he was to repay me with a house; I wanted him to give his part and Louis's part to me, because I always wanted my money invested in that house; I know at that time my husband had only \$750 on that house; I know now, but did not at that time know,
 20 that Louis and wife had conveyed that house to my husband on March 5, 1873.

Q. How came you, then about nine months afterwards, to give Louis a mortgage for \$900?

A. I found it wasn't paid for yet, his share, therefore I gave him that mortgage to secure him.

Q. Who did you expect to pay for it?

A. I expected my husband to pay for it; I expected him to earn the money in that florist affair; when I paid the \$2,000 I had some money left
 30 in my drawer; I could not say how much I had left; I had not \$300 left; it was in the hundreds, but it was not \$200; my business from that time on continued good, and as profitable as before; it is still in a flourishing condition; I can't say how much money I have made since then; I have only built that on leased ground and paid that second mortgage of Louis Wirtz's of \$900; I have no money to invest now; I built the house in spring of 1876; Henry F. Eveland is not re-
 40 lated to me nor to my husband; Eveland did not marry a Wirtz; he is no relation whatever; I occupied the house on the nursery only a short time, a month or so; it was in the winter near New Year's; while living there I carried on the business at 404 Palisade avenue; the Huffnagle mortgage was \$1,000; I paid \$1,000 on that mortgage in bank notes to Mr. and Mrs. Huffnagle; they were in my house, but couldn't say whether before or after the execution of the papers; I really don't know who made out the papers, but think it was Mr. Bratzfeld; I

could not say why it was made out in my husband's 10
name; I have not that bank book with me; I think
they took that in when they paid me the money; it
was only a small amount, about \$100; I never had
more than \$100 on that book; I deposited my money
in the savings bank at that time, was because I had
no steady home; I lived up at the florist and
did my hair business at the other place ;
I don't think I got any interest on my money
that I deposited in the savings bank; I did not have 20
my money long enough in the savings bank to draw
interest; it was a bank on the Bowery, but could not
say where; I made the deposits myself; I drew my
account out of that bank after New Year's, at the
commencement of 1874; Mrs. Kennard is the name
of one of my customers that I did business for, and
do business for her yet; Mrs. Steel, Mrs. Heppin-
heimer, Mrs. Tausic, Mrs. Staples, Mrs. Rogers,
Mrs. Ferretts, Mrs. Wood, Miss Brickenstein; there
is but few around there that I haven't worked for;
I can't remember all their names; these are those 30
that I have worked years for; they are what I call
my regular customers; I have a great many custom-
ers at South Bergen at present, but hadn't at that
time; there is another hair dressing establishment
in that neighborhood besides mine; Mrs. Shepherd
keeps it, and she is at present opposite mine; she
was in business at the time my husband was in the
florist business; I don't think Mrs. Shepherd did as
good a business as myself; there was another hair
dresser there for a month or so, but is not 40
there now; could not say what year that
was, but 'tis quite awhile ago; there is one
hair dresser in Hoboken that I know of; I guess
there are a good many hair dressers in Jersey City
proper, but I don't know; I don't know whether
there are any hair dressers in Bergen; Miss Giffin-
ger did the work at times, but I had women to do
washing and cleaning, at times; Miss Giffinger as-
sisted me in all the work; I could not say how much
stock I got in during a month or a year on an aver-

10 age; my business was as prosperous from 1871 up to July, 1873, as it had been before 1871; it was never prosperous from July, 1873, to February, 1874, than before.

Q. Do you mean to say that your business was as prosperous during that time over and above all your losses?

A. I always had enough, and I always had to give a great deal of money to my husband, for he never got any out of the florist whatever, but was in need
 20 of great deal; I could not say when the last payment was that I made to my husband on account of the florist business; some of those moneys were to pay for work done on windows, but I couldn't say the amount; it was several hundred dollars; I gave him from \$25 to \$200 at a time, and even \$500, to take up that mortgage of Huffnagle's, which he had; there was never a month passed without my giving him money; when I speak of these moneys, I don't mean that they are
 30 a part of the \$2,000 that I let my husband have at the start; I built my house, No. 403, on leased ground, two years ago—1876; the building cost about \$1,000; the building is all paid for, except \$50; \$50 is due on it yet; this \$50 has been due since April last; it was for some more improvements that we made in the house; the cost of improvement and repairs was about \$200 since I have had the house, and my business is just as good now, and has been from January, 1874, to the present time—in labor;
 40 there is just as much labor, but the labor don't bring the price that it did before; I did not dress a dozen heads last week, but dressed more than five; I could not say how many; I dressed, last Sunday, Miss Werder's hair, and several young ladies from the factory, and during the past week I dressed several wedding parties' hair.

1879, February 19th. Parties, by their counsel, appeared, and complainant's counsel announced

his side of the case closed; consented that Mrs. 10
Wirtz should be hereafter cross-examined.

CROSS-EXAMINED:

Witness being shown chattel mortgage made by
her and her husband, to Charles Lehman, dated
March 5, 1874, says it is the mortgage given by me
and my husband to Charles Lehman for \$500 I got of
him; said mortgage is marked Exhibit W 3, on the
side of the defendants; the bond and mortgage that
I gave Louis Wirtz for \$900 was paid in the fall 20
of 1875, and was paid with \$400 and the chattel
mortgage, marked Exhibit W 3, above stated; I
paid Lehman the \$500 on the bond and mort-
gage; that, with the \$400 cash, made the \$900;
the \$900 mortgage was cancelled; I paid Louis,
on the \$500 chattel mortgage, \$200; George
Glaubrecht is dead; I have the signature of my
brother; an assignment from Charles Lehman to
Louis Wirtz, dated October 6, 1875, assigns the chat-
tel mortgage above mentioned; said assignment is 30
offered in evidence, and marked Exhibit W 4, on the
side of defendants; Exhibit W 4 is the assignment
made by Lehman to Wirtz when I paid Lehman
the \$500 that was due on it; the \$200 paid
Louis on the chattel mortgage was paid during
the years 1876 and 1877; the chattel mortgage was
then assigned to Stephen Kessler for \$300, which
was due to Louis Wirtz. Said assignment to Kessler
is offered in evidence, and is marked Exhibit W 5
on the side of the defendants; Kessler has been paid 40
the balance due on this.

RE-DIRECT :

Kessler was paid this morning; I paid him with
my own money.

MRS. MINNIE WIRTZ.

Sworn and subscribed before)
me, this May 12, 1879, at)
Jersey City.

GEO. VAN HORN,
Master in Chancery,
New Jersey.

10 EXHIBITS FOR COMPLAINANT.

Exhibit T 1.

May 22d, 1878.

Chattel mortgage from John M. Wirtz and Minnie Wirtz, his wife, to Charles Lehman, to secure the sum of five hundred dollars, on the following goods and chattels: Household goods—One sofa, one lounge, one upholstered rocking chair, three stoves, eight tables, three
20 bureaus, one wardrobe, one bedstead with bedding and bed clothes complete, one carpet and lot of oil-cloth, two clocks, twelve pictures, all the kitchen utensils, pots, dishes, plates, tinware, spoons, knives and forks. In store—Counters, shelves, show-cases, looking-glasses, and made-up and manufactured stock of hair goods and material.

Dated March 5th, 1874.

Filed March 2d, 1875.

30 Affidavit of present interest of C. Lehman, dated February 25th, 1875.

Copy certified to by J. B. Cleveland, May 22d, 1878.

Exhibit T 2.

May 22, 1878.

40 Chattel mortgage from Henry Beltz and John M. Wirtz to Anton Wirtz, to secure the payment of five hundred dollars on the following goods and chattels: Two wagons, one set of harness, all the new green-house and hot-bed sashes, numbering one hundred and fifty, and all the gardeners' tools, fixtures and utensils.

Dated December 20th, 1873.

Filed December 22d, 1873.

Copy certified to by J. B. Cleveland, May 22d, 1878.

IN CHANCERY OF NEW JERSEY.

10

Between

JOHN TRESCH,
Complainant,*and*JOHN M. WIRTZ *et ux.*,
Defendants.

On Bill, &c.

20

Examination of witnesses, &c., on the part of defendants, taken before me, George Van Horn, one of the Masters and Examiners of the Court of Chancery of said State, at my office, 602 Newark avenue, Jersey City, New Jersey, on Monday, March 10th, 1879, at 2 o'clock in the afternoon, in presence of M. T. Newbold, Solicitor of defendants, and of Lippincott & Deacon, Solicitors of complainant, by consent of Solicitors of said parties.

30

LENA M. LYNCH, being duly sworn on oath, saith: I live at Union Hill now; I am a married woman; I know Mrs. Minnie Wirtz, and have known her about ten years; I knew her when she commenced the hair-dressing business; it was about ten years ago; she was living on Palisade avenue, near Franklin street, next to where I lived when she commenced the hair dressing; the sign that was up was, Mrs. M. Wirtz, hair dressing and ornamental hair work; her store was at that place; she continued there about three months; she then went a few doors above on the same street; she had the same sign there, Mrs. M. Wirtz, hair dressing and ornamental hair work; I worked for her about nine years; I worked three years for her; Mrs. Wirtz employed me, and paid me, too; Mrs. Wirtz conducted the business; the business consisted of hair dressing, selling hair; that was not such a business as could

40

10 not have been conducted by a man; that hair that was purchased, Mrs. Wirtz would buy the hair, and she and I would sell it to the customers; when Mrs. Wirtz would be at home she herself would have charge of the store; and when she was away I would have charge of the store for her; when I first went with Mrs. Wirtz, Mr. Wirtz worked in New York; he afterwards left New York; Mrs. Wirtz continued to carry on the business herself all the time I worked there; of times we would have others to
 20 assist myself and Mrs. Wirtz in the hair dressing; when I left I got married, and Miss Giffinger took my place.

CROSS-EXAMINED:

That sign had the name of Mrs. Wirtz on it; that was the only sign that was on the premises; that was all on it that I have stated; at the time I commenced to work for Mrs. Wirtz her husband was
 30 doing nothing, but living on his wife; he had not gone into the florist business before I left there, at least I don't remember it; he was not about the store at all; he was sitting around most of the time, occasionally doing work in New York for a store; sometimes he did house-work; I heard them say so; Mr. and Mrs. Wirtz say that this work that he was doing was for a store in New York; this was hair jewelry; I did not see him do any work that they did not say was for the New York
 40 store; Mrs. Wirtz did a very large business there; a good deal; sometimes she was away for a whole day at a time, but that was very rare; I don't know what was in the drawer; I don't think I ever took in as much as \$10 a day; I was around there when Mrs. Wirtz was there, but I was not in the store; I was in the workroom when she was there; from the work that I did I know she took in \$10 a day; about on an average \$10 a day; sometimes I think she averaged more than that; sometimes two and sometimes three were employed there; I mean by two,

myself and another lady, and sometimes more; two 10
 was employed for a day at a time when we were busy;
 on occasional days two were employed, and on occa-
 sional days three were employed; I was the only
 steady one employed there; Mr. Wirtz never sold
 any of this hair to customers, and he never took any
 money for selling; I don't know I'm sure if Mr.
 Wirtz spent any money in these days; I never said
 his wife gave him any money; I never saw him
 give her any; Mr. Wirtz was first working
 in New York when I went there; when 20
 I went there Mr. Wirtz had left New York;
 I don't know whether Mrs. Wirtz's expenses were
 very heavy in those days; I don't know how or
 about what salary was paid by Mrs. Wirtz to those
 girls that worked there occasionally; I was paid by
 the week; she paid me \$8 a week, and sometimes
 more; my regular pay was \$3 a week.

