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Notice of Appeal.
(Filed Feb. 23, 1916.)

In Chancery of New Jersey

Between

MARIE ANTOINETTE CANTZLAAR
EUGSTER,

Complainant,

and

JEAN BENEDICT EUGSTER,
Defendant.

On Bill, Etc.
Notice of Ap-
peal.

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TO MESSRS. WELLER & LICHTENSTEIN,
Solicitors of Defendant.

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Gentlemen:

The complainant, Marie Antoinette Cantzlaar Eugster, hereby appeals from the final decree and every part thereof made in this Court in the above entitled cause on the 14th day of February, 1916, to the Court of Errors and Appeals in the last resort in all causes.

30

Dated, February 18th, 1916.

J. EMIL WALSCHEID,
Solicitor and of Counsel with Complainant.

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

J. EMIL WALSCHEID,
Of Counsel with Complainant.

40

Petition of Appeal.

(Filed March 23, 1916.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	MARIE ANTOINETTE CANTZLAAR EUGSTER, <i>Complainant-Appellant,</i> vs. JEAN BENEDICT EUGSTER, <i>Defendant-Appellee.</i>	} On Appeal } from Court of } Chancery. } Petition of } Appeal.
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20 TO THE HONORABLE THE COURT OF ERRORS AND
APPEALS IN THE LAST RESORT IN ALL CAUSES:

The petition of Marie Antoinette Cantzlaar Eugster, appellant in this cause, respectfully shows that:

30 Your petitioner heretofore instituted a suit in the Court of Chancery of the State of New Jersey against Jean Benedict Eugster, praying certain relief in which cause there has been made and entered a final decree by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 14th day of February, A. D. 1916, in and by which decree your petitioner finds herself aggrieved in this respect, to wit:

That the said decree does order, adjudge and decree that certain property therein described as the separate property and estate of your petitioner is subject to the payment of the sum of \$3,190.77 found to be due to the defendant, Jean Benedict Eugster, on an accounting from your pe-

Petition of Appeal.

tioner and from a certain business in said decree described; that said decree does order, adjudge and decree a partnership alleged to be in existence between your petitioner and the said defendant, Jean Benedict Eugster, in connection with the conduct of a certain embroidery business to be dissolved; and that said decree does further order, adjudge and decree that petitioner, within ten days from the date thereof, pay to the said defendant, Jean Benedict Eugster, or his solicitors, the sum of \$3,190.77, the amount found due by said decree to said defendant from your petitioner and from said business on the dissolution of said alleged co-partnership. 10

Your petitioner, therefore, humbly appeals from that part of the said decree of the said Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous for the following reasons: 20

1. The pleadings in the cause do not raise the questions thus decided.

2. There is neither cross-bill nor answer in the nature of a cross-bill praying the relief thus attempted to be granted.

3. Complainant and defendant at all times covered by the matters brought under review in said cause were husband and wife and said matters arose within the State of New Jersey; and under the laws of the State of New Jersey, a husband and wife cannot be or become partners in business. 30

4. A husband and wife cannot, under the laws of the State of New Jersey, contract with each other for their respective services in relation to the management or operation of a mercantile business owned by them or by either of them. 40

Petition of Appeal.

5. A husband cannot, under the laws of the State of New Jersey, recover compensation from his wife for services rendered by him to or for his wife.

10 6. The business relationship attempted to be created between the parties complainant and defendant in this cause at the time of their marriage, if it ever had legal existence, was terminated by the acts of the parties prior to the filing of the bill of complaint in this cause and prior to at least a portion of the time for which the defendant was allowed compensation by the Court of Chancery.

20 7. The business relationship attempted to be created between the parties complainant and defendant in this cause at the time of their marriage, if it ever had legal existence, was terminated by the filing of the bill of complaint in this cause, which date was prior to at least a portion of the time for which the defendant was allowed compensation by the Court of Chancery.

8. The complainant is not lawfully indebted to the defendant in any amount.

30 9. The defendant held in his possession and control the separate property and estate of the complainant by force and against the wishes of the complainant, and operated an embroidery business with the separate property and estate of the complainant by force and against the wishes of the complainant.

40 10. The business relationship attempted to be created between the parties at the time of their marriage was entered into by complainant under the influence, persuasion and coercion of the defendant, her husband, and without competent, independent and impartial advice.

Petition of Appeal.

11. The business relationship attempted to be created between the parties at the time of their marriage was continued after their marriage solely through the influence, persuasion and coercion exercised by the husband over the wife, and without competent, independent and impartial advice to the wife upon the subject.

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12. The evidence in this cause does not warrant a finding that complainant was indebted to defendant in the sum of \$3,190.77 or any other sum of money.

13. The evidence in this cause does not warrant a finding that a partnership existed between parties complainant and defendant in this cause.

14. The defendant at all times held the separate property of the complainant described in said decree as trustee of complainant, and was at all times bound to account to her for the same and for any and all increment thereof.

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15. The defendant, after the filing of the bill of complaint in this cause, held the separate property of the complainant described in the said decree as trustee of complainant and was at all times bound to account to her for the same and for any and all increment thereof.

Your petitioner, therefore, prays that the parts or portions of said decree of the said Chancellor, which decree as aforesaid, may be in all things reversed, set aside and for nothing holden and that your petitioner may have such relief in the premises as to this Honorable court shall seem meet.

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And your petitioner will ever pray, etc.

J. EMIL WALSCHEID,

Solicitor for and of Counsel with Petitioner.

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Bill of Complaint.

(Filed Nov. 18, 1912.)

IN CHANCERY OF NEW JERSEY.

TO HIS HONOR, EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY:

Complaining shows unto your Honor your oratrix, Marie Antoinette Cantzlaar Eugster, of the Town of West Hoboken, County of Hudson, and State of New Jersey: 10

1. That on November 23, 1910, she was lawfully married to Jean Benedict Eugster in the said Town of West Hoboken, and that since her marriage she has lived in the said Town of West Hoboken continuously until the present time.

2. That at the time of her marriage, your oratrix was the owner of certain lands situate in said Town of West Hoboken, County of Hudson and State of New Jersey, which is known as Lot 13 E, Plot 13 and Block 179 on the Town Map of said Town of West Hoboken, which real estate your oratrix had purchased before the time of her marriage with funds from her own separate estate; and your oratrix was also possessed of personal property consisting of cash and securities to the amount of nine thousand (\$9,000) dollars. 20

3. That about the time of her marriage, the said Jean Benedict Eugster, the defendant herein, who was a man of over the age of fifty years, represented to your oratrix that he was skilled in the business of manufacturing embroidery, and had been engaged in that business both in the Republic of Switzerland, of which he is a native, and in this country, for a number of years, and that if a factory could be equipped with the necessary machinery, he, because of his knowledge of the 30

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Bill of Complaint.

embroidery business, could manage the same successfully and it would be a source of profit; and she requested your oratrix to furnish the money that would be necessary to equip said embroidery factory from her own separate property of which she was at that time possessed.

10 4. That your oratrix thereupon agreed with the defendant to furnish, from her own separate estate, the money necessary to buy the machinery and equip said embroidery plant, and to erect a building upon the lands and premises described as aforesaid, in which to install said machinery, and the defendant agreed with your oratrix that upon her furnishing said money and erecting said building and installing therein the necessary machinery, that he, the said defendant, 20 would devote all of his time and his best efforts to the management of said business; that out of the said business, he would accept and receive the sum of twenty-five (\$25) dollars per week for the services thus rendered by him in said business and from and out of said sum of twenty-five (\$25) dollars per week, he would weekly pay to your oratrix for her household expenses the sum of fifteen (\$15) dollars per week; that out of said 30 business your oratrix should receive as and for rent of said building the sum of twenty-five (\$25) dollars per month, that out of the profits of said business the money advanced by your oratrix for the purpose of buying the machinery and equipping said embroidery plant should be repaid, either to her or by the payment and cancellation of any chattel mortgages, conditional bills of sale or other liens which might be placed upon any of said machinery or equipment as part of the pur-

Bill of Complaint.

chase price thereof, that until the full purchase price of said machinery and equipment had thus been repaid and satisfied out of the profits of said business and until all such liens had been discharged and satisfied out of the profits of said business no division of profits was to be made, and that after the payment of the purchase price of said machinery and equipment had thus been made, the profits of the business would be divided equally between the said defendant and your oratrix; and that it was further agreed between your oratrix and said defendant that he, the said defendant, could at any time sell the said business for a price satisfactory and acceptable to your oratrix and that upon any such sale of said business, your oratrix was to be reimbursed for all moneys advanced by her to said business out of her separate estate.

5. That in pursuance of said agreement your oratrix thereupon caused to be erected upon said lands a building suitable for use as an embroidery factory and in order to be able to do so, placed a first mortgage for the sum of six thousand (\$6,000) dollars upon said land and building, that oratrix did also pay out and expend out of her separate estate the sum of three thousand, eight hundred and fifty (\$3,850) dollars in cash in the purchase of the embroidery machines necessary for said business and the equipment of an embroidery plant in said building, a detailed statement of the moneys thus expended being hereto annexed and marked "Schedule One," and that when said embroidery plant was ready for operation it contained two shuttle embroidery machines, System Saurer, two motors and mending ma-

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Bill of Complaint.

chines, a sewing machine, tables, electric lights, needles, threads, fabrics, tools and all other implements, appliances and devises necessary in a first-class embroidery manufacturing business.

10 6. That the two shuttle embroidery machines referred to in the preceding paragraph were purchased at a cost of four thousand two hundred and eighty-seven dollars and fifty cents (\$4,287.50); that your oratrix paid for said machines the sum of two thousand (\$2,000) dollars in cash and gave chattel mortgages to the vendor for the balance of said purchase price, to wit, for the sum of two thousand two hundred and eighty-seven dollars and fifty cents (\$2,287.50).

20 7. That the defendant did not contribute to the cost of installing said embroidery business or to its costs or expenses any money whatsoever, because at the time of his marriage and at the time of the installation of said business the entire fortune of the defendant consisted of the sum of forty (\$40) dollars in cash and some articles of personal property.

30 8. That after the said embroidery factory was completed and fully equipped, the defendant took entire charge and management of the same, employed the necessary labor, collected the money, paid all the bills, maintained a separate check account in the Commonwealth Trust Company in the Town of West Hoboken in his own name and has managed and run said business as his own, denying to your oratrix all information in regard to the same and excluding your oratrix from all information and knowledge concerning the same.

40 9. That out of the profits of said business the said defendant on April 9, 1912, paid and satis-

Bill of Complaint.

fied the chattel mortgage made by your oratrix in part payment of the purchase price of the embroidery machines installed in said factory; that since the latter part of the month of April, one thousand nine hundred and twelve, your oratrix and the defendant have not consorted together; that since that time the defendant has ceased to pay to your oratrix the fifteen (\$15) dollars per week for household expenses and since that time has also ceased to pay unto your oratrix the sum of twenty-five dollars per month as and for the rent hereinbefore stipulated and agreed upon; that since that time the said defendant has locked, as against your oratrix, the desk used in said business containing the papers and documents appertaining to said business and also on various occasions since that time denied to your oratrix the right to enter said embroidery factory by locking the doors of the same against your oratrix when he, the defendant, went away, and that since that time the said defendant has asserted to your oratrix that she, your oratrix, had no interest in said business and had no rights therein, and that whatever property your oratrix invested in said business passed unto the defendant because as he, said defendant maintains, the property of the wife becomes the property of the husband upon marriage and the husband can do with it as he sees fit.

10. That your oratrix has invested in the purchase of the lands hereinbefore described, which lands were purchased for the sole purpose of being used after her marriage for the erection thereof of the embroidery plant aforesaid, and in the erection of said embroidery plant and the in-

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Bill of Complaint.

10 stallation of the machinery and equipment there-
in contained all of her separate estate; that your
oratrix has placed upon the property hereinbe-
fore described a mortgage for the sum of six
thousand (\$6,000) dollars, which mortgage falls
due January 1, 1914, and bears interest at the
rate of six per centum per annum; that your
oratrix is unable to pay the interest on said mort-
gage and will be unable so to do when next said
interest is payable; that your oratrix will be un-
able to pay off the principal sum of said mort-
gage or any part thereof if said mortgage should
be called when it falls due, and that said defend-
ant refuses to pay unto your oratrix any portion
of the moneys derived from the business afore-
20 said, that he refuses to reimburse your oratrix
for the moneys expended by her on account of
said business, its installation and equipment and
refuses to pay to your oratrix any portion of the
profits of said business although he, the said de-
fendant, admits that said business is profitable
and that he has made sufficient money with which
to reimburse your oratrix for the moneys ex-
pended by her on account of said embroidery
plant, its installation and equipment.

30 11. That said embroidery business is at present
being conducted and operated daily and that nine
persons are employed therein.

12. That the defendant has refused and does
refuse to pay to your oratrix any money on ac-
count of said business or on account of her house-
hold expenses, although often requested so to do
by your oratrix.

40 In tender consideration whereof for as much as
your oratrix is withiut adequate relief at law and

Bill of Complaint.

can only have relief in this Honorable Court, where matters of this nature are particularly cognizable and relievable.

To the end, therefore, that the said defendant may full, true and perfect answer make, but without oath, the oath of the defendant being hereby expressly waived, to all and singular, the matters and things hereinbefore stated and contained, and that he may be required *to account* to your oratrix for the profits of said embroidery business and that he may be decreed to pay unto your oratrix all moneys advanced by her in the installation and equipment of said embroidery business together with all profits and other moneys belonging unto her by reason of the foregoing transactions; that he may be declared a trustee for your oratrix so far as the moneys invested by her in said embroidery business from her separate estate are concerned and that he may be required to pay over to your oratrix within a short day the amount of money that is found to be due to your oratrix upon such accounting or otherwise by reason of her rights and interest in said business; that a receiver may be appointed to operate said business or to sell the same, and that the said defendant, his agents, servants and employees may be restrained from transferring and disposing of, mortgaging or in any other manner pledging any property or choses in action belonging to said embroidery business and that your oratrix may have such other and further relief in the premises as the nature of the case may require and as may be agreeable to equity and good conscience.

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Bill of Complaint.

10 May it please your Honor the premises consid-
 ered to grant unto your oratrix the State's writ
 of injunction issuing out of and under the seal of
 this Honorable Court directed to the said de-
 fendant, Jean Benedict Eugster, restraining him,
 his agents, servants and employees from trans-
 20 ferring and disposing of, mortgaging or in any
 other way pledging any property or choses in ac-
 tion belonging to said embroidery business
 whether in the possession of the said Jean Bene-
 dict Eugster or in the possession of any agent,
 servant or employee, of the said defendant, Jean
 Benedict Eugster, and also to grant unto your
 oratrix the State's writ of subpœna issuing out
 of and under the seal of this Honorable Court to
 20 be directed to the defendant, Jean Benedict
 Eugster, commanding him by a certain day and
 under a certain penalty therein to be expressed
 to be and appear in this Honorable Court, then
 and there to answer all and singular the premises
 and to stand to, abide by and perform such order
 and decree therein as to your honor shall seem
 meet and shall be agreeable to equity and good
 conscience.

30 And your oratrix as in duty bound, will ever
 pray.

J. EMIL WALSCHEID,
Solicitor of and of Counsel with Complainant.

Bill of Complaint.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

MARIE ANTOINETTE CANTZLAAR EUGSTER being duly sworn according to law upon her oath deposes and says that she is the complainant named in the foregoing bill of complaint; that she has read the same and knows the contents thereof, and that the matters and things therein stated are true to the knowledge of this deponent. 10

Deponent further says that she was married to Jean Benedict Eugster on the twenty-third day of November, one thousand nine hundred and ten; that at that time she owned in her own right the land and premises known as Lot 13 E, Plot 13, Block 179, on the Town Map of the Town of West Hoboken, and that at that time she had a separate estate consisting of cash and securities to the amount of nine thousand (\$9,000) dollars; that at the time of her marriage to said Eugster, the said Eugster represented to this deponent that he was skilled in the business of manufacturing embroidery and that because of his knowledge in this business, if a factory could be equipped for him with the necessary machinery, he, the said Eugster, could manage the same successfully, and it would be a source of profit; that he, the said Eugster, then requested this deponent to furnish the money necessary to equip such an embroidery factory from her own separate estate of which she was at that time possessed. 20 30

Deponent thereupon agreed with the said Eugster to furnish from her own separate estate the money necessary to buy said machinery and equip such embroidery plant and to erect a building on 40

Bill of Complaint.

such land and premises, described as aforesaid, in which to install said machinery and the said Eugster agreed with this deponent that upon her furnishing said money and erecting said building and installing therein the necessary machinery, that he, the said Eugster, would devote all of his
10 time and his best efforts to the management of said business; that out of the said business he would accept and receive the sum of twenty-five dollars per week for the services thus rendered by him in said business and that out of said sum of twenty-five dollars per week he would weekly pay to this deponent the sum of fifteen dollars per week for her household expenses; that out of said business deponent should receive as and for
20 rent of said building the sum of twenty-five dollars per month; that out of the profits of said business the moneys advanced by deponent for the purpose of buying the machinery and equipping said embroidery plant should be repaid to her; that said machinery and embroidery plant should out of said profits be cleared of any chattel mortgages, conditional bills of sale, or other lien which might be placed upon any of said machinery or equipment as part of the purchase price thereof, and that until the full purchase
30 price of said machinery and equipment had thus been repaid and satisfied out of the profits of said business and until all such liens had been discharged and satisfied out of the profits of said business no division of profits was to be made between deponent and said Eugster; that after the payment of the purchase price of said machinery and equipment had thus been made the profits of the business should be divided equally between
40 deponent and the said Eugster.

Bill of Complaint.

Deponent further says that in pursuance of said agreement deponent thereupon caused to be erected on said lands and premises a building suitable for use as an embroidery factory and in order to be able to do so, placed a first mortgage for the sum of six thousand (\$6,000) dollars upon said building; that deponent did also pay and expend out of her separate estate the sum of three thousand eight hundred and fifty (\$3,850) dollars in cash in the purchase of embroidery machines necessary for said business and the equipment of an embroidery plant in said building, a detailed statement of the moneys thus expended and the objects for which they were expended is hereto annexed and marked "Schedule One," and that when said embroidery plant was ready for operation it contained two shuttle embroidery machines,—System Saurer, two motors and mending machines, a sewing machine, tables, electric lights, needles, threads, fabrics, tools and all other implements, appliances and devices necessary in a first-class embroidery manufacturing business.

Deponent further says that the two shuttle machines purchased by her and hereinbefore referred to cost the sum of four thousand two hundred and eighty-seven dollars and fifty cents (\$4,287.50); that deponent paid for said machines the sum of two thousand dollars in cash and gave chattel mortgages to the vendor for the balance of said purchase price.

Deponent further says that the said Eugster did not contribute to the cost of installing said embroidery business or to its costs and expenses any money whatsoever because at the time of his

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Bill of Complaint.

marriage and at the time of the installation of said business, the entire fortune of the said Eugster consisted of the sum of forty (\$40) dollars in cash and some articles of personal property.

10 Deponent further says that after said factory was completed and equipped the said Eugster took entire charge and management of the same, employed the necessary labor, collected the money, paid all bills, maintained a separate check account in the Commonwealth Trust Company of the Town of West Hoboken, in his own name, and has managed and run said business as his own, denying to this deponent all information in regard to the same and excluding her from all information and knowledge concerning the same.

20 Deponent further says that out of the profits of said business the said Eugster on April 9th, 1912, paid and satisfied the chattel mortgages made by this deponent in part payment of the purchase price of the embroidery machines installed in said factory; that since the latter part of the month of April, 1912, deponent and said Eugster have not consorted together; that since that time the said Eugster has ceased to pay to deponent the sum of fifteen dollars per week for her household expenses and since that time has also ceased to pay to deponent the sum of twenty-five dollars per month for rent as agreed upon; that since that time the said Eugster has locked, as against deponent, the desk used in said business containing all papers and documents and also on various occasions since that time has denied to deponent the right to enter said embroidery factory by locking the doors against the deponent when he, Eugster, went away; that since that time said

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Bill of Complaint.

Eugster has asserted to deponent that she, deponent, has no interest in said business and has no rights therein and that whatever property said deponent invested in said business passed unto said Eugster, because as he, said Eugster, maintains, the property of the wife becomes the property of the husband upon marriage and the husband can do with it as he sees fit; that deponent has invested in the purchase of the land hereinbefore described which land was purchased for the sole purpose of being used, after her marriage for the erection thereon of the embroidery plant aforesaid and in the equipping of said embroidery plant and the installation of the embroidery machines therein contained all of her separate estate; that deponent has placed upon her property hereinbefore described a mortgage for the sum of six thousand dollars, which mortgage falls due on January 1, 1912, and bears interest at the rate of six per cent per annum; that deponent is unable to pay the interest on said mortgage and will be unable to do so when next said interest is payable; that deponent will be unable to pay the principal sum of said mortgage or any part thereon if said mortgage should be called when it falls due; that said Eugster refuses to pay unto deponent any portion of the moneys derived from the business aforesaid; that he refuses to reimburse deponent for the moneys expended by her on account of said business, its installation and equipment and refused to pay to deponent any portion of the profits of said business, although he, the said Eugster, admits that said business is profitable, and that he has made sufficient moneys with which to reimburse deponent for the moneys

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Bill of Complaint.

expended by her on account of said embroidery plant, its installation and equipment and that all the moneys thus expended by deponent now remain unpaid to her.

10 Deponent further says that said embroidery business is at present being conducted at a profit and is being conducted and operated daily with nine persons being daily employed therein.

Deponent further says that said Eugster has refused and does refuse to account to your deponent for any of said profits or to pay to deponent any money on account of said business, on account of her household expenses, or on account of her rent, although often requested so to do by deponent.

20 MARIE ANTOINETTE CANTZLAAR EUGSTER.

Sworn and subscribed to before me at the Town of Union, this 15th day of November, A. D., 1912.

HENRY VOGLER,
Master in Chancery of New Jersey.

30 SCHEDULE ONE.

A statement of the moneys advanced by Marie Antoinette Cantzlaar Eugster from her separate estate for the establishment of the embroidery manufactory, which is now being operated by J. Benedict Eugster:

1910	Cash on account of purchase price of two embroidery machines	\$1,000.00
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Bill of Complaint.

Dec. 8	Cash on account of the purchase price of two embroidery machines	500.00	
Dec. 15	Cash on account of purchase price of two embroidery machines	500.00	10
1911			
Jan. 11	For hauling machinery from steamship dock to West Hoboken	125.00	
Feb. 15	Incidental machinery.....	100.00	
Feb. 28	For electric motor.....	200.00	
Apr. 1	For electrical work.....	165.00	
Mar. 3	Incidental machinery.....	100.00	
July 1	For expense of conducting business	135.00	20
July 11	For expense of conducting business	150.00	
Aug. 17	Insurance premium (on account)	140.00	
Feb. 21	Deposit to secure electric bill with Public Service Corporation	40.00	
Mar. 10	Incidental machinery expenses	100.00	
Mar. 18	Incidental machinery expenses	135.00	30
Dec. 1	For "mending" machine...	40.00	
Dec. 1	Foundation work for machines	20.00	
Sept. 26	Cash advanced to Eugster to operate business	400.00	
		<hr/>	
		\$3,850.00	

Answer.

(Filed May 26, 1913.)

IN CHANCERY OF NEW JERSEY.

	Between	} On Bill, &c. Answer.
10	MARIE ANTOINETTE C. EUGSTER, <i>Complainant,</i>	
	and	
	JEAN BENEDICT EUGSTER, <i>Defendant.</i>	

20 The defendant, Jean Benedict Eugster, answering the complaint of Marie Antoinette C. Eugster, says:

1. He admits that he was married to the complainant as set forth in paragraph one of her complaint.

2. He admits that complainant was the owner of the lands and premises described in paragraph two of her complaint at the time of her marriage to him and that the property was purchased before their marriage with funds from her separate estate, and that she was possessed of personal property consisting of cash and securities to the amount of about Nine Thousand Dollars (\$9,000).

3. He admits that about the time of their marriage he told complainant that he was skilled in the business of manufacturing embroideries and had been engaged in that business in Switzerland for a number of years, but he denies that he told the complainant that if the factory were equipped

Answer.

with the necessary machinery he could manage the same with profit, or that he ever requested the complainant to furnish the money that would be necessary to equip any such plant as set forth in paragraph three of the complaint.

4. He admits that complainant agreed to furnish from her own separate estate the money necessary to buy the machinery and equip said embroidery plant and to erect a building upon the lands and premises described as aforesaid in which to install the machinery, but denies that he ever agreed to devote all of his time to the management of the business, or that out of said business he agreed to accept or receive Twenty-five Dollars a week for services to be rendered by him in the business or that out of the Twenty-five Dollars he would pay to the complainant Fifteen Dollars a week for household expenses, but admits that he agreed to pay the sum of Twenty-five Dollars as rent for said building; he denies that he ever agreed to pay out of the profits of the business the moneys advanced by the complainant for the purpose of buying machinery and equipping said embroidery plant, either to her or by the payment or cancellation of any chattel mortgage, conditional bills of sale or other liens, which might be placed upon said machinery as part of the purchase price thereof, or that it was ever agreed between them that until the purchase price of the machinery and equipment had been paid out of any profits of the business, or any liens discharged, that there was to be any division of profits or that there was any agreement as to a division of profits in connection with said business as set forth in paragraph four of the complain-

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Answer.

ant's bill; and denies that he ever agreed that if he sold said business the complainant was to be reimbursed for any moneys advanced by her to him or to said business.

10 5. He admits that complainant caused to be erected upon said land, a building suitable for use as an embroidery factory, and that she placed a first mortgage of Six Thousand Dollars upon the land and building but denies that she expended the sum of Three Thousand Eight Hundred and Fifty Dollars in cash in the purchase of embroidery machines necessary for said business and the equipment of said plant, and denies that the statement of moneys annexed to the complaint and marked Schedule "1" is a true and accurate statement of the moneys expended by her but admits
20 that when said plant was completed, it contained the articles enumerated in paragraph five and other articles not therein enumerated.

6. He denies that the two embroidery machines referred to in paragraph six of the complaint were purchased at a cost of Four thousand Two hundred Eighty-seven Dollars and Fifty Cents, but says that the cost of said machines was Five Thousand and Fifty Dollars; he admits that Two
30 Thousand Dollars was paid down on said machines out of the moneys of the complainant and that a chattel mortgage was executed to the vendor for the sum of Two thousand Two hundred Eighty-seven Dollars and Fifty Cents, but says that that was not for the balance of the purchase price, the difference between \$4,287.50 and the purchase price having been paid in cash with moneys earned by this defendant.

7. He denies that he did not contribute to the
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Answer.

cost of installing the said embroidery machinery or to its costs or expenses any money whatever, or that at the time of his marriage he was only possessed of Forty Dollars in cash, but says that he was possessed of over Three Hundred Dollars and that practically all the moneys earned by him in connection with said business have been used towards the payment of debts incurred in the equipment of said plant and for betterments, additions and improvements thereto. 10

8. He admits that after the embroidery plant was completed and equipped he took entire charge and management of the same, employed the necessary labor and collected accounts, paid all bills, maintained a separate check account in the Commonwealth Trust Company of the Town of West Hoboken in his own name and has managed and run said business as his own as in law and equity he had a right to do, and denies that he ever denied information in regard to said business to the complainant or excluded her from any information or knowledge concerning the same, but, on the contrary, says that he has at all times been ready and willing and anxious to impart to the complainant, his wife, any and all information that she might desire to have in connection with the business or its affairs; that he has repeatedly requested his wife to take an interest in the business as other wives in the same station in life took in the business of their husbands, so that she might be of assistance to him, but that his wife has at all times persistently refused to have anything to do with the business, to take any interest therein or to acquaint herself with anything concerning his affairs, stating that she was an Ameri- 20 30 40

10 can woman, that she wanted nothing to do with his business; that the place of business has at all times been open to her to learn anything in connection therewith that she desired; that he never refused to permit her to have access to his business or to his accounts, and that she has never availed herself of the opportunity she had to do this, and which this defendant desired that she should have of interesting herself in his business.