RE-DIRECT:

When Mrs. Wirtz was no busier down next door 30
 to me Mr. Wirtz was engaged in New York; I think
 it was about a year after Mrs. Wirtz commenced
 business that Mr. Wirtz got out of business in New
 York.

LENA M. LYNCH.

Sworn and subscribed be- }
 fore me, on March 10, }
 1879.

GEORGE VAN HORN,
 Master in Chancery.

40

JOHN PFORRA being duly sworn on his oath, saith:
 I am a carpenter, and built the house where Mrs.
 Wirtz has been carrying on business; I built it for
 Mrs. Wirtz; my agreement was with her, and she
 paid me for it; the house is built on leased lands.

CROSS-EXAMINED:

I did not know she held the lease; she and me and
 Mr. Wirtz talked about the building.

10 Q. How did you know he had no interest in it?

Objected to as assuming something witness has not stated.

A. I don't know who has the lease; I don't know whether he has interest in the lease premises or not, because I did not see the lease; I know I was building that building for Mrs. Wirtz, because she and I made a bargain—an agreement in writing, too; Mr. Wirtz's name is not in that writing; I have
20 it here. [Witness produces it.] I saw Mrs. Wirtz sign her name to this agreement; this paper was made out before the work commenced; it was made within the same year it is dated—written a week of this date; she signed it to pay me the money due on it; I signed another one Mrs. Wirtz has now a copy of; this is the reason I did not sign this one; this is the only building there is in the premises that I put up; it is only a part of lot.

JOHN PFORRA.

30

Sworn and subscribed before me, this March }
10th, 1879. }

GEORGE VAN HORN,
Master in Chancery.

JOHN M. WIRTZ, a witness on the side of the defendants, being duly sworn on oath, testified thus: I am one of the defendants; I was in
40 partnership with Henry Beltz in the florist; I went in partnership with Beltz in July, 1873, and I dissolved partnership with him January 16th, 1874, when I sold out my interest to Eveland; I put into that partnership about \$3,000; I got that money from my wife; some of the principal items of expenditures on the florist property were building four new green-houses, repairing six old green-houses, altering a barn into a dwelling-house, paying for labor on the premises, and for debts which had been incurred by Beltz before I was there;

Beltz did not pay anything towards these improvements; he worked on the premises; I did not receive any moneys for sales of flowers or anything else sold off the premises; Beltz collected all the moneys for things sold off the premises, and did not pay me one cent of it; the expenditures made by me amounted to about \$3,000; I say I had no money myself, and I got all this money from my wife; it was her separate money, which she had made out of her business; the largest sum I ever got of her at any one time was eleven or twelve hundred dollars, and I would get from her at other times twenty-five, fifty, one hundred or two hundred dollars, just as she had it; the same along during the time I was making the improvements upon the premises, from July, 1873, to January, 1874; the last sum I got from her was \$269; this sum was applied to the payment of a note given for sashes to a man named Hellen; I sold out to Eveland because I was tired of the business; it did not pay, and Beltz cheated me by taking money and using it for himself instead of accounting for it; I sold out for \$1,000 and took a note for it, and Eveland, who bought it, assumed to pay the debts to the amount of \$2,000; and the complainant, Tresch, was one of them; the whole of Tresch's claim was not incurred; I this time sold out; only about one-half of it was incurred; my wife has been carrying on the hair-dressing business for herself ever since 1869; I never gave her any money to start in the business; I know she had some herself, and \$150 she borrowed from my brother Louis; I was in business at that time in New York making hair jewelry; I gave that business up in 1871; I still make hair jewelry and sell to a place in New York—a wholesale jeweler; I am sometimes employed three or four days in a week, and some weeks I am not employed at all; it is just as I get orders; I sometimes assist my wife in her business in preparing hair to be made into switches, curls, &c., for ladies' wear; I am assisting her sometimes three hours a day, sometimes four hours a day,

10 sometimes ten hours a day, and sometimes I am not assisting her for weeks at a time; what I do there for her does not form any considerable part of the business done by her; any small girl can do the same thing; I do not do the hair dressing; the principal part of wife's business consists of hair dressing; my wife runs the house, too, and pays all the bills; I get my board, but don't pay for it; she gives me money when I want it; the assistance I give my wife would
 20 hardly pay for my board; I have nothing whatever to do with the management of her business; I have nothing whatever to do with the renting of her premises, or any interest in it; she rents it herself; I have no interest whatever in the building she put up, where she conducts her business; none of my money went to build that; I had none; my wife has carried on her business separate and free from any interest on my part since 1869; and whatever I had done for her, she paid me for it, just the same as she would if she hired a girl.

30

Counsel for complainant excepts to the questions, to which the witness has answered but:—Yes.

The property known as the Sherman avenue was owned by my brother Louis and me in March, 1873; we had owned it for nearly seven years at that time; in March, 1873, there was \$1,300 incumbrances on it; that was in the shape of a mortgage to Theodore Schlich; that mortgage remains on
 40 the premises to the present day; a deed was made for the undivided one-half of this property from my brother and wife to me; at that time \$100 was paid to him; there was to have been paid to him \$1,000; the \$100 that was paid was my wife's money, gotten from me of her, and my wife was to pay the balance of \$900 on it; she paid this some time afterwards; it was paid by a mortgage from my wife to Louis Wirtz, when the property was deeded to her; when I got this \$3,000 from my wife there was an

agreement made between me and her in reference 10
to the Sherman avenue property; she agreed to ad-
vance me moneys to go into the florist business, and
my brother Louis was to convey his interest in the
property to me, and I was to convey the whole to
my wife; she advanced to me as much as she
agreed to, and more, and I did convey the property
to Lehman, and Lehman and wife conveyed it to
my wife; at the time the deeds were made the bal-
ance of \$1,000 for Louis's interest had not been
paid. [Witness being shown bond and mort- 20
gage from Minnie Wirtz and husband to Louis
Wirtz, dated February 2d, 1874, for \$900, says:] That
is the bond and mortgage that was given to Louis for
the balance of the \$1,000 that he was to receive for
his interest in the property, and said bond and mort-
gage are marked Exhibits W 1 and W 2, on the side of
the defendants; I don't think Louis's one-half inter-
est was worth any more than the \$1,000 which he
received; by the \$100 I got from my wife, and the
\$900 mortgage which she gave him, and my one- 30
half interest was not worth no more than \$1,000; it
is admitted here that Exhibits W 1 and W 2, on side
of defendants, were canceled October 11th, 1875, by
J. B. Cleveland, Register of Hudson County.

CROSS-EXAMINED:

Eveland, to whom I sold out my business, was
not in any way related to me or my wife; the three
thousand dollars that I got from my wife was en- 40
tirely lost in the business, except a thousand-dollar
judgment which I got against Eveland, which I
could get nothing on; I did not do a prosperous bus-
iness when engaged in the florist business.

Q. Did you not find sale for more plants than you
could supply, so that you were compelled to buy
from other parties?

A. There was no sale of plants while I was in the
business during that term of the year; my estab-
lishment was well stocked when I left with plants I

10 had raised; I bought no plants outside; I sold no plants at all; I did not at that time loan money; I did not loan money to Henry Beltz at that time; I loaned him money a year before, \$300; I got that from my wife; my wife got the \$3,000 she loaned me by earning it in her business; when my wife paid me that eleven or twelve hundred dollars she paid me in greenbacks, legal-tender money; she did not have to sell any securities to raise it for me; she had not that amount that she paid me very long;
 20 just that amount she did not have long; when she loaned me the \$1,200 I don't know how much she had on hand; she did not increase the moneys she had on hand in any other way than by her earnings in the business she had been since 1869, when she started earning the moneys out of which she paid me the \$1,200. Her business was immediately profitable after she started; Beltz gave his knowledge or skill in the business as against my investments of money; the value of the business and stock was between four
 30 and five thousand dollars when I sold to Eveland; I did not know my losses were being so heavy before I sold to Eveland; I sold out to Eveland because the business did not pay, and I found out that Beltz was cheating me; I know that the business owed to Tresch and others certain sums of money; I got the last payment of money from my wife on January 2, 1874; I did not borrow any money from my wife after I found that Beltz was cheating me.

Q. How came you to sell to Eveland for \$1,000
 40 cash, what was worth \$2,500?

A. It was not a small consideration to get \$1,000 cash, and for Eveland to assume \$2,000 in debts; I don't know how long I had owed \$2,000 in debts; I did not know at the time it was \$2,000, but I thought it was about \$2,000; I did not get \$1,000 cash; I did not know when I took Eveland's note that he was not good for the money; when my wife put that money in the business she asked a good many questions about the condition of the business; I informed her in what condition,

as well as I knew; I did not inform her it was pros- 10
 perous; I did not tell her it was unprosperous; I am
 not doing hardly anything for a living now, except
 what I am doing for myself; I am entirely depend-
 ing on my wife; while I was in the florist business
 my wife employed assistants in her business; some
 of their duties was such that I could have performed
 them, and some not.

Q. Why did not your wife employ you to perform
 those duties when you was idle about the house, in-
 stead of employing assistants? 20

A. It was no work for a man; I knew how much
 Mrs. Wirtz was to loan me at the time that she
 loaned me the \$1,100 or \$1,200; that was not the
 first loan; the first loan was \$50; this \$50 went into
 the business afterwards; she made me this \$50 loan
 at the end of the year 1872, or the beginning of the
 year 1873; I did not know when the \$50 loan was
 made what amount she was to loan me then; but I
 did know, when the \$1,100 or \$1,200 loan was made,
 what amount she was to loan me in all; that amount 30
 was \$2,000; I don't know whether she had that \$2,000
 on hand at the time she loaned me the \$1,100 or
 \$1,200; I had no money of my own at the time I
 borrowed this money of my wife; I had previously,
 years before, money of my own; five or six years
 before; I spent that money, and lost it in business.

Q. Am I to understand that your wife was to loan
 you \$2,000?

A. Yes.

Q. Yet she loaned you \$3,000? 40

A. About \$3,000.

Q. Did you give her any security for the amount
 over \$2,000?

A. No. myself and brother Louis from Johanna
 Schlich for the Sherman avenue property got
 \$1,500 cash and a mortgage for \$1,300.

Q. What was the whole amount paid your brother
 for his share by you, or your wife, cash or mort-
 gage?

10 A. \$1,000 and a mortgage left on the place; Chas. Lehman, to whom I conveyed, is my brother-in-law.

Q. When did your wife, to whom Lehman conveyed this property January 2, 1874, make the condition with you that you should give her that house to pay her for the money she gave you to go into business with?

A. It was at the time when Louis conveyed his interest in the property to me; Lehman paid no money for the property.

20 Q. Was there any consideration since paid, for the conveyance of the property from you to Lehman, and from Lehman to your wife, other than the money you owed her?

A. No; when I made that conveyance I was indebted to Mr. Tresch; Charles Lehman did not owe me money any more; I did not swear on my examination under supplemental proceeding that he owed me \$2,000.

30 Q. Did you not swear, under the examination in supplemental proceedings in the case of Mr. Tresch against you and Mr. Beltz, on October 9th, 1877, before Mr. Van Horn, here at his office in Jersey City, that "Charles Lehman owes me two thousand dollars; he lives in Summit avenue; he has a grocery store and owns it in his own name; I would not give a cent for it"; did you not swear that?