20 9. He admits that out of the profits of the business he paid and satisfied the chattel mortgage executed in part payment of the purchase price of the embroidery machines installed in said factory, but says that said chattel mortgage was executed prior to their marriage and by both the complainant and this defendant and that the notes that were given in payment of said balance were made by the defendant personally; he admits that since about the month of April, nineteen hundred and twelve the complainant and defendant have not consorted together, but says that this condition was brought about solely by reason of the complainant's conduct, and without the consent of the defendant; he denies that since the month of April nineteen hundred and twelve he has ceased to pay the complainant Fifteen Dollars a week for household expenses, but says that he continued to pay the Fifteen Dollars until the month of August, nineteen hundred and twelve, when he stopped paying her Fifteen Dollars a week, paid her Ten Dollars a week and continued said payments until the ninth of October, last, when he ceased giving her anything for household expenses because she refused to cook for him regularly and on many occasions when he went home

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ANSWER.

to his meals she would not be there and when she was there, her son would very often be there and would say to the complainant in this defendant's presence, "What do you want to be cooking for him for; why don't you fire him out of here?" and that after that time, she refused to take any rent from him; that in December, 1912, he paid her \$400 by check for moneys he had borrowed from but for some reason she has never used said check; that it is his intention to continue to pay the said rent as heretofore he was in the habit of doing; he denies that since the month of April, nineteen hundred and twelve, he has locked his desk as against the complainant or that he has since that time denied to the complainant the right to enter said embroidery factory by locking the doors, or otherwise, but says that his conduct with reference to his desk and factory has always continued to be the same from the time he first commenced business in said building; that the desk and doors were never locked excepting on occasions when he was compelled to leave the plant and that his wife has never on any occasion while he was in the building, sought access to the desk or to any books or papers belonging to him and that he has never refused her access to said embroidery plant, unless complainant considers that access was refused her during such intervals as defendant was away from the plant on business and was obliged to lock the doors in order to protect the same from being entered by strangers; he denies that he ever told complainant that she had no interest in said business and that she had no rights therein, or that whatever property complainant invested in said business

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Answer.

10 passed unto him because he maintained the property of the wife became the property of the husband upon marriage, or that the defendant could do with it as he saw fit, but says that although no agreement was ever entered into between them as to their individual or joint properties he has often told her that in his opinion what belonged to him belonged to her, and what belonged to her belonged to him, and that the complainant never at any time made any claim to this defendant that she had any interest in the business of any nature whatever, and never made any claim as against the defendant excepting that she has claimed that he was indebted to her for moneys loaned, amounting in the aggregate to the sum claimed to have
20 been invested by her as set forth in her complaint.

30 10. Defendant denies that the complainant has invested in the purchase of the lands described in the complaint and in the erection of said embroidery plant and the installment of machinery therein, all of her separate estate, but admits that the complainant invested in the purchase of said lands and in the building and equipment of said plant moneys from her separate estate amounting to the sum of about Nine thousand Dollars
40 (\$9,000) as claimed by her; he admits that the complainant placed upon the property, a mortgage for Six thousand Dollars, but says that the mortgage falls due on January first, nineteen hundred and fourteen instead of January first, nineteen hundred and thirteen; he denies that complainant has no money with which to pay the interest on said mortgage, but says that she has moneys in bank at the present time, but that this defendant stands ready and willing to pay any

Answer.

interest that may become due on said mortgage and to allow the same to be credited to him as rent, and also stands ready and willing to negotiate for a new mortgage if the old mortgage is called in, and to assist his wife in every possible way to preserve said property, so that there will be no loss to her; he admits that he has refused to pay unto the complainant moneys derived from the business aforesaid except for rent and board as he had agreed to do and denies that he refused to reimburse the complainant for moneys expended by her on account of said business in the installation and equipment of said embroidery plant, even though in law and equity he would not be obliged to reimburse her, but says that he has repeatedly informed his wife that it was not his intention to keep one penny that belonged to her or a penny of moneys that she invested in the business and that he stood ready and willing, despite their differences and his claim that she made him a present of the moneys invested in the business prior to their marriage, to pay back to her upon her rendering to him a true and correct statement of the moneys invested and giving him an opportunity of paying it without ruining his business; he admits that his business has been fairly profitable, but denies that he has made sufficient moneys with which to reimburse said complainant, for moneys expended by her in said embroidery plant, its installation and equipment, and says that the reason for the success with which he is meeting is that he has worked regularly from six o'clock in the morning until ten o'clock at night in his business, and has maintained it with very little expense.

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Answer.

11. He admits that he employs nine people.

12. He admits that he never paid the complainant any portion of the profits of the business, but says that the complainant never made claim that she was entitled to any profits, and that as a matter of fact and law, she is not entitled to any profits from said business.

13. Defendant further answering says that prior to their marriage and while he was courting the complainant, they had a number of conversations with reference to their future; that complainant informed him that she had about Nine thousand Dollars and that she was willing to purchase some land and erect a building thereon and would make defendant a present of two machines and give him such further moneys as would be necessary to properly equip an embroidery plant; that defendant informed her that he felt he could make a success of the embroidery business because he had always been a successful man in business in Europe and that she thereupon agreed to give him as a gift and not as a loan any moneys that might be necessary to equip an embroidery plant; that shortly thereafter and before their marriage, she asked defendant to look around for a suitable plot of land upon which to erect a building and defendant located the land described in the bill of complaint, had plans prepared for the erection of the building and actually supervised the construction thereof, devoting all of his time thereto covering a period of about eight months, without compensation; that he also negotiated for the purchase of two embroidery machines and other appliances necessary for the purpose of properly equipping the plant aforesaid.

Answer.

14. Defendant further answering says that annexed hereto and marked Schedule "A" is a statement of the moneys expended by the complainant from her separate estate in connection with the embroidery business which is now being conducted by defendant.

15. Defendant further answering says that he has paid off on account of the machinery purchased by him in connection with said business the sum of \$3,050, which moneys were made by him out of said business during the time he has conducted the same; that his wife has not since their marriage taken any interest either directly or indirectly in the business conducted by him and has never rendered any assistance to him in connection therewith, but on the contrary her conduct throughout their married life has been such as to prevent him from having that peace of mind which is necessary to the successful operation of any business.

16. Defendant further answering says that within a week after their marriage the complainant informed him that she could not be a wife to him but that she was willing to be a friend; that she also informed him that she had made a mistake in marrying; that she was always happy with her children, did not need a husband and could not understand why she had ever married this defendant; that defendant, thinking that possibly she might change her mind, continued to live in the house with his wife and her son and at all times endeavored to reason with her and to get her to change her views with reference to her marriage, but without apparent success; that complainant's son never treated defendant with any

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Answer.

10 respect but, on the contrary, sought to and actually did instigate his mother to ill-treat him; that on numerous occasions while they were sitting at the table he asked his mother why she tolerated defendant to remain in the house and why she continued to prepare his meals or to
20 serve him and that he also on numerous occasions told her that she should put him out of the house and have nothing further to do with him; that defendant tolerated this conduct for a long time until finally he informed complainant that the treatment of her son was such that he could not tolerate it any longer and that he would not eat his meals in the house unless the son left; that both she and her son stated that under no circumstances would he leave, but that defendant would
30 have to go instead; this was on the sixteenth day of March, 1912; that thereafter defendant continued to eat his meals outside until the ninth day of October, 1912, when complainant's son married; that thereupon defendant, thinking that complainant had changed and that she would treat him as she should, he appealed to his wife and asked her whether she was willing to prepare his meals so that he could eat them at home, but she answered that under no circumstances would she provide any meals for him but that he would have to eat outside, and that he was obliged to and still continues to eat his meals in restaurants.

40 17. Defendant further answering says that in the month of March, 1911, defendant and complainant had a dispute with reference to their domestic affairs and the manner in which defendant had attended to the construction of said building; that she told defendant she did not wish to

Answer.

have anything whatever to do with her land and that she did not wish to have anything to do with the business, and that thereupon defendant agreed to pay her \$25 a month for the rent of his shop and to give her a weekly allowance of \$15 a week for the maintenance of the house, and in order that she might show the same to her son defendant reduced this arrangement to writing and rendered it to her, which paper was in the possession of the complainant until she destroyed it. 10

18. Defendant further answering says that in the country from which he comes, viz.: Switzerland, he has always understood that under the laws of Switzerland the property of the wife is considered the property of the husband and the property of the husband that of the wife, and that after their marriage he on numerous occasions again spoke to his wife and told her that he considered such to be the arrangement under which they held their property, but that on the occasions in question his wife repudiated this arrangement and said that she did not want him to have any interest in her real estate and that she wanted to have no interest in the business; that this conversation led up to his making the arrangements above set forth. 20 30

This defendant humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WELLER & LICHTENSTEIN,
Solicitors for Defendant.

Answer.

State of New Jersey, }
 County of Hudson. } ss.

10 JEAN BENEDICT EUGSTER, being duly sworn, says that he is the defendant in the within cause of action named; that he has read the above answer and that the matters and things therein set forth are true.

JEAN BENEDICT EUGSTER.

Sworn and subscribed to before me this fifth day of May, A D. 1913.

RICHARD W. GUTHIEL,
Notary Public, N. J.

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SCHEDULE "A".

	1910.		
	Oct. 12,	Cash advanced on account of purchase price of machines,	\$1,000.00
	Dec. 8,	Cash advanced on arrival of first embroidery machine, ..	500.00
	" 19,	Cash advanced on arrival of second embroidery machine,	500.00
30	" 31,	Paid workmen for unloading machines,	4.50
	1911.		
	Jan. 3,	Paid workmen for unloading machines,	2.00
	" 11,	Paid Mr. Erhardt, carting machines,	125.00
	" 14-17,	Paid workmen unpacking machines,	17.65
40	Feb. 18,	Paid workmen unpacking machines and filing vise, ..	10.70

Answer.

	" "	Mending machine,	8.00	
	" 20,	Leveling foundation, and wages of 8 men,	23.00	
	" 24,	Monitor and helpers,	12.42	
	" 27-28,	Monitor Bouman, express.	3.65	
	" "	Mr. Frei, electric motor, ...	200.00	
Mch.	1,	Monitor Breny,	3.27	10
	" 4,	Paid men handling machine and cleaner (1 week).....	34.25	
	" 6,	Iron for leveling machines, .	4.50	
	" "	Cash paid cleaner (1 week).	11.35	
	" 10,	Cornelli machine,	15.00	
	" 11,	Two monitor helpers (1 week)	27.50	
	" 13,	Mending machine,	40.00	
	" 14,	Two workmen (putting up machine,	5.00	20
	" 17,	1 ton of coal,	6.85	
	" 18,	1 scale,	3.75	
	" "	Helper to watchman (1 week)	16.70	
	" 21,	Monitor Breny,	10.00	
	" 24,	Monitor Assutact,	10.00	
	" "	Mending machine table, ...	10.00	
	" "	Machine cloths,	3.70	
	" 26,	Fire buckets and shuttle girl table,	5.55	30
Apr	1,	Mr. Frei, electric motor, ..	165.00	
	" "	Cost of foundation,	20.00	
July	1,	Cash advanced to Mr. Eugster,	135.00	
July	11,	Cash for which check was returned to Mrs. Eugster to pay insurance,	150.00	

Answer.

	Aug. 17,	Cash advanced,	140.00	
	Sept. 26,	Cash advanced,	400.00	
				\$3,624.34
		CREDITS.		
10	Mch. 4,	Check to Jacob Weber for household insurance,	\$ 5.00	
	“ 24,	Lettering house number,	4.00	
	Aug. 10,	Cash paid constable,	2.00	
	“ 17,	Cash for insurance on property,	151.10	
	Sept. 5,	Water bill,	5.25	
	“ 11,	Gas bill,	1.60	
20	Oct. 23,	1/4 year's interest on mortgage,	90.00	
	Nov. 15,	Cash paid Siegel & Cooper	2.68	
	Oct. 1-11,/			
	Apr. 1912	Superintending construction of building and expenses, ..	630.00	
	1912.			
30	Jan. 23,	Cash paid Mr. Steinman, milkman,	24.61	
	Mch. 2,	Check to Mrs. Eugster,	120.00	
	Dec. 2.	Check to Mrs. Eugster,	400.00	
	1913.			
	Feb. 4,	Check to Mrs. Eugster,	3.00	1,736.24
				\$1,888.10
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Replication.

(Filed May 28, 1913.)

IN CHANCERY OF NEW JERSEY.

Between

MARIE ANTOINETTE CANTZLAAR
EUGSTER,

Complainant,

and

JEAN BENEDICT EUGSTER,
Defendant.

10

On Bill, etc.
Replication

The complainant joins issue on the answer of
the defendant.

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J. EMIL WALSCHEID,
Solicitor and of Counsel with Complainant.

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Testimony.

IN CHANCERY OF NEW JERSEY.

	Between	}	On Bill, &c., Testimony.
10	MARIE ANTOINETTE CANTZLAAR EUGSTER,		
	<i>Complainant,</i>		
	and		
	JEAN BENEDICT EUGSTER,		
	<i>Defendant.</i>		

20 Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on Thursday, January fifteenth, 1914, before Hon. Vivian M. Lewis, Vice-Chancellor.

APPPEARANCES:

J. EMIL WALSCHEID, Esq., for the Complainant.
WELLER & LICHTENSTEIN, Esqs., for the Defendant.

30 MR. WALSCHEID: I will ask you to produce the originals of these contracts, and the confidential letter under date of October 8, 1910.

Having called for a contract, Mr. Lichtenstein hands me a paper, and it reads as follows (reading contract):

Now, I ask you to produce the confidential letter that goes with that contract.

(Letter produced.)

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Mrs. Marie Eugster—for Complainant—Direct.

This letter was sent over from Sitz.
(Reading same).

Now, I ask you to produce a letter addressed to the complainant from Mr. Sitz, under date of December 5, 1910. (Letter produced.) (Letter read.)

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MRS. MARIE ANTOINETTE CANTZLAAR EUGSTER, being duly sworn, in her own behalf, testified as follows:

Direct Examination by Mr. Walscheid:

Q. You are the wife of Jean Benedict Eugster?
A. Yes, sir.

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By the Court:

Q. Do you recall about the purchase of this machinery A. Yes, sir.

Further Direct Examination by Mr. Walscheid:

Q. When were you married to Mr. Eugster?
A. The 23rd of November, 1910.

Q. And at that time, how long had you known Mr. Eugster? A. I had known him since about March—about half a year. 30

Q. You met him in March? A. Yes, sir.

Q. How did you meet him? A. I got acquainted with him through other friends of mine.

Q. And after you met him, did you see much of him? A. Not at first, but later on.

Q. How long after you first met him did you begin to see him more frequently? A. Maybe about six weeks.

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Mrs. Marie Eugster—for Complainant—Direct.

Q. So that at the end of April, 1910, you began to see more of him? A. Yes, sir.

Q. When did he first propose marriage to you? A. I guess it was about in August.

Q. And sometime in August you agreed to marry him? A. About that time—maybe a little later.

Q. After you had agreed to marry him, did you fix a day for the wedding? A. No, sir, not then.

Q. When did you first fix a day for the wedding? A. I really cannot say—in September, I think.

Q. And did you then fix the 23rd day of November? A. Yes, sir, we did.

Q. Now, you bought some embroidery machines, did you? A. Yes, sir.

Q. Tell us how you came to buy those embroidery machines? A. Mr. Eugster at that time was working as a stitcher, and when he worked he made good money, but he was out of a job very often, and was not satisfied; it was very hard for him at his age to be knocked about in embroidery shops, and all he was wishing was to get started in his own business, and he knew the business thoroughly; he had worked at the business in Switzerland, and he wished he could get into his own business again; we talked it over many times, and I knew something about the embroidery business; I was in that business in Switzerland; and we talked it over and over; and finally, I said I would agree to buy my own machines, and that he, if he would be my husband, that he could manage the business; of course, he said he would be thankful to me, and that he would show that he would be an honorable and trustworthy man. It took a long

Mrs. Marie Eugster—for Complainant—Direct.

time until we finally agreed to it. At first, I did not want to build my own place, and we looked around to find a shop to rent.

THE COURT: There is no dispute about the ownership of this building, as I understand it.

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MR. LICHTENSTEIN: No, sir, there is no dispute about that.

MR. WALSCHEID: But there is this about it; my contention is, that this woman, through her whole course of dealings was influenced by this man.

THE COURT: That is apparent, or she would not have married him.

Q. As a result of looking around for a shop, you finally decided to build your own building? A. Yes, sir, we finally agreed that it would be better if I invested my money and bought my own shop and house, because we had to live somewhere; and I bought the land and built the shop. 20

Q. Now, get to the machines; how did you come to buy the machines? A. So that he could start and manage it as a man in my place.

Q. How did you come to buy them; did you write, or did you go to see an agent? A. I saw an agent; Mr. Eugster went first, and he went around to a few places; and, to make life easier,—the reason I bought this machinery was to make life easier for him. 30

Q. How did you come to go to Mr. Sitz? A. Mr. Eugster went to Mr. Sitz to see him.

Q. After he had been to see Mr. Sitz, what did he tell you? A. Then he showed me a letter from Sitz. 40

Mrs. Marie Eugster—for Complainant—Direct.

Q. What letter? A. About a contract to buy the machines.

Q. Would you remember that letter if you saw it? Look at this letter and see whether— A. My son could tell you that better than I can.

10 Q. Look at this letter; can you read English?
A. Yes, sir; this is the letter that I saw at that time.

Q. How did that come into your possession; did Mr. Eugster give it to you? A. Yes, sir.

Q. And you showed that to your son? A. Yes, sir.

20 Q. Did he at the same time bring that with it?
A. I saw this—I could not exactly tell whether I saw it at the same time. (Referring now to the original contract.)

Q. But you don't know now whether you saw it at the same time? A. No, sir.

Q. And you received these from Mr. Sitz? A. Mr. Eugster gave it to me.

MR. WALSCHEID: Now, I offer these two papers in evidence.

MR. LICHTENSTEIN: No objection at all.

30 MR. WALSCHEID: The first paper talked about and first identified by Mrs. Eugster is the letter entitled "Strictly confidential," dated October 8, 1910, and addressed to her.

Marked "Exhibit C-1."

The second paper identified is the original contract.

Marked "Exhibit C-2."

Mrs. Marie Eugster—for Complainant—Direct.

Q. Now, did you know Mr. Sitz at that time?

A. I only learned to know him when I went over to see him, when I brought the money for the first payment; that was the second time; the first time I saw him was when I went to make the contract to buy the machinery; the second time was when I went over to take the thousand dollar payment; I took it over; Mr. Eugster went with me; it was in cash.

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Q. Where did you get that cash from? A. I had a \$3,000 mortgage, and I sold this mortgage and paid this thousand dollars out of that.

Q. That mortgage was a mortgage you owned before you married? A. Yes, sir.

Q. You were not married at that time? A. No, sir.

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Q. Did you at that time agree to lend this money to Mr. Eugster? A. No, sir; the whole understanding was that the machinery belonged to me, and I paid for it; and the second payment was by check, which shows already; the second payment was made by check.

Q. Your check? A. Yes, sir, my name.

Q. Do you remember the date of the second payment? A. I cannot remember.

Q. How much was the second payment for? A. \$500.00 when the machinery was delivered on the place; it was \$500.00 on each machine, and the machines did not come together.

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Q. Now I show you a check for \$500.00, dated December 8, 1910, drawn to the order of C. Sitz, and ask you whether you made and signed that check? A. Yes, sir.

Q. Is that one of these checks? A. Yes, sir.

Marked "Exhibit C-3."

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Mrs. Marie Eugster—for Complainant—Direct.

Q. I show you another check, dated December 15, 1910, for \$500.00, drawn to the order of C. Sitz, and ask you whether you made and signed that check? A. Yes, sir.

10 Q. And are those the two checks that you speak about as having been paid by you? A. Yes, sir, those were paid by my money.

Marked "Exhibit C-4."

Q. Now, at the time when you paid this first check, did you agree to make a loan of this money to Mr. Eugster? A. No, sir, it was never mentioned.

Q. Did you agree to make a loan of the second check to Mr. Eugster? A. No, sir.

20 Q. You were married then, were you not? A. I guess by the time the second check was given, I was married.

Q. That is dated December 15th? A. I was married when both of those checks were given.

Q. Now, prior to your marriage, did you ever make a gift of any of this property to Mr. Eugster? A. No, sir, never.

30 Q. Did you, after your marriage, ever make a gift of any of this property to Mr. Eugster? A. No, sir, never any gift whatsoever.

Q. Now, you also agreed, didn't you, under your contract, to make a chattel mortgage; do you remember that, or don't you? A. I don't understand that.

Q. Chattel mortgage on these two machines; you agreed to make a chattel mortgage on these two machines? A. I could not have paid the full amount.

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Mrs. Marie Eugster—for Complainant—Direct.

Q. Then you agreed to make a chattel mortgage? A. Yes, sir.

Q. And that chattel mortgage was afterwards made? A. Yes, sir.

Q. That is your signature? A. Yes, sir.

MR. WALSCHEID: I offer it in evidence; that is dated August 3, 1911. 10
Marked "Exhibit C-5."

Q. The idea is, that this chattel mortgage, under the terms of the contract, is to be given when these machines are set up and ready for operation? A. Yes sir.

Q. Now, after you were married, Mrs. Eugster, the machines arrived shortly after you were married? A. Yes, sir. 20

Q. And what happened between you and your husband, after you were married, in relation to all your property? A. When I was married—a few weeks after my marriage, Mr. Eugster came one day and threw me a paper and said that I should read that paper, and that he wanted me to sign it. He said he wanted some kind of a security in his hands, as he wanted some profit out of his business. When he showed me the paper and wanted me to sign the paper, and when I had read it over, I refused to sign it. 30

Q. You refused to sign the first paper? A. Yes, sir.

Q. What did he say when you refused? A. Then he quarrelled; he was fighting with me, and showed me another paper and wanted me to sign this paper.

Q. Did you sign that one? A. I signed the second paper. 40

Mrs. Marie Eugster—for Complainant—Direct.

Q. How long was it between the first and second paper? A. Maybe a week or so.

Q. Do you remember what the difference was between the two papers? A. Yes, sir.

10 Q. What was the difference between them? A. The difference between the first and the second paper was that he had in the first paper that he wanted me to give him the privilege to sell my house whenever he wanted; on account of that, I refused to sign the paper.

Q. What did he say about who owned the property? A. He knew that I owned the property; but one time he said I was not his wife, because he had nothing to say about the house.

20 Q. He told you you were not his wife, because he had nothing to say about the house? A. Yes, sir.

Q. Now, the paper that you did sign, who was present when you signed it? A. Mr. Fritsche.

Q. Mr. Eugster was there? A. Yes, sir.

Q. Had you invited Mr. Fritsche to come there? A. No, I did not know why Mr. Fritsche came; I thought he only came in the house as a visitor; I did not know that Mr. Eugster got him.

30 Q. Did you know what the relations between Mr. Fritsche and Mr. Eugster had been at that time? A. I thought they were friends at that time.

Q. During the time of your courtship, and before you were married, did you see much of Mr. Fritsche with Mr. Eugster? A. They were friends.

40 Q. Now, tell us what was in this paper that you signed? A. I cannot exactly say every word; I don't remember every word that was in this paper, but Mr. Eugster was to receive \$25.00 weekly for his salary; that is, the second paper; and that he.

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after the chattel mortgage was paid off, would receive half the profits, whatever the business would bring—half the profits.

Q. And what was he to do for that? A. Manage the business.

Q. Was there anything else in that paper? A. And it said that I should get \$25.00 a month for the shop rent, so I could pay off the interest on the mortgage, which I kept. 10

Q. Was there anything else in that? A. And it was in there, that out of this \$25.00 he had to give me \$15.00 for the household; the \$10.00 would be his spending money.

Q. Had you seen that paper which you signed at that time, prior to the time when you did sign it, or how long before you signed that paper had you first seen it? A. Only a few days before; he showed it to me, and he said I should read it over; there was quite a fight about that, and I was not willing to sign that, but he was fighting all the time with me and tormenting me until I signed it. 20

Q. When he first showed you this second paper did you also refuse to sign that second paper? A. He put it on the table and walked away and said I should read it, and said he wanted me to sign it, and in a day or two I read it over, and I showed it to my son and daughter, and I talked it over with them and they were against it; but he was always fighting about it, and finally I agreed to sign this paper, and I signed it. 30

Q. And what language was it written in? A. In German, in his own handwriting.

Q. And upon what kind of paper was it drawn? A. It was a small piece of paper, about 9 inches long and about 6 inches wide. 40

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Q. Was it folded over, this paper? A. I guess it was.

Q. After you signed it, do you know whether Mr. Eugster signed it? A. I cannot tell that; as soon as I signed the paper, he folded it together and put it in his pocket, and I have never seen it since that time.

MR. WALSCHEID: Now, I ask you to produce the paper; I want it upon the record, and I ask you to produce it.

MR. LICHTENSTEIN: I say there is no such paper and never was such a paper as the lady described.

Q. After that, what became of your property, after this paper was signed; I mean, so far as the embroidery business is concerned? A. The machine was not going yet.

Q. When did the business start? A. About March; it took a long time; there was fighting going on with the men that put the machinery up, and it was delayed a lot.

Q. When the machinery began to run, what did Mr. Eugster do, so far as this business was concerned? A. He managed it; he made the contracts, and I had to pay the bills.

Q. When Mr. Eugster married you, did he have any money? A. \$40.00 as far as I know.

Q. How do you know he had \$40.00? A. When a bill came in for the wedding, that was \$100.00, a little over \$100.00—

Q. That bill was addressed to him? A. Yes, sir.

Q. Did he get it? A. Yes, sir, and he showed me the bill and said that he only had \$40.00.

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THE COURT: There is no dispute about that.

Q. What else did he want from you? A. Then I had to give him \$60.00, and we went together and paid the bill.

Q. Now, of course, you knew before he was married to you that he had no money? A. He said he was not a rich man; I thought he had quite some money, but I did not suppose he had very much; I thought he had at least a few hundred dollars. 10

Q. Well, now, when the machine was installed and set up, what did Mr. Eugster do in relation to the management of it, and what did you have to say about it? A. I had nothing to say but to pay the bills; he would not show me anything, and kept his desk locked. One time he went away to Chicago on a pleasure trip and gave the key to the girl in the shop, and I had no right to open the desk; that was about in June or July. 20

Q. Now, after you married Mr. Eugster, did he receive any money from any source whatsoever, excepting out of your business, so far as you know; did he get any money from anybody; did anybody send him any money? A. Yes, sir, what the business brought. 30

Q. On your machinery? A. Yes, sir.

Q. Well, he received no money from Europe, did he? A. Nothing whatsoever.

Q. And after he was married to you, he did no other work, did he, excepting in connection with your machinery? A. That is all.

Q. Now, when you signed this paper for Mr. Eugster, did you consult a lawyer? A. I did not; 40

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I told Mr. Eugster to go to a lawyer, and we should go to a lawyer together to draw up this paper, and he said he did not want to do such a thing; that he could not read English, and something could be put in the paper that he did not understand, he did not trust them; he was afraid
 10 there would be something written in the paper and that he could not understand it.

Q. You yourself did not take this paper along to any lawyer? A. No, sir.

Q. And you did not consult any lawyers about your rights? A. No, sir.

Q. Now, who paid for the installation of the machinery plant there? A. I did, every cent, and I can show you the checks.

20 Q. And did Mr. Eugster have any money with which he could pay? A. Not that I know of; only \$40.00. I had to pay for the drinks when he went into the saloon with the men.

Q. That is, during the installation period? A. Yes, sir.

Q. Would he come back and hand you a bill for those drinks? A. No, sir, sometimes I gave him five or ten or twenty dollars; also, I gave him checks for \$100.00.

30 Q. Did you ask him what he did with that? A. No, sir; he would say that he had to go in a saloon and pay for drinks.

THE COURT: I do not see how this is at all material.

MR. WALSCHEID: Now, I understand that this is now merely a question of a loan.

THE COURT: That is his defence.

MR. LICHTENSTEIN: We do not admit the amount that she claims.

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MR. WALSCHEID: How is it material, if it is only a loan; if your Honor decides primarily the question of loan or no loan, that would leave merely the details of going into all these checks.

THE COURT: It could be done in a short time by a Master. 10

MR. WALSCHEID: With your Honor's permission, I will not go into that branch of the case at this time.

THE COURT: No; the witness says she paid for it with her own money.

Q. Did you ever receive any money out of this business? A. I did not, except he gave me a few checks.

Q. He paid you once \$400.00? A. Yes, sir. 20

Q. That was after the suit was started? A. Yes, sir; this was \$400.00 which I gave to Mr. Eugster, without any papers to show that I gave him this \$400.00; it was not a loan. He managed the business, and this was the first payment on the chattel mortgage, the first note; and \$700.00 was the first note.