A. No.

Q. Did you swear that, or anything like that, or to that effect?

40 A. I said \$200, not \$2,000; Lehman does not owe me anything now; me and my wife has given him a chattel mortgage in or on furniture; he did not owe us money when he got that chattel mortgage, we owed him money; he did not pay the \$200; he owed him money before, and paid him that money and \$200 besides to start his grocery store, and we paid him the chattel mortgage because we owed him the money.

Q. But, you say you paid him, and overpaid him \$200; explain.

A. Simply because it is so.

10

Q. Do you mean that you made this payment by giving him the mortgage?

A. First he got the mortgage to secure his money, and then he got the money for his mortgage afterwards; I don't recollect when that was; it was more than two years ago; the mortgage given to me by Huffnagle for \$1,000 on the property at Union Hill, I think the last of 1873 or 1874, \$500 has been paid on it; the other \$500 has been settled by Huffnagle giving a new mortgage to my wife for \$500; that money for that mortgage belonged to my wife, and not to me; the first mortgage was in my name; my wife, in the new mortgage, did not give Huffnagle any additional money; the first \$1,000 was my wife's money; I had the mortgage made to me, and not to her, because I did not know anything about it; I did not understand it; Beltz said the lawyer made it; that was this \$1,000 was additional money of my wife's to that which she loaned me to go into the florist business.

30

Q. What became of the \$500 paid to you?

A. I don't know; my wife took it.

Q. Did you not swear on supplemental proceedings that that \$500 went into the florist business?

A. It may be, I don't know; I don't know; most likely it went into the florist business; if it did, it is a part of the \$3,000 she let me have to go into the florist business; I don't know where my brother Louis is; it may be a year, and it may be two years since I heard of him last.

40

Q. Was he present when you made the agreement with your wife to borrow \$2,000 of her, and deed this property over to her?

A. Yes; of course he did.

Q. What part?

A. He was to convey his interest to me, and I the whole property to my wife; she was to pay him \$1,000, and to give me \$2,000 to start in business with.

10 Q. Did Louis have anything to say or do about her paying you the \$2,000?

A. No, he had not; I have no idea to Louis's whereabouts; I don't want to know, either; because I don't want to see him; I don't like him; we were good friends at the time this arrangement was made.

Q. What has happened since to make you enemies?

A. He leads a disorderly life.

20 Q. Did his life differ from what it was when this arrangement was made?

A. Yes; the value of the property in which he conveyed his interest was at that time a little over \$3,000.

Q. Why did not you have put in the deed the full amount that you owed your wife instead of the simple \$2,000?

A. I don't know what is in the deed, and don't know why it is there.

30 Q. Did you say that your wife borrowed the money of your brother she started in business with?

A. Well, she borrowed \$150 of Louis, and had some of her own herself; she got the money she had herself by working for A. T. Stewart & Co.

Q. At the time when your wife loaned you the money, what was the value of her stock in trade?

A. I can't tell; maybe \$200, maybe \$500, maybe \$800.

40 Q. Under the agreement made between you and your wife, she was to let you have \$2,000; she afterwards advanced you more money; were the advances of additional money—I mean outside of the \$2,000—made before the agreement for \$2,000, or afterwards?

A. Afterwards.

Q. Why, for the Sherman avenue property, did you charge your wife \$2,000, leaving the mortgage of \$1,300 still on the property, and her to pay Louis his \$1,000 when Louis's share was only worth \$1,000!

A. I was to pay Louis \$1,000 out of the money 10 she gave me.

Q. Then that \$1,000 to be paid Louis was not additional to the \$3,000 she did advance you?

A. No; a part of it.

Q. After you had contracted Mr. Tresch's debt, did you not say to your partner, Mr. Beltz, that you had fixed your property and saved yourself, or that you would do it, or something to that effect?

A. No.

Q. Did you ever have any conversation with him 20 on the subject?

A. I don't recollect.

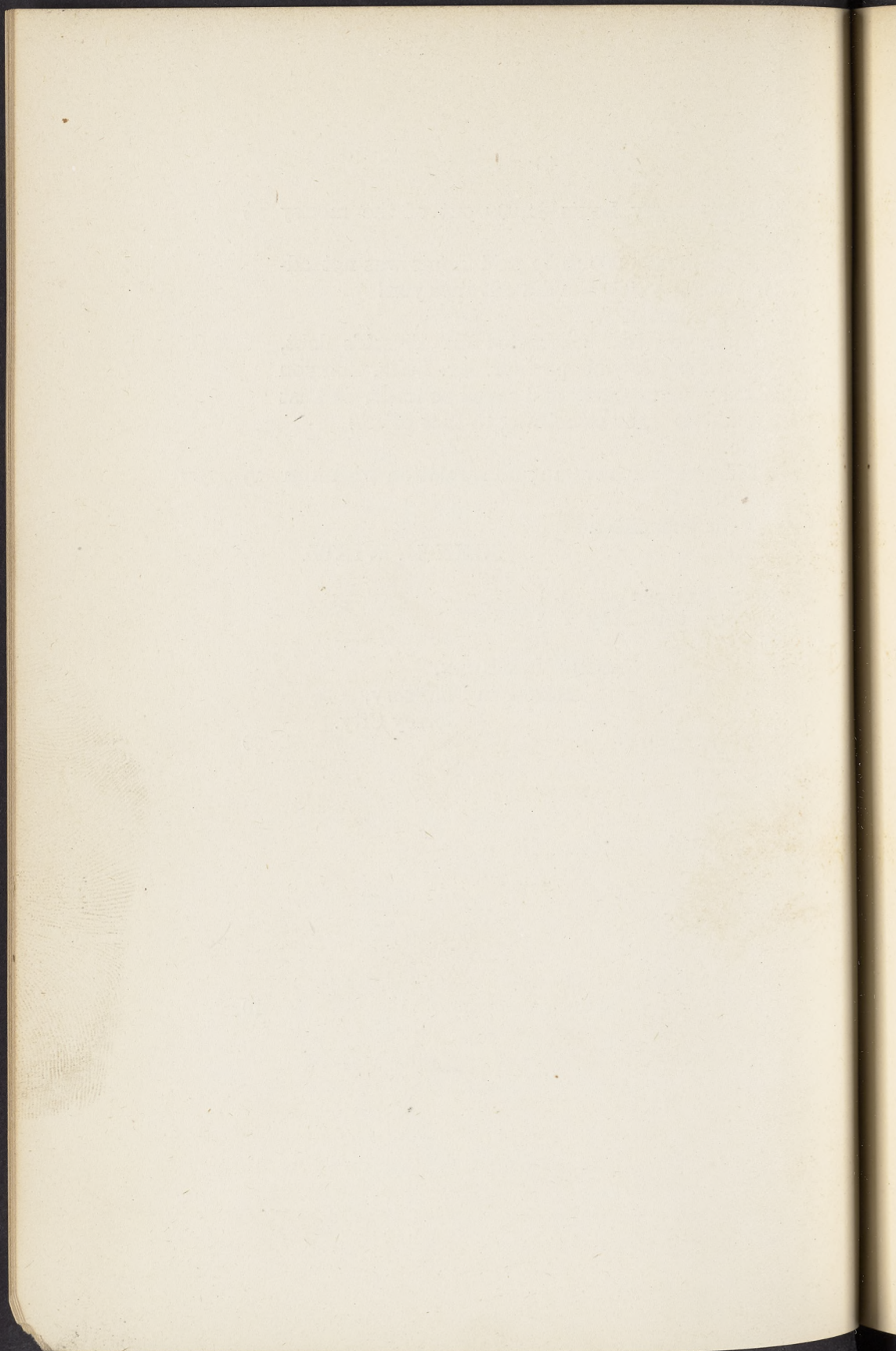
JOHN M. WIRTZ.

Sworn and subscribed before me, this May 7, 1879. }

GEORGE VAN HORN,
Master in Chancery,
Jersey City.

30

40



WM. S. SHARP, Printer, 21 W. State St., Trenton, N. J.

COURT OF ERRORS AND APPEALS.

Between

JOHN TRESCH,

Appellant,

and

JOHN M. WIRTZ et al.,

Respondents.

*On Appeal
from Decree
in Chancery.*

Bill of Complaint.

[Filed December 21, 1877.]

*To the Honorable Theodore Runyon, Esquire, Chancellor
of the State of New Jersey:*

Humbly complaining, showeth unto your Honor, your orator, John Tresch, of the city, county and State of New York—

1. That Henry Beltz and John M. Wirtz, of the city of Jersey City, in the county of Hudson and State of

New Jersey, partners, doing business as florists, in said last-named city, were, on the first day of April, in the year one thousand eight hundred and seventy-three, indebted unto your orator in the sum of three hundred dollars and nine cents, for goods, wares and merchandise sold and delivered by your orator to the said Henry Beltz and John M. Wirtz, as partners aforesaid, before that time.

10 2. That your orator heretofore, to wit, on the twenty-first day of October, in the year eighteen hundred and seventy-four, in the Inferior Court of Common Pleas of the county of Hudson, in the State of New Jersey, holden at Jersey City, in and for said county of Hudson, recorded a judgment against the said Henry Beltz and the said John M. Wirtz, for the sum of three hundred and fifty-three dollars and four cents damages, and the sum of thirty four dollars and eighty-six cents costs of suit, making a total sum of three hundred and eighty-seven dollars and ninety cents, which your orator has
20 sustained as well by reason of the non-performance of certain promises and undertakings made by the said defendants, Henry Beltz and John M. Wirtz, as for the costs and charges by your orator about his suit in that behalf expended, which said suit against the said Henry Beltz and the said John M. Wirtz, for the wares and merchandise aforesaid, was commenced by summons, and said summons was returned, duly served by the sheriff of the county of Hudson, on the said defendants, Henry Beltz and the said John M. Wirtz.

30 3. That on the twenty-third day of October, in the year one thousand eight hundred and seventy-four, for the purpose of obtaining satisfaction of the said judgment, your orator sued out of the said the Inferior Court of Common Pleas in and for said county of Hudson, a writ of *feri facias*, directed to the sheriff of the county of Hudson, by which said writ of execution the sheriff of the said county of Hudson was commanded that of

the goods and chattels of the said Henry Beltz and John M. Wirtz, within his said county, he should cause to be made the sum of three hundred and eighty-seven dollars and ninety cents, which your orator, in the Hudson county Court of Common Pleas aforesaid, recovered against the said defendants, Henry Beltz and John M. Wirtz, and if sufficient goods and chattels of the said Henry Beltz and John M. Wirtz could not be found in his county, that then, in that case, he should cause the damages and costs aforesaid to be made of the lands, 10 tenements, hereditaments and real estate whereof the said Henry Beltz and John M. Wirtz were seized on the twenty-first day of October, in the year one thousand eight hundred and seventy-four, or at any time afterwards, in whose hands soever the same might be, and that he should have those moneys before the judge of the said Court of Common Pleas on the thirteenth day of November, in the year one thousand eight hundred and seventy-four, to render unto your orator his damages and costs aforesaid, and that he should have, then 20 and there, that writ, which said writ was duly recorded in the office of the clerk of the said court, in Book of Executions, page three hundred and twenty-four, prior to the delivery thereof to the said sheriff of the said county of Hudson, as hereinafter stated.

4. And your orator further shows that the said writ of *feri facias* was, before the delivery thereof to the said sheriff of the said county of Hudson, as hereinafter stated, duly endorsed, with a direction to the sheriff to levy and make the said damages and costs, with interest 30 from the said twenty-first day of October, in the year eighteen hundred and seventy-four, besides sheriff's execution fees, and was delivered to the sheriff of the county of Hudson, to be executed in due form of law, on the twenty-third day of October, in the year eighteen hundred and seventy-four.