Q. Did he pay it back to you? A. And Mr. Eugster did not have the \$700.00; he had been unable to make it in the short time; he had only \$300.00 made in the business that he could pay on the chattel mortgage; so I had to give him \$400.00 to make the \$700.00 to pay the first chattel mortgage, the first note. And this \$400.00 he denied that I ever gave to him to pay this note, and did deny it until I started this case. 30

Q. And then what happened after that? A. And after that same day, he made out a check for 40

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10 \$400.00, and was down in the shop, and he threw this check on the table; that was on a Sunday; I don't know exactly the date; the \$400.00 check; so I picked it up and asked what it was for, and he said that this \$400.00 was the \$400.00 that I always claimed that I gave to him, and he was looking up the books for a day and a half, and he found \$150.00 was missing, according to his books, but he would pay up the \$400.00 that I gave him, even though he could not find it in the books.

Q. And that is the only money that you got?

A. There were some little things he paid; sometimes when I needed money I asked him.

20 Q. After you had built this house in which the embroidery factory is, and after you had installed the embroidery factory, did you have any money left? A. I had no money left; I had to sell \$4,000 shares; I had some stocks left—\$4,000 worth, and I had to sell this to put up the machinery.

Q. Now, after the machinery is put up and after the business is in operation, did you have any money left then? A. No, sir.

Q. No money at all? A. No, sir.

30 *Cross-Examination by Mr. Lichtenstein:*

Q. When you were engaged to marry Mr. Eugster, you were willing, as you say, to help him to get along? A. I agreed to put up two machines.

Q. And, of course, you expected that he would go on and earn a living and support you? A. I would not marry him if I did not think we could live as husband and wife together.

40 Q. But your idea was, to put him up in business, so that he could earn a living, so that he could

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support you? A. So as to make life easier for him.

Q. You were very friendly to him at that time?

A. Yes, sir.

Q. Do you remember his saying that he would need two machines? A. He said his only wish was, to start in to work for himself, and that it was very hard for him to be knocked about embroidery shops; and to make life easier for him, I said I would buy the machines and he could manage the business. 10

Q. Is that what you said? A. Yes, sir.

Q. Didn't you say then what you said before, that he said he wanted to start in business once in his life for himself; that he had worked for others all his life, and he wanted to start in business for himself? A. Certainly; everything belonged to me, and he was to manage the business. 20

Q. Do you mean to say, that when you were about to get married and after he had told you he wanted to start in business once in his life for himself, and you made it a condition that these things were to be your property and not his?

A. Certainly.

Q. Didn't you say that \$2,000 you would make him a present of? A. No, siree, never a word about that; he acted so strangely. 30

Q. Now, when you finally made up your mind that you had put up enough money to get two machines, he was the one that went out to get the best machines he could get? A. Yes, sir.

Q. He had worked in that business all his life?

A. Yes, sir.

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Q. And he knew the various systems of machines? A. Yes, sir.

Q. And he finally selected this Sitz machine? A. Yes, sir.

Q. And he made all the arrangements to buy it? A. Yes, sir.

10 Q. And then he brought over this paper, this confidential letter to you? A. Yes, sir.

Q. Then you gave him \$1,000 in cash, didn't you? A. No, sir; I went over myself to Sitz, to the agent, and paid the thousand dollars.

Q. And then afterwards you paid the other two \$500.00, because he did not have the money; he did not have any money at that time? A. No, sir.

20 Q. Before that time you had already started in to build? A. Yes, sir.

Q. You went around with him and you found a piece of land, and then he told you he wanted it built in order to have a factory? A. Yes, sir.

Q. Then it took about eight months to put up that building, so, of course, the shop was built first and the machinery came later? A. Yes, sir.

Q. It took about eight months, didn't it? A. Yes, sir.

30 Q. And during all that time, Mr. Eugster was looking after things? A. Yes, sir.

Q. He went on and managed things and started the plant working? A. Yes, sir.

Q. He went out and bought up the sewing machines and other things that were necessary? A. Yes, sir; he told me before we were married that he was out of a job already at that time, and he told me it was very hard for him—

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THE COURT: That is enough.

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Q. Now, after the machinery was put up, he started right in to run the business? A. Yes, sir.

Q. And he hired men and women to work until he had about nine people there for him? A. Yes, sir.

Q. And he worked from morning to night, and he worked overtime, didn't he-

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MR. WALSCHEID: Objected to.

THE COURT: Objection sustained.

Q. Now, after the mortgage was made and he started in to get business, you knew he had a bank account, didn't you? A. No, sir.

Q. You did not know that at all? A. Who had?

Q. That he opened up a bank account? A. Do you mean a check account?

20

Q. Yes. A. Yes, sir, I knew that; that was from the very beginning.

Q. He went on and conducted the whole business and hired the help and bought the material, and sold material and received the money and paid out money? A. Yes, sir.

Q. And he did it all with his own checks, didn't he? A. That was what came in from the business.

Q. Where he was working? A. Yes, sir.

Q. And you took no part at all; you attended to the house upstairs? A. He had a salary for that.

30

Q. Now, then, if this was your machinery, Mrs. Eugster, and he had nothing to do with the machinery, and had nothing to do with the plant, and was merely an ordinary workman, why did you let him—(Question withdrawn). You know that after this mortgage was signed, that he paid it off, didn't you? A. He never showed me any-

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thing; he never showed me anything; whenever I asked him to show me, he would insult me.

10 Q. Mrs. Eugster, as a matter of fact, didn't you tell him time and time again, that you were a lady, and that you would have nothing to do with any such business as an embroidery business? A. I did not say it in that way.

Q. What did you say? A. I had plenty to do, and he had nothing to do but to run the mill business.

Q. Didn't you say to him when he asked you to take an interest in this business, didn't you say to him that you were a lady and that you would not bother with the business? A. I did not say that; he did not want to show me anything.

20 Q. You know that he kept books? A. I know he did.

Q. And didn't you see the books every single night while the building was going up and while the machinery was coming in, and afterwards, for some time? A. As soon as the business started to go, I did not see anything.

Q. But you did see it before that time? A. I only saw the books before it started.

30 Q. Didn't he make memorandums of every dollar that you paid out and every dollar that he paid you back, and every dollar he spent, and didn't you go over it with him every night. A. No, sir.

Q. Then what do you mean when you state that you saw the books up to the time the business started; didn't he always show you just what he did with the money? A. No, sir.

40 Q. Didn't you ask him? A. Not for little things; the big things I paid in checks myself.

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Q. So that, I understand it, all of the money that you spent there was spent for yourself? A. That was spent for my business, and he was the manager.

Q. And he had nothing to do with the machinery or anything that you brought there? A. No, sir.

Q. Do you mean to say that you told him that everything you bought you bought for yourself and not for him? A. Yes, sir.

10

Q. And that was always the understanding? A. Yes, sir.

Q. And you never gave him any interest in that business at all, outside of that agreement that you signed, you never gave him any interest in that business? A. I don't know exactly what you mean.

Q. Well, you never agreed that he should be a partner? A. I did not.

20

Q. And you never agreed that he should have any profits in the business, only the \$25.00 a week? A. That is all.

Q. And out of this \$25.00, he was to give you \$15.00? A. Yes, sir.

Q. And then he was to have \$10.00 for himself? A. Yes, sir.

Q. And out of that \$10.00 he was to buy clothes for all of you? A. No, sir, for him himself.

30

Q. Was that your agreement, that he was to give you \$15.00 to keep house, that is, for food, and the \$10.00 he was to use for buying himself clothes? A. Yes, sir.

Q. And that is what he was to get for working there? A. Yes, sir.

Q. And you say that you never loaned him this money? A. That is right.

40

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Q. Hasn't he been repaying this loan to you from that time up to the time you had the final quarrel; hasn't he been paying you back the money that he borrowed from you? A. The chattel mortgage he paid off.

Q. But I mean other moneys? A. No, sir.

10 Q. I show you check dated October 5, 1912, signed "Madame Eugster"? A. That is for shop rent.

Q. I will take those out; those are for rent. I show you a check for \$250.00, and ask you whether you received that \$250.00? A. That is for shop rent.

Q. I show you a check for \$50.00, to your order; what is that for, do you know? A. For shop rent.

20 Q. You think that is for shop rent? A. Certainly it is, two months.

Q. I show you check for \$300.00; did you receive that? A. Yes, sir; he had to give me sometimes money.

Q. You would not have any money, and he would give you a check for it? A. Yes, sir.

Q. I show you another check for \$400.00? A. That was the \$400.00 that I said that he made the check out when the suit started.

30 Q. What did he give you this \$400.00 for? A. I told him I needed money to pay the interest on the mortgage, and that I had no money, and he made this \$400.00 out, and he threw it on the table, and I asked him what it was for, and he said, "This is the \$400.00 that you always claim" that I gave to him,--that he denied that I gave to him; I had given it to him to make part of the payment on the note.

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Q. You claim you had given him \$400.00 to make part payment on the note? A. Yes, sir.

Q. And he claimed that he did not get the money? A. Yes, sir.

Q. And then, long afterwards he came in and he threw down this check, and he said, "Here, here is the \$400.00 that you claim that you gave me to pay on the note?" A. Yes, sir. 10

Q. And you took it? A. Certainly; I needed money.

Q. You were getting \$25.00 a month for the rent, and you were getting \$15.00 from him, until you stopped cooking for him, and he reduced it to \$10.00, and you refused to give him anything to eat; didn't he pay you the \$15.00 a week, and pay you \$25.00 a month, until you stopped cooking for him and refused to give him anything to eat? A. I never refused to cook him; he refused to eat at home on account of my son; he wanted me to put my son out of the house, and I refused to do so. 20

Q. Isn't it a fact that your son was engaged to be married, and didn't I write you a letter and say that you might just as well make up, as your son would be married in a few weeks; and didn't you have a lawyer write and say you would not live with him? 30

MR. WALSCHEID: I object to that as immaterial.

Q. Now, I show you another check for \$90.00 to Charles S. Klink; that was for your benefit, wasn't it? A. He gave me this money, \$90.00—it was for interest on the mortgage on the real estate. 40

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Q. Now, I show you another one for \$90.00 to Klink? A. Yes, sir.

10 Q. Now, Mrs. Eugster, the \$25.00 a month that you were getting; that was to pay the interest, wasn't it; wasn't that the understanding you had with your husband? A. Yes, but this was not enough; \$25.00 is not enough for interest on the mortgage, which is \$30.00 a month.

Q. I show you another check for \$120.00, and ask you whether you received that from him, too? A. Yes, sir.

20 Q. Your son loaned some money, didn't he, at one time? A. He gave me the money; this \$212.00 was to run the business and I had gotten that money from my son, and then he gave me back the money and I handed it over to my son.

Q. He made it out to your son? A. Yes, sir.

Q. Now, you say that he was always bothering you about signing paper? A. Yes, sir.

Q. Isn't it a fact that you were the one that bothered him about signing a paper after you had had the trouble? A. No, sir.

Q. Didn't you want him to reduce to writing the arrangement that you had with him? A. Never.

30 Q. Didn't you want him to prepare a paper and sign it, that he was going to pay you every month \$25.00? A. He was the one that asked me to sign this paper.

Q. Didn't you ask him time and time again, to sign such a paper? No, sir.

Q. Why was it that you asked him to go to a lawyer to sign a paper? A. When he came up with this, I thought this was not the right thing—

40 Q. As you were not interested in the paper and

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you did not ask for the paper, why did you say to him to go to a lawyer, so that it would be legal?

A. For his satisfaction; he was fighting with me all the time until I did sign this paper.

Q. Why should you suggest to him to go to a lawyer so that it would be legal? A. Only for his own benefit.

10

Q. He merely presented you with the paper, which must have been satisfactory to him? A. He went to another man to ask for advice about this paper, and this man told him to go and see a lawyer.

Q. And why did you tell your husband to go to a lawyer to have the paper drawn up regularly by a lawyer, if he presented this paper and he was satisfied with it himself? A. I only did that for his own benefit; I trusted him; I did not mistrust him.

20

Q. You wanted him to make it stronger? A. I did not, only for his own account; I said, if he did not trust me, why didn't he go to a lawyer.

Q. You wanted him to be sure that that paper was right, and drawn up right, didn't you? A. He wanted that paper.

Q. But why did you want a lawyer to draw it up? A. I did not want anyone; I told him he should see a lawyer on his own account, if he mistrusted me.

30

Q. You did go with him to Mr. Klumpp? A. I don't remember.

Q. You know Mr. Klumpp, a Justice of the Peace? A. That is the first time I have seen him; I know his son.

Q. If you were satisfied that night with that paper, and he was the one that demanded it, can

40

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you explain why it was that he came in and threw it on the table and walked away; can you explain why it was that he threw it on the table and walked away? A. So that I should read it over.

Q. He was angry that night? A. Yes, sir.

10 Q. And he was angry because he had to give you that paper? A. He was angry because I refused to sign the first paper.

Q. What paper was it that you wanted to show to your son? A. The first and the second paper; I never said I wanted him to sign a paper.

Q. There were two papers that he prepared? A. Yes, sir.

20 Q. The first paper was what? A. On account of the house, so that he could sell the house whenever he wanted to; I refused to sign that, but said that he was to receive \$25.00 on salary, and when the chattel mortgages were paid, that he should receive half the profit from the business.

Q. What was the second paper? A. This is the second paper I am speaking of; both papers were the same except about the house—

Q. The second paper was, that he was to get \$25.00 a week, and out of that he was to pay you \$15.00? A. Yes, sir.

30 Q. And then all the machinery was to be paid off, and then the profits were to be divided up? A. Yes, sir.

Q. Didn't you claim you had an agreement of that kind before you were ever married? A. This was the first paper.

Q. When you went to see your lawyer to have this case started, you told him your whole story, didn't you? A. Yes, sir.

40 Q. Did you tell him at that time that you bought

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these machines for yourself, and the whole business was yours? A. I certain did.

Q. And you told him your husband had no interest in the business, did you? A. After this paper was signed, I understood that he was to have half the profits of the business, if the mortgage was paid. 10

Q. Did you tell your lawyer that before this paper was signed, that Mr. Eugster had no interest in the business, that it was all yours? A. He knew the whole case.

Q. Let me read the third paragraph of this bill of complaint to you: "That about the time of her marriage," etc., (reading third paragraph of the bill). You remember saying that to Mr. Walscheid, do you? A. I cannot remember everything. 20

Q. The affidavit is attached to this bill of complaint; do you remember signing an affidavit? A. Yes, sir.

Q. Now, then, I will read further in the fourth paragraph of this bill of complaint. (Reading). Now, this was all agreed beforehand, before you were married? A. No, sir, this was after.

Q. "That out of the business your oratrix should receive as and for rent of said building, the sum of \$25.00 per month," (reading down to the word "repaid"). Do you remember that? A. No, sir. 30

Q. Didn't you tell Mr. Walscheid all that: "That out of the profits of said business, the money advanced," etc., (reading bill). Now, you told all that to Mr. Walscheid, didn't you? A. Whatever I told Mr. Walscheid I think is true.

Q. Further, this complaint goes on and says: 40

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“And that it was further agreed between your oratrix and the defendant, that he, the said defendant, could at any time sell the business for a price satisfactory and acceptable to your oratrix,” (continuing reading); you remember telling him that? A. No, sir.

10 Q. “And pay you back the money you invested. Then you say, “pursuant to that agreement, your oratrix thereupon caused to be erected upon the lands a building,” etc.; so that all took place before the building was erected; now, do you mean to say that you did not have an understanding with your husband before the building was erected, that he was to run the business and out of the profits, that you were to get back all the money you invested in the business? A. Not one thing
20 before I was married.

Q. Then what did you mean by saying all these things in the complaint; was the building put up before you were married? A. It was started before we were married.

Q. While the building was going up, didn't you have this agreement with him? A. No, sir.

30 Q. Then, why did you say all these things in this bill of complaint? A. The whole thing was made before I was married; that I said to Mr. Eugster that I would buy two shuttle machines, and when we were married, of course, he, as the husband, could manage the business.

Q. What did you mean, if this machinery belonged to you, why did you agree with him that you were to get back your money out of the profits?

40 MR. WALSCHEID: I object to that; there is no such statement in the bill.

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Q. I say, if this machinery belonged to you, as you say now, why did you agree with him that he should pay you back the moneys that you invested, out of the profits? A. I cannot understand you; in case he would sell the business, of course, I would want my money out.

Q. If this business belonged to you, why did you give him the right to sell it? A. He made me sign.

Q. This all took place before the building was erected? A. No, sir.

Q. Let me read your affidavit, annexed to this bill of complaint: first, you say that you were married to the defendant on the 23rd of November, 1910; then you say, "Deponent thereupon agreed with the said," etc. (reading). Now, then, at that time when you agreed to furnish the money, etc., of course, he had not had you sign this agreement that you speak of? A. This was before I was married.

Q. Did you make such an arrangement with your husband before he had you sign this paper, that you were to get back your money out of the profits of the business?

MR. WALSCHEID: Objected to as immaterial and irrelevant; first, because such an agreement would have to be in writing, under the Statute of Frauds.

A. Not before I was married.

Q. Why do you say here that you did? A. This agreement was made after we were married.

Q. Didn't you also say in your affidavit that at that time and as part of that agreement, you agreed with him that after the payment of the

Mrs. Marie Eugster—for Complainant—Cross.

purchase price, the profits should be divided equally between you? A. No, sir; I was always willing to pay him half the profits of the business.

10 Q. You further state in your affidavit, Mrs. Eugster, that "the said Eugster refused to pay, reimburse," etc. "its installation and equip-
ment"; now, if this was your machinery, why did you ask him to reimburse you to pay you back the money; why do you say that he refused to pay you back the money that you invested in the business?

MR. WALSCHEID: Objected to.

A. I cannot understand the question.

20 Q. You say in your affidavit here that your husband refused to pay you back the money that you expended in the installation and equipment of this plant? A. If he sold the business, I wanted my money back.

Q. Has he refused to pay you back? A. No, sir.

Q. Hasn't he offered to pay it back to you? A. I have not got any money yet.

Q. Hasn't he offered to pay it back to you? A. No, sir.

30 Q. Didn't you refuse to take it back? A. No, sir.

Q. You say further that he has made sufficient moneys with which to reimburse deponent for the moneys expended by her on account of the embroidery plant, its installation and equipment, and that all the moneys, etc., now remain unpaid to her; why did you make that statement if it was not a loan to your husband? A. I don't understand the question.

Mrs. Mary Eugster—for Complainant—Re-Direct.
Julium Klumpp—for Complainant—Direct.

Re-Direct Examination by Mr. Walscheid:

Q. You were a widow when you married Mr. Eugster? A. Yes, sir.

Q. What was your first husband's name? A. Rudolph Cantzlaar. 10

Q. And by Rudolph Cantzlaar you had two children? A. Yes, sir.

Q. And they are living? A. Yes, sir.

Q. And this separate estate that you had when you married Mr. Eugster came from Rudolph Cantzlaar? A. Yes, sir.

Q. And after your discussion with Jean B. Eugster, did you tell him that this property was eventually to go to the children, or any such conversation? 20

MR. LICHTENSTEIN: Objected to as immaterial.

THE COURT: Objection sustained.

JULIUS KLUMPP, sworn in behalf of the complainant, testified as follows:

Direct Examination by Mr. Walscheid:

Q. Where do you live? A. 587 Clinton Avenue, West Hoboken. 30

Q. What is your business? A. Real estate.

Q. And you have also been a Justice of the Peace for a long number of years? A. Yes, sir, and a Notary Public.

Q. And do you maintain an office in Union Hill? A. Yes, sir. 40

Julium Klumpp—for Complainant—Direct.

Q. In 1910, did you maintain an office? A. Yes, sir.

Q. Where was your office then? A. In West Hoboken.

Q. On Spring Street? A. Yes, sir.

10 Q. You advertised the fact at that time that you were a Notary Public and Justice of the Peace? A. Yes, sir.

Q. Did you know Mrs. Eugster, the witness who was on the witness stand before you? A. No, sir.

Q. Did you ever see her before? A. No, sir.

Q. Do you know Mr. Eugster? A. Yes, sir.

Q. How long have you known him? A. A few years.

20 Q. Did Mr. Eugster ever come to you for advice in regard to a written contract? A. Yes, sir.

Q. And do you remember when that was? A. It must have been about three years ago.

Q. And what did he say to you at that time? A. He had a written document in German.

Q. Written in German? A. Yes, sir.

Q. Whom did this written document concern? A. And it concerned an agreement between him and his wife.

30 Q. And the Mr. Eugster that you are speaking about is the gentleman sitting there? (Indicating the defendant). A. Yes, sir.

Q. And what was in that agreement; did you read it at that time? A. I read part of it, and when I saw what it was, I smiled and thought it was a funny agreement.

Q. What else did you tell him? A. The agreement said he was to give his wife \$15.00 a week for support, and \$25.00 for rent per month for the shop.

40

*Julius Klumpp—for Complainant—Direct—
Cross.*

Q. Did it say anything else? A. And he wanted me to translate that into English, and then he wanted to take it back to his wife to have it signed.

Q. Was it then signed when you saw it? A. I refused to have anything to do with it. 10

Q. Was the paper signed by anyone when you saw it? A. No, sir.

Q. The paper that you saw was not signed? A. I could not recollect about that.

Q. Was there anything in that paper about profits that you remember? A. I only read as far as it says about \$15.00 a week, and I asked him if he was married, and he said, "Yes"; and I said, "You are supposed to support your wife without an agreement"; I told him I thought it would not have any effect, and I refused to have anything to do with it; that is all that happened. 20

Q. Where did this happen? A. In my office.

Cross-Examination by Mr. Lichtenstein:

Q. You told him it was not necessary to have any written agreement? A. Yes, sir.

Q. And told him to go home? A. Yes, sir.

Q. He told you that his wife wanted it? A. No, sir; he simply asked me to translate it into English. 30

Q. Did he tell you what he wanted to do with it? A. What the agreement said; when I reached that part where it said he was to give her \$15.00 a week for support, I dropped it; it was quite a document; I only read as far as the \$15.00 a week for support.

Julius Klumpp—for Complainant—Cross.
Jacob Fritsche—for Complainant—Direct.

Q. If there was anything else in it, did you read it? A. I say I dropped the document when I got to that point.

Q. Will you say there was anything else in it?

10 A. Sure; there was quite some, but I did not read it.

Q. Why didn't you read it when he came to you for advice? A. Because I thought it was a foolish agreement.

Q. But you did not know what was in the agreement, so how could you tell whether it was foolish or not? A. Wasn't I right to drop it under such circumstances? It did not interest me any further.

20 Q. You made an affidavit in this case? A. I don't think so.

Q. I show you a paper signed—is that your signature? A. Yes, sir.

Q. The third of May, 1913? A. Yes, sir.

Q. (Reads affidavit of witness.) You did not state in this affidavit that there was anything else to the agreement, did you? A. No, sir.

30 Q. And in that affidavit you stated that when you learned the contents of the agreement, you advised him then again; now, did you learn the contents of the whole agreement? A. I did not; not the whole agreement; only as far as I have stated.

JACOB FRITSCHÉ, sworn in behalf of the complainant, testified as follows:

Direct Examination by Mr. Walscheid:

40 Q. Where do you live? A. 444 Twentieth Street, West New York.

Jacob Fritsche—for Complainant—Direct.

Q. What is your business? A. Embroidery business, stitching.

Q. Do you know Mr. Eugster? A. Yes, sir.

Q. How long have you known him? A. Six years.

Q. Do you know when he became acquainted with Mrs. Cantzlaar? A. Yes, sir. 10

Q. And were you and he at that time very close friends? A. Yes, sir.

Q. And did you go out together? A. Yes, sir.

Q. And do you remember when he was married? A. I was at the wedding.

Q. And did Mr. Eugster ever show you a paper? A. He showed me a paper when he was with Mrs. Cantzlaar.

Q. And was that the first time that you had seen that paper? A. Yes, sir. 20

Q. When was it that you saw this paper in relation to the time of the marriage, was it before or after? A. After the wedding.

Q. And where did you meet Mr. Eugster that day? A. On Monastery Street.

Q. And what time of day was it that you met him? A. In the afternoon.

Q. When you met him there, what happened after you met him and while you were along there? A. Mr. Eugster showed me a piece of paper. 30

Q. While you were alone? A. He showed it to me outside the house.

Q. Where were you when he showed it to you the first time? A. On the street.

Q. On the street where? A. On Monastery Street, where Mrs. Eugster lives.

Q. And when he showed you this paper on the street, on Monastery Street there, what did you 40

Jacob Fritsche—for Complainant—Direct.

do with it, before you went to Mrs. Eugster? A. He showed it to me, and I read the contents before he showed it to Mrs. Eugster.

Q. Did he read the contents to you? A. Mr. Eugster explained it to me outside.

Q. And you saw it outside? A. Yes, sir.

10 Q. Then where did you go with him? A. To Mrs. Eugster.

Q. How did you happen to go to Mrs. Eugster's; why did you go? A. He wanted a witness.

Q. And when you got into Mrs. Eugster's, who was there? A. Mrs. Eugster.

Q. Was anybody else besides Mrs. Eugster there? A. Mrs. Eugster was all that was there.

Q. After you got in there with Mr. Eugster, and the three of you were together, what happened then? A. Mrs. Eugster signed the document.

20 Q. Well, before signing it, what happened? A. I read it.

Q. Now, what did you read? A. That he should receive \$25.00 in pay as salary, and that he pay \$15.00 board.

Q. What else? A. And \$25.00 rent.

Q. And what else? A. And that the profits were to be divided; and he said he was merely a servant or porter, and he wanted it in writing.

30 Q. Did he say that in the presence of Mrs. Eugster? A. He said that outside.

Q. Then you saw Mrs. Eugster sign it? A. Yes, sir.

Q. And after it was signed, who took the paper? A. He put it in his pocket.

Q. Now, in what language was this paper written? A. In German.

Jacob Fritsche—for Complainant—Direct.

Q. Do you know Mr. Eugster's handwriting? A. Yes, sir.

Q. Was it written in his handwriting? A. Yes, sir.

Q. And how many pages did it cover? A. Two pages.

Q. Do you mean on two sides of one paper, or two pages folded over? A. I don't remember that exactly. 10

Q. Now, you say that this happened after Mr. and Mrs. Eugster were married; how long after they were married did it happen? A. Three months; I cannot say exactly.

Q. But you are sure it was after the marriage? A. Yes, sir.

Q. And was it signed in the rooms that Mr. and Mrs. Eugster occupied? A. Yes, sir. 20

RECESS TO 2 P. M.

AFTER RECESS.

JACOB FRITSCHÉ resumes the witness stand.

Direct Examination (continued) by Mr. Walscheid:

Q. You testified that on the day when Mrs. Eugster signed this paper, he said something to you about having this paper signed, because he did not want to be a servant and wanted to secure himself, did you? A. He wanted something safely in his hand. 30

Q. How often before this paper was signed did he say this to you? A. A number of times he said this.

*Jacob Fritsche—for Complainant—Cross.**Cross-Examination by Mr. Lichtenstein:*

Q. Mr. Fritsche, when you met Mr. Eugster in Monastery Street, were you waiting there for him? A. Yes, sir.

10 Q. What were you waiting there for? A. He said he wanted to make a contract with Mrs. Eugster.

Q. Did he say he wanted a paper signed? A. He wanted to make it.

Q. And then, you say, he showed you the paper and you read it over? A. I read it.

Q. And then he explained it to you, did he? A. Yes, sir.

Q. You read it over so you know what it was, didn't you? A. Yes, sir.

20 Q. You read it over yourself, so that you knew what it was? A. Yes, sir.

Q. And in this paper you say it was provided that he was to get \$25.00 a week? A. Yes, sir.

Q. He was to pay his wife \$15.00 a week? A. Yes, sir.

Q. And pay her \$25.00 a month for rent? A. Yes, sir.

30 Q. And then out of the profits all of her money was to be paid back? A. No; the profits were to be divided.

Q. Was there anything said about the money that Mrs. Eugster put into the business; how she was going to get that back? A. No, sir.

Q. Well, now, he asked you to come up to the house to witness it, did he? A. Yes, sir.

Q. And you went up there? A. Yes, sir.

40 Q. And Mrs. Eugster and her children were there? A. No, sir, only Mrs. Eugster, myself and Mr. Eugster.

Jacob Fritsche—for Complainant—Cross.