5. And your orator further shows that the said sheriff

of the county of Hudson, on the thirteenth day of November, in the year eighteen hundred and seventy-four, returned the said writ of *feri facias*, that he could find no goods or chattels, lands or tenements of the said defendants, Henry Beltz and John M. Wirtz, in the said writ of *feri facias* mentioned, in his county, and returned the said writ of *feri facias* wholly unsatisfied, as by the said writ, and the return thereto of the said sheriff endorsed thereon, and now on file in the office of
10 the clerk of the said Hudson county Court of Common Pleas, will more fully and at large appear, and to which said writ and the return thereto, thereon endorsed as aforesaid, your orator prays leave to refer, if it be necessary so to do.

6. And your orator further shows that the said Henry Beltz and John M. Wirtz, or either of them, since the recovery of the said judgment, has paid no part thereof to your orator, or to any other person in his behalf, and that
20 the whole amount thereof, that is, the sum of three hundred and eighty-seven dollars and ninety cents, and interest thereon from the twenty-first day of October, in the year eighteen hundred and seventy-four, remains due, and is still unpaid, to your orator, over and above all claims which the said Henry Beltz and John M. Wirtz could have against your orator by way of offset or otherwise.

7. And your orator further shows that, at the time of the recovery of the said judgment above mentioned, against the said Beltz & Wirtz, they had been, for several years previous thereto, engaged in business in the
30 city of New York, and in the city of Jersey City, in the county of Hudson and State of New Jersey; and your orator is informed, and verily believes such information to be true that in the course of such business of the said Beltz & Wirtz, divers persons became indebted to them in large amounts of money, and that the said Beltz & Wirtz, or one or both of them, at the time of the exhibiting of this your orator's bill of complaint, have debts

due to them, or one of them, for a large amount of money, for which they, or one of them, hold divers securities, and have divers goods, wares and merchandise, and other articles of personal property which belonged to them, or in which they have an equitable interest, and things in action, of some nature or kind which might and ought to be applied to the payment of your orator's said judgment against them.

8. And your orator further shows that, at the time of the recovery of the said judgment, the said Henry Beltz 10 and John M. Wirtz, as your orator has been informed, and believes such information to be true, had then, as well as at the time of the exhibiting of this bill, debts due to them in the State of New Jersey, and for which they held divers securities, and evidences to a large amount, and have yet divers goods, wares and merchandise, and other articles of personal property which belong to them, or in which they were, in the same way, beneficially interested, and that they, the said Beltz & Wirtz, have equitable interests, and things in action of 20 some nature or kind which might and ought to be applied to the payment of your orator's said judgment.

9. And your orator further shows that the said Henry Beltz and John M. Wirtz, or one of them, are now in some way interested in a large amount of real estate in the said county of Hudson and State of New Jersey.

10. And your orator further shows that, during a greater part of the year eighteen hundred and seventy-three, and after the indebtedness of your orator was incurred, the said Beltz & Wirtz were engaged in the 30 business of florists, in the city of Jersey City, in the county of Hudson and State of New Jersey, and while so engaged, they, the said Beltz & Wirtz, incurred the aforesaid indebtedness to your orator; that about the first day of July, in the year eighteen hundred and seventy-three, and while so engaged in said business, the said Beltz & Wirtz leased of one Henry F. Eveland, of

the county of Hudson and State of New Jersey, fifteen lots of land, situate on the southerly side of Paterson street, within the city of Jersey City, in said county of Hudson, for the term of eight years, from the first day of August, in the year one thousand eight hundred and seventy-three, for the yearly rent, for the first three years, of eight hundred dollars per annum, and for the balance of the said term at the rate of one thousand dollars per year.

10 10. And your orator is informed, and verily believes such information to be true, that during the year eighteen hundred and seventy-three the said Beltz & Wirtz were doing a prosperous business; that they erected several green-houses and a dwelling upon said leased lands, mentioned in the preceding paragraph, worth several thousand dollars.

11. And your orator is informed, and believes such information to be true, that the leasehold premises, together with the improvements thereon, were worth at
20 least the sum of five thousand dollars.

12. And your orator further shows that while the said Beltz & Wirtz were apparently doing a good business on or about the first day of January, in the year one thousand eight hundred and seventy-four, as your orator is informed, and believes such information to be true, the said Beltz & Wirtz suddenly sold and transferred the said lease, premises and business and stock in trade, implements and utensils to the said George F. Eveland for a very inconsiderable amount of money; as your
30 orator is informed, and believes such information to be true, that the said John M. Wirtz received a promissory note from the said George Eveland for the sum of one thousand dollars, but your orator is not aware of the amount received by the said Henry Beltz for his share and interest.

13. And your orator further shows that he believes such sale to have been fraudulent, and intended to cheat

your orator and the other creditors of the said Beltz & Wirtz.

14. And your orator further shows that on or about the first day of January, in the year eighteen hundred and seventy-four, the said partnership of Beltz & Wirtz was dissolved ; that the said George Eveland entered into possession of said leasehold premises, the green-houses and building and dwelling erected thereon, and for some time held possession of the same and carried on said business of florist, as your orator is informed and be- 10
 lieves, and then failed in said business and became insolvent, and all his property of every nature and kind sold.

15. And your orator further shows that on the twenty-ninth day of June, in the year one thousand eight hundred and sixty-six, Johanna Schlich, by deed dated on the day and year last aforesaid, sold and conveyed to the said John M. Wirtz and Louis Wirtz all those two certain lots, tracts or parcels of land and premises situate, lying and being in Jersey City (at that time city of 20
 Hudson, in the county of Hudson, and State of New Jersey, which, on a map of Washington Village Land Association, duly affiled of record in the office of clerk (now register) of the county of Hudson, are numbered as lots three hundred aad thirty-seven (337) and three hundred and thirty-eight (338) on the east side of Bergen avenue, for the sum of twenty-eight hundred dollars.

16. And your orator further shows that said two lots 30
 of land were improved property, there being at the time of the purchase a substantial frame dwelling-house erected thereon.

17. And your orators further show that on the fifth day of March, in the year eighteen hundred and seventy-three the said Louis Wirtz and Matilda, his wife, by deed dated that day, sold and conveyed his undivided interest in said premises, described in the preceding paragraph, to the said John M. Wirtz for the sum of one thousand

dollars, so that the said John M. Wirtz became the owner in fee simple of the whole of said lots of land and premises.

18. And your orator further shows that on the seventh day of January, in the year one thousand eight hundred and seventy-four, the said John M. Wirtz and Minnie, his wife, by deed dated on that day, conveyed to Charles Lehmann the said lands and premises mentioned and described in paragraph fourteen of this bill of complaint for the pretended consideration of two thousand dollars.

19. And your orator further shows that the said Charles Lehmann was and is yet a brother-in-law of the said John M. Wirtz.

20. And your orator further shows that on the seventh day of February, in the year one thousand eight hundred and seventy four, the said Charles Lehmann, by deed dated on that day, conveyed the same premises described in paragraph fourteen of this bill of complaint to Minnie Wirtz, the wife of John M. Wirtz, for the pretended consideration of two thousand dollars.

21. And your orator further shows that he begs leave to refer to the deeds of conveyance mentioned in paragraphs fourteen (14), sixteen (16), eighteen (18) and nineteen (19), to be proved as this honorable court shall direct.

22. And your orator further shows that he is informed, and believes such information to be true, and expressly charges that the said deeds of conveyance, as aforesaid, of John M. Wirtz and Minnie, his wife, to Charles Lehmann, and from the said Charles Lehmann and his wife to the said Minnie Wirtz, of the premises described in paragraph fourteen of this bill of complaint, were made by the said John M. Wirtz, Charles Lehmann and Minnie Wirtz, without any consideration whatever, notwithstanding the consideration of two thousand dollars expressed therein, that they were entirely without any consideration of any nature or kind whatever, and that the

said deeds were made with the express design of putting the said property beyond the reach of the said creditors of the said John M. Wirtz, and with the design to cheat and defraud his creditors, and for no other purpose, and that the said conveyances are, as against the creditors of the said John M. Wirtz, absolutely void; and your orator further charges that, at the time of the said conveyances aforesaid from Wirtz to Lehmann, and from Lehmann to Minnie Wirtz, the said John M. Wirtz was indebted to your orator in the sum of money for which 10 your orator obtained judgment as aforesaid, against the said Beltz & Wirtz, and that said indebtedness was created by the sale of goods, wares and merchandise to the said Beltz & Wirtz while they were engaged in the business of florists, and which said indebtedness was due and payable at the time of the said conveyances by said Beltz & Wirtz, to your orator; and your orator expressly charges that each and both of said last-named conveyances were made and given without any consideration, and that neither the said Lehmann or the said 20 Minnie Wirtz ever paid any consideration for the said lands in said deeds described; and your orator further expressly charges that the said deed from the said John M. Wirtz and Minnie, his wife, to the said Charles Lehmann, and from the said Charles Lehmann and wife to the said Minnie Wirtz, wife of the said John M. Wirtz, were severally made with the express design of cheating and defrauding the creditors of the said Beltz & Wirtz; and your orator requires that the said John M. Wirtz and Minnie, his wife, severally and respectively set 30 forth and state what consideration was actually paid, if any, for the said lands and premises in the said deeds described.

23. And your orator further shows that said lands and property, as now claimed to be held by the said Minnie Wirtz, under said deeds from the said Charles Lehmann and wife to her, are of great value, and was, at

the time of the making of the deeds, to wit, of the value of three thousand dollars.

24. And your orator further shows that, on the eighth day of July, in the year one thousand eight hundred and seventy-one, Frederica Hufnagle and Bernhard Hufnagle, her husband, made and executed to the said John M. Wirtz a mortgage for the sum of one thousand dollars, on all that certain piece or parcel of land situate in Bellevue, in Hudson county and State of New Jersey, known and distinguished as lot number one hundred and twenty-one (121), with the messuage or tenement thereon erected, on a map entitled "Map of Bellevue, Hudson County, New Jersey," the property of James Pope, and which map is filed in the office of the clerk of the said county of Hudson; also all that other lot, known as lot numbered one hundred and twenty, as laid down on said map.

25. And your orator further shows that said mortgage was duly acknowledged and recorded in the office of the clerk of the county of Hudson, in Book eighty-six of Mortgages, pages four hundred and ten, etc., as by the record thereof, reference thereunto being had, will more fully appear; and that on the tenth day of January, in the year one thousand eight hundred and seventy-four, the said mortgage was canceled of record; that only the sum of five hundred dollars was paid them by the said Frederica or Bernhard Hufnagle.

26. And your orator further shows that the said Frederica Hufnagle and Bernhard Hufnagle only paid five hundred dollars in cash, upon said mortgage, and in addition thereto, made and executed to Minnie Wirtz another mortgage on said last-above described lots of land, for the further sum of five hundred dollars, bearing date the eighth day of January, in the year eighteen hundred and seventy-four, and duly recorded in the office of the clerk (now register) of the county of Hudson, that said five-hundred-dollar mortgage was given in part payment of the one-thousand-dollar mortgage, which

was duly canceled upon the sum of five hundred dollars being paid in cash, and the five hundred-dollar mortgage being given.

And your orator further shows that the said five-hundred-dollar mortgage was made and executed to Minnie Wirtz, the wife of John M. Wirtz, with the express design of cheating and defrauding the creditors of the said John M. Wirtz, and for no other purpose; and your orator expressly charges that the said Minnie Wirtz never paid to the said Frederica Hufnagle and Bernard Hufnagle, or to either of them, any consideration whatever, but that the whole transaction was made for the purpose and design of cheating and defrauding the creditors of the said John M. Wirtz and your orator. 10

28. And your orator further shows that the said John M. Wirtz is an energetic man and of considerable business ability, and that for several years last past he has been working and trading in human hair, alleging that it is his wife who is carrying on said business; that in such business so carried on in the name of Minnie Wirtz, the said John M. Wirtz and his said wife have realized considerable money, and are now in easy circumstances; that on the first day of February, in the year one thousand eight hundred and seventy-six, one Thomas Costello leased to the said Minnie Wirtz, in her name, all that certain lot, tract or parcel of land and premises situate on the southeast corner of Palisade avenue and Hutton street, being twenty-five feet on Palisade avenue and sixty feet on Hutton street, for the yearly rent or sum of one hundred and twenty dollars, for the term of five years, from the first day of May, one thousand eight hundred and seventy-six. 20 30

And your orator further shows that, since the first day of May, one thousand eight hundred and seventy-six, the said Minnie Wirtz and John M. Wirtz have erected on said leased premises a store and building, worth between one and two thousand dollars; and your orator expressly charges that said premises have been so as aforesaid

leased in the name of Minnie Wirtz, for the fraudulent purpose and design of protecting the same from the creditors of the said John M. Wirtz and your orator, and for no other purpose; and your orator also expressly charges that the improvements made upon said leased premises were made thereon from the means derived from the said business of dealing in hair; and that said business is carried on in the name of Minnie Wirtz as a cover and to protect the avails of said business from the
10 creditors of the said John M. Wirtz; that the said John M. Wirtz devotes his whole time and attention thereto, and solely controls the business, and is the only source of profit therein; that the said Minnie Wirtz had no means of her own to start or carry on said business; and your orator expressly charges that said business is conducted in such manner only for the purpose of defrauding the creditors of the said John M. Wirtz and your orator.

29. And your orator further charges that the said
20 John M. Wirtz and Minnie Wirtz, his wife, the defendants to this suit, are the owners of, or in some way or manner beneficially interested in some other real estate in this or some other state, or some chattels real, of some nature or kind, or some contract relating to real estate, or the rents, issues and profits of some real estate, and also that the said defendants are the owners of, or in some way beneficially interested in the stock of some company, incorporated or unincorporated, or in the profits of some company or copartnership, and that, also,
30 they had in their possession, at the time of filing this your orator's bill of complaint, some money in coin or bank bills, or that they have some money deposited in some bank or elsewhere, to their credit, or that they have moneys, or security for the payment of money, held by some other person, in trust or otherwise, for their benefit; and if the said defendants, or either of them, have made any other assignment or transfer, your

orator expressly charges that he believes such assignment, conveyance or transfer is merely colorable, and made with a view of protecting the property and effects of the said defendants, so assigned, conveyed or transferred, and placing the same beyond the reach of your orator's said judgment, and enabling the said defendants to control and enjoy the same and the avails thereof, and that so it would appear, if the said defendants would state and set forth, when and to whom such transfers or assignments were made, and what was the amount in value of the property or effects so assigned or transferred, and what were the terms upon which such transfers or assignments were made, and what disposition has been made of the property or effects so assigned or transferred, and in whose possession the same is, or what has been done with the avails thereof. 10

30. And your orator claims a full and complete discovery of all such property, effects or things in action belonging to the said defendants, in the same way as if the said defendants, Jonh M. Wirtz and Minnie, his wife, were charged and interrogated thereto, and of all trusts whereby any property, debts or other effects, and of the person or persons to whom such assignment, conveyance or transfer has been made, and all facts and circumstances relating thereto, and particularly what is the situation of the property, debts or other effects assigned or transferred at the time of filing this your orator's bill of complaint; and your orator further shows that the said former firm of Beltz & Wirtz, or Henry Beltz, have no property of any kind whatever, which your orator can reach by execution, and that this bill of complaint is not exhibited by collusion with the said defendants, or with any other person, or for the purpose of protecting the property or effects of the said defendants against the claims of other creditors, but for the sole and only purpose of compelling the payment and satisfaction of 20 30

the judgments so as aforesaid recovered by your orator against the said Henry Beltz and John M. Wirtz.

And your orator well hoped that the said defendants would have paid to your orator the amount due to him on his said judgment, or would have applied for that purpose any property, money, debts or other equitable interests or things in action belonging to him, or in which he is in any way interested, as in equity and good conscience he ought to have done.

10 But now so it is, may it please your Honor, that the said defendants, combining and confederating with divers other persons, to your orators unknown, but whose names, when discovered, he prays may be inserted herein, with proper and apt words to charge them, contriving how to injure and defraud your orator in the premises, neglect and refuse the amount so due to your orator on his said judgment, or to apply for that purpose any property, equitable interests or things in action belonging to the said defendants, and for reasons whereof the
20 said defendants set up a variety of unfounded pretences.

All which actions and doings, neglects and pretences, are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises.

In tender consideration whereof, and for as much as your orator is remediless in the premises at law, and cannot have adequate relief, save in a court of equity, where matters of this kind are properly cognizable and reliev-
30 able: To the end, therefore, that the defendants, John M. Wirtz and Minnie Wirtz, and their confederates, when discovered upon their several and respective oaths their direct and perfect answer make to all and singular the matters and things hereinbefore stated and charged, as fully and particularly as if the same were here again repeated, and they and each of them therewith distinctly interrogated, paragraph by paragraph, and especially

that they may set forth and discover, according to the best of their knowledge, remembrance, information and belief, the nature and situation, amount and value of all the property, interests and effects of the said defendant, John M. Wirtz, including all things in action, of whatever nature and kind, and all the particulars relating thereto, and that they make answer and state whether at the time of the filing of this your orator's bill of complaint, he, the said defendant, John M. Wirtz, has not debts due to him in a considerable amount, and if so 10 that they may state particularly the amounts of said debts respectively, and from whom the same are due and what securities are held therefor, and also that they may state which and what amounts of said debts are good and collectible, and what amount bad and doubtful, and whether at the time of filing your orator's bill of complaint they have not some property, real or personal, in law or equity, belonging to them, or in which they have some beneficial interest of some kind or description, and if so, that they state and set forth a true, full and particular account thereof, and the nature and value of their 20 interest therein; and that they may also state whether they have not money of some kind in their possession or under their control, or deposited to their credit, or for their use in some way or manner held for their benefit, and if so that they may state and set forth particularly the amount thereof, and how and by whom the same is held; and that they may also state whether they have any other equitable interest or things in action, or other means belonging to them, the said John M. Wirtz and 30 Minnie, his wife, or in what way they are interested whereby they could pay any part of the amount so as aforesaid due to your orator upon the judgments against the said defendant, John M. Wirtz, and that if the said defendant has made any transfer or assignment of his property or effects, or any part thereof, and then he may state and set forth what property and effects have been so assigned or transferred,

or the value thereof, and particularly when and to whom and for what purpose, and upon what terms and conditions such agreement or transfer has been made, and what has been done under such assignment or transfer, and what has been done with the property so assigned or transferred, or the avails thereof; and that the said defendants, or some or one of them, may be decreed to pay unto your orator the amount so as aforesaid due to him for principal and interest on his said judgments, together
10 with your orator's costs and charges in this behalf sustained, and may be decreed to apply for that purpose any money or property, real or personal, in law or equity, debts, choses in action, or equitable interests belonging to him or them, or held in trust for him or them, or in which they, or any of them, are in any way or manner beneficially interested, and that the said deeds made by the said John M. Wirtz and Minnie Wirtz, his wife, to the said Charles Lehmann, bearing date as aforesaid, the seventh day of January,
20 in the year eighteen hundred and seventy-four, and the said deed from Charles Lehmann and wife to the said Minnie Wirtz, bearing date as aforesaid, on the seventh day of February, in the year eighteen hundred and seventy-four, be each and both of them declared fraudulent and void as against your orator, being a creditor of the said John M. Wirtz; or if it be more agreeable to equity that the said Minnie Wirtz be decreed to hold the property conveyed to her by said deed from the said Charles Lehman and his wife, as trustee for your orator,
30 being a creditor of the said John M. Wirtz, as aforesaid, and that the said mortgage made by Frederica Hufnagle and Bernhard Hufnagle, her husband, to the said Minnie Wirtz, and the said leasehold lands described in the lease made by Thomas Costello to Minnie Wirtz, as aforesaid, be declared fraudulent and void as against your orator, being a creditor of the said John M. Wirtz; or if it be agreeable to equity that the said Minnie Wirtz be decreed to hold the said mortgage and lease-

hold property aforesaid, and that a receiver be appointed to take and receive principal and interest of said mortgage for the benefit of your orator, and also the rents and profits of the real estate held as aforesaid by the said Minnie Wirtz.

May it please your Honor to grant unto your orator the state's writ of injunction issuing out of this honorable court, commanding and enjoining the said defendants, John M. Wirtz and Minnie, his wife, from selling or conveying said real estate as aforesaid, described in 10 this bill of complaint, to any person or persons, or otherwise disposing of it, and also enjoining them, or either of them, from selling, assigning or otherwise disposing of said mortgaged or leasehold estate aforesaid.

And also the state's writ of subpœna to be issued out of this honorable court, and under its seal, to be directed to John M. Wirtz and Minnie, his wife, commanding them and each of them, on a certain day, and under a certain penalty therein to be expressed, to be and appear before your Honor, in this honorable court, then and 20 there to answer all and singular the premises contained in this your orator's bill of complaint, and to stand to, abide by, and perform such order and decree in the premises as to your Honor may seem meet, and shall be agreeable to equity and good conscience.

LIPPINCOTT & DEACON,
Solicitors of Complainant.

J. H. LIPPINCOTT,
Of Counsel with Complainant.

State of New Jersey, *ss.*—John Tresch, of full age, 30 the complainant in the foregoing bill of complaint named, being duly sworn according to law, on his oath saith that the facts, matters and things set forth in the foregoing bill of complaint, so far as they relate to his own acts and deeds, are true, and so far as they relate to

the acts and deeds of other persons, he believes them to be true.

JOHN TRESCH.

Sworn and subscribed before me, at Jersey City, this day of October, A. D. 1877.

GEO. VAN HORN, *M. C.*

State of New Jersey, Hudson county, *ss* — John Tresch, of full age, being duly sworn according to law, on his oath saith that the facts, matters and things set forth in
 10 the foregoing bill of complaint, from paragraph one to thirty, are true as therein stated; that, on the ninth day of October, in the year eighteen hundred and seventy-seven, this deponent heard the said John M. Wirtz swear to the following, his testimony, word for word, being as follows, and in the proceeding in said testimony named: Hudson Circuit Court. John Tresch *vs.* Henry Beltz and John M. Wirtz. In Case.

Examination of John M. Wirtz, one of the above-named judgment debtors—the said Henry Beltz, the other
 20 judgment debtor, not appearing—taken before me, George Van Horn, a Supreme Court commissioner of New Jersey, at my office, No. 602 Newark avenue, Jersey City, at ten A. M. of October 9th, 1877, in presence of J. H. Lippincott, counsel for plaintiff, pursuant to order of M. M. Knapp, judge of said court, which was returnable before me on October 2d, 1877, at ten A. M., and adjourned by me on application of parties to October 9th, 1877, at ten A. M.