Q. And then Mr. Eugster, did he read it over again? A. Yes, and he showed it to Mrs. Eugster.

Q. Then, what did Mrs. Eugster do? A. Mrs. Eugster signed it.

Q. And he took it away, you say? A. Yes, sir.

Q. Why didn't you sign it as a witness then; you came there as a witness? A. I did not say anything. 10

Q. Now, he did not leave a copy with Mrs. Eugster, did he? A. No, sir.

Q. Mrs. Eugster did not say she was going to take that paper and show it to her son and daughter the next day, did she? A. No, sir.

Q. You did not hear her say that, did you? A. No, sir.

Q. And you are sure she signed the paper that night? A. Yes, sir. 20

Q. Have you told us everything that was in that paper? A. There was more in the document, but I have forgotten it.

Q. You made an affidavit in this case, too, didn't you? A. Yes, sir.

Q. Let me read from that affidavit and see whether this was in it, as you then remembered it: "I took the paper and read it and listened to his explanation of it, which was that said paper was a contract to be signed by the defendant and Marie Antoinette Cantzlaar Eugster, his wife; and in said paper it was agreed that the defendant was to have a salary of \$25.00 a week, and out of the \$25.00 a week he was to pay his wife \$15.00 a week as board; and the complainant, that is, Mrs. Eugster, was to receive from said business the sum of \$25.00 a month for rent of the shop"? A. Yes, sir. 30

Jacob Fritsche—for Complainant—Cross.
Charles Cantzlaar—for Complainant—Direct.

Q. And further, the paper further stated that the complainant, Mrs. Eugster, was to receive one-half of the net profits of the business, but that no profits were to be divided until all debts had been paid? A. I cannot say now; I don't remember.

10 Q. If you stated that in your affidavit that you made in this case, was it true? A. Yes.

Q. "And also, if the complainant should die, that her children should not sell the shop in which said business was conducted, or put the defendant out of business for at least three years"; did you state that in your affidavit? A. That was in it.

Q. You and Mr. Eugster are not friends? A. We are friends.

20 Q. Are you friends now? A. We are friends still.

Q. How long is it since you have spoken to him? A. Two years we have not spoken.

Q. He discharged you from his business, didn't he, over two years ago? A. Yes, sir; I started in business for myself.

Q. Didn't he put you out because you were making trouble in the house? A. I don't know.

30 CHARLES FREDERICK RUDOLPH CANTZLAAR, sworn in behalf of the complainant, testified as follows:

Direct Examination by Mr. Walscheid:

Q. You are a son of Mrs. Eugster? A. Yes, sir.

Q. And in 1910, the summer of 1910, where did you live? A. I lived then at 421 Spring Street, with my mother and sister.

40

Charles Cantzlaar—for Complainant—Direct.

Q. You are married now? A. Yes, sir.

Q. And your sister is married now? A. Yes, sir.

Q. And did your sister get married before your mother? A. No, sir, they were both married the same night.

Q. Did you see much of Mr. Eugster before your mother married him? A. Not very much. 10

Q. Did you see him at your house? A. I saw him occasionally, probably on a Sunday or so.

Q. Prior to the marriage, did you hear any discussion between Mr. Eugster and your mother about the purchase of embroidery machines? A. I knew there was a discussion going on, but in the summer time they usually went on the roof and discussed it between themselves. 20

Q. Did you hear any actual discussion between them? A. Not that I recall.

Q. Do you remember when the embroidery machines were purchased? A. The contract, I think, was signed just a little prior to the day of the wedding; I am not sure of that.

Q. After the wedding, where did they go to live? A. 421 Spring Street.

Q. And that home had been the home of your father? A. After my father died, we went to Europe—lived in New York City for three months—then we moved all our furnishings over to 421 Spring Street, West Hoboken. 30

Q. After the marriage, did you hear any discussion between your mother and Mr. Eugster in regard to the property? A. There was practically a continual discussion.

Q. Right in the beginning, how soon after the

Charles Cantzlaar—for Complainant—Direct.

marriage did you begin to hear discussions about the property? A. Within about two weeks.

10 Q. And what was the first discussion that you remember? A. There was a discussion going on that Mr. Eugster may start this business and get a building, and when we got good and ready we would be able to just throw him out, he said, and he wanted to safeguard himself in some way, and he had an impression that I was influencing my mother against anything that he was trying to put through; and one afternoon my mother was in New York, and Mr. Eugster and I were home together, and something or other came up about the business, and he said, if I remember rightly, that he had to have the business and the house together.

20 Q. What do you mean? A. That is, the whole thing should be one transaction.

Q. In whose name was it to be? A. He wanted to have it in his name just the same as my mother's—the whole thing; and I said that just prior to the death of my father, his instructions to me were that I was to look after my mother, and that the money that he worked hard for was my mother's, and it has been the family custom—

30 Q. Did you tell him that? A. Yes, sir, I told him; he said he could not get any credit, and I told him that as long as the name "Cantzlaar" was in with the firm's name, that we could get all the credit that we desired for a business of that size.

Q. Did you tell him you would not agree to a transfer of the property to him? A. Yes, sir.

40 Q. Did you hear any further discussion after that? What next did you hear in relation to the property from him? A. I cannot recall just now,

Charles Cantzlaar—for Complainant—Direct.

but there were a lot of things all centered on the same subject, that is, that the house and the business, that the whole thing should be one transaction, and his name should be in with it and considered a part owner of the whole venture.

Q. Did you hear him request your mother to do that? A. He never took those things up openly when I was around. 10

Q. What next do you remember after that? A. Well, then, after all the discussion, it seemed to be that he wanted to protect himself in some way, and the outcome of that was, that they signed a sort of agreement between them.

Q. Before signing that, did you see any of the papers? A. I saw the contract that was signed for the machines. 20

Q. That was before they were married? A. Yes, sir.

Q. Now, I am getting to the signing of papers after marriage; what papers did you see signed; what papers did you see coming from him? A. The only paper I saw was this paper that was signed—the first paper—and the second paper, that was written in Mr. Eugster's handwriting.

Q. They were both written in Mr. Eugster's handwriting? A. Yes, sir. 30

Q. In ink? A. Yes, sir.

Q. How long was there between the first and the second paper? A. Not more than one week.

Q. When was the first paper—when did you see the first paper; do you know it now from the date of her marriage, which was the 23rd of November, 1910; how long after that date did you see that first paper? A. It was less than a month, be-

Charles Cantzlaar—for Complainant—Direct.

cause the second paper was signed a little prior to Christmas.

Q. Did you see it at all before it was signed?

A. No, sir, but my mother told me there was something in the wind.

10 Q. Did you see that paper signed? A. No, sir.

Q. You did not see the second paper? A. I saw the second paper, but I did not see it signed; I saw it after it was signed; I read it.

Q. Who had it when you saw it after it was signed? A. I am not quite sure now whether I saw it before it was signed or not.

Q. Did you read it? A. Yes, sir.

20 Q. What was in it when you saw it? A. From what I recall, the agreement was that my mother started this business, and I knew she was trying to help him along.

30 Q. What was in the agreement? A. He was to get \$25.00 a week; he was to get \$25.00 a week for salary to conduct the business for her; he was to pay \$25.00 a month for rent. and out of his salary, \$15.00 a week was to run the house, and the other \$10.00 was for endowment for both of them and to provide clothes for him and her; and there was a balance due on this machinery, and that machinery was to be cleared and paid in full; and after that, she said she would give him 50 per cent of the net profits of the business.

Q. Was that in that paper? A. Yes, sir.

Q. That is the second paper? A. Yes, sir.

By the Court:

Q. Did you hear any conversations between your mother and your stepfather regarding this

*Charles Cantzlaar—for Complainant—Direct—
Cross.*

transaction? A. Not that I recall, not a direct conversation.

Q. What do you mean by a "direct conversation"? A. If I was sitting at the table and they were discussing it between themselves—I did not hear any of that. 10

Q. The information you got was from reading the paper? A. Yes, sir.

Q. And I suppose she told you about things, too? A. Well, we talked it over.

Q. Do you know whether or not she refused to sign the first paper? A. Yes, sir.

Q. Were you there when she refused? A. No, sir.

Q. Did you advise her to refuse to sign? A. 20
Yes, sir, I told her not to.

Cross-Examination by Mr. Lichtenstein:

Q. You and your stepfather did not get along very well at all, did you? A. It was not my fault.

Q. You did not get along? A. No, sir.

Q. He did not like it because you would not talk German at the table, so that he could understand what you were saying? A. That is right.

Q. He said he could not understand English, 30
and he did not think it was nice for you, sitting at the table with him to keep on talking English?
A. He never told me that direct; my mother said he did not like it.

Q. And you still persisted and kept on talking English and not German when he was at the table? A. He did not regard me as anything, and I did not regard him as anything more than he did me. 40

Charles Cantzlaar—for Complainant—Cross.

Q. Your stepfather said to you that he thought that you were influencing your mother? A. He did not tell me; but my mother told me that that was his idea.

10 Q. And he told you that he felt as if, on account of the situation, that you people would throw him out? A. Yes, sir.

Q. And could throw him out at any time? A. Yes, sir.

Q. That he did not have anything to show what his interest was in the place? A. Yes, sir.

Q. And he did not want to be thrown out of the place without having something to show what interest he had? A. Yes, sir.

20 Q. And you told him you would throw him out, too, didn't you? A. No, sir.

Q. And he said he wanted something to show what his interest was? A. He said he wanted to have something in hand.

30 Q. And then it was that these papers were prepared, and the second one, as you say, by that he was to get this \$25.00 a week, and to pay your mother \$15.00 a week out of that \$25.00, and the other \$10.00 was to go for maintaining the house and buying clothes for your mother and himself with \$10.00? A. Yes, sir.

Q. And then out of the profits the debts were to be paid,—of the business? A. Well, the chattel mortgage we had put on this machinery was to be settled, and then she would give him 50 per cent of the profits.

40 Q. But was your mother to get back her money? A. She put the money up; there was not any agreement as to when she should get it back; she owned the business.

Charles Cantzlaar—for Complainant—Cross.

Q. Was she to get it back some time out of the profits? A. If it was sold, she would naturally get her money back, and the profits split.

Q. Now, where was it that you first saw this paper—the second one that you are speaking of?

A. In the kitchen at 421 Spring Street.

Q. Who gave it to you to read? A. My mother.

10

Q. Was she alone when she gave it to you? A. I don't know.

Q. Just think. A. Mr. Eugster may have been in the house at the time, but I cannot recall whether there was anyone around there or not.

Q. Cannot you remember who was present at the time that it was handed to you? A. I would not say anyone was present.

Q. Who do you think handed it to you? A. My mother.

20

Q. Did you see your stepfather hand the paper to your mother? A. I don't think I did.

Q. Was it signed at the time that you saw it—by your mother? A. I cannot just recall whether it was signed just before I read it, or after that.

Q. Do you know how many days after it was handed to your mother you saw it? A. I should judge within three or four days after she got it.

Q. How do you know that? A. I know this agreement in the first paper was going on between them, and that that was not satisfactory, and another paper was to be drawn up.

30

Q. How many days did your mother have this second paper before you saw it? A. I don't know.

Q. You did not see this man Fritsche in the house? A. No, sir.

Q. You were not there when your mother signed the paper? A. No, sir.

40

Charles Cantzlaar—for Complainant—Cross.

Q. You don't remember Mr. Fritsche being there at all and seeing your mother sign it? A. No, sir.

Q. And you don't remember this paper being taken away by Mr. Eugster, do you? A. I was not there.

10 Q. Do you read German? A. I can make out what is written on the paper.

Q. Let me show you a paper, and I will ask you whether that is in your stepfather's handwriting? A. Undoubtedly.

Q. Can you read it? A. Yes, sir.

Q. Read it. A. (Witness reads it.)

COMPLAINANT RESTS.

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Jean B. Eugster—for Defendant—Direct.

IN CHANCERY OF NEW JERSEY.

Between

MARIE ANTOINETTE CANTZLAAB
EUGSTER,

Complainant,

and

JEAN BENEDICT EUGSTER,
Defendant.

On Bill, &c.,
Testimony.

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Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the fifteenth day of January, nineteen hundred and fourteen, before Hon. Vivian M. Lewis, Vice-Chancellor.

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APPEARANCES:

J. EMIL WALSCHEID, Esq., for the complainant.

WELLER & LICHTENSTEIN, Esqs., for the defendant.

JEAN B. EUGSTER, the defendant, being sworn in his own behalf, testified as follows:

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Direct Examination by Mr. Lichtenstein:

Q. You were married in November, 1910, and before you were married, how long did you know your wife? A. Three and a half months.

Q. And before you were married, did you have any talk with her about starting in business? A. Yes, sir; she wanted to give me two machines two

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Jean B. Eugster—for Defendant—Direct.

months before we were married.

Q. Tell us what talk you had with your wife about that? A. She told me she was rich and had lots of money, and she wanted to make me a good home and wanted to buy me machines so that I would have my own business.

10 Q. What other talk did you have with her at that time; did you afterwards go to look for machines? A. Yes, sir, I went outside, to look for a place.

Q. Did you go and look for the machines? A. We both went together.

Q. And did you make arrangements with Sitz as to buying the machines? A. Before we were married we went down together to buy machines, down at Sitz's.

20 Q. Now, you remember when Sitz gave you a letter to take to your wife, do you? A. No, sir.

Q. Well, you handed me a paper that I gave to Mr. Walseheid this morning, a contract and a confidential letter? A. Yes, sir.

Q. Now, the contract was made out in your wife's name; why was that made out in your wife's name? A. We were not married yet, and she paid \$1,000.

30 Q. When this letter, confidential letter, of October 8, 1910, was given to you, did your wife sign it? A. No, only I.

Q. On the bottom it appears to be signed by Marie Antoinette Cantzlaar and John B. Eugster; when did you sign that? A. Both together, in the office of Mr. Sitz.

Q. And was that the day that you got this paper from him? A. Yes, sir, the same day.

Jean B. Eugster—for Defendant—Direct.

MR. LICHTENSTEIN: That is referring to paper marked "Exhibit C-1."

Q. Now, the mortgage—you signed the chattel mortgage, did you, Mr. Eugster? A. Yes, sir.

Q. And after the mortgage was signed, did you go on and help put up the building or supervise it? 10

MR. WALSCHEID: Objected to as immaterial and irrelevant to this issue.

MR. LICHTENSTEIN: I want to show just what work this man did, and how these people dealt with each other prior to the time of their marriage and at the time of their marriage and afterwards. It has a bearing on the question of the claim that is made in this case, it seems to me. 20

THE COURT: The real estate is entirely outside of this issue; it is in her name, and it cannot be a matter of dispute in this controversy.

MR. LICHTENSTEIN: I am merely offering this to show what work this man did, and the manner in which these people treated with each other—the time he spent in arranging this plant and keeping the plant going. 30

THE COURT: I don't think there is anything unnatural about it; they pooled their issues, so to speak.

Q. After you signed this mortgage, did you start in working in the plant after the machinery was up? A. In March, 1911, I started.

Q. Now, before the day that you started to 40

Jean B. Eugster—for Defendant—Direct.

work, did you ever have an agreement with your wife that this machinery and the whole plant belonged to her? A. In the beginning of March there was trouble in relation to the building.

10 Q. Before you started to work—listen to my question—before you started to work—

(Question withdrawn.)

Q. Before you were married, did you and your wife agree that all the machinery that was bought, and the plant, were to belong to her always? A. No, sir.

20 Q. Was there any such understanding between you and your wife at any time, that she was to be the owner of the machinery and the other things in the factory? A. Yes, from the beginning of March; she was the owner of the house and I was the owner of the plant.

Q. Did you ever have any agreement before you were married, or after you were married, that the machinery was to belong to your wife? A. Never.

Q. Now, after you started in to work, did you open a bank account? A. Yes, sir.

30 Q. In what bank? A. Commonwealth Trust Company.

Q. And in whose name? A. In my name.

Q. Have you got the first pass-book? A. Yes, sir.

MR. LICHTENSTEIN: I offer the pass-book in evidence.
Marked "Exhibit D-1."

40 Q. When did you start in to work? A. On the 28th day of March, 1911, I commenced to work.

Jean B. Eugster—for Defendant—Direct.

Q. And have you worked since that time steadily? A. No, sir; this summer I did not work for two months.

Q. After you started, who bought the material? A. I did.

Q. Did you pay off the mortgage? A. Yes, sir.

Q. And have you the checks with which you paid it off? A. Yes, sir. 10

THE COURT: The chattel mortgage is paid off, then?

MR. WALSCHEID: Yes, it is paid off.

THE COURT: She did not advance the money for that.

MR. WALSCHEID: No, sir; we say the business paid it off.

Q. I show you three notes for \$762.50 each; did you sign these notes and give them to Mr. Sitz? A. Yes, sir. 20

Q. And were these the notes for the balance of the machines? A. Yes, sir, these were to pay it.

Q. How many were there—three or four? A. These are three, but I paid off something before I signed the note.

Q. Now, then, did you pay these three notes? A. Yes, sir. 30

Q. Have you got the checks for the three notes? A. Yes, sir.

MR. LICHTENSTEIN: I offer in evidence the three notes and the three checks in payment of these three notes; and I also offer in evidence check dated June the 27th, 1911, for \$762.50, which he says

Jean B. Eugster—for Defendant—Direct.

is the fourth payment on this machine, all signed by him, and all the notes signed by him alone.

THE COURT: That is, for these last payments that were covered by the mortgage.

10

Bunch marked "Exhibit D-2, C. E. R."

Q. I show you a mortgage made by you and your wife to Charles E. Sitz, covering this machine, and I ask you whether you had the mortgage cancelled after it was paid? A. Yes, sir.

MR. LICHTENSTEIN: That mortgage is already in evidence, I think.

20 Q. Did you pay the interest on this chattel mortgage? A. Yes, sir.

Q. And have you the checks here for the interest that you paid? A. Yes, sir.

Q. And I show you six checks, and I ask you whether these were checks that you gave to Mr. Sitz for the interest? A. Some of them are not for the interest.

Q. With one exception? A. This one is not, the others are.

30

MR. LICHTENSTEIN: I offer them in evidence.

Bunch marked "Exhibit D-3, C. E. R."

Q. Before you were married, did you have any talk with your wife as to when the money she invested in the business was to be repaid to her?

40

MR. WALSCHEID: I object; he has not said it was to be repaid; you are assuming that it was to be repaid.

Jean B. Eugster—for Defendant—Direct.

Q. (Question withdrawn). Did you have any talk with your wife as to whether you were to repay to her the moneys which she invested in the business? A. Yes, sir; I told her I would pay it back to her just as quick as I earned it.

Q. And out of what was this money to be returned to her? A. Out of my earnings out of the business. 10

Q. Now, Mr. Eugster, you were to pay your wife; you had an arrangement with your wife to pay her a certain amount for housekeeping or for board, and also for rent; what was that for rent? A. Just that I should pay rent, as she separated it, so that the house should belong to her and the machines to me; she said I should pay her \$15.00 a week. 20

Q. Did you ever agree with her that you were only to get \$25.00 a week, and nothing more? A. No, sir.

Q. Did you return any moneys to your wife? A. Oh, yes—everything she loaned me, except—she gave me money for installation and for running expenses.

Q. And I show you a check for \$400.00; did you give her that check? A. Yes, sir.

Q. And what was that for? A. That was money she loaned me, together with the other. 30

Q. And this is one payment that you paid her back? A. Yes, sir.

Q. I show you another check for \$120.00, dated March 2, 1912; do you know what that was for? A. No, sir.

Q. What was this check given for—to your wife? A. To return what I owed her.

Jean B. Eugster—for Defendant—Direct.

Q. I show you another check for \$300.00, in February, 1913; was that for rent? A. That is also for money she loaned me.

MR. WALSCHEID: Is that that certified check?

10

MR. LICHTENSTEIN: I think it is.

Q. Just look at this certified check again; do you remember giving your wife a large check for rent at one time; is this the check you gave her for rent or not?

MR. WALSCHEID: No, it is not.

A. That is not for rent; that is for money she loaned me.

20

Q. Another check for \$250.00; what was that for? A. That check; that is for rent; she would not at first take rent, and then she wanted \$50.00 rent, and then I paid her ten months' rent with this check of \$250.00.

Q. I show you check of \$90.00; what is that for?

A. That is for interest on a mortgage.

Q. And you gave that to her, did you? A. Yes, sir.

30

Q. I show you another check for \$90.00; is that also for interest? A. Yes, sir.

MR. LICHTENSTEIN: I offer all these checks in evidence.

Marked "Exhibit D-4½, C. N. R."

(This is a bunch).

Q. I show you another check of January 23, for \$24.61; did you give her that, too? A. I had to make out a check to her for the milkman.

40

Jean B. Eugster—for Defendant—Direct.

Q. Now, Mr. Eugster, did you keep a book to show all the moneys that you ever got from Mrs. Eugster? A. Yes, sir.

Q. And you also have a book to show all moneys that you paid her? A. Yes.

MR. WALSCHEID: You are now going into what I did not go into, viz: the amount which might be due on an accounting, provided a loan is established. 10

Q. Did you make up a transcript from your book of the account, as you had it in the book?

A. Yes, sir, I gave her a copy.

Q. And when was it that you gave her a copy?

A. In the spring of 1912.

Q. Can you tell by looking at your book when it was? A. Yes, sir. 20

Q. How much did you owe her at that time; do you know?

MR. WALSCHEID: I object to that as calling for a conclusion by this witness. I object to it on the ground that it is relevant only on the question of an accounting before a Master.

MR. LICHTENSTEIN: I call on the complainant to produce the account which was submitted by the defendant to the complainant in the spring of 1912. 30

MR. WALSCHEID: It was submitted to me; I have such an account, but I object to producing it on the ground that it is irrelevant and immaterial; I object to its being offered. I will produce it.

Jean B. Eugster—for Defendant—Direct.

Q. To whom did you give this account—to Mr. Walscheid or to your wife? A. To my wife.

Q. Why did you give her this account in the spring of 1912? A. Because we had separated.

10 Q. Why did you give her the account? A. So that she may know exactly what was being given out, and might know what her money in the business was, and what it went for.

Q. Mr. Eugster, did you ever have your wife sign any paper for you? A. Yes, sir.

Q. What kind of a paper was it? A. That was the arrangement that I was to pay her \$25.00 per month and the \$15.00 per week.

Q. Who signed that paper? A. We two.

Q. What was in that paper?

20 MR. WALSCHEID: I object.

Q. What became of the paper after it was signed? A. The lady tore it to pieces in the kitchen.

Q. What lady? A. Madame Eugster.

Q. Your wife? A. Yes, sir.

Q. She tore it up? A. Yes, sir.

30 Q. That was after Mr. Klump did what? A. He said that this paper was improper, and "you are responsible for the wife," and that we had no right to make such a contract with one another. I brought it back to the kitchen to my wife, and then she said, "In this paper it is all too small; I want it all." And then she tore it to pieces.

Q. Now, who prepared the paper? A. I did.

Q. At whose request did you write it? A. The Lady Eugster, my wife.

40 Q. How often did she ask you to prepare such a paper? A. Only once.

Jean B. Eugster—for Defendant—Direct.

Q. And what did you write in the paper; tell us everything that was in the paper. A. That I should pay so much; \$25.00 rent, and so much for board, and otherwise, nothing.

Q. Now, did you go to Mr. Klump at one time? A. Yes, sir.

Q. And what did you go to Mr. Klump for? A. To learn if I must make a contract with my wife regarding the board and my rent—

Q. Then, when Mr. Klump told you it was not necessary to have it in writing, what did you do? A. I brought the paper back to her and told her what Mr. Klump said, and that she should go to see Mr. Klump.

Q. Then, what did she do? A. Then, she tore the paper to pieces and said it was entirely too small, and she wanted everything—

Q. You know this man, Mr. Fritsche? A. Yes, sir.

Q. Did you ever meet him on Monastery Street and show him any paper? A. No, sir.

Q. Did you ever show him a paper in which it was agreed that you were to pay off the debts of the firm and then divide the profits? A. Such a paper never existed.

Q. Did you ever take him into the house to witness the signing of a paper by your wife? A. Oh, no.

Q. Did you ever take a paper to your wife in your house in the presence of this man and have your wife sign it in his presence? A. No, sir, we always did that alone.

Q. Did you ever tell him that you wanted to make an agreement of that kind, or that your wife

Jean B. Eugster—for Defendant—Direct.

wanted you to make an agreement of that kind?

A. No; I was the husband.

Q. Did you ever tell your wife, or tell your stepson, that you wanted the real estate to be in your name? A. No, sir.

10 Q. Did you ever ask her to sign a paper that the property should belong to both of you, to you and your wife, the real estate? A. No, sir.

Q. Now, have you paid back to your wife as much as you could out of the profits of the business? A. Yes, sir, as much as I could.

Q. The embroidery business has been at practically a standstill for the last year and a half, hasn't it? A. Yes, sir; I have lost much money.

20 Q. Mr. Eugster, your wife says that you refused all the time from the beginning to allow her to go into the business or to look around in the business; is that so? A. That was in the last year when she always made trouble for me; before that I had to refuse to permit her to go into the business.

Q. Did you ask her to look into the business? A. It was open; she could come in when she wanted.

30 Q. Did you ever ask her to take an interest in the business? A. No, sir, she did not want to interest herself.

Q. What did she say? A. She said, "I am a rich woman; why shall I interest myself in the business?"

Q. She says that you went to Chicago at one time; did you ever go to Chicago?

THE COURT: I don't think it is material.

Jean B. Eugster—for Defendant—Direct.

MR. WALSCHEID: She says she is mistaken.

Q. Are you ready to continue to pay your wife the balance of the money that is due to her out of the profits of the business?

10

(Question withdrawn).

Q. Were you always willing to pay your wife back the money that she put into the business, out of the profits of the business? A. Yes, sir.

Q. Before this case was started against you, did you direct me to write a letter to your wife? A. (No answer).

By the Court:

20

Q. Did you go to Mr. Lichtenstein about this matter before this suit commenced? A. Yes, sir.

MR. LICHTENSTEIN: I offer in evidence a letter dated March 11, 1912, addressed to Mrs. Eugster, and the reply thereto, by Mr. Walscheid on March 14, 1912.

MR. WALSCHEID: I object to it on the ground that it is immaterial and irrelevant to the issues in this case.

30

THE COURT: The Court will receive them.

MR. LICHTENSTEIN: I offer now letter of March 19, 1912, and the reply of Mr. Walscheid on March 20, 1912. (Reading.)

40

Jean B. Eugster—for Defendant—Direct.

Q. Do you remember being at Mr. Walscheid's office with me? A. Yes, sir.

Q. Who was there at that time? A. Mr. Walscheid, Mr. Lichtenstein, myself and Mrs. Eugster.

10 Q. And what did we do there that day? A. She demanded from me money, and that I must hurry to get money for the building.

MR. WALSCHEID: I wish to enter a further objection.

Q. Did you have your books there at that time? A. Yes, sir.

Q. And your checks? A. Not all the checks.

20 Q. But the checks that had relation to the moneys that she loaned or advanced—at that time or at any time, did you wife ever make claim that the machinery and the plant belonged to her, A. No.

Q. Did she ever make any such claim? A. Yes, sir, hundreds of times, outside, but not on me—to injure me in business.

30 MR. WALSCHEID: "Hundreds of times to people on the outside"; that is the answer.

Q. At this meeting at Mr. Walscheid's office, what claim did your wife make, outside of the moneys which she said she invested in the business? A. I can remember nothing else, only concerning this account, that is all.

Q. Did she want any other moneys outside the accounts? A. I cannot recall anything of that sort.

Jean B. Eugster—for Defendant—Direct—Cross.

MR. LICHTENSTEIN: Will you agree with me that the claim that was made on your client was for one-half of the profits, in addition to the amount that she invested?

MR. WALSCHEID: I think you are taking an undue advantage of the situation.

MR. LICHTENSTEIN: It is not a confidential matter of any kind; you are setting up a claim that is not in the pleadings, and never was considered between these parties, and I never heard of it before this morning. 10

THE COURT: I think it is fairly before the Court.

Cross-Examination by Mr. Walscheid:

Q. How old are you? A. 52, going on 53. 20

Q. Where were you born? A. In Oberig, Apselten, Switzerland.

Q. Did you have any schooling? A. Yes, sir.

Q. What school did you attend?

THE COURT: What is the object of going into all this?

MR. WALSCHEID: I want to show his ability and his standing; his business ability, as compared to the lack of business ability of the wife. 30

MR. LICHTENSTEIN: I will admit he is a business man.

(Question withdrawn).