John M. Wirtz, one of the above named judgment
 30 debtors, being duly sworn, on his oath saith—

I know Henry Beltz; he resides, I don't know where; I don't know whether he is worth anything or not; he and I were partners in business from July 1st, 1873, to January 16th, 1874, as florists; I don't know what has been Beltz's business since that time; my business has

been making human hair work in Jersey City, No. 404, and, afterwards, 403 Palisade avenue; I am in that business now, but not on my own account; I was never in it on my own account; the business is on my wife's account; I work for her; she pays me no wages; I make my living out of the business; my wife set up that business there on April 5th, 1868, and she has carried it on ever since; she borrowed \$150 from my brother to start with; she never borrowed any of me, nor I never gave her any; at the time she started the 10 business, I was in business in New York, making hair-jewelry, and she started this business because I could not make a living; she has not much stock in trade in her store—worth about \$300—not more than that; there are a few orders come in for hair-jewelry once in a while—not much, however; at the time that Beltz and I were in business, we leased a plot of ground on the south side of Paterson street, Jersey City, containing about fifteen lots; we erected some buildings on these lots, viz., four green-houses, and converted an old barn into a 20 dwelling-house; I sold out my share in the business to George F. Eveland, the man that gave us the lease, for a note of \$1000; I sold on January 16th, 1874; I am not sure about it, but I believe Beltz sold out his interest to Eveland too; that included my interest in the green-houses and lease, and everything; I can't tell exactly, but I think I had invested in that business about \$3000 in cash; I got that money from my wife; I owned other property, viz., in Sherman avenue, Jersey City Heights, two lots and a house; that was up to January 30 7th, 1874; my brother Lewis and self bought that property from Johanna Schlit; there were two lots and a house on both of them together; we gave \$2800 for it, and my brother afterwards sold his share to me for \$1000, but he did not get the money at the time; he got a mortgage, some time afterwards, for \$900, and \$100 cash; I owned that property up to January 7th, 1874; I then conveyed it to my brother-in-law, Charles

Lehmann, and he conveyed it to my wife, Minnie, on or about February 7th. 1874; on January 2d, 1874, my wife gave me the last \$100; she made the condition that I should give her that house, to pay her for the money she gave me to go into business with; Beltz and I did so; that was the reason I made the conveyance to my wife; Lehmann paid no money; the object of those two conveyances was to convey the property to my wife; no cash passed; the firm of Beltz
10 & Wirtz were at that time indebted to Mr. Tresch, but there was stock enough in the business to pay at that time Mr. Tresch and all the other creditors; the stock, plants, tools and materials were worth at least \$5000, and the debts did not amount to more than about \$2000; I sold out to Eveland on January 16th, 1874; I don't know that Beltz sold out to Eveland on January 1st, 1874; I never talked with him about it; I looked after Mr. Eveland to see that he paid the debts; he paid some of the debts; he carried on the business
20 himself; he made an agreement to settle all the debts, and he knew of Mr. Tresch's claim; he agreed to pay it; he paid nearly all the debts with notes, and he paid some of them in cash; I spoke to him about paying Mr. Tresch's claim, and he said he was going to pay it after the season was over; after the season was over I did not go to him to see whether he had done it or not, till after I got the summons to appear; I don't know, for I did not trouble myself how Mr. Eveland was to pay Mr. Beltz for his interest; I presume George Eveland is
30 in Bayonne city now; I did not get my \$1000 from Eveland; I obtained a judgment against him for it, which I still hold; the judgment was recovered in New Jersey Supreme Court; I have not sold it nor assigned it, but still hold the judgment; I have heard that Eveland is not worth a cent; he sold his property before the note came due; I owned some lots in Long Island, but I understood they were sold by the sheriff for a mortgage that was on them there; six lots; I gave \$35 apiece for

them; there were no buildings on them; I own no other land in the United States, and I hold none in trust for any one; I have no leasehold property anywhere; no one holds any money in trust for me; there are some who owe me money, but can't collect it; Charles Lehmann owes me \$800; he lives in Summit avenue; he has a grocery store, and owns it in his own name; I would not give a cent for it; there are no other persons that owe me any large sums of money over \$20; I have no bonds, nor own none; I have no interest in property at Union Hill; I do not hold a mortgage on property at Union Hill; I did hold one for \$1000 about the last day of 1873 or the beginning of 1874; half of the money of this mortgage went into that florist business, and the other half my wife owns yet; she has \$500 yet; the old mortgage was canceled, and a new one for \$500 was taken by my wife; it was in 1874; she owns it yet; my wife's name is Minnie; I have never had any mortgages since in my name, nor before; I don't keep any books of account; when I was in the florist business they went to Eveland; when I sold to him I sold to Eveland everything in the florist business, worth \$5000; my interest in it for \$1000; I reside now at 403 Palisade avenue, Jersey City; the lot is owned by Mr. Costello, of New York; my wife leased it for five years, and built a house on it; the house cost \$700 or \$800; my wife still owns the property on Bergen or Sherman avenue; there is a mortgage of \$1300 on this property; my wife owns no other property that I know of; she may have other property, but I don't know anything about it; a man brings the rent of that house in Sherman avenue to my wife; she gives no receipt for it; my wife, in her business, keeps no accounts; she has paid the \$150 she borrowed of my brother out of the profits of the business; my wife and self are employed in the business; she is employed all the time, and attends to her household affairs too; she pays me no salary for my services.

[Signed]

JOHN M. WIRTZ.

Sworn and subscribed before me this October 9th, 1877, at Jersey City, New Jersey.

[Signed]

GEO. VAN HORN, *S. C. C.*

Sworn and subscribed before me this 9th day of November, A. D. 1877, at Jersey City, New Jersey.

ALFRED B. DAYTON, *M. C.*

JOHN TRESCH.

Answer.

[Filed March 9, 1878.]

- 10 The answer of John M. Wirtz and Minnie Wirtz, defendants, to the bill of complaint of John Tresch, complainant.

These defendants, now and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or so much thereof, and such parts thereof as these defendants are advised is material for them to make answer unto, they answer and

20 say—

1. That they admit that said Henry Beltz and John M. Wirtz were indebted to complainant at the time and in the manner in paragraph one of complainant's bill alleged.

2. And further, that complainant recovered a judgment in the Inferior Court of Common Pleas of the County of Hudson, in the State of New Jersey, for the amount, at the time and in the manner mentioned in paragraph two of complainant's said bill.

- 30 3. And further, that complainant sued out a writ of *feri facias* from said court against said Henry Beltz and

John M. Wirtz, of the tenor and effect, and for the amount, at the time and in the manner mentioned in paragraph three of complainant's said bill, and that the same was recorded and delivered to the sheriff of Hudson county as therein mentioned.

4. And further, that said writ of *feri facias* was endorsed, directed and delivered to said sheriff at the time and in the manner and form alleged in paragraph four of complainant's said bill.

5. And further, that said writ was returned wholly unsatisfied, for want of property of said defendants upon which to levy, as in paragraph five of complainant's bill is alleged and set forth. 10

6. And further, that said Henry Beltz and John M. Wirtz, or either of them, since the recovery of said judgment, has paid no part thereof to complainant, or any other person, in his behalf, and that the whole of same is due, together with interest, as set forth in paragraph six of complainant's bill.

7, 8, and 9. And these defendants, further answering, admit that, previous to the recovery of said judgment, to wit, from July third, eighteen hundred and seventy-three, to January sixteenth, eighteen hundred and seventy-four, said Beltz and John M. Wirtz had been engaged in business in the city of Jersey City, but deny that it was for several years, as in complainant's bill alleged; and defendants deny that John M. Wirtz has been in business in New York city since the year eighteen hundred and sixty-nine, and say that then he was in no way connected with said Beltz; and further, they deny that in the course of said business of said Beltz & Wirtz, in Jersey City, divers persons became indebted to them in large amounts of money, and deny that the said Beltz & Wirtz, or one or both of them, at the time of the exhibiting of complainant's bill, or at any time since, had debts due to them or one of them, for a large amount of money, for which they or one of them held divers securities, and had divers goods, wares 20 30

and merchandise, and other articles of personal property, which belonged to them, or in which they had an equitable interest, and things in action, of some nature or kind, which might and ought to be applied to the payment of complainant's said judgment against them; but defendants say that, while said Beltz and Wirtz were in business together in said city of Jersey City, divers persons became indebted to them, but only in small amounts, which defendants are informed and believe, 10 said Beltz has since collected and converted to his own use, without accounting to said John M. Wirtz for the same; that defendants cannot give the names of the persons who contracted said debts, nor the amounts due, if any, because the books of account of said Beltz & Wirtz are inaccessible to these defendants, and they cannot give the same from memory; and that, at the time of the exhibiting of complainant's bill, said Wirtz & Beltz had dissolved partnership, and said Wirtz had an interest in the business aforesaid, and was possessed of no prop- 20 erty, real or personal, nor interest therein, in the State of New Jersey or elsewhere; nor was any money, or anything of value due or owing to him, or held in trust for him, as in paragraphs seven, eight and nine of complainant's bill alleged; and that, as to the property and other interest of the said Henry Beltz, in said paragraphs mentioned, defendants do not know, and are not informed, save by complainant's bill, but leave complainant to make due proof thereof, if he thinks proper.

10. And defendants, further answering, admit that 30 during a greater part of the year eighteen hundred and seventy-three, to wit, from July third, eighteen hundred and seventy-three, to January sixteenth, eighteen hundred and seventy-four, and after said indebtedness to complainant was incurred, the said Beltz & Wirtz were engaged in the business of florists in Jersey City aforesaid, and while so engaged they incurred the aforesaid indebtedness to complainant; that about the first day of July, in the year eighteen hundred and seventy-three,

and while so engaged in said business, the said Beltz & Wirtz leased of one Henry F. Eveland the premises mentioned in paragraph ten of complainant's bill upon the terms of rental mentioned therein.

11. And defendants, further answering, deny that during the year eighteen hundred and seventy-three the said Beltz & Wirtz were doing a prosperous business, but admit that they erected several green-houses and a dwelling upon said leased premises, as mentioned in paragraph eleven of complainant's bill, worth several thousand dollars. 10

12. And defendants admit that said leasehold premises, together with the improvements thereon, were worth at least the sum of five thousand dollars.

13. And defendants, further answering, admit that on or about the first day of January, in the year one thousand eight hundred and seventy-four (to wit, January sixteenth, eighteen hundred and seventy-four,) the said John M. Wirtz sold and transferred his interest in said lease, premises, business, stock in trade, implements and utensils to the said George F. Eveland, but deny that it was for a very inconsiderable sum of money; and further say that at that time the business was in a very unprosperous condition, and said Wirtz wished to get it off his hands for that reason, and for the further reason that he was led to believe that said Beltz was collecting debts of the firm and not accounting to said Wirtz for his share thereof; and further, that in addition to the note of said Eveland for one thousand dollars, there was the further consideration that Eveland assumed said Wirtz's portion of the debts of the firm to the amount of two thousand dollars, and released him from liability on said lease. 20 30
And defendants say that they do not know and are not informed, save by complainant's bill, whether said Beltz sold out his share or any interest in said lease, premises, business, stock in trade, implements or utensils, to said Eveland, or any other person, but leave complainant to make due proof thereof if he thinks proper.

14. And these defendants deny that said sale was fraudulent or intended to cheat complainant or the other creditors of said Beltz & Wirtz.

15. And defendants admit that on or about the first day of January, eighteen hundred and seventy-four, said partnership of Beltz & Wirtz was dissolved. And defendants say that so far as they know, said Eveland went into possession of and carried on business upon said premises, and then failed in said business and became insolvent, and all his property was sold; but defendants
10 leave complainant to make due proof thereof if he thinks proper.

16. And these defendants admit that on the twenty-ninth day of June, in the year one thousand eight hundred and sixty-six, Johanna Schlich made the conveyance mentioned in paragraph sixteen of complainant's said bill of the lands therein described to said John M. Wirtz and Louis Wirtz.

17. And defendants admit that at the date of said conveyance said land was improved property, with a substantial dwelling erected thereon.
20

18. And these defendants admit that on the fifth day of March, in the year eighteen hundred and seventy-three, the said Louis Wirtz and Matilda, his wife, made the conveyance mentioned in paragraph eighteen of complainant's bill, of their undivided interest in the premises therein mentioned to the said John M. Wirtz. But defendants say that the consideration of one thousand dollars for said conveyance was paid by the said
30 Minnie Wirtz out of her separate estate, and that the said deed was made to the said John M. Wirtz, solely as a trustee for the said Minnie Wirtz, to convey such interest as was acquired by said last-mentioned deed, together with his previous interest therein, obtained by his joint purchase with his brother, Louis Wirtz, aforesaid.

19. And defendants, further answering, admit that on the seventh day of January, in the year one thousand eight hundred and seventy-four, said John M. Wirtz and

Minnie, his wife, made the conveyance mentioned in paragraph nineteen of complainant's bill of the premises therein mentioned to Charles Lehmann; but deny that the consideration for said conveyance was pretended, but say that there was a good and valuable consideration, being the sum of three thousand dollars—one thousand dollars paid as aforesaid to said Louis Wirtz for said conveyance of his interest to John M. Wirtz, in trust, as aforesaid, and two thousand dollars paid to said John M. Wirtz for his interest in said premises—by the said Minnie Wirtz out of her own separate estate, and that the said conveyance to said Lehmann was upon a verbal trust that the said premises should be immediately conveyed to said Minnie Wirtz, and was merely a necessary form of law to convey said premises to said Minnie Wirtz, and should, together with said conveyance from Lehmann to said Minnie Wirtz, mentioned in paragraph twenty-one of complainant's bill, be considered in equity as a single conveyance. 10

20. And defendants admit that said Charles Lehmann was and is yet a brother-in-law of said John M. Wirtz. 20

21 and 22. And defendants admit that on the seventh day of February, in the year one thousand eight hundred and seventy-five, said Charles Lehmann conveyed said last-mentioned premises to said Minnie Wirtz; but deny that the same was for a pretended consideration; and further say that the real consideration for said conveyance was as above stated in paragraph nineteen of this answer.

23. And these defendants, further answering, deny that said conveyance from John M. Wirtz and Minnie Wirtz, his wife, to Charles Lehmann, and from the said Charles Lehmann and his wife to the said Minnie Wirtz, above mentioned, were made without any consideration, and deny that said deeds were made with the express or any design of putting said property beyond the reach of the said creditors of the said John M. Wirtz, or with the design to cheat and defraud them, or for any other fraud- 30

ulent purpose; and further, these defendants say that since the year eighteen hundred and sixty-eight, said Minnie Wirtz has carried on in her own name, and entirely separate from her husband, John M. Wirtz, the hair-dressing business; that she started in said business with a capital of one hundred and fifty dollars, borrowed by her on her own responsibility, has done a fair business ever since, and has accumulated during the period aforesaid in said business the three hundred dollars consideration money paid by her for the conveyances from 10 Louis Wirtz and wife to John M. Wirtz in trust, and from John M. Wirtz through said Charles Lehmann to her, as above set forth and explained.

24. And these defendants admit that said property is now claimed to be held by said Minnie Wirtz under said deed from Charles Lehmann and wife to her, and was at the time of making said deed worth three thousand dollars.

25. And defendants admit that on the eighth day of 20 July, one thousand eight hundred and seventy-one, Frederica Hufnagle and Bernhard Hufnagle, her husband, made and executed to said John M. Wirtz a mortgage for the sum of one thousand dollars on the premises described in paragraph twenty-five of complainant's bill.

26. And defendants further admit that said mortgage was duly acknowledged and recorded in the office of the clerk (now register) of the county of Hudson, and that on the tenth day of January, in the year one thousand 30 eight hundred and seventy-four, \$500 was paid to said John M. Wirtz by Frederica or Bernhard Hufnagle, on account of said mortgage, and that the same was canceled of record as set forth in paragraph twenty-six of complainant's bill.

27. And defendants admit that only the said five hundred dollars was paid in cash upon said mortgage by said Frederica Hufnagle and Bernhard Hufnagle, and that in addition thereto they made and executed unto the

said Minnie Wirtz another mortgage on said last above-mentioned lands for the further sum of five hundred dollars, the same being dated and recorded as set forth in paragraph twenty-seven of complainant's bill, and that the same was in part payment of the one thousand dollar mortgage, which was duly canceled upon the sum of five hundred dollars in cash being paid, and the said five hundred dollar mortgage being given.

28. And these defendants deny that said five hundred dollar mortgage was made and executed to said Minnie Wirtz with any design of cheating or defrauding the creditors of the said John M. Wirtz or complainant, and deny that the said Minnie Wirtz never paid to the said Frederica Hufnagle and Bernhard Hufnagle, or to either of them any consideration whatever as charged in paragraph twenty-eight of complainant's bill; but defendants say that the consideration for said mortgage was five hundred dollars balance due on said one thousand dollar mortgage, which was made to said John M. Wirtz to secure the payment of one thousand dollars by said Minnie Wirtz lent and advanced to said Hufnagles, out of her own separate estate, and which mortgage was held in trust for said Minnie Wirtz by said John M. Wirtz, under a verbal agreement that upon payment of the sum secured thereby, the said John M. Wirtz would repay the same to said Minnie Wirtz forthwith; and defendants further say that although said \$1000 mortgage was payable to said John M. Wirtz by its terms and conditions, yet in equity and good conscience the said money secured thereby, or any balance thereof remaining unpaid, was due and payable to said Minnie Wirtz, and that the making and execution of said five hundred dollar mortgage to her was equitable and just, and not fraudulent, as charged in complainant's bill.

29. And these defendants, further answering, deny that said John M. Wirtz has ever, in his own name or in the name of his wife, Minnie Wirtz, carried on the business of working or trading in human hair, or that said

John M. Wirtz ever alleged such to be the case; and deny that said John M. Wirtz, in carrying on such a business, or any business, has realized considerable money, or that he is in easy circumstances; but defendants say that said Minnie Wirtz started in the business of dressing hair on or about the fifth day of April, in the year eighteen hundred and sixty eight, at Jersey City, with money of her own, as above, in paragraph twenty-three of this answer, set forth, and has ever since
10 carried on said business in her own name and right; but that said John M. Wirtz never had any interest in said business or the profits thereof. And defendants admit that on the first day of February, in the year one thousand eight hundred and seventy-six, one Thomas Costello leased to said Minnie Wirtz, in her own name, the premises described in paragraph twenty-nine of complainant's said bill for the term therein mentioned.

30. And defendants, further answering, deny that said John M. Wirtz, alone or together with said Minnie
20 Wirtz, has ever erected on said leased premises, any store or building whatever, or that the premises so leased as aforesaid in the name of Minnie Wirtz, were so leased with the fraudulent purpose or design of protecting the same from the creditors of said John M. Wirtz or complainant; and deny each and every of the fraudulent motives and intentions imputed to said John M. Wirtz or Minnie Wirtz in paragraph thirty of complainant's bill; and defendants charge that the improvements
30 made upon said leased premises, were made from means derived from the business of dressing hair, and that said business is and has always been carried on by said Minnie Wirtz in good faith, in her own name and upon her own responsibility solely; and they deny that it is so carried on as a cover, or to protect the avails of said business from the creditors of said John M. Wirtz; and defendants deny that said John M. Wirtz devotes the whole time and attention to said business, or solely controls the business, or that he is the only source of profit

therein, or that said Minnie Wirtz had no means of her own to start or carry on said business, or that said business is carried on in such manner for the purpose of defrauding the creditors of the said John M. Wirtz or complainant; but defendants say that the manner of carrying on said business and the party interested therein, who furnished the capital to commence the same, and who is entitled to the profits thereof, is as full and clearly set forth and stated already in paragraphs twenty-two and twenty-nine of this the defendant's answer. And 10
defendants further say that although said business is carried on by said Minnie Wirtz in her own name, and the labor thereof performed by her and assistants employed by her and paid out of her own separate earnings and estate, and although her said husband, John M. Wirtz, has no capital invested in said business and no interest in the profits thereof or responsibility for the debts and liabilities incurred therein, or for the management thereof, yet when otherwise unemployed he has and does assist his said wife in the making of hair braids the same as any 20
other of her assistants, and has and does receive therefor ample return in board and clothing, and money furnished and paid him by her.

31 and 32. And defendants, further answering, deny that they are the owners of or in any way or manner beneficially interested in any real estate in this or any other state, or in any chattels real, or in any contract relating to real estate, or in the rents, issues and profits of any real estate, or in the stock of any company, or in the profits of any company or copartnership, except as has 30
already been fully and clearly stated in this the defendant's answer; and further deny that they had in their possession at the time of the filing of complainant's bill any money in coin or bank bills or deposited in any bank or elsewhere to their credit, or that they have moneys or security for the payment of money held by any person or persons in trust or otherwise for their benefit, or that defendants have made any other transfer or conveyance

than those above set forth in this the defendants' answer, and excepting such small sums of money as the said Minnie Wirtz has earned in her said business of hair-dressing, and are now in her possession or due and payable to her from her customers, and in which the said Henry Beltz or John M. Wirtz have no interest whatsoever. And these defendants admit that the said former firm of Beltz & Wirtz, or Henry Beltz have no property of any kind whatever which complainant can reach by execution. And these defendants deny all and all manner of unlawful combination and confederacy in said bill charged, without that, any other matter, cause or thing material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants.

All which matters and things these defendants are ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs in this behalf most unjustly sustained.

M. T. NEWBOLD,
Solicitor and of Counsel with Defendants.

State of New Jersey, Hudson county, ss.—John M. Wirtz and Minnie Wirtz, the above-named defendants, being duly sworn according to law, on their respective oaths, each for himself, saith that the matters and things set forth in the above answer, so far as relate to their own acts, are true, and so far as relates to the acts of other persons, they believe them to be true.

JOHN M. WIRTZ.
MINNIE WIRTZ.

Sworn and subscribed this 6th day of March, A. D. 1878, before me.

GEO. VAN HORN, M. C.

Replication.

[Filed March 30, 1878.]

This repliant, saving and reserving to himself, all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto: and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is untrue; all which matters and things this repliant is, and will be, ready to aver and prove, as this honorable court shall direct; and humbly pray, as in and by his said bill he has already prayed.

LIPPINCOTT & DEACON,
Solicitors of Complainant.

J. H. LIPPINCOTT, 20
Of Counsel with Complainant.

Opinion of Vice-Chancellor.

[Filed May 24, 1881.]

On final hearing on bill and answer and proofs, taken before a master.

Mr. E. D. Deacon, for complainant.

Mr. M. T. Newbold, for defendants.

VAN FLEET, V. C.

This is a creditor's suit. The defendants are husband and wife. The complainant having recovered a judgment against the husband, and being unable to find any property out of which he can make his debt, seeks by this suit to reach certain property standing in the name of the wife, which he says is, in law, the property of the husband, and should, therefore, be applied to the payment of his debts.