Q. You obtained a business education, didn't you? A. Yes, sir.

Q. And you were in business? A. Yes, sir. 40

Jean B. Eugster—for Defendant—Cross.

Q. And you were in business for yourself in Europe, were you not? A. Yes, sir.

Q. And for how many years? A. Three years.

Q. And in the embroidery business? A. Always in the embroidery business.

10² Q. When did you come to America? A. The 13th of November, 1908.

Q. How much money did you have then, when you came to America? A. \$100.00, or 500 francs.

Q. After you came to America, what did you do? A. I worked as a stitcher in the embroidery business.

Q. And in 1910 you were an embroidery stitcher? A. Yes, sir.

20² Q. And when did you meet Mrs. Cantzlaar? A. In August, 1910.

Q. You were out of employment then, were you not? A. No, sir, I had work.

Q. You had been out of employment for a considerable portion of the year 1910, hadn't you? A. Yes, during the time that my wife was sick and died, and I was sick myself.

Q. Then, you were married to somebody else in the year 1910, in the early part? A. Yes, sir, I was married to my first wife.

30² Q. And when did you lose your first wife? A. On the 11th of February, 1910.

Q. And she had been sick a long while? A. Yes, she was sick about 20 years all together.

Q. And after she died, you were sick a long while, were you not? A. Yes, sir.

Q. So that when you met Mrs. Cantzlaar, you were practically without any money? A. That is not so, I had three or four hundred dollars.

Jean B. Eugster—for Defendant—Cross.

Q. And where had you those three or four hundred dollars? A. In the German Bank in New York.

Q. And have you the bank-book here? A. No, when I took out all the money the bank-book remained in the bank.

Q. When did you close that account? A. About the beginning of September; I had to look for some business. 10

Q. Then, about the beginning of September, you were out of work? A. I never was out of work until I became acquainted with Mrs. Cantzlaar.

Q. When you became acquainted with Mrs. Cantzlaar, you ceased working, didn't you? A. I must give it up.

Q. You did? A. I had to give it up; she ordered it. 20

Q. And then you did not do any more work until you established this embroidery business that you are now in? A. Every day I worked.

Q. Well, you did not earn any money? A. I worked for her; I was looking for a place, and every night I told her what I did during the day.

Q. And you used up all your money before you got married? A. Not all.

Q. How much did you have left when you got married? A. Between \$50.00 and \$70.00. 30

Q. Now, you did not pay any portion of the first thousand dollars that was paid on this machine, did you? A. No, sir.

Q. And after you were married, you did not get any money from any source excepting from this embroidery business? A. No, sir.

Q. Then, all the moneys that you have paid off, as you say, were earned in the embroidery busi- 40

Jean B. Eugster—for Defendant—Cross.

ness. A. Out of the embroidery business—yes, what I earned.

Q. Now, when you made these notes, you made them in March, referring now to the three notes that you have here, and which constitute part of “Exhibit D-2,” didn’t you? A. (No answer).

10 Q. You made those three notes in March, didn’t you? A. No, that is a fraud.

Q. Is not that your writing on that note? A. No, sir, that is not my writing.

Q. Who wrote that? A. Some employe of Mr. Sitz wrote that.

Q. Does that same story hold true in reference to these other two notes; were they written up in Sitz’s office? A. No, sir, it was made in some real estate office on Spring Street.

20 Q. Well, you had them written out, didn’t you? A. I was compelled to.

Q. Who compelled you to make these three notes? A. The family.

Q. What family? A. The family of Mrs. Cantzlaar.

Q. Who, in Mrs. Cantzlaar’s family, told you you had to make these three notes? A. Mr. Sitz was called upon to make out these notes.

30 Q. Who, in the family of Cantzlaar, forced you to sign these three notes? A. I think it was the son.

Q. And how did he force you to make these three notes? A. I was over to Mr. Sitz’s office; he said I was not a man, and he scolded me; he said this property does not belong to me.

Q. How did Mr. Cantzlaar, or anybody else, force you to make these three notes? A. The machines were not yet paid for, and they must be

Jean B. Eugster—for Defendant—Cross.

paid for, every three months, the sum of \$762.00 must be paid; and after I had paid the first—

Q. Isn't it a fact, that you took possession of the machinery and plant in the latter part of March, as your own? A. Yes, I took it over for myself.

Q. On what date did you take it over? A. On the 28th of March. 10

Q. Isn't it a fact that you took it over on the 24th of March? A. The machines started to run on the 28th of March.

Q. But you had taken possession of the machines as your own before that? A. I had to; I was responsible for the machines, and for the building.

Q. You mean you were responsible for these bills? A. Yes, of course. 20

Q. And what was there that had made you responsible for these bills? A. According to the arrangement that we had, that the house should belong to her, and the machines to me.

Q. Now, what did you pay her for these machines when this arrangement was made; what did you pay her at the time this arrangement was made, and when you say she transferred to you these machines? A. I did not buy the machines from her; I paid them off. 30

Q. Where is the agreement that you made with Mrs. Cantzlaar, whereby you get the machines and she gets the house? A. There is no contract; the paper that I wrote was torn to pieces.

Q. Now, isn't it a fact that you made these notes and sent them over to Mr. Sitz, and that Mr. Sitz said that that was not satisfactory; that he was entitled to a chattel mortgage with Mrs. Cant- 40

Jean B. Eugster—for Defendant—Cross.

zlaar's name on it? A. Yes, sir; there is a mortgage that was made.

Q. (Question read.) A. That is not so.

10 Q. Well, did not Mr. Sitz want a chattel mortgage, according to his contract? A. Naturally—yes, with every contract Mr. Sitz makes, he requires a chattel mortgage.

MR. WALSCHEID: I ask that the latter portion be stricken out as not responsive.

THE COURT: Strike it out.

Q. And in response to his request, you, on the third day of August, 1911, and long after these notes were dated, made out this chattel mortgage?

20 A. The notes and the chattel mortgage were made out on the same day, on the third of August.

Q. And the chattel mortgage was executed at the same time that the notes were? A. At the same time as the notes.

Q. Now, those notes are all dated March 25; the chattel mortgage is dated August 5, 1911, and completed by acknowledgment on the same day?

MR. LICHTENSTEIN: What is your point?

30 MR. WALSCHEID: This is what I intend to prove in rebuttal, that this man comes in as a volunteer—

MR. LICHTENSTEIN: Look at this chattel mortgage, and you will find those very notes are referred to in this mortgage, dated March 25, 1911.

40 MR. WALSCHEID: If your Honor will look at the contract, it provides that promissory notes be drawn to the order of C.

Jean B. Eugster—for Defendant—Cross.

E. Sitz, with interest at 6 per cent per annum, and secured by chattel mortgage on the machines; now, the situation, as we contend, is this: that this man made out these notes and sent them over there, and they were not acceptable, because he was not dealing with him; and he insists on his chattel mortgage, whereupon this chattel mortgage was executed. 10

MR. LICHTENSTEIN: That may be so.

MR. WALSCHEID: Which explains how he accepts these notes, as long as he has the chattel mortgage, he has got his claim on the machines—

MR. LICHTENSTEIN: He did not take the note obligations of Mrs. Cantzlaar, which he could have gotten if he had wanted to. 20

MR. WALSCHEID: This man injected himself into this proposition as a volunteer; that is what we say.

MR. LICHTENSTEIN: Have you the information as to when these machines were finally completed and in running order?

THE COURT: How long will this case take you, Mr. Walscheid? 30

MR. WALSCHEID: I think it should take me about two hours.

Q. This bank account which you have offered in evidence as "Exhibit D-1," represents money earned in this business, doesn't it? A. So many checks I have given up to the bank.

Q. And all of the money which you gave to the

Jean B. Eugster—for Defendant—Cross.

bank, came out of the earnings of this business?

A. Yes, sir.

Q. And all the money that you have paid off to Mrs. Eugster, as you claim, comes out of the earnings of this business? A. Yes, sir; I did not steal it; I earned it.

10 Q. Now, Mr. Eugster, if you say an agreement was signed in March by Mrs. Cantzlaar, why did you, in your answer, and in an affidavit to your answer, say that no such agreement was ever signed by her? (Question withdrawn). When was this agreement, which you say Mrs. Eugster signed, and you signed, when was it executed? A. That was not a contract, it was simply a piece of paper.

20 Q. When was it that she signed that piece of paper? A. At the beginning of March, 1911.

Q. And immediately after that paper was signed, you took possession of the embroidery machinery as your own? A. No, sir; it was not set up; it was before.

Q. What was before? A. The signing of the paper.

30 Q. You took possession of the embroidery machinery as your own, whether it was set up or not, just after this paper was signed? A. I took over the machinery in January when they came up from the talk.

Q. But right after you signed this paper with Mrs. Eugster, which gave her the real estate and gave her the personal property? (Question withdrawn). In this paper, which you say was signed in the early part of March—that gave Mrs. Eugster the real estate and gave you the machinery in

40

Jean B. Eugster—for Defendant—Cross.

the factory, didn't it? A. There was nothing concerning that in it.

Q. Was there a paper giving you the machinery and the factory, and Mrs. Eugster the land and the house? A. That was not written; that was made orally and personally between us.

Q. And when was that made orally and personally between you. A. I have said in the beginning of March, 1911. 10

Q. And at that time you made the arrangement about—at that time you also made an arrangement about moneys, that you were to draw, didn't you? A. No, sir.

Q. Well, what did you say about \$25.00 before?

A. This \$25.00 she wanted, as she had a mortgage on the house for money that she had loaned. 20

Q. How often were you to pay her this \$25.00?

A. Every month.

Q. Isn't it a fact, that you were to draw the sum of \$25.00 every week? A. No; I said, "I will take out \$25.00, as I must save;" I did not use all the \$25.00; I had to use it for the business.

Q. You said that you took out \$25.00 a week out of the business, didn't you? A. I will credit myself on the books with \$25.00 a week.

Q. And out of that \$25.00 a week that you were to credit yourself on the books, you were to pay her \$15.00 a week for board? A. No, sir, that is not so. 30

Q. Well, out of what were you to pay the \$15.00 a week; from what were you to take that \$15.00 a week? A. Out of my earnings, out of my business.

Q. And those earnings, by your own agreement, were limited to \$25.00 a week, were they not? A. No, sir, it is not so. 40

Charles E. Seitz—for Complainant—Direct.

Q. What share of the profits were you to have?
 A. Everything; the machines belonged to me.
 Adjourned to February 2, 1914 (motion day) at
 12 o'clock.

10 IN CHANCERY OF NEW JERSEY.

Between

MARIE ANTOINETTE
 CANTZLAAR EUGSTER,
Complainant,

and

20 JEAN BENEDICT EUGSTER,
Defendant.

On Bill, &c.

Second day's transcript of testimony taken before Honorable Vivian M. Lewis, Vice-Chancellor, at the Chancery Chambers, Jersey City, New Jersey, on February 11th, 1914.

30 APPEARANCES: J. Emil Walscheid, Esq., for the Complainant; and Weller & Lichtenstein, Esqs., for the Defendant.

CHARLES E. SEITZ, sworn.

Direct Examination by Mr. Walscheid:

Q. What is your business? A. I am a merchant.

40 Q. Where is your place of business? A. 100 William Street, New York.

Charles E. Seitz—for Complainant—Direct.

Q. What particular line are you in? A. Well, I am selling embroidering machines, and besides that I am the Treasurer of the Arabol Manufacturing Company.

Q. Do you know Mr. Eugster, the defendant?
A. Yes, sir.

Q. How long have you know him? A. Well, since September or October, 1910. 10

Q. Do you know Mrs. Eugster? A. Yes, sir, I do know her.

Q. How long have you known her? A. I got acquainted with her after the contract for machinery was made out.

Q. How did you first meet Mr. Eugster? A. He came to my office and inquired about the price of embroidering machines. 20

Q. What conversation did he have with you there—what talk did he have with you there? A. He wanted to buy machines and I asked him if he had any money, and he said he had saved some money but he was going to marry a lady who had about \$10,000, and she was going to pay for the machines; after I had given him the prices and terms, he accepted my prices and terms.

Q. And that time was Mrs. Eugster there? A. No, sir, she was not there. 30

Q. Who did he tell you was going to buy these machines? A. Well, he did not express it in those words; he said that the contract had to be made out in the name of Mrs. Eugster, because she was furnishing the money and he was going to divide the profits with her.

Q. You say "Mrs. Eugster," at that time she was Mrs. Cantzlaar? A. Yes, sir.

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Q. As a result of that conversation what did you do? A. Well, I had the contracts written out and I addressed the contracts, with the accompanying letter, as I always do, with a confidential letter, and sent it to Mr. Eugster.

10 Q. Enclosed in another letter? A. I enclosed in one envelope the contract and a letter written to Mrs. Marie Antoinette Cantzlaar, and another letter which I addressed to Mr. Benedict Eugster.

Q. And you mailed the whole of it? A. Yes, sir, I mailed the whole of it to Mr. Eugster.

Q. And that was on October 8th, 1910? A. Yes, sir.

Q. Now, up to that time you had not yet seen Mrs. Cantzlaar? A. No, sir, I had not.

20 Q. And the letter to Mrs. Cantzlaar is addressed to 421 Spring Street, West Hoboken? A. Yes, sir.

Q. And the letter which Mr. Eugster is addressed to number 826 Charles Street, West Hoboken? A. Yes, sir.

MR. WALSCHEID: Now I ask you to produce a letter from C. Seitz, addressed to Mr. Jean Benedict Eugster, dated October 8th, 1910, addressed to Mr. Eugster at 826 Charles Street, West Hoboken.

30 MR. WELLER: And the defendant says that he has not such a letter; he says it might be possible that he received such a letter, but he does not remember that he has done so.

Q. Now I show you, Mr. Seitz, a paper marked Exhibit C-1 and I ask you whether that is the confidential communication that you enclosed in the letter to Mr. Eugster? A. Yes, sir, that is it.

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Charles E. Seitz—for Complainant—Direct.

Q. And I show you Exhibit C-2 and ask you whether that is the contract which you enclosed in that letter? A. Yes, sir, they were attached together.

MR. WALSCHEID: Those are the two contracts. 10

THE COURT: All right, proceed.

Q. And those two papers Exhibit C-1 and Exhibit C-2, the two papers which the Judge has, were enclosed in this letter here which I now hand you, and addressed and sent to Mr. Eugster? A. Yes, sir.

MR. WALSCHEID: Now I offer this copy of the letter which I have just called for, in evidence. 20

Mr. WELLER: To whom is that letter addressed.

MR. WALSCHEID: To Mr. Eugster.

MR. WELLER: I would like to cross-examine on it before it goes in, Your Honor, (The Court examines it).

THE COURT: All right.

Marked Exhibit C-D-1 for identificaton. 30

Q. At the time when you sent this letter containing the contract and the confidential communication you had then not yet seen Mrs. Eugster? A. No, sir.

Q. Now, what next happened after you sent this letter to Mr. Eugster containing the contract and confidential communication? A. Probably about a week afterwards Mr. Eugster, with Mrs. Cantzlaar, came to my office, and they signed the con- 40

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tract in my presence, and Mrs. Eugster paid me in cash \$1,000 as per the conditions of the contract.

10 Q. And did they then bring with them the papers marked Exhibit C-1 and C-2—these two papers? A. They brought with them triplicates of this contract because they all had to be signed—the original for them to keep, and the duplicate for me to keep, and the triplicate for me to send to Arbon, Switzerland.

Q. And they signed those contracts then in your office in triplicate? A. Yes, sir.

20 Q. When you sent this letter to Mr. Eugster—referring now to the letter marked C-D-1 for identification, did you enclose these papers C 1 and C-2 in triplicate? A. Yes, they were enclosed in triplicate.

Q. The confidential letter to Mrs. Cantzlaar refers to the duplicate and triplicate of the contracts to be returned? A. Yes, sir.

30 Q. I notice in this letter of October 8th, Exhibit C-D-1 for identification the following language: “It is understood that after the marriage with this lady, your intended wife, has taken place, next month, or sooner, the contract will be transferred to both of you.” From whom did you understand that? A. From Mr. Eugster.

Q. “In the meanwhile, and for good order’s sake, you will kindly countersign the contracts and letters in triplicate, which form part of the contract;” that meant that Mr. Eugster was to countersign? A. Yes, sir.

Q. Why did you want him to countersign? A. Because he bought the machines, and he told me

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he had saved some money, and I thought I wanted him to be liable together with the lady.

Q. You wanted the additional responsibility?

A. Yes, sir, I wanted his signature; I always take as many signatures as I can get.

Q. Did you afterwards have any trouble about your chattel mortgages and papers? A. Yes, sir, I had to write for them repeatedly. 10

Q. What was the trouble: tell us what your trouble was? A. How do you mean?

Q. What was the trouble about getting your chattel mortgage and your notes? A. Well, you know that very often happens with all these men; they are never in a hurry to send the notes and never in a hurry to send the chattel mortgages.

Q. Did you have any trouble as to who should sign the papers later on? A. I, personally, not, but my manager did whom I sent with the notes, and the chattel mortgage, to Mr. Eugster, to have them signed. 20

THE COURT: Strike out about his manager.

Q. Did you finally receive the notes and chattel mortgage in the condition in which you were entitled to have them under your contract? A. No, sir, I did not. 30

Q. And in what respect did they vary from the form in which they were put under your contract?

A. The chattel mortgage came back; I had duplicates sent of the chattel mortgage; the chattel mortgage came back with the signature of Mrs. Cantzlaar and of Mr. Eugster, and the notes came back only with the signature of Mr. Eugster.

*Charles E. Seitz—for Complainant—Direct—
Cross.*

10 Q. Now when the notes came back with the signature only of Mr. Eugster what did you do about those notes, if anything? A. I sent the same man over there to Mr. Eugster to say that Mr. Eugster must have those notes countersigned by Mrs. Cantzlaar.

Q. Did you finally get them countersigned? A. No, sir.

Q. And then did you give up trying to get them countersigned; did you stop trying to get them countersigned? A. My intention first was to put the thing into the hands of my lawyer; finally I neglected it.

Q. You did not attend to it? A. No, sir.

20 Q. So that the notes remained signed only by Mr. Eugster? A. That is right; the reason I did not push it was—

THE COURT: Never mind that.

Q. You had the signature of Mrs. Eugster on the chattel mortgage anyhow? A. Yes, sir, and his too.

Cross-Examination by Mr. Weller:

30 Q. Were the notes and chattel mortgage both dated on the same day? A. No, sir.

Q. Which did you get first—the notes or the chattel mortgage? A. I got them both together because I sent them at the same time.

40 Q. Isn't it a fact that you had the notes a considerable time before the chattel mortgage was executed? A. No, sir, it is not the fact; I did not have the notes before I got the chattel mortgage; I sent them both over at the same time.

Charles E. Seitz—for Complainant—Cross.

Q. Now, when was it that this man bought these machines from you—what was the date of that?

A. I cannot tell you the exact date; it must have been about the eighth of October; at that time I had never seen Mrs. Cantzlaar.

Q. How long after was it that Mrs. Cantzlaar did come to your place? A. Well, about six or eight days. I cannot remember the exact date. 10

Q. When he purchased these machines did he pay something down on account? A. No, sir, he did not pay anything.

Q. Now, you sent over these notes; and did you send the notes to Mrs. Cantzlaar? A. I sent the notes and the chattel mortgage together to Mr. Eugster's place of business, which, if I am not mistaken, is the place also where his wife lived then, but I sent them to him, by my messenger. 20

Q. Did you ever send them to Mrs. Cantzlaar? A. No, sir, there was no necessity; I could not send them to two parties.

Q. Isn't it a fact that Mrs. Cantzlaar refused to sign those notes? A. I got the signatures; I was not present when she signed the notes.

Q. You sent the notes over by your messenger? A. Yes, sir.

Q. Didn't you tell him to see Mrs. Cantzlaar and have them signed? A. I told him to go to Mr. Eugster with these papers and get his signature and the signature of Mrs. Cantzlaar, because, I supposed, as her husband he would be able to find her. 30

Q. You did not know that they lived in the same house? A. I supposed they lived in the same house because I had been over there one day before, when I wanted him to send me the notes and 40

Charles E. Seitz—for Complainant—Cross.

the papers, and he and his wife—I met them in the same place where his factory is.

Q. Then you did know that they lived in the same place? A. Well, I supposed they did.

10 Q. How often did you send this messenger over there to have these notes signed? A. I sent him once; then he got the chattel mortgage signed by Mr. Eugster and Mrs. Cantzlaar, and he got the notes signed only by Mr. Eugster; my messenger reported that Mr. Eugster had refused to get Mrs. Cantzlaar to sign those notes, and had used very abusive language.

Q. Well, she had signed the chattel mortgage? A. Yes, sir.

Q. She was there then? A. I don't know.

20 Q. Your messenger was there and he had the mortgage and he had the notes? A. Yes, sir.

Q. She signed the notes and refused to sign the mortgage? A. No, sir, Mr. Eugster refused to make her sign the notes.

Q. He refused to make her sign them? A. Yes, sir, because my messenger had instructions to go to Mr. Eugster and tell him I wanted the notes and the mortgage signed by Mrs. Cantzlaar.

30 Q. Your messenger reported back to you that he saw Mrs. Cantzlaar? A. That I don't know; he must probably have seen her.

By the Court:

Q. Did he tell you that he had? A. I don't remember that he did.

Q. (FURTHER CROSS) But he brought back her signature on that mortgage? A. Yes, sir, he did.

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Charles E. Seitz—for Complainant—Cross.

Q. And her signature was not on the notes? A. No sir, it was not.

Q. Isn't it a fact that she refused to put her name on the notes? A. I don't know about that.

Q. Did you ever write to her after that? A. No, sir; I sent my messenger over again to Mr. Eugster and said I must have her name on those notes, and Mr. Eugster would not ask her to put her name on the report; he must have had an object in that; as for the contract they both were bound to sign the notes. 10

Q. Kindly let me see that contract; I am not familiar with it.

THE COURT: I know you are not.

Q. If Mrs. Cantzlaar made the contract and was the purchaser of this machine, why did you want her husband's name on there? A. In the first place I answer that Mrs. Cantzlaar did not make the contract; I made the contract. 20

Q. And you made it with her alone? A. No, sir, I did not make it with her alone; I made it at my office and sent it over there to be signed—that is, my contract—I made that contract, or at least my clerks made it.

Q. Did she sign this contract? 30

THE COURT: I do not think that he understands what you mean.

A. There is the signature of Mrs. Cantzlaar.

THE COURT: Put the question in a different form.

MR. WELLER: I do not think it is so very material. 40

Charles E. Seitz—for Complainant—Cross.

Q. Your having this contract with Mrs. Cantz-
laar—why was it you always corresponded with
her husband and not with her? A. I corre-
sponded with him because he was running the
business and I knew that she did not know any-
10 thing about the business at all, so why should I have
bothered the lady with correspondence when she
would have had to refer to Mr. Eugster any how.

Q. You treated with him always, didn't you?

A. Yes, sir, I treated with him always.

Q. And you never wrote to her about anything?

A. Yes, I wrote to her here—"I beg to av-
knowledge with thanks the receipt of your favor
of today" (reading a letter dated Devenber 15,
1910.)

20 Q. I show you a letter dated February 21, 1912,
is that your signature? A. Yes, sir.

Q. In that letter you say "Are you not in the
market for a new machine?" A. Yes, that is what
I said.

Q. Why did you not write to Mr. Eugster if you
wanted to sell a new machine, and this man had
nothing to do with it? A. In money matters, as
you have seen, I have written to both of them; and
in business matters I wrote to him.

30 Q. You say you had great trouble with Mr.
Eugster? A. Great trouble to get those papers.

Q. What papers? A. To get the chattel mort-
gage and the notes; I wrote to him about it; I told
him when he was in my office; once or twice I said
"I must have those notes and that chattel mort-
gage;" and when he finally did not send the notes
or the chattel mortgage, I had the notes drawn
myself, and the chattel mortgage, and sent it over

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to him with a letter addressed to both Mr. Eugster and Mrs. Cantzlaar.

Q. What is the date of that letter? A. The date of that letter is August 4th, 1911.

MR. WALSCHEID: I ask you to produce that letter. 10

MR. WELLER: Let me see that letter.

MR. WALSCHEID: I now ask that it be marked for identification.

Marked Exhibit C-D-2 for identification.

Q. Mr. Seitz, did you sell any other machines except the machine that you sold on October 8th, 1910, to Mr. Eugster? A. No, sir, I sold him two machines.

Q. And that was on October 8th, 1910? A. 20
Yes, sir, I guess I sold them to him a day or so before, because, after I had made the sale, then I had to have the contract drawn, and I do not generally do that right away. It may have been on the sixth of October when he bought the machines.

Q. You did not get this chattel mortgage until a year later, did you? A. That is right.

Q. And you wrote to him on August 4th, 1911, didn't you—wrote to him and to her? A. Yes, sir. 30

Q. And you sent back three promissory notes made by Mr. Eugster, alone, didn't you? A. I had the notes drawn, he did not draw any notes; I had them drawn in my office.

By the Court:

Q. Did you send back your promissory notes made by Mr. Eugster alone, in this letter? A. I did not. 40

Charles E. Seitz—for Complainant—Cross.

Q. Had Mr. Eugster signed any notes before 1911? A. No, sir, he had not signed any notes before I sent the whole batch over by my messenger.

Q. Well, you had received quite a number of payments before that time, outside of the \$2,000? A. I received payments as per contract; he has to pay a first installment, and then he has to pay a second installment when the machine comes in; and then for the balance he has to give notes, secured by chattel mortgage.

Q. Well, he paid after that contract \$1,000 when the machine came in? A. He did not pay it; Mrs. Cantzlaar brought it herself in cash.

Q. And there was \$1,000 paid when the contract was made? A. \$1,000 was paid when they both came to my office and signed the contract together.

Q. When was the second thousand paid?

MR. WALSCHEID: There is no dispute about that—December 5 and December 15.

Q. But Mr. Eugster had paid you some money before the chattel mortgage was signed, hadn't he? A. Of course I got the two installments on each machine.

Q. Who paid it to you? A. I don't remember whether he brought the money or sent a check.

Q. You said a moment ago that Mrs. Cantzlaar paid it didn't you—Mrs. Eugster? A. I said that Mrs. Cantzlaar paid \$1,000 cash; and then, in December I wrote her for a check of \$500, and that check I acknowledged the receipt of it in one of those letters.

Q. I show you check dated June 27, 1911, signed by Jean Benedict Eugster for \$762.50; you got that money from Mr. Eugster before the chattel

Charles E. Seitz—for Complainant—Cross.

mortgage was signed, didn't you? A. That was 1911; that was against those notes.

Q. Isn't it a fact that the chattel mortgage was not signed until August, 1911, after August 4th? A. Yes, they were signed August, 1911.

Q. Then did you get this check for \$762.50 before the chattel mortgage was signed at all, didn't you? A. Yes, sir. 10

Q. I just want to refresh your memory (reading some letters). A. I did receive the money before the chattel mortgage was signed.

Q. Whose check was it? A. Mr. Eugster's check.

MR. WELLER: I offer this check.
Marked Exhibit DD-1.

Q. You have identified this letter; I want to offer it in evidence. 20

THE COURT: All right.

MR. WELLER: I might offer them as a bunch; they are letters to Mr. Eugster from this man Sitz.

MR. WALSCHEID: I desire to enter an objection to this letter so far as its materiality is concerned, and I object to it as not binding upon Mrs. Eugster; it may be evidential as to the credibility of this witness, as testing his recollection. 30

THE COURT: I will accept it for that purpose.

Marked Exhibit DD-2.

MR. WELLER: I want to offer them all to attack this man's credibility. There refer to final payments. 40

Charles E. Seitz—for Complainant—Cross.

MR. WALSCHEID: We say that the money came out of his account, and he has testified he had \$70 when he was married, and that that was spent on the wedding.

10 I have no objections to receiving any letters which Mr. Seitz wrote on the question of machinery, so far as it may effect the credibility of this witness; but, so far as it is binding on Mrs. Eugster, who knew nothing about them, I object to them as binding upon her.

MR. WELLER: I offer all the rest together in a bunch.

Marked Exhibit DD-3. Bunch of letters.

20 Q. The first time that this man Eugster came to see you what conversation did you have with him?

A. The first time he came to see me?

Q. Yes. A. He came to me and said he wanted to buy some machines and he wanted to buy a Saurer machine, and not a Reiner machine, because he had more faith in a Saurer machine. I said, "Have you got any money?" He said, "Yes, I have saved a little money, but I came from the other side where I had lost almost everything";

30 I said, "How are you going to pay for this machine?" He said, "Well, I got acquainted with a lady"; before that he had told me that his wife had died, of whom he had been very fond—

THE COURT: Strike this all out; what is the use of all this in the record.

Q. What did he say to you about the machines?

40 A. He told me he was going to marry Mrs. Cantzlaar and that she had \$10,000, and she would pay

Charles E. Seitz—for Complainant—Cross.

for the machines and furnish the necessary money to carry on the business with this \$10,000 and, of course, the contract would have to be made in her name; and I understood from him then that they were going to divide the profits.

Q. How did you understand that? A. He said so. 10

Q. What did he say? A. I could not remember the exact words.

Q. You talked this over with Mrs. Eugster this morning? A. No, sir, I did not.

Q. Didn't she speak to you about it? A. No, sir.

Q. Did you speak to anybody about that? A. No, sir.

Q. Did you speak to any one about dividing the profits? A. No, sir. 20

Q. In what way did he say they were going to divide the profits? A. I was perfectly satisfied that she had \$10,000, and he wanted to buy machines for \$6,000, and I felt I was pretty safe if she really had the \$10,000.

Q. He did not say how they were going to divide the profits? A. No, sir.

Q. Did he tell you he was an expert embroidery man? A. He said he knew all about embroidering, that he had been a stitcher; he did not say he was an expert. 30

Q. Did he tell you he had been in business in the old country? A. Yes, sir, and he said he had lost almost everything he had.

Q. Was it the first time he came there that he told you they were going to divide the profits? A. Yes, sir, he told me the whole story—a big story he told me. He came over again but we did not re-hash the whole thing. 40

Charles E. Seitz—for Complainant—Cross—Re-Direct.

MR. WALSCHEID: You offered a number of letters, Mr. Weller, and I don't know whether you offered the originals—

MR. WELLER: I offered only originals.

10 *Re-Direct Examination by Mr. Walscheid:*

Q. You sent to Mrs. Cantzlaar the original of that letter, didn't you? (Showing witness a letter.) A. Yes, sir.

Q. And you sent that letter? A. Yes, sir.

MR. WALSCHEID: I offer that letter in evidence; it calls for a \$500 payment.

Marked Exhibit CD-3½.

20 MR. WELLER: All right.

Q. You sent Mrs. Cantzlaar that letter, didn't you? A. Yes, sir, I did.

MR. WALSCHEID: I offer that in evidence.

Marked Exhibit CD-4.

30 Q. Now, this letter of December 9, 1910, addressed to Mrs. Cantzlaar, "I shall be pleased to receive against delivery of your machine your chattel mortgage to secure payment of balance due on machine 16,766, to be described as follows," referring now to this letter of December 9th, that is at the time of delivery of the first machine, isn't it? A. Yes, sir.

(Referring to Exhibit CD-4.)

40 Q. You also sent her the original of the letter of December 13, 1910? A. Yes, sir.

Charles E. Seitz—for Complainant—Re-Direct.

Q. Asking for a check of \$500? A. Yes, sir.

Marked Exhibit CD-5.

Q. You also sent her the original of the letter of December 5, 1910, asking for a check of \$500?

A. Yes, sir.

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MR. WALSCHEID: I offer that in evidence.

Marked Exhibit CD-6.

Q. And on August 4th, 1911, you wrote to both Mr. Eugster and to Mrs. Eugster, that letter, didn't you? A. Yes, sir.

Q. And sent it? A. Yes, sir.

Q. And asked for three notes? A. Yes, sir.

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Marked Exhibit CD-7.

Q. Now that is the time that you finally received your chattel mortgage and the three notes? A. Yes, sir.

Q. And at the same time you made out four notes? A. No, sir, there were four notes to be paid; there were all together four notes, but Mr. Eugster had paid a check of \$762, which check has been shown to me before that—

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Q. Referring now to this check? A. Yes, sir, I did not have a note for that, as far as I remember, but he knew it was due; he had received the statement, and he paid that, without a note (referring now to Exhibit DD-1.) (A. continued.)

Q. After that letter of August 4th, I sent the chattel mortgage to be signed with three notes.

Q. And this letter reads as follows: "Dear Sir and Dear Madam, I beg to hand you enclosed the

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*Charles E. Seitz—for Complainant—Re-Direct—
Re-Cross.*

10 three promissory notes of (then a description of the three promissory notes) the last one being March 25th, 1912, and chattel mortgage in duplicate, which have to be signed by both of you, and acknowledged by a Notary Public. Kindly attend to this at once that the bearer can get the chattel mortgage recorded tomorrow morning early— (reading from Exhibit CD-7). A. (No answer.)

Re-Cross Examination by Mr. Weller:

Q. You sent these three promissory notes and Mr. Eugster signed them; you did all your corresponding with him, didn't you? A. I have no other correspondence with him on this note business.

20 Q. Are you sure of that? A. Yes, sir.

Q. I show you Exhibit DD-3 and ask you if that is not a letter that you just acknowledged? A. That is all right.

Q. That is dated long after that—1912? A. Yes, sir.

30 Q. Why did you say then that you had no other correspondence about these notes? A. Not about these notes to be signed; of course, when he paid he sent me a check; of course, I acknowledged receipt of the check.

Q. You never corresponded about the notes or anything else with Mrs. Cantzlaar, after those notes were signed? A. After the notes and chattel mortgage were signed, I did not correspond with her any more, because there was no occasion.

40 Q. You looked to him for the payment of the balance? A. No, sir, I looked to both of them for the payment.

*Jean B. Eugster—for Defendant—Cross—
Continued.*

MR. JEAN BENEDICT EUGSTER resumes the witness stand.

(It was agreed that the interpreter should not be sworn.)

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Cross-Examination Continued by Mr. Walscheid:

Q. Mr. Eugster, right after you were married you began to have family troubles with your wife, didn't you? A. Yes, sir.

Q. And as time went along the troubles between you grew bigger? A. Yes, sir.

Q. And in March of 1911 you were living as actual enemies in the house, were you not? A. Yes, sir.

20

Q. And when you brought the paper which you and your wife signed, you had then been living in this manner? A. Yes, sir.

Q. Mr. Eugster, you wrote your wife a letter on July 21, 1912, is that the letter? A. Yes, I wrote that.

MR. WALSCHEID: I ask that it be marked for identification.

Marked Exhibit CD-81½ for identification.

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Q. You also wrote another letter about August 6, 1912, which was divided into two sections, one relating to your family affairs, and the other relating to, your money affairs, with your wife didn't you, and that is your writing? A. I wrote that.

MR. WALSCHEID: I ask that these two sheets be marked for identification.

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*Jean B. Eugster—for Defendant—Cross—
Continued.*

Q. You also wrote that sheet? A. Yes, sir, I wrote that sheet too.

(The two last sheets, part of a letter of August 6, 1912.)

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Marked CD-9½ for identification.

MR. WALSCHEID: I offer these papers in evidence and I desire to read to the Court translations of the important parts.

MR. WELLER: Read the whole letter.

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MR. WALSCHEID: (Reading) The translation is as follows—Extract from letter of July 21, 1912, Eugster to wife: "I yield to the hope that God the Just will prevent that a murder be done in the house. In about eight months I will have earned the \$2,000, which I must give you; then I can play the big drum and can say: now is the time when we can separate without having to do too much damage to each other. If you will then make an acceptable lease with the purchaser of my machines it will be well for both of us; if not, I will take my machines away from West Hoboken and will set them up and run them some place else; until such time I will remain in the house, and woe to the beast who attempts before that time to make my life in our house impossible."

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(Extract from letter of August 6, 1912.)

"Since you do not appear to know exactly how wealthy you were at the time of our marriage November 23rd, 1910, I demand of you written proof as to how much money and estate you possessed upon the

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*Jean B. Eugster—for Defendant—Cross—
Continued.*

aforesaid day. This done, I will in writing inform you where and how your money is invested * * *.” “What I owe you is \$2,000, which you gave me to purchase two ten yard machines, which I will secure to you at the sale of my machines together with the business belonging thereto, by means of an installment * * * or if the purchaser can pay cash it will be paid to you in cash at the time of sale * * *. Of my estate and money, which I have earned with my work and in my business I will give nothing out of my hands; or will I divide, prior to my death, out of my hands anything to which I am legally entitled. We did not make any contract before our marriage, therefore, the legal principle applies—what belongs to the husband belongs to the wife; and what belongs to the wife belongs to the husband; in other words, equal rights. Since you have more estate than I have I will allow you to divorce me from bed and board, upon condition that I pay no alimony, and that you will not demand more than \$40 for the shop without living rooms, from my prospective purchaser, and that we have arrived at a financial settlement personally or through the adjudication of a judge.”

MR. WELLER: I will accept that translation (referring to Exhibit marked CD-10½ 2 pages).

*Jean B. Eugster—for Defendant—Cross—
Continued.*

Q. Did you ever ask your wife for a share or portion of her real estate? A. No, sir.

RECESS TO TWO P. M.

Same Witness resumes the witness stand.

10

(Fred Woeckner, of 242 Lindley Avenue, Jersey City, acted as interpreter, but was not sworn by consent.)

Cross-Examination Continued by Mr. Walscheid:

Q. Did you ever ask your wife for an interest or share of her real estate? A. No, sir.

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Q. Did you ever say to your wife that under the laws of Switzerland the property of the wife is the property of the husband, and that you considered that that was the arrangement under which you held your wife's property? A. Yes, I understood it was the same as it was in this country on the ownership.

Q. Did you say to your wife that under the laws of Switzerland her property was your property, and you thought you held her property in this manner? A. I said that.

30

(At this moment August G. Menge became the interpreter, and was not sworn.)

Q. And you always thought that that was so? A. Yes, until I was otherwise told so.

Q. And when were you otherwise told so for the first time? A. March, 1911.

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Q. And when you found out that the laws of this country were different, then you wanted to protect yourself, didn't you? A. From the be-

*Jean B. Eugster—for Defendant—Cross—
Continued.*

ginning, I always treated this matter in the right way, and I had no right to adjudicate it; I always was dealing in the correct manner.

Q. When you went to Weller & Lichtenstein's whom did you see there? A. I saw Mr. Julius Lichtenstein.

10

Q. Reading now to you from your answer in this matter, did you say to Mr. Julius Lichtenstein "I come from Switzerland—that under the laws of Switzerland the property of the wife is considered the property of the husband, and the property of the husband is the property of the wife; and after my marriage I often spoke to my wife and told her that I considered that to be the arrangement under which we held our property; and that on all of these occasions my wife repudiated this arrangement, and that she did not want me to have any interest in her land or real estate, but that I might have an interest in the business." Is that so? A. That is not so; the first few sentences are correct; and I was so advised by Mr. Klumpp.

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Q. I show you, Mr. Eugster, the letter marked Exhibit CD-1, for identification, and I ask you whether you received that letter? A. Yes, this letter I received.

30

MR. WALSCHEID: I now offer in evidence the letter which heretofore has been marked CD-1 for identification.

(Marked CD-1 (Mr. Walscheid reading)
"I beg to hand you enclosed renewal contract in the name of Mrs. Cantzlaar for the two machines (continuing reading letter).

40

*Jean B. Eugster—for Defendant—Re-Direct.**ReDirect Examination by Mr. Weller*

Q. It has been testified that your wife did not sign some notes in 1911; why didn't she sign them? A. Because that did not concern her.

Q. You know Mr. Seitz? A. Yes.

10 Q. Did you tell him in 1910 that you and your wife were going to divide the profits of the business? A. No, sir.

Q. There has been a letter offered in evidence in which you say in one place to your wife: "I will show where your money is invested"; what did you mean by that? A. My wife built a house and in that way I wanted to show her where the money went to.

20 Q. What money? A. The money she was paying out for the building of the house.

Q. Had she, before that, accused you of keeping money? A. Not to me.

Q. Had she accused you, and it had come to your knowledge? A. Yes, sir.

MR. WELLER: I want to offer in evidence the part of the affidavit, Mrs. Eugster's affidavit.

30 THE COURT: I will take judicial notice of that anyhow.

MR. WELLER: Also the affidavit of Julius Klumpp, so far as he was cross-examined.

THE COURT: I know you asserted absolute ownership over the property, and that she had never passed the title to her husband at all, and that the property still was hers.

Jean B. Eugster—for Defendant—Re-Direct

MR. WALSCHEID: Then the pleadings show first a contemplated gift which he abandoned, and then he took the stand that it was a loan of the money.

THE COURT: You direct the Court's attention to these affidavits so far as they were cross-examined on. 10

MR. WELLER: Yes. Would your Honor permit me now to have the stenographer read the first two questions and answers of Mr. Eugster on his direct examination; your Honor said it was material? (After further argument.)

MR. WALSCHEID: So far as there is a profit sharing agreement it amounts to a partnership. 20

THE COURT: Mr. Walscheid says that the ownership of this property remains entirely in the wife—that the profit-sharing should be between husband and wife as to the profits; but as to the ownership of the goods and chattels purchased with the money of Mrs. Eugster, the title never passed from her.

Q. When your wife advanced the \$2,000 towards buying the two embroidery machines, had you and she said anything about being partners or in partnership? 30

MR. WALSCHEID: I object on the ground that he has already testified, and he testified that there was no agreement whatsoever, or anything said, until some time in March, 1911. These machines were bought in October, 1910, and he says noth- 40

*Jean B. Eugster—for Defendant—Re-Direct—
Re-Cross.*

ing was said at that time; that is in his testimony.

A. No, sir.

Q. What was it she said to you in March, 1911?

10 A. She was building a house at the time, and she had some trouble with the workmen and builders, and she said that she was going to take care of that herself; at the time they had some trouble about the house with the workmen and builders and she said to me that she was going to take care of the building of the house, and then I should take care of the business.

20 MR. WALSCHEID: I wish to say that that is wrongly interpreted.

Re-Cross Examination by Mr. Walscheid:

Q. Your wife had trouble with the building? A. Yes.

Q. And then she told you that she was going to take care of that trouble with the building, didn't she? A. Yes, sir.

30 *By the Court:*

Q. When your wife said she was having trouble with the building what did you say to her? A. She said that I should have nothing to do with the building, and then I said that as long as I should have nothing to do with the building she should have nothing to do with the business.

Jean B. Eugster—for Defendant—Re-Re-Direct.*Re-Re-Direct Examination by Mr. Weller:*

Q. Had she had anything to do with the business before that? A. No, sir, but we told each other about it.

Q. Did you say anything to her at that time about its being a partnership? A. Never. 10

Q. Did you say anything to her about her owning the business? A. Yes.

Q. What did you say? A. As it now stands I was to buy the machines and pay her back.

MR. WALSCHEID: The witness said, "As it now stands I will take the machines and will pay you back"; that is what he said.

THE INTERPRETER: That is correct, sir. 20

Q. Under what name did you do business; was your wife's name on the sign? A. It was.

Q. Why did you put your wife's name there; why did you put the word "Cantzlaar" after your name? A. It is the custom in Europe.

By the Court:

Q. When the wife does not put money in the business, is it the custom in Switzerland to put the wife's name on the business? A. It is, yes, sir. 30

By Mr. Weller:

Q. Why is it put there when she has no interest in the business?

MR. WALSCHEID: Objected to as immaterial. 40

Jean B. Eugster—for Defendant—Re-Re-Cross.

Re-Re-Cross Examination by Mr. Walscheid:

Q. When was it that you and your wife first commenced to quarrel bitterly? A. On the first morning we were married.

10 *By the Court:*

Q. Did you quarrel the first morning you were married? A. We did not quarrel, but there were differences.

Q. When did you become enemies? A. We have never been enemies, but ever since the first day we were married she has never recognized me as her husband.

20 Q. When were the contracts for the machines made?

MR. WALSCHEID: Before March.

Further Re-Re-Cross Examination:

Q. Mr. Eugster, it was after you had your difference about the management of the house that you told your wife that you would take charge of the shop? A. I already said that.

30 Q. Say it again; was it or was it not after you had the quarrel about the building that you told her that you would take charge of the shop; in the beginning you were managing the building of her house, were you not? A. I did until it was nearly completed at the beginning of March.

Q. And in the beginning you were also managing the business? A. The business first started in March.

40 Q. And the business first started at the end of March—why don't you translate what he says? A. End of March, that is right.

*Mrs. Marie Eugster—for Complainant—Recalled
—Rebuttal—Direct.*

Q. And when did she tell you that you could not manage her building any more? A. About the beginning of March.

Q. And it was after the beginning of March that you told her that you thereafter would manage the business? A. Yes, right immediately thereafter. 10

Q. And it was because she had said this to you that you told her that you were going to manage the business? A. If I am not to know anything about the building then she is not to know anything about the business.

DEFENSE RESTS.

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Rebuttal

MRS. MARIE ANTOINETTE CANTZLAAR EUGSTER recalled in rebuttal.

Direct Examination by Mr. Walscheid:

Q. I show you a letter under date of October 8th, 1910, and addressed to Mr. Jean B. Eugster, and signed by Mr. Seitz, which is marked Exhibit CD-1, did you ever see a letter of this kind? A. I never saw that letter before. 30

Q. Did you ever know that Mr. Eugster had told Mr. Seitz the contract was to be transferred to him and to you? A. I don't know anything about this.

Q. Do you remember an occurrence in March, 1910, when you had a talk with Mr. Eugster about managing your building? A. Well, he had trouble 40

*Mrs. Marie Eugster—for Complainant—Recalled
—Rebuttal—Direct—Cross.*

with the men and the men did not want to have anything to do with him.

10 Q. Did you have any talk with him then in which you told him you would not let him manage the building any more? A. I never said anything like that.

Q. What did you say, if anything? A. I really cannot understand.

Q. What did you say; did you say anything about his not controlling the building? A. I did not say anything.

20 Q. Did you ever say to Mr. Eugster, speaking to Mr. Eugster, "You can no longer manage my building," and did he then say to you, "Well, if I cannot manage your building then you can have nothing to say about the business," or anything like that? A. He did not say that to me.

Q. Did he ever say to you that you could not manage the business or know anything about it? A. When he threw me out, he locked the door.

Q. When was that? A. 1912, I guess; I cannot remember the date when it was.

30 Q. And when he threw you out and locked the door, what did he say about the business? A. That it belonged to him.

Q. Did he ever account to you for the moneys that were made in the business? A. Never.

Cross-Examination by Mr. Weller:

Q. When did the business actually start? A. March, 1911.

Q. You and your husband were living together at that time? A. Yes, sir.

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*Mrs. Marie Eugster—for Complainant—Recalled
—Rebuttal—Cross.*

Q. When did you cease living together? A. I guess it was 1912; I don't remember the date.

Q. In 1911, when this business commenced, you knew that he started a bank account in his own name? A. He started a check account.

Q. Did you see his bank book? A. I saw it once.

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Q. And you lived right over the place in the same building? A. Yes, sir.

Q. And you were down in the mill every day? A. In the beginning I was.

Q. How long did you keep up going down to the mill every day? A. It did not do me much good.

Q. How long did you keep up this going down to the mill every day? A. Until about 1912.

Q. And you went down every day? A. Mostly.

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Q. And you knew he was manufacturing the goods there? A. Yes, sir.

Q. And you knew he was selling them? A. Yes, sir.

Q. And taking the money in his own name? A. Yes, sir.

Q. And you knew he was depositing it in the bank account? A. I knew that.

BOTH SIDES REST.

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MR. WELLER: The case, I am not ready to sum the case up today; Mr. Lichtenstein will do that.

(After further argument on that question.)

MR. WALSCHEID: I should like to sum it up today, but if it is not to be summed up today, I think some disposition ought to be made of the property itself, that some-

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body ought to be put in possession of it at this time, because it now plainly appears before the court that this property was purchased in the name of the complainant, with her funds, and upon her security. This defendant has not one dollar invested in this plant. It further appears by a great preponderance of the evidence, by the evidence of Mrs. Eugster and the evidence of her son, and the evidence of Mr. Klumpp, and the evidence of Mr. Fritsche and by the evidence of Mr. Seitz, that what he intended to do, and what he did do was to sign a certain paper at a time when he had estranged from himself from his wife, or to induce her to sign a certain paper whereby he agreed to accept \$25 a week in salary for his services, and whereby he further agreed to furnish for the rental of that place, and for the payment of the mortgage on the building, the sum of \$25 a month by way of rent; whereby he agreed out of the \$25 a week of salary to pay her \$15 a week for the maintenance, and whereby he further agreed that when the debts of the plant were paid off, he was to share the profits with her, half and half; he was a manager in charge—a manager sharing the profits—perhaps to a certain extent a management bearing some relationship to a partnership, or resembling a partnership. Now are the facts established in this case. They are not denied. Every dollar was paid out for the business according to his own testimony.

THE COURT: It is a very unfortunate matter, the whole thing.

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MR. WALSCHEID: Here is the situation: Here he is confronted with a decree; we don't know what is going to happen to that plant. Supposing he should think at this time that the decree is going against him, which might be a reasonable deduction for him to draw, from my standpoint, but I think it is reasonable for him to draw a deduction that some sort of decree is going to be made; I say that under those circumstances something should be done. He is living away from her— 10

THE COURT: What share of the profits is he entitled to?

MR. WALSCHEID: We don't want to deprive him of his profit, but we want to control ours.

THE COURT: Come in on Monday next, February 16, 1914, and you can argue it then. 20

On Monday, February 16, 1914, argument of the question reserved at end of hearing was continued to March 9, 1914, when after argument the following order was advised.

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Order of Reference.

(Filed March 10, 1914.)

IN CHANCERY OF NEW JERSEY.

	Between	}	On Bill, etc. Order.
10	MARIE ANTOINETTE CANTZLAAR EUGSTER, <i>Complainant,</i>		
	vs.		
	JEAN BENEDICT EUGSTER, <i>Defendant.</i>		

20 This cause coming on to be heard in the presence of J. Emil Walscheid of counsel with complainant and of Weller & Lichtenstein of counsel with defendant

30 It is, on this ninth day of March, A. D. 1914, by EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, ordered, and the said Chancellor by virtue of the power and authority of this court does hereby order that William C. Asper, Esq., one of the special masters of this court, be and he hereby is appointed to take and state an account in reference to the embroidery business in dispute between the parties in this cause of all moneys invested by complainant in said business and of all moneys received and expended by defendant on account of said business, from the installation of the same to the day of the date hereof, and that said account be made and stated within five days from the date hereof and be filed in this court on or before March 16th, 1914.

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Order of Reference.

And it is further ordered that the said defendant, his agent, servants or employees do absolutely desist and refrain, and they are hereby enjoined from drawing any money out of the bank account in Commonwealth Trust Co., West Hoboken, N. J., and from in any manner interfering with the business aforesaid or any of the property belonging to the said business. 10

And it is further ordered that a copy of this order, which need not be certified, be forthwith served upon the Commonwealth Trust Co., of West Hoboken, N. J., and that said Trust Co. be and it is hereby enjoined from honoring any checks or orders withdrawing any moneys issued by the said defendant, Jean Benedict Eugster. 20

E. R. WALKER, C.

Respectfully advised,
VIVIAN M. LEWIS, V. C.

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*Deposition of Antoinette Carpenter—Direct—
Cross.*

STATE OF NEW JERSEY, } ss.
COUNTY OF HUDSON. }

ANTOINETTE CARPENTER, a witness produced on the part of the Complainant, of full age, being duly sworn on her oath deposes and says: 10

Q. Miss Carpenter you are the daughter of Mrs. Eugster? A. I am.

Q. I show you a check marked "C-9" and ask you is this your signature? A. Yes.

Q. Tell us in your own language and in your own way how you got this check, what you did with it and what you did with the proceeds. A. Mr. Eugster needed the money for the factory laborers. He had no time for himself to go from the factory, so my mother made out the check to me and told me to get the money at the bank and to give Mr. Eugster the money. It was in cash. It was \$135.00. 20

Cross-Examination by Mr. Lichtenstein:

Q. Do you remember when it was that you received the check that you speak about? A. It was the same day that I gave the money to Mr. Eugster. 30

Q. Do you remember when that was? A. It was in March.

Q. What year? A. 1911.

Q. What was Mr. Eugster doing at the factory when you gave him the money? A. I do not remember.

Q. Was it in the forenoon? A. I believe it was in the forenoon.

Deposition of Antoinette Carpenter—Cross.

Q. Was your mother in the habit of drawing checks to your order? A. She was not.

Q. Is this the only check that was drawn to your order by your mother? A. It was.

10 Q. Was the factory in operation at that time?
A. It was. I think it was.

Q. You saw the goods spanned on the machine?
A. I do not remember.

Q. Did Mr. Eugster tell you what he was going to use this money for? A. He did not tell me what he was going to use it for, but I knew it was for the labor.

20 Q. In speaking of labor, do you mean stitchers and watchers? A. I cannot say whether it was stitchers or watchers, but I know it was for labor.

Q. You do know that at that time the machines had already been constructed and installed and that Mr. Eugster was already working on embroideries? A. Yes. I do not remember whether they were in operation, but I do know that they were erected.

Q. Previous to the day that you gave Mr. Eugster this \$135.00 had you been to the factory? A. I had.

30 Q. How often? A. Very often.

Q. Every day? A. Not every day, but a few times a week.

Q. Can you tell us when it was that Mr. Eugster actually started to embroider? A. I cannot tell the actual day.

Q. When did you see this check before today?
A. When I endorsed it at the bank. That was the last I saw it.

40 Q. So that your recollection of what transpired
dates back to March 18th, 1911. A. Yes.

*Deposition of Marie Antoinette Cantzlaar
Eugster—Direct.*

Q. You do not know what Mr. Eugster used this check for? A. For labor.

Q. Did you see him pay the money out to laborers? A. I did not.

Q. Why then do you say that it was used for labor? A. My mother told me it was for labor. 10

Q. That is the only reason you say so? A. Yes.

Q. Was the building completed at that time? A. It was almost completed.

Question by Master:

Q. Do you remember what day of the week it was? A. It was on a Saturday.

ANTOINETTE CARPENTER. 20

Taken, sworn and subscribed to
before me this 20th day of March,
A. D. 1914.

WILLIAM C. ASPER,
Master.

STATE OF NEW JERSEY, } ss. 30
COUNTY OF HUDSON.

MARIE ANTOINETTE CANTZLAAR EUGSTER, of full age, being duly sworn on her oath deposes and says:

Q. You are the complainant in this case? A. I am.

Q. And you spent certain monies to establish the embroidery plant at No. 325 Mountain Road, West Hoboken? A. Yes. 40

*Deposition of Marie Antoinette Cantzlaar
Eugster—Direct.*

Q. When did you spend the first money? A. The first money I spent on the business was on October 8th, 1910, as an installment towards an embroidery machine.

10 Q. This was spent in cash? A. Yes.

Q. The next money you spent for that purpose was spent when and where? A. The next money was spent December 8th, 1910. Check for \$500.00 paid on account of the embroidery machines. (Solicitor for the complainant offers in evidence check drawn on the Highland Trust Company. It is admitted and marked Exhibit "C-1").