10 The facts are almost entirely free from dispute. They come mainly from the mouths of the defendants, and may be stated as follows :

The wife, in the spring of 1863, commenced the business of hair dressing and the manufacture of human hair in Jersey City. She started with a capital of \$250. Part of this she borrowed, and the balance she had earned with her needle. Her husband, at this time, was engaged in the manufacture of hair-jewelry in the city of New York. He had no interest in his wife's business ;
20 he furnished none of her capital, and exercised no control over her in its prosecution, but allowed her to conduct herself in its prosecution, as though she were a *feme sole*. She succeeded, and made money. In July, 1871, she gave her husband \$1000 to loan for her on bond and mortgage. He made the loan, but allowed the papers to be made payable to himself. He now, however, says that the money belonged to his wife, and that the bond and mortgage were made payable to him through mistake. In January, 1874, \$500 of the principal of this
30 mortgage was paid to the wife, and a new mortgage executed to her for the balance, and the old one canceled. Part, at least, of the complainant's debt had been incurred by the husband prior to this last date. The husband gave up his business in 1871, and, after that, up to July, 1873, assisted his wife, more or less, in her business. He was, however, a mere worker ; the wife continued to control the business, and he merely gave her such labor as she required. She paid him no wages, but

supported him, and gave him money as she thought he needed it. In July or August, 1873, he formed a copartnership with a man named Beltz, to carry on the business of florists. Beltz furnished no capital; Mrs. Wirtz really furnished the whole, by loans, to her husband. The evidence renders it very clear that she advanced, by way of loan, between July, 1873, and January, 1874, over \$2000. Both husband and wife swear that these loans were made upon a distinct understanding that they were to be repaid by a conveyance of the house and lot which the complainant now seeks to have declared the property of the husband. During the winter of 1873-74, the husband became satisfied his copartner was defrauding him, and, on the 16th of January, 1874, he sold his interest in the floral business for \$1000, and a stipulation or promise by his purchaser, that he would pay the husband's share of the copartnership debts. His purchaser paid neither the purchase-money nor any part of the debts of the copartnership. On the 7th of January, 1874, the husband conveyed the house and lot in dispute to a third person, and that person, on the 2d of February, 1874, conveyed them to the wife. Upon these facts, the complainant asks a decree declaring that the mortgage and house and lot are held by the wife in trust for her husband's creditors, and adjudging that they shall be applied to the payment of his debts.

The evidence shows very clearly that the money loaned on the mortgage, as well as that invested by the husband in the floral business, was made by the wife. She acquired it chiefly by her labor and skill as a hair-dresser, her other gains being quite small; so that the money used for both purposes was her earnings, the product of her labor. The evidence, I think, makes it equally clear that she carried on business for her own benefit and advantage, with her husband's full consent, and that, when she passed over the money to him, represented by the property in dispute, she had no intention

to give it to him, nor to abandon it, nor he any purpose to obtain it, or to reduce it to possession, in virtue of his marital rights.

Taking these to be the facts, the question presented by the case is one of law. The complainant contends that a wife's earnings belong to her husband, and that he cannot, as against his creditors, give them to her. There can be no doubt that, by the common law, a husband had an absolute right to all moneys earned by
10 his wife. If he died without having recovered them, they did not survive to her, but went to his representatives. If it became necessary to sue for them during coverture, the husband had to sue alone, unless he could show a special promise to the wife, and then he might sue either in his own name or in the name of both, as he chose. *Clan. on Husb. and Wife* 3, 5. But this rule of the common law has been abrogated in this state. By a recent statute, the wages and earnings of a married woman, acquired or gained by her in any employment,
20 occupation or trade, carried on separately from her husband, are made her separate property, as though she were a single woman. *Rev.*, p. 637, § 4. This statute does not, however, prescribe the rule by which the rights of the parties to this suit must be determined. It did not take effect until after the moneys in controversy had been earned, received and invested. The question is, could a husband, prior to this statute, relinquish his common law right to the earnings of his wife so as to give her a valid title to them against his creditors?
30 The complainant contends that he could not, and this contention is fully supported by a proposition affirmed as law, in *Cramer v. Reford*, 2 C. E. Gr. 380. It is there said: "A wife's earnings and the avails of her labor, during coverture, belong to her husband, and he cannot, as against his creditors, give, or agree to give them to her; nor can she justly claim that property purchased with them, in her name, is hers, and not subject to be taken for his debts." Two cases are cited in sup-

port of this proposition, namely, *Skillman v. Skillman*, 2 *Beas.* 403, and *Belford v. Crane*, 1 *C. E. Gr.* 265.

But these cases, as I understand them, do not go quite to the length of declaring that a husband can, under no condition of facts, make a valid relinquishment of his right to his wife's earnings as against his creditors, but they do go to this extent: they hold that while a wife may acquire, by gift from her husband, a separate property in equity, in her earnings, as against him, such gift will not be valid as against his creditors, unless made pursuant to an ante-nuptial contract. The creditors here meant are, obviously, those only whose debts were contracted prior to the gift or relinquishment. When free from debt a husband may lawfully surrender his right to his wife's earnings, or make a valid gift to her of anything that is susceptible of ownership. The wife in this case had been carrying on business as a *feme sole* with her husband's consent, for more than five years before the complainant's debt was incurred. The property the complainant is seeking to reach had been surrendered by his debtor long before the relation of creditor and debtor existed between them. The complainant did not trust the wife, nor look to her ability to earn money for the payment of his debt. If at the time his debt was contracted he knew his debtor had a wife, and made any inquiry respecting her, he undoubtedly was informed that she was carrying on business separately from her husband, and had loaned him the money with which he had started business. The gift in this case long antedated the complainant's claim, and was made when, so far as appears, the husband had no creditors, and did not expect to incur debts, and must therefore be held valid against the complainant.

But at the time the complainant's debt was contracted a husband might make a valid gift or relinquishment to his wife of her earnings, even against creditors whose debts had already been contracted, though no ante-nuptial arrangement existed between them. In *Peterson v.*

Mulford, 7 Vr. 489, decided by the Court of Errors and Appeals at its March Term, 1873, that court declared it to be the settled law of this state that a husband may permit his wife to labor for herself and appropriate to her own use the avails of her labor, and may give it to her or allow her to appropriate to her own use the proceeds of her own labor when received by her, and that such permission or gift is good and valid as against his creditors, if such proceeds have not actually been re-
10 duced into his possession.

No part of the earnings represented by the property in controversy, was ever reduced to possession by the husband. The fact that he invested \$1000 of them on a mortgage payable to himself, did not, under the circumstances stated, constitute a reduction to possession so as to make the security his and deprive the wife of it. By allowing her to establish a business and to manage and control it as her own separate affair, and to take and appropriate its proceeds as her separate property, he told
20 her in the most unmistakable manner that he abandoned all right to her earnings and the proceeds of her business. While they remained in her possession they were hers absolutely, and he was powerless to get them from her. When she had accumulated sufficient to warrant her in making an investment, it was both natural and proper for her to go to him and ask him to do it for her. If she placed the money in his hands to be invested for her, and he accepted it with that understanding, he became her trustee, and was bound to execute his trust
30 faithfully. If, after getting the money into his possession to invest for her, he should have attempted to deprive her of it by the exercise of his marital rights, his attempt would have been a fraud of the most offensive kind. Neither he nor those who must trace their title through him, can found a right on a wrong of that character. But the husband did not invest the money in his own name for the purpose of asserting a claim to it, nor for the purpose of making the security his. The invest-

ment in his name was a mistake, which, in equity, took nothing from the wife and gave the husband nothing. In what the husband did there was no intent to appropriate the money to himself, in virtue of his marital right, and without such intent there can be no reduction into possession so as to deprive the wife of her right. 1 *Bish. on Mar. Wom.*, § 119. Nor does the fact that a husband assists his wife by working for her, or managing her business, make her property liable for his debts. A married woman may allow her husband to manage her 10 separate estate without necessarily subjecting it or the profits arising from his management, to the claims of his creditors. *Aldridge v. Muirhead*, 11 *Otto* 399. A man's creditors cannot compel him to work for them. A debtor is not the slave of his creditors. The marital relation does not disqualify the husband from becoming the agent of his wife. All the property of a married woman is now her separate estate; she holds it as a *feme sole*, and has a right to embark it in business. She may lawfully engage in any kind of trade or barter. If she 20 engages in business, and actually furnishes the capital, so that the business is in fact and truth hers, she has the right to ask the aid of her husband, and he may give her his labor and skill without rendering her property liable to seizure for his debts. *Voohees v. Bonesteel*, 16 *Wall.* 31. The property the complainants seek to reach is not the property of his debtor, and his bill must therefore be dismissed with costs.

Decree.

This cause coming on to be heard on bill, answer and 30 proofs, in the presence of E. D. Deacon, of counsel with complainant, and of M. T. Newbold, of counsel with defendants, and upon hearing the argument of the re-

spective counsel thereon, it appearing to the court that the complainant is not entitled to the relief sought and prayed for by him in his said bill of complaint: It is, on this sixteenth day of June, eighteen hundred and eighty-one, ordered and decreed that said bill of complaint be and the same is hereby dismissed, with costs.

THEODORE RUNYON, C.

Respectfully advised.

A. V. VAN FLEET, V. C.

10

Notice of Appeal.

The complainant hereby appeals from the final decree in the above cause, and from the whole and every part thereof, to the Court of Errors and Appeals, in the last resort in all cases.

Dated September 10th, 1881.

J. H. LIPPINCOTT,

Solicitor and of Counsel with the Complainant.

I conceive there is good cause for appeal in the above-stated cause.

20

J. H. LIPPINCOTT,

Of Counsel with Complainant.

Petition of Appeal.

To the Honorable the Court of Errors and Appeals, in the last resort in all cases.

The humble petition of John Tresch, appellant in the above-stated cause, respectfully shows that your peti-

tioner finds himself aggrieved by a final decree made in the Court of Chancery, by his Honor Theodore Runyon, Chancellor of New Jersey, bearing date the sixteenth day of June, in the year one thousand eight hundred and eighty-one, wherein the said John Tresch was complainant, and the said John M. Wirtz and others were defendants, in this respect, that the decree adjudges that the complainant is not entitled to the relief sought and prayed for by him in his said bill of complaint, and that the said decree further adjudges that the said bill of 10 complaint be dismissed, with costs.

And your petitioner hereby appeals from the said decree, and the whole and every part thereof, as aforesaid, on the ground that the same is erroneous, for that the said complainant is entitled to the relief sought and prayed for by him in his bill of complaint, and that the said bill of complaint should not be dismissed.

Your petitioner therefore prays that the said decree of the said Chancellor may be in every particular reversed, set aside, and for nothing holden, and that your 20 petitioner have such relief in the premises as to this honorable court shall seem meet.

J. H. LIPPINCOTT,

Solicitor for and of Counsel with Appellant.

Answer to the Petition of Appeal.

The answer of the above-named respondents to the petition of appeal of the above-named appellant.

These respondents, not acknowledging all or any matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, say 30 and admit that a decree was, on the sixteenth day of

June, A. D. eighteen hundred and eighty-one, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as therein stated, but as to the substance and form thereof these respondents pray to refer thereto, when the same shall be produced.

And these respondents are advised and believe that the said decree is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged 10 to these respondents.

M. T. NEWBOLD,

Solicitor for and of Counsel with Defendants.