20 Q. What other monies did you spend for the installation of this business? Tell us when and how the money was spent. A. The next money I spent was on December 15th, being a payment of \$500.00 on account of the purchase price of the embroidery machines. The payment was made by check. (Solicitor for the complainant offers the check in evidence. It is admitted and marked "C-2"). On January 11th, 1911, I paid to Erhard Brothers, truckmen, \$125.00 for carting the embroidery machine to the factory site. This payment was made by check. This is the check. (Solicitor for the Complainant offers the check in evidence. It is admitted and marked "C-3"). On February 15th, 1911, I gave Mr. Eugster my check for \$100.00. The check is endorsed by him and was cashed by him. This check was given to Mr. Eugster at his request for installation expenses. It is supposed to cover the expense of the men helping to put up and clean the machines. I do not know how he used the money. This is
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40 the check. (Solicitor for the Complainant offers

*Deposition of Marie Antoinette Cantzlaar
Eugster—Direct.*

the check in evidence. It is admitted and marked Exhibit "C-4"). This check was not used for any purpose connected with the construction of my house, nor was it given to Mr. Eugster for any such purpose. On February 28th, 1911, I paid to Charles Frei, an electrician, the sum of \$200.00 on account of the installation expenses, by my check. This was payment on account of an electric motor and its installation. Here is the check. (Solicitor for the Complainant offers the check in evidence. It is admitted and marked "C-5"). On April 1st, 1911, I paid to this same Mr. Frei, in cash the balance of his bill; it amounts to \$165.00. The receipted bill is among the papers of the business. On March 3d, 1911, I again gave to Mr. Eugster my check for \$100.00 payable to his order, which was endorsed by him and cashed by him. Here is the check. (Solicitor for the Complainant offers the check in evidence. It is admitted and marked "C-6"). This check was also given to him for installation expense of the business. He was going to buy with it mending machines, tables, chairs, scissors and other things necessary for the business. It was not given to him for anything in connection with my house, nor was it used in connection with my house. On February 21st, 1911, I made out my check payable to the Public Service Corporation for the sum of \$40.00 for installing the electric service in the business. Here is the check. (Solicitor for the Complainant offers the check in evidence. It is admitted and marked "C-7"). On March 10th, 1911, I gave to Mr. Eugster my check for \$100.00, which is endorsed by him and which was cashed

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*Deposition of Marie Antoinette Cantzlaar
Eugster—Direct.*

by him. I gave him this for the business. It was used in the business. Here is the check. (Solicitor for the Complainant offers the check in evidence. It is admitted and marked "C-8"). On
10 March 18th, 1911, I made out my check to my daughter, Antoinette Carpenter, for \$135.00. She cashed it on the same day and gave the money to Mr. Eugster. Here is the check. (Solicitor for the Complainant offers the check in evidence. It is admitted and marked "C-9"). On the day when this check was made out Mr. Eugster was at the place of business where the plant was being installed. He needed the money in the business
20 for the helpers. There were four or five men there. He told me that there were four or five men there and the Monteur and that he would have to pay these men. He told me he could not leave the place because he had all these men working there and that I should send my daughter to have the check cashed and send him the money by her. I did not see the money represented by this check delivered to Mr. Eugster. On December 1, 1910, I gave to Mr. Eugster my check for \$40.00,
30 which he cashed. Here is the check. (Solicitor for the Complainant offers the check in evidence. It is admitted and marked "C-10"). I gave him this money for the business. He said he had to go in the saloons with the men and treat them and he needed money. The price of a mending machine is \$40.00 and my best recollection now is that this \$40.00 was for a mending machine. Altogether there were two mending machines and a sewing machine installed in this plant and this
40 \$40.00 represents the price of one. About June

*Deposition of Marie Antoinette Cantzlaar
Eugster—Direct.*

26th, 1911, Mr. Eugster needed \$300.00 in the business. He asked me for the \$300.00. I did not have the \$300.00, so I obtained the \$300.00 from J. Henry Furrer. He gave me his check, which I endorsed and cashed. Here is the check. (Solicitor for the Complainant offers the check in evidence. It is admitted and marked "C-11"). Mr. Furrer owed me the money on notes which were then not yet due, but which he paid off at my request so that I might have the money. This money I gave Mr. Eugster. He wanted it for running expenses of the business, because he said he was short. On or about September 1st, 1910, Mr. Eugster again asked me for money. He wanted \$400.00. He wanted it to help pay off the first chattel mortgage note, so he said. I did not have the money, and I again obtained money from J. Henry Furrer. He gave me his check for \$505.00. It is the balance of what he then owed me. Here is the check made by Mr. Furrer and endorsed by me. (Solicitor for the Complainant offers the check in evidence. It is admitted and marked "C-12"). I received the cash on this check and gave Mr. Eugster \$400.00 of it. In addition to this I gave to Mr. Eugster \$140.00 on July 11th, 1911, but this money was not given to him for the business. I owed the insurance on my building to the amount of \$151.10. He took the \$140.00 in cash, made out his check for \$151.10 to pay the insurance and did pay the insurance, so that he really gave me \$11.10 on this last transaction. This represents all the cash money that I gave to Mr. Eugster on account of the business.

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*Deposition of Marie Antoinette Cantzlaar
Eugster—Cross.*

Cross-Examination by Mr. Benjamin Lichtenstein.

Q. Did you erect a building on Mountain Road?

10 A. Yes.

Q. When did you start to build? A. I cannot remember the date any more.

Q. Was it before December, 1910? A. It was.

Q. When was the building completed? A. About March, 1911.

Q. Do you know when in March, 1911? A. Beginning of March.

Q. Did you owe any person monies for the construction of this building in April, 1911? A. Yes,
20 the contractor.

Q. Did you have one contractor to construct the entire building? A. Yes.

Q. Who was the contractor? A. August Eppler.

Q. What was the amount of your contract with him? A. I can't remember.

Q. Have you the contract? A. Yes, I have.

Q. Was there any person to whom you directly owed money for the construction of this building?
A. No.

30 Q. How were your payments to the contractor made, by check or in cash? A. Some were made by cash and some by check.

Q. Did you personally make all payments to the contractor? A. Some of them, the rest were made by my lawyer.

Q. Were all the payments made by you made by check? A. By cash and by check.

Q. Who was your lawyer in that transaction?
40 A. Max Sturm.

*Deposition of Marie Antoinette Cantzlaar
Eugster—Cross.*

Q. Mr. Sturm handled the money to raise your mortgage? A. Yes.

Q. How much was the mortgage? A. \$6,000.00.

Q. Did Mr. Sturm pay this entire \$6,000.00 to the contractor? A. He did not. 10

Q. Did he pay part of the \$6,000.00 to you? A. No, to the contractor only.

Q. So that the \$6,000.00 that Mr. Sturm had paid to the contractor? A. No, he did not.

Q. Did you have a check account at the time you made these payments to the contractor? A. I did.

Q. About how much did you pay the contractor in cash? A. About \$3,000.00.

Q. Why was it you made these payments in cash when you had a check account? A. The check account was small. I used the check account mostly for the installation of the business. 20

Q. What did it cost to construct the building? A. \$8,500.00.

Q. Did you not say before that you invested \$3,000.00 in this building? A. Yes.

Q. When was it that the Monteur and the helpers completed the installation of the machines? A. I do not remember the date. 30

Q. Do you remember the month and year? A. I guess it was in March, 1911.

Q. How long was it before April the first when Mr. Eugster's business commenced? A. I do not remember.

Q. Was it two or three months before? A. No, it was not that long.

*Deposition of Marie Antoinette Cantzlaar
Eugster—Cross.*

Q. Was it a month before? A. I cannot tell exactly. It may be a few weeks.

Q. Did Mr. Eugster pay any part of the monies represented by the checks which you made payable to his order for the building? A. He did not.

Q. Do you owe the contractor any money at this time? A. I do not. He says I do.

Q. This \$40.00 item evidenced by the check dated February 21st, 1911, payable to the Public Service Corporation, was that in the nature of a deposit? A. Yes.

Q. Do you hold the receipt of that? A. I do. I guess so. I can't remember.

Q. Do you recall whether the deposit was made in your name? A. It was.

Q. That \$40.00 is to go back to you when you pay your bill? A. Yes. In the event of my discontinuing the use of the electric current in the factory, it comes back to me.

Question by Master.

Q. How many accounts have you in the Highland Trust at that time? A. I only had one account in the Highland Trust Company at that time.

Question by Mr. Walscheid.

Q. Why did you sign some checks "Eugster-Cantzlaar" and other checks "Cantzlaar-Eugster"? A. When I was married I did not know how to sign. Upon Mr. McEwan's advice I signed

Deposition of William H. McTigue—Direct.

the checks with Mr. Eugster's name last. Before that I put Cantzlaar last. This also applies to the checks given me by Mr. Furrer.

MARIE A. C. EUGSTER.

Taken, sworn and subscribed to before me this 20th day of March, A. D. 1914. 10

WILLIAM C. ASPER,
Master.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

William H. McTigue, a witness produced on the part of the Defendant, being duly sworn on his oath deposes and says: 20

Q. Mr. McTigue, you are a public accountant?
A. Yes, sir.

Q. Have you examined the books of account of J. Benedict Eugster? A. I have. I have found that Mrs. Eugster had advanced between October 10th, 1910, and April 1st, 1911, the sum of \$2,812.64, and between the dates of April 1st, 1911, and March 7th, 1914, there was advanced by Mrs. Eugster \$700 in cash and \$100 for rent unpaid, making a total advance by Mrs. Eugster of \$3,612.64. Between the date of April 1st, 1911, and March 7th, 1914, there was paid out of the business to Mrs. Eugster or for her account \$1,092.94, leaving a balance to her credit March 7th, 1914, of \$2,519.70. Of these advances as stated above amounting to \$3,612.64, \$2,812.64 was advanced for machinery and installation thereof 30 40

Deposition of William H. McTigue—Direct.

prior to April 1st, 1911, and \$700 thereafter advanced for general expenses of conducting the business. The profits of the business from April 1st, 1911, to November 20th, 1912, were \$3,755.70, and from November 20th, 1912, to March 7th, 1914, were \$1,853.16, making a total profit of \$5,608.86. This, however, is exclusive of credit thereby increasing the profit of inventory estimated by Mr. Eugster to amount to \$1,077.00 and a sale under March 3rd, 1914, to a customer Lavitch amounting to \$85.00, which amount should also be added to the profits, making a total profit for the entire period of \$6,770.86. Mr. J. B. Eugster's account from April 1st, 1911, to November 20th, 1912, shows charges of \$3,005.48, and credits consisting of \$2,100.00 for salary and sundry cash disbursements of \$592.42, aggregating \$2,692.42, resulting in a net overdraft in his account on November 20th, 1912, \$313.06, and from November 20th, 1912, to March 7th, 1914, there were charges to his account of \$2,953.44 and credits consisting of salary \$1,700.00 and sundry cash disbursements of \$201.30, aggregating \$1,901.30. Resulting in an overdraft for this period of \$1,052.14. This overdraft of \$1,052.14, together with the overdraft for period of April 1st, 1911, to November 20th, 1912, of \$313.06 makes a total overdraft of \$1,365.20. This overdraft however is subject to a credit of \$800 deposited by Mr. Eugster on February 25th, 1914, in the Commonwealth Trust Company of West Hoboken, New Jersey. The net overdraft of March 7th, 1914, of \$565.20. The two personal accounts aforesaid of Mrs. Eugster and Mr. Eugster showing balances of \$2,519.70 to the credit of Mrs. Eugster and charge or overdraft in the ac-

*Deposition of William H. McTigue—Direct—
Cross.*

count of Mr. Eugster of \$565.20 are subject to the disposition of the profits of \$6,770.86. Therefore if the profits of \$6,770.86 were distributed on the basis of half to each Mr. Eugster and Mrs. Eugster, their personal accounts would appear as follows: Amount due Mrs. Eugster \$5,905.12. Amount due Mr. Eugster \$2,820.22. 10

Cross-Examination by Mr. Walscheid:

Q. Did you ever read this order? We are referring to the Order of Reference? A. Yes.

Q. When did you first see that? A. This afternoon.

Q. Will you tell, Mr. McTigue, according to the terms of this order whether or not the books of account which you have examined show that Mr. Eugster has received any monies whatsoever from Mrs. Eugster? A. Yes, it does. 20

Q. Where does it show this in the books? A. It shows it on Folio 88 of the Cash Book, under date of July 11th. There are no others that I know of.

Q. And in giving Mrs. Eugster credit for monies advanced by her between October 10th, 1910, and April 1st, 1911, \$2,812.64, there is nothing in these books to show that she advanced this money or invested it? A. The books would not show that independently. 30

Question by the Master.

Q. What do you mean that the books do not show it independently? A. The receipts during this period were not recorded in the books.

Q. Do the books show the receipt of the \$700.00 40

Deposition of William H. McTigue—Cross.

additional that you give Mrs. Eugster credit for between April 1st, 1911, and March 7th, 1914? A. I could not locate it.

By Mr. Walscheid:

10 Q. Then these books of the account you have examined do not show the monies invested by the Complainant in this business? A. No.

Q. Can you tell us from the examination which you have made the total amount of monies received by the defendant Eugster on account of the operation of the business from the 1st day of April, 1911, to March 7th, 1914? A. Not exactly.

20 Q. From the books which you have examined have you made up a statement of the total receipts received by Mr. Eugster in the operation of the business in the periods of time mentioned in the last question? A. No.

Q. Did you make any calculation of the receipts of this business? A. Yes.

Q. What is it? A. It amounts to \$38,233.02, which is not proven by me to be correct.

30 Q. And those are the total receipts from the operation of the business as shown from the books of account? A. I have not calculated them from the books of account.

Q. Nobody has stopped you from making such a calculation? A. I did not have all the books.

Q. Did you complain to anybody about this? A. I made it known. I did not exactly complain.

Q. To whom did you make it known? A. I made it known to Mr. Frederick Cantzlaar and to Mr. Lichtenstein.

40 Q. And what books did you need to make a complete examination of the business? A. I needed

Deposition of William H. McTigue—Cross.

the cash book, sales book and bank pass book.

Q. How many of these books did you have? A. I had the sales book and the cash book.

Q. Did Mr. Cantzlaar tell you that he did not have the bank book, that is the bank pass book?

A. He did.

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Q. Did he tell you that Mr. Eugster had it? A. No.

Q. After you had told him that you needed this bank pass book did you still continue to take your account? A. Yes.

Q. When you told Mr. Lichtenstein that you needed the book what did he say? A. He said that it could not be helped, that the case was on Monday at the Chancery Court, and he said that on Monday morning.

20

Q. Monday morning you knew that you were to make a further examination? A. Yes.

Q. And you knew that you were to appear before Mr. Asper on Thursday? A. Yes.

Q. Did you make it known to the Court on last Monday or to me since last Monday, or to anybody since last Monday, that you could not properly state or make up this account without this bank pass book? A. No.

30

Q. And you made up an account and struck balances without having this bank pass book? A. Yes.

Q. From the work that you have done what has been the total disbursements by Mr. Eugster on account of this business from April 1st, 1911, to March 7th, 1914? A. I don't know exactly.

Signature of the testimony to the present point is waived. Hearing adjourned to March 21st, 1914.

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Special Master's Report.

IN CHANCERY OF NEW JERSEY.

Between

10 MARIE ANTOINETTE CANTZLAAR
 EUGSTER,
 Complainant,

and

JEAN BENEDICT EUGSTER,
 Defendant.

} On Bill, etc.,
} Master's
} Report.

20 In pursuance of an Order of this Court, bearing
 date the ninth day of March, nineteen hundred
 and fourteen, whereby it was referred to the sub-
 scriber, one of the Special Masters of this Court,
 to take and state an account in reference to the
 embroidery business in dispute, between the par-
 ties in this cause, of all monies invested by the
 Complainant in said business and of all monies
 received and expended by the Defendant, on ac-
 count of said business from the installation of
 the same to the date of said Order, to-wit, March
30 9th, 1914, I do report that I have been attended
 by J. Emil Walscheid, Solicitor of the Complain-
 ant, and Weller & Lichtenstein, Solicitors of the
 Defendant, and in their presence have taken the
 depositions and evidence returned with this re-
 port.

40 And I do find and report, that the total amount
 of monies invested by the Complainant in said
 business is the sum of three thousand, eight hun-
 dred and twenty dollars (\$3,820.00), and that the
 total amount of all monies received by the De-
 fendant on account of said business from the in-
 stallation of the same to the ninth day of March,

Master's Report.

1914, is the sum of forty-two thousand, one hundred and twenty-six dollars and seventy-eight cents (\$42,126.78), and that the total amount of monies expended by the defendant on account of said business, from the installation of the same to March 9th, 1914, is the sum of forty thousand, seven hundred and sixty-six dollars and ninety-one cents (\$40,766.91). 10

These figures are based upon the calculations made by William H. McTigue, a witness on the part of the Defendant, whose calculations were admitted to be true by a stipulation entered upon the testimony.

And I do further report, that in order to assist the Court, testimony was taken as to the credits of the parties to this suit, which credits are set forth in Schedule "A" and "B," annexed to my report and made a part hereof. Testimony was also taken for the same purpose in reference to an inventory of the goods of the business, after the defendant had ceased to have charge of said business, all of which will more fully appear by the testimony of the witnesses produced before me and the Exhibits offered in evidence and marked by me, which are annexed to this my Report and returned herewith. 20 30

Respectfully submitted this eighteenth day of March, nineteen hundred and fifteen.

WILLIAM C. ASPER,
Special Master.

Continuance.

IN CHANCERY OF NEW JERSEY.

10	Between MARIE ANTOINETTE CANTZLAAR EUGSTER, <i>Complainant,</i> and JEAN BENEDICT EUGSTER, <i>Defendant.</i>	}	On Bill, etc., Continuance.
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20 Continuation of the taking of depositions in the above entitled cause, before me, William C. Asper, a Special Master in Chancery of New Jersey, this thirteenth day of February, nineteen hundred and fifteen, at three o'clock in the afternoon, at my office, Room No. 4, Hudson Trust Building, No. 423 Hackensack Plankroad, in the Town of West Hoboken, in the County of Hudson and State of New Jersey, in pursuance of the Order of Reference before recited, and in the presence of J. Emil Walscheid, of Counsel with the Complainant, and Weller & Lichtenstein, of Counsel with the

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WILLIAM C. ASPER,
Special Master.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON. } ss.

MARIE ANTOINETTE CANTZLAAR EUGSTER, being recalled on oath says:

Q. When you took possession of the shop what

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*Deposition of Marie Antoinette Cantzlaar
Eugster—Recalled—Direct.*

did you do with the material on hand, yarns, etc.?

A. I put all the yarns aside, except what was actually on the machine. What was on the machine I finished up. I did not use any of the other materials which were there when I took possession. They were all put aside in the cotton room, which is a sort of a storage room used for the storage of cotton and other materials. These goods thereafter remained in this room and they are still there, just as I put them there when I took possession. An inventory and appraisement of the goods and materials thus set aside was made on July 28th, 1914, by a Mr. Tanner, representing me, and a Mr. Ahlers, representing Mr. Eugster. This was done by an agreement between counsel, made before the Master, taking the testimony. I was present when the inventory and appraisement was made. Mr. Eugster also was there. Mr. Eugster then gave to these two appraisers the value of the material upon the machines when he left. These two appraisers after the appraisement agreed upon figures, and having agreed upon figures these two appraisers then gave to me a copy of their appraisal. Here it is. (Solicitor for the Complainant offers a copy of the Appraisal in evidence. Solicitor of the Defendant objects on the ground that the Appraisers made the appraisement as of the 28th day of July, 1914, and the Appraisers have not been produced to prove that the appraisement was made after March 7th, 1914, which is the only appraisement and inventory which would be relevant under the Order of Reference calling for an accounting as of March 7th, 1914. And on the further ground that there

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*Deposition of Marie Antoinette Cantzlaar
Eugster—Recalled—Direct.*

10 is no evidence pending to show that the appraisers were qualified to make this appraisal, or that both appraisers agreed upon the figures here presented and on the further ground that this witness is not competent to prove the result of an appraisal to which she was not a party. The appraisal is admitted in evidence and is marked Exhibit "C-1" of this date).

20 Q. When was the last day that Mr. Eugster paid you board and contributed anything towards your support? (Question is objected to on the ground that it does not come within the scope of the Order of Reference made in this cause and therefore immaterial, incompetent and irrelevant). A. Beginning of October, 1912.

30 Q. During the time that Mr. Eugster had control of the factory, was it shut down for any period of time? (Question objected to on the ground that it does not come within the scope called for in the Order of Reference in this cause and is therefore incompetent, immaterial and irrelevant). A. It was not exactly shut down. Mr. Eugster went away a couple of times, but the girls run the place.

Q. Was there ever a time when he went away for an extended period? (Question objected to on the ground that it is irrelevant, incompetent and immaterial and does not come within the scope of the Order of Reference in this cause). A. He was away for about a week three times.

*Deposition of Marie Antoinette Cantzlaar
Eugster—Recalled—Cross.*

Cross-Examination by Mr. Tiffany:

Q. Were you present at the shop or plant every day between March 7th, 1914, and July 28th, 1914?

A. I was not.

10

Q. How often were you away from the plant or shop between these days? A. I was there always.

Question by Master:

Q. To a previous question you said that you were not present at the shop between March 7th and July 28, 1914. Now you say that you were there always. Please explain the two answers.

A. I understood you from the beginning when the business opened; then I was not always present. After March 7th, 1914, I was always present.

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Question by Mr. Tiffany:

Q. Who else had the keys to the shop besides yourself during the days between March 7th, 1914, and July 28th, 1914? A. Nobody.

(It is conceded by the Complainant that it is within the range of possibility that some goods may have been removed from that factory between March 7th, 1914, and July 28th, 1914. But we do not concede the fact).

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Q. Did you pay for the goods, that is the yarns, that was on the machines at the time you took possession March 7th, 1914? A. No.

Q. The yarn that was on the machines was being used for work which you were doing for a man named Meyer? A. Yes.

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*Deposition of Marie Antoinette Cantzlaar
Eugster—Recalled—Cross.*

Q. And is it not a fact that this work is still unpaid for? A. Yes.

Q. How much does he (Meyer) owe you for this work at the present time? A. I don't remember.

10 Q. Can you tell approximately? A. No.

Q. As a matter of fact, is it not about six hundred dollars? A. It is about five hundred dollars.

Q. Was the work which you did for Meyer in the place at the time these appraisers you spoke of made their appraisal on July 28th, 1914?

A. A little part of it was, but I do not remember much.

20 Q. Do you know whether or not the appraisers in making their appraisal took into account the Meyer work? (Question objected to on the ground). A. They did not.

Q. Who gave you this copy of the appraisal? A. Mr. Tanner.

Q. He was your appraiser? A. He was.

Q. When did he give it to you? A. The day he made it.

Q. Were you present when he made it? A. I was.

30 Q. Do you know whether Mr. Ahlers was identical with this? A. Yes.

MARIE A. C. EUGSTER.

Taken, sworn and subscribed to before me this 13th day of February, A. D. 1915.

WILLIAM C. ASPER,
Master.

Deposition of J. Benedict Eugster—Direct.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON. } ss.

J. BENEDICT EUGSTER, of full age, being duly sworn on his oath deposes and says:

Q. Do you know what stock, materials and work in progress was contained in the premises in question on March 7th, 1914? (Mr. Walscheid objects to the question on the ground that it is not within the scope of the Order of Reference and therefore irrelevant and immaterial). A. Yes. 10

(It is agreed between the parties that this objection may be taken now to the whole line of testimony in reference to inventory proposed to be given by and on behalf of the defendant). 20

The materials, etc., in the premises in question on the 7th day of March were:

Yarns	\$400.00	
Work in progress.....	326.00	
Finished stock embroidery.....	30.00	
Designs	150.00	
Cloth	50.00	
Wrapping paper.....	15.00	
Stationery	20.00	
Shuttles.....	66.00	30
Needles and hooks.....	20.00	

\$1,077.00

I made this inventory in the beginning of March, 1914. I am certain that the materials, etc., were in the business in the beginning of March, 1914. The valuations that I have given these various items are based upon my experience in the embroidery business and as manager of this particular business. I have been in the embroidery business for twenty years. 40

Deposition of J. Benedict Eugster—Cross.

10 The stationery consisted of some cord in the cellar, some oil in the cellar, (*interrupted by the Master.*) What do you mean by the word stationery? All the little things that have not been mentioned in the statements which had been given.

Cross-Examination by Mr. Walscheid:

Q. How many pounds of wrapping paper was there there? A. I cannot tell exactly, but it was very near a new roll.

Q. How much is it worth a pound? A. That I cannot tell exactly. A roll costs almost \$15.00, and this was almost a complete roll, and there are
20 about two hundred pounds in a roll.

Q. When did you buy this roll of packing paper? A. My memories are not as strong as they used to be and I cannot tell exactly when I bought it.

Q. And when you put down the words wrapping paper \$15.00 on this inventory paper here, you did it from your memory, did you not? A. Yes.

Q. And all these items in the list that you have given are taken from your memory absolutely? A. Not all; the yarn inventory I took that out of
30 the note book which I had.

Q. Do that with the exception of the item yarn, \$400.00, all the other items are taken from your memory purely? A. Yes.

Q. When did you make up this inventory? A. I made up this inventory with Mr. McTigue at the same time that Mr. McTigue struck up an inventory.

Deposition of J. Benedict Eugster—Cross.

Q. Do you mean that you dictated this inventory from your memory to Mr. McTigue? A. Yes.

Q. And that is what you mean that you took it up when Mr. McTigue made his inventory? A. Yes, I believe so.

Q. How many weeks or months ago is it that you dictated the inventory to Mr. McTigue? A. About ten months ago.

Q. Then it was after you were out of the factory and after you had lost the control and possession of the books and of the factory? A. Yes.

Q. Where is the note book in which you have these yarns set out here in the inventory? A. (Witness produces a note book, and says here it is).

Q. Kindly indicate in this note book the account showing yarns, \$400.00? A. The book I have not got. This is a memorandum which I made for myself so that I could see where I stood.

Q. In this little book (memorandum) under dates of Monday, March 30th, and Tuesday, March 31st, I find some entries. Are these the entries regarding yarn that you spoke about when you said your entries about the yarn were in a little memorandum book? A. Yes.

Q. Where did you get this item from? A. From my cotton room.

Q. And when did you write these items down? A. Between the 24th day of February and the 6th of March, 1914.

Q. Can you now tell me exactly on what date you wrote these items down? A. No.

Q. After you wrote these items down you continued to work, did you not? A. Yes.

*Deposition of J. Benedict Eugster—Cross—
Re-Direct.*

Q. And you used up some of this yarn? A. Yes. And that is why I only charged \$400.00 for yarn because I deduct what I used and also deduct what the business had not yet paid for.

10 Q. So that the \$400.00 of yarn that you are charging for the business had paid for? A. Yes, that has been paid for.

Q. Was all this yarn, shown in this little book, on spools? A. Yes, on spools and bobbins.

Q. And did you count all these spools and bobbins when you made up this statement? A. No; from my experience in the business I estimated with my eye.

20 *Re-Direct Examination by Mr. Tiffany:*

(The memorandum book mentioned above is offered by the Solicitor of the Defendant. It is admitted without objection and marked Exhibit "D-1" of this date, February 13th).

Q. The \$630 worth of yarn mentioned in the book in evidence is the value of the yarn which you estimated to be present at the time you made your estimation? A. Yes, I paid that much for it.

30 Q. Did you actually pay \$630.00 for this yarn, or was there still money due on account? A. It was all paid for except about \$150 or \$180 worth.

Q. And is this item of \$150 or \$180 included in the items of accounts payable which you admitted at the last hearing? A. Yes.

40 Q. Your memorandum in this book is headed March 30th and March 31st. Were the entries made prior to that date or on the dates mentioned at the heading of the page? A. Those dates are not related to the entries.

Deposition of J. Benedict Eugster—Re-Direct.

Q. In your inventory you have the word "Stationery." What do you mean by this word? A. I understand by "Stationery" different things which are present but which are not specifically entered.

Q. That means that \$20.00 other supplies which were not enumerated elsewhere? A. It might be more. I only estimated it. 10

Q. Itemize what you have included under this heading of "Stationery. A. Oil, coals, cords, different boxes, rosin, clamps for straps and many other different things I do not remember.

J. BENEDICT EUGSTER.

Taken, sworn and subscribed to before me this 13th day of February, A. D. 1915. 20

WILLIAM C. ASPER,
Master.

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Continuance.

IN CHANCERY OF NEW JERSEY.

10	Between MARIE ANTOINETTE CANTZLAAR . EUGSTER, <i>Complainant,</i> and JEAN BENEDICT EUGSTER, <i>Defendant.</i>	}	On Bill. etc. Continuance.
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20 Continuation of the taking of depositions in the above entitled cause, before me, William C. Asper, a Special Master in Chancery of New Jersey, this seventeenth day of February, nineteen hundred and fifteen, at eight o'clock in the evening, at my office, Room No. 4, Hudson Trust Building, No. 423 Hackensack Plankroad, in the Town of West Hoboken, in the County of Hudson and State of New Jersey, in pursuance of the Order of Reference before recited, and in the presence of J. Emil Walscheid, of Counsel with the Complainant, and Weller & Lichtenstein, of Counsel with the

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WILLIAM C. ASPER.
Special Master.

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Certificate.

IN CHANCERY OF NEW JERSEY.

Between

MARIE ANTOINETTE CANTZLAAR

EUGSTER,

Complainant,

and

JEAN BENEDICT EUGSTER,

*Defendant.*On Bill, etc. 10
Certificate.

I certify that all the foregoing depositions were reduced to writing, upon the typewriting machine, and without stenography, by Daisy Menne, a competent person selected by me, and the said testimony was so written in my immediate presence and hearing, and at the examination, and was accurately taken down from the lips of the witnesses. 20

WILLIAM C. ASPER.
Special Master.

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Deposition of Jacob Tanner—Direct.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON. } ss.

JACOB TANNER, a witness produced on the part of the Complainant, being duly sworn on his oath deposes and says:

I am in the embroidery business and I reside at 307 Mountain Road, West Hoboken, N. J. I have been in the embroidery business for about fifteen years. I have dealt in the materials used in the embroidery business and I know the value thereof.

On the 28th day of July, 1914, I made an inventory and appraisal of certain materials which are used in the embroidery line at No. 325-327 Mountain Road, West Hoboken, N. J. I made this inventory with Mr. Ahlers, I representing Mrs. Eugster. The goods which we appraised were in a room immediately off the office.

Q. Was there any machinery in this room where these goods were? A. No.

Q. Was there anything else in the room besides the goods which you appraised? A. No.

Q. Did you make a list of the goods you then appraised? A. Yes.

Q. I show you a paper marked "C-1" of February 17th, 1915, and ask whether that is the list or one of the lists of the goods which you then appraised? A. That is a copy of the list I made. (Pointing to copy of "C-1").

Q. And did you make this copy? A. Yes (Pointing to "C-1" of February 13th, 1915).

Q. Does that paper "C-1" of February 13th, 1915, set forth the goods which you found in this room together with the valuations which you

Deposition of Jacob Tanner—Direct—Cross.

found in this room together with the valuations which you place upon these goods? A. Yes.

Q. And are those valuations the market value of the goods? A. Yes.

Question by Master:

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Q. Of what date is it the market value? A. I took the market value of the goods as of July 28th.

Q. Was that higher or lower than at March 7th? A. That does not change.

By Mr. Walscheid:

Q. Did Mr. Ahlers agree with you upon the valuations you found? A. Yes.

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Q. Are these the valuations to which Mr. Ahlers agreed? A. Yes.

Q. Did you send a copy of this paper "C-1" of February, 1915, to Mrs. Eugster? A. Yes.

Q. Did you send or give a copy of the same to anybody else? A. No.

Cross-Examination by Mr. Tiffany:

Q. How large a room was it in which these goods were contained when you saw it? A. A little stock room.

30

Q. Did the goods fill the room? A. No, not quite.

Q. Did you make a list at the time you examined the goods or afterwards out in the office? A. I made a rough list there when I examined the goods.

Q. When did you make that list which you have

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Deposition of Jacob Tanner—Cross.

in your hand, "C-1" of February 17th? A. After I got back to my place.

Q. How long after you got back to your place did you make this copy? A. In the afternoon.

10 Q. And about what time was it when you sent the copy to Mrs. Eugster? A. Between 4 and 6.

Q. Did you mail it to her? A. I gave it to her.

Q. Where were you when you gave it to her? A. In Mrs. Eugster's on Mountain Road.

Q. Is the market value of the goods mentioned in the list which you made the same today as it was July 28th? A. About the same.

20 Q. Why did you say on direct examination that you sent a copy to Mrs. Eugster? A. I think I made a mistake in saying that I sent it to her.

Q. Are you sure you yourself gave it to her? A. Yes, I am sure.

Q. Did you notice the material which was being used upon the machines at the time you made this inventory? A. I did not see the machines.

JACOB TANNER.

30 Taken, sworn and subscribed to before me this 17th day of February, A. D. 1915.

WILLIAM C. ASPER,
Master,

Deposition of Herman H. Ahlers—Direct.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON. } ss.

HERMAN H. AHLERS, a witness produced on the part of the Complainant, being duly sworn on his oath deposes and says: 10

I am a manufacturer of embroidery and laces. I have myself been in this business for ten years, but I have been in this particular line since 1883. I am generally acquainted with the values of the materials used in that line of business and am also acquainted with the materials which are used in manufacturing embroideries and laces. I sell the same.

Q. Do you manufacture in the county? A. Yes, sir. 20

Q. How long have you manufactured in the county? A. Ten years.

Q. And do you purchase the raw material for your business here in Hudson County? A. Yes.

Q. Did you make an appraisalment of raw materials and other materials used in the manufacture of embroidery and laces on the 28th day of July, 1914, at 827 Mountain Road, West Hoboken? A. Yes, I made the appraisalment, but I am not sure of the date. 30

Q. Anybody make that appraisalment with you? A. Yes.

Q. Who? A. Mr. Tanner.

Q. Is he here? A. Yes, he is.

Q. How did you come to go there to make the appraisalment? A. Upon the request of Mr. Eugster.

Q. Did Mr. Eugster's lawyers in any way request you? (Question objected to on the ground 40

Deposition of Herman H. Ahlers—Direct.

that the question has already been answered). A. No, they did not request me, but upon Mr. Eugster's request I called up the firm of Weller & Lichtenstein and I told them that I was requested by Mr. Eugster to take up stock and they would
10 be more or less pleased if I would do it.

Q. Then you and Mr. Tanner took up stock?

A. Yes.

Q. Did you place a value on the stock you took up? A. Yes.

Q. Did you make a list? A. Yes.

Q. Did you add up the total of the stock that was just taken up? A. Yes.

Q. How much did the total amount to? A. I don't remember.
20

Q. How many copies of the list which you then made were made out? A. To my best recollection I made an original and copy. One I kept and one I gave to Weller & Lichtenstein.

(Solicitor of the Complainant demands from the Solicitor of the Defendant the above mentioned original. It is produced).

Q. I show you a paper just produced by Messrs. Weller & Lichtenstein and ask you whether that
30 is the inventory or appraisement which you delivered or sent to Weller & Lichtenstein?

(Solicitor for the Complainant offers in evidence the paper. It is admitted and marked "C-1" of this date).

Q. The values placed opposite those materials, are they the reasonable market values for the same? A. Yes.

*Deposition of Herman H. Ahlers—Cross.**Cross-Examination by Mr. Tiffany:*

Q. To whom did you speak when you called up Mr. Lichtenstein and said that you had been asked by Mr. Eugster to make the appraisal? A. I do not remember who was on the 'phone. 10

Q. Are the values that are set forth on this paper "C-1" the values of the goods which you actually saw upon or about July 28th, 1914, when you made your appraisal? A. It is the market value of the goods shown to us at the time we made the appraisal.

Q. Is this the original paper upon which you made your figures? A. No, sir.

Q. Who made the original figures? A. Mr. Tanner. 20

Q. Where did you get these figures from? A. From the original which he had.

Q. Did you take the original paper to your place of business in West New York and make this copy? A. I might of taken a copy of the original from Mr. Tanner to West New York and copied from that. I would have to ask Mr. Tanner to be certain.

Q. Did you give Mrs. Eugster a copy of this inventory? A. No. 30

Q. Were the goods which you inventoried and appraised goods which are used every day in the embroidery business? A. There were goods manufactured as well as raw material there.

Q. Was the raw material such material as is used every day in the embroidery business? A. Yes.

Q. Did you notice what goods if any were on the machines at the time you made the appraisal? A. I had no chance to see the machine. 40

*Deposition of Herman H. Ahlers—Cross—
Re-Direct.*

Q. Where were the goods which you have here set forth? A. They were set aside in a closet or ante-room.

10 Q. Was that adjoining the office and plant? A. The inventory was taken in the office.

Q. But was the place in which these goods were found near or adjoining that part of the building in which the embroidery machines were operated?

A. As much as I remember we had to go up a couple of steps to get into the office.

Q. Was this cotton near the machines? A. I did not see the machines when I took the inventory.

20 *Re-Direct by Mr. Walscheid:*

Q. These goods which you inventoried were stored away in a room by themselves? A. Yes.

Q. And you and Mr. Tanner agreed as to the valuation of the goods? A. Yes.

Question by Master:

30 Q. That your signature there, Mr. Ahlers? A. Yes.

HERMAN H. AHLERS.

Taken, sworn and subscribed to before me this 17th day of February, A. D. 1915.

WILLIAM C. ASPER,
Master,

*Deposition of Marie Antoinette Cantzlaar
Eugster—Recalled—Direct.*

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

MARIE ANTOINETTE CANTZLAAR EUG-
STER, being recalled, says: (Witness for the De- 10
fendant).

Q. Did you pay for the yarn and material that
was on the machines when you took possession
on March 7th? A. Not for the yarn that was on
the machine.

Q. Did you use the yarn that was on the ma-
chine? A. Yes, it was taken in the machine. Mr.
Eugster gave the estimate of the yarn which was
on the machine.

(Solicitor for the Defendant asks that the latter 20
part of the answer be stricken out on the ground
that it is not responsive).

Q. Was the material and yarns which you set
aside as you say in this yarn or store room the
same kind of material that was on the machine? A.
There were all kinds of yarn on the machines.

Q. Yarns which are used every day in the em-
broidery business? A. Yes.

MARIE A. C. EUGSTER. 30

Taken, sworn and subscribed to
before me this 17th day of Feb-
ruary, A. D. 1915.

WILLIAM C. ASPER,
Master,

*Deposition of J. Benedict Eugster—Recalled—
Direct.*

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

10 J. BENEDICT EUGSTER, being recalled, on
his oath says:

Q. You were there when they made the inventory? A. Yes, on July 28th.

Q. Did you see the goods and materials which they inventoried and which are in this schedule marked "C-1" of February 17th, 1915? A. Yes.

20 Q. Are the goods mentioned in this schedule "C-1" of February 17th, 1915, all the goods and the materials which you left in the place when you turned over possession to Mrs. Eugster on March 7th, 1914? A. No; it is only a part of what I had on March 7th.

Q. About how much or what proportion? A. About one-third.

Q. Did you remove any of the goods? A. No. The place was entered between the 6th and 7th of March.

Q. Did you remove any of the goods after the 7th of March? A. No.

30 J. BENEDICT EUGSTER.

Taken, sworn and subscribed to before me this 17th day of February, A. D. 1915.

WILLIAM C. ASPER,
Master,

*Deposition of William H. McTigue—Recalled—
Direct.*

STATE OF NEW JERSEY, } ss.
COUNTY OF HUDSON. }

WILLIAM H. MCTIGUE, a witness on the part
of the Defendant, being recalled on his oath de- 10
poses and says:

Mrs. Marie Antoinette Cantzlaar Eugster gave
the defendant three thousand eight hundred and
twenty dollars for use in the business. He re-
ceived other monies as follows: From sales,
thirty-six thousand six hundred and four and
ninety-nine hundredths dollars; from Fred Cantz-
laar, two hundred dollars. He, the defendant,
contributed to the business personally eight hun- 20
dred and eight dollars and seven cents; from mer-
chandise rebates, five dollars and eighty cents;
from cash sales, six hundred and seventy-nine dol-
lars and twenty cents; from interest on bank de-
posits, eight dollars and four cents, aggregating
a total receipts of forty-two thousand, one hun-
dred and twenty-six dollars and seventy-eight
cents.

Q. So that the total of all monies received in the
business over and above the money invested by 30
the complainant amounts to the sum of thirty-eight
thousand three hundred and six dollars and sev-
enty-eight cents? A. Yes.

Q. And the absolute gross sum which has come
into the business, that is including the amount in-
vested by the complainant, is the amount of forty-
two thousand one hundred and twenty-six dollars
and seventy-eight cents? A. Yes.

The defendant disbursed out of said monies as 40
follows:

*Deposition of William H. McTigue—Recalled—
Direct.*

	For machinery and equipment.....	\$6,022.66
	For office furniture and fixtures.....	47.60
	To Fred Cantzlaar.....	200.00
	To or for acct. of Mrs. Cantzlaar Eugster	1,239.58
10	Paid for his own account.....	4,594.57
	For merchandise purchased.....	9,174.96
	For wages	16,484.66
	For rent	850.00
	For factory supplies	237.75
	For light and power	438.40
	For coal	240.87
	For repairs	281.92
	For designing	222.37
20	Insurance on machinery.....	204.76
	For interest.....	126.30
	For sundry expenses, stamps, express, etc.	316.86
	For telephone	53.65
	Manufacturers' Association dues	30.00

Total disbursements on acc. business \$ 40,776.91

30 Resulting in a cash balance on hand of one thousand three hundred and fifty-nine dollars and eighty-seven cents. These figures are taken from the books of the business and are calculated to March 7th, 1914.

40 During the period there were discounts allowed customers amounting to nine hundred and thirteen dollars. There were sales made during the period amounting to eight hundred and forty-eight dollars and forty cents which were considered as being uncollectible and correspondingly charged against the profits. There was twenty-five dol-

*Deposition of William H. McTigue—Recalled—
Direct.*

lars rent for the shop due Mrs. Cantzlaar Eugster which was unpaid at March 7th, 1914. Same has been charged against the profits and credited to the account of Mrs. Cantzlaar Eugster.

10

Mr. Eugster is credited with salary at the rate of twenty-five dollars per week for the entire period, amounting to thirty-eight hundred and twenty-five dollars. This has been charged against the profits and credited to the account of J. Benedict Eugster.

The sales other than cash sales for the entire period amounted to \$38,978.69. The total earnings for the entire period to March 7th, 1914, were: Sales, \$39,657.89; interest on bank balances, \$8.04; aggregating total earnings of \$39,665.93, against which there are chargeable expenses amounting to \$34,268.10, resulting in a net profit for the entire period of \$5,397.83.

20

The assets of the business at March 7, 1914, were:

Cash on hand.....	\$1,359.87	
Machinery and equipment.....	6,022.66	
Office furniture and fixtures.....	47.60	
Accounts receivable	612.30	30

Total assets

\$9,119.43

The liabilities of the business at March 7, 1914, were:

Amount due Mrs. Cantzlaar.....	\$2,605.42	
Detail of which I offer in this statement		

A.

Amount due J. Benedict Eugster.....	39.18	
-------------------------------------	-------	--

40

*Deposition of William H. McTigue—Recalled—
Direct.*

Details of which I submit in this statement B.

Total liabilities\$2,644.60
 10 Resulting in net assets of.....\$5,397.83

Q. The figures which you gave last, namely, the sum of five thousand three hundred and ninety-seven dollars and eighty-three cents, represent the capital account of that business after payment of its obligations, including therein the obligations to Mrs. Cantzlaar Eugster as just stated by you and the obligations to Mr. Eugster as just stated by you? A. Yes.

20 It is stipulated between the parties that the foregoing figures today given by Mr. McTigue are agreed upon as correct. The complainant and defendant each however contend that additional facts and figures as to which they desire to offer testimony shall be considered in the matter.

It is further stipulated that this amount, two hundred and thirty-one dollars and sixty-three cents, be added to the liabilities of the business and be subtracted from the assets.

30 This change is produced by the production of unpaid bills at March 7th, 1914.

Master's Report.

IN CHANCERY OF NEW JERSEY.

Between

MARIE ANTOINETTE CANTZLAAR

EUGSTER,

Complainant,

and

JEAN BENEDICT EUGSTER,

Defendant.

}	On Bill, etc.	10
	Master's	
	Report.	

In pursuance of an Order of this Court bearing date the 20th day of September, nineteen hundred and fifteen, whereby it was referred to the subscriber, one of the Special Masters of this Court, to report upon the following matters in the above entitled cause, viz: the amount of finished and unfinished embroideries, silks, yarns, and other stock in and about the shop mentioned in the bill of complaint on the ninth day of March, 1914, and also an account of all monies not reported upon heretofore, which were paid by the defendant to the complainant as a weekly allowance. 20

I do report that I have been attended by J. Emil Walscheid, Solicitor for the Complainant, and Weller & Lichtenstein, Solicitors of the Defendant, and have taken the deposition and evidence returned with this Report. 30

And I do report that the defendant, Jean Benedict Eugster, paid to Marie Cantzlaar Eugster, the complainant, a weekly allowance of fifteen dollars per week to October 12th, 1912, and that he made no payment of any weekly allowance thereafter. 40

Master's Report.

And I do further report that the complainant and the defendant took no evidence before me that would enable me to report upon the other matters referred to me.

10 All of which is respectfully submitted this eighth day of October, nineteen hundred and fifteen.

WILLIAM C. ASPER,
Special Master.

Order Re-Referring Cause to Special Master.

(Filed September 29, 1915.)

20

IN CHANCERY OF NEW JERSEY.

Between

MARIE ANTOINETTE CANTZLAAR
EUGSTER,
Complainant,

and

JEAN BENEDICT EUGSTER,
Defendant.

On Bill, etc.
Order of
Reference,
etc.

30

An order having heretofore been made referring certain matters of account between the parties to William C. Asper, Esq., one of the Special Masters of this Court, and it appearing that certain other matters which the Court may find necessary to use in the making of a decree in said cause have not been reported upon;

40

IT IS, on this 20th day of September, 1915, on motion of Weller & Lichtenstein, Solicitors for the

Order Referring Cause to Special Master.

above named defendant, ORDERED that said matter be and the same is hereby re-referred to the said William C. Asper, Esq., a Special Master of this Court, to report upon the following matters, viz: the amount of finished and unfinished embroideries, silks, yarns and other stock which were in and about the shop mentioned in the bill of complaint on the 9th day of March, 1914; and also an account of all moneys not reported upon heretofore, which were paid by the defendant to the complainant as her weekly allowance. 10

E. R. WALKER, C.

Respectfully advised,

VIVIAN M. LEWIS,

V. C.

20

IN CHANCERY OF NEW JERSEY.

Between

MARIE ANTOINETTE CANTZLAAR

EUGSTER,

Complainant,

and

JEAN BENEDICT EUGSTER,

Defendant.

On Bill, etc.
Depositions.

30

Depositions taken in the above entitled cause, before me, William C. Asper, a Special Master in Chancery of New Jersey, this thirtieth day of September, nineteen hundred and fifteen, at two o'clock in the afternoon, at my office, Room No. 4, Hudson Trust Building, No. 423 Hackensack Plankroad, in the Town of West Hoboken, in the 40

County of Hudson and State of New Jersey, in pursuance of an Order of Reference made in this cause and dated the twentieth day of September, nineteen hundred and fifteen, and in the presence of J. Emil Walscheid, of Counsel with Complainant, and Weller & Lichtenstein, of Counsel with the Defendant.

10

WILLIAM C. ASPER,
Special Master in Chancery.

It was agreed between Counsel that Jean Benedict Eugster, the Defendant, paid to Marie Antoinette Cantzlaar Eugster, the Complainant, a weekly allowance of fifteen dollars per week to October 12, 1912, and made no payment thereafter.

20

The Solicitor for the Defendant desires in view of the fact stipulated above as to the amount of weekly payments, to offer proof why the Defendant did not pay the Complainant the weekly allowance after October 12, 1912.

The Solicitor for the Complainant objects to the offer on the ground that it is not included within the Order of Reference.

The Master directed that witnesses be sworn and the testimony objected to question and answer. No witnesses were sworn.

30

The Solicitor for the Complainant offers proof of depreciation as affecting the profit account hereinafter taken.

Solicitor for the Defendant objects to the offer because it was passed upon by the Vice Chancellor on September 20th, 1915, adversely to the Complainant.

The Master also asked the testimony to be taken on this point, but none was offered.

40

WILLIAM C. ASPER,
Special Master in Chancery.

Exhibit C-I.

Original.

C. SEITZ,

100 William Street, New York.

Cable address: Cary, Newyork.

Telephone: 4990 John.

ADOLPH SAURER'S

Embroidering Machines

"GRAND PRIX" awarded at World's
Exposition, Paris, 1900.

10

New York, October 8th, 1910.

Strictly Confidential!

Mrs. Maria Ant. Cantzlaar,

421 Spring Street, West Hoboken, N. J.

Dear Madam:

Referring to the conversation which I had with
Mr. Jean Benedict Eugster, yesterday, I beg to
hand you enclosed Contract for Importation
Order No. 615 for two (2) Shuttle Embroidering
machines with which you have kindly favored me,
and for which you will please accept my thanks. 20

It is mutually understood and agreed upon that
I have changed my regular terms of payment,
which are:

One third Cash, when ordering,

Two thirds Cash, when the machines arrive
in port and before entry at the Custom
House, 30

for you as follows:

\$1,000.—when ordering, or before October
15th, 1910,

\$1,000.—when machines arrive,

\$762.50 in a 3 months note

\$762.50 in a 6 " " } dated from the

\$762.50 in a 9 " " } date when ma-

\$762.50 in a 12 " " } chine is erect-

ed and in good
working order. 40

Exhibit C-I.

Promissory notes to be drawn to the order of C. Seitz, with interest at 6% (six per cent) per annum and secured by chattel mortgage on the machines.

10 Kindly return duplicate and triplicate of the Contract and of this Confidential Letter, which forms part of the Contract, with your signature for reference here and in Arbon; also please enclose check for first instalment amounting to \$1000.—before Oct. 15.

20 It is understood that you will not mention these terms of payment, which are exceptional for you, to anybody.

Yours very truly,
C. SEITZ.

Contract not transferable.

Terms and particulars correct and approved of by:

MARIA ANTOINETTE CANTZLAAR,
JOHN BEN. EUGSTER.

30

40

Exhibit C-II.

Original.

CONTRACT.

C. SEITZ,

100 William Street, New York.

Cable address: Cary, Newyork.

Telephone: 4990 John.

ADOLPH SAURER'S

Embroidering Machines

"GRAND PRIX" awarded at World's
Exposition, Paris, 1900.

10

New York, October 8th, 1910.

IMPORTATION ORDER NO. 615.

By Mrs. Maria Ant. Cantzlaar,

421 Spring Street, West Hoboken, N. J.

To C. Seitz

Two shuttle Embroidering Machines 10 Yard 20
4/4 repeat, Model 1908, complete, with all the lat-
est improvements, one with 3 boring—, Stuepfel—
& Blattstich apparatus the boring app. to be one
4/4, one 8/4 & one 12/4 repeat, No Festooning
apparatus

Price for complete machine \$2700.—

less for no festooning apparatus 142.— \$2558.—

one with 3 automatic, boring apparatus,

30

one 4/4, one 8/4 & one 12/4 repeat,

Blattstich apparatus etc. as above,

No festooning—and no Stuepfel apparatus

Price for complete machine \$2700.—

less for no festooning app. 142.—

" " " Stuepfel app. 57.— 199.— \$2501.—

 \$5059.—

for \$5050.—

both machines with Stichabstellvorrichtung

40

"System Keller"

Exhibit C-II.

Spanning width about 40 c/m,
 all the Fadenleiters to be of brass (Messing)
 No Extra Shuttles,
 No Extra Needles

10 TIME OF DELIVERY—as soon as possible,
 on no condition later than December 30th 1910
 on dock in New York.

BREAKAGE or Damage, warping of wooden
 parts, etc., during the voyage, at buyer's risk.

MARINE INSURANCE covered by me.

20 PRICES—in Dollars net on dock in New York
 harbor, freight and duty paid, cost of erection in-
 cluded, but the buyer to pay cartage and freight
 to factory floor, hoisting, unpacking, installation,
 etc., also the necessary help to the erector.

If the machines go out of town or the immedi-
 ate vicinity of greater New York, the buyer has
 to pay travelling expenses of the erector, express-
 age on his baggage and tools and travelling time
 at the rate of \$5.00 a day from New York to fac-
 tory and back.

TERMS OF PAYMENT.

One-third Cash, when the order is given;

30 Two-thirds Cash, when the machine arrives in
 port and before entry at the Custom House.

For delay of payments after due dates interest
 will be charged at the rate of 6% (six per cent)
 per annum.

40 Unavoidable delays of delivery from Arbon in
 consequence of strikes, or stoppages, damage by
 superior force, fire or the elements delayed—non-
 delivery of raw material or of patented compos-
 ing parts of the machines by outside contractors
 to Mr. Saurer or from other causes will neither
 entitle the buyer to make claims for damages nor

Exhibit C-II.

in any way invalidate this contract which cannot be cancelled on any pretext whatever, except by mutual consent.

If foundations and everything else not ready when machine is delivered the erector receives \$3.—a day for waiting. 10

It is mutually understood and agreed upon that the buyer will notify Mr. Seitz on enclosed notice sheet of the date when the erector starts to erect the machine, and when it is erected the buyer will give to the erector the "Erector's Certificate" enclosed, duly signed giving the dates, if such work should have been interrupted.

If during the interval or afterwards any repair work should have been done by the erector for the buyer on old machines, Mr. Seitz will be notified and the time, days or hours spent on such work will be specified by the buyer on the same notification sheet in order to facilitate the final accounting. 20

The buyer is bound to cover the fire risk of the machine from the time it arrives in his factory until it is paid for.

The machines to remain the property of Mr. Seitz until fully paid for, and the promissory notes to be given in settlement of the account are to be secured by a chattel mortgage on the machines, and to be endorsed by Mr. John Benedict Eugster. 30

C. SEITZ.

CONTRACT NOT TRANSFERABLE.

Prices, terms and particulars correct and approved of by

MARIA ANTOINETTE CANTZLAAR, 40
JOHN BEN. EUGSTER.

Exhibit C-III.

No. 3

West Hoboken, N. J., Dec. 8, 1910.

HIGHLAND TRUST COMPANY

OF NEW JERSEY.

10 Pay to the
order of

C. SEITZ

FIVE HUNDRED DOLLARS 00/00 DOLLARS
\$500.00

MARIA A. EUGSTER CANTZLAAR.

Payable at Company's Office, Second National Bank Building,
Hoboken, N. J.

20

Exhibit C-IV.

No. 5

West Hoboken, N. J., Dec. 15, 1910.

HIGHLAND TRUST COMPANY

OF NEW JERSEY.

Pay to the
order of

C. SEITZ

30 FIVE HUNDRED DOLLARS 00/00 DOLLARS
\$500

MARIA A. EUGSTER CANTZLAAR.

Payable at Company's Office, Second National Bank Building,
Hoboken, N. J.

40

Exhibit C-V.

KNOW ALL THE MEN BY THESE PRESENTS THAT

We, J. Ben Eugster, and Maria Antoinette Eugster, his wife, formerly Maria Antoinette Cantzlaar of the Town of West Hoboken, in the County of Hudson, and State of New Jersey, party of the First Part for securing the payment of the money herein mentioned and in consideration of the sum of One Dollar to duly paid by Charles E. Seitz, of the City of New York, County of New York, and State of New York, party of the second Part at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold and by these presents do bargain and sell unto the said party of the second part, his administrators, and assigns, all the goods and chattels mentioned in the schedule hereunto annexed and now in the factory and premises known as 325 and 327 Mountain Road, corner of Cliff Street, West Hoboken, New Jersey.

To have and to hold all and singular the said goods and chattels unto the said party of the second part, his executors, administrators, and assigns forever;

Upon condition that, if the said party of the first part shall and do well and truly pay unto the said party of the second part, his executors, administrators or assigns, Three (3) promissory notes, as follows: One note dated March 25th, 1911, for the sum of \$762.50, due six months from its date; one note dated March 25th, 1911, for the sum of \$762.50, due nine months from its date, and one note dated March 25th, 1911, for the sum of \$762.50, due twelve months from its date,

Exhibit C-V.

said notes bearing interest at the rate of six per cent per annum, and made by the party of the first part to the order of C. Seitz, the party of the second part hereto.

10 Said notes being given to secure part of the purchase prices of the chattels described in the Schedule hereto annexed then these presents shall be void. And the said party of the first part for themselves and their heirs, executors and administrators all and singular the said goods and chattels unto the said party of the second part, his executors, administrators, and assigns against the said party of the first part and against all
20 and every person and persons whomsoever lawfully claiming or to claim the same, shall and will warrant and forever defend;

And the said party of the first part, for themselves and their heirs, executors, administrators and assigns, covenant and agree to keep said goods and chattels insured against loss by fire as said party of the second part, his administrators or assigns may request, but to an amount not exceeding \$2,287.50 Dollars, and in default thereof said party of the second part, or as
30 signs may so insure them and the premium or premiums paid therefor by said party of the second part, or assigns, shall be a lien upon said goods and chattels added to the amount of this mortgage, secured by these presents and payable on demand with legal interest. And the said party of the first part for themselves, heirs, executors, administrators, and assigns covenant and agree to and with the said
40 party of the second part, and assigns, that in case default shall be made in the

Exhibit C-V.

payment of the said sum above mentioned, or in
 case the said party of the first part shall at any
 time before the payment of the moneys hereby
 secured, remove or cause to be removed out of the
 county where they now are, secrete, destroy, sell
 or exchange without the written consent of the
 party of the second part, or as- 10
 signs the said goods and chattels, or any of them,
 or permit or suffer any attachment or other pro-
 cess against property to be issued, or permit or
 suffer any judgment to be entered up against the
 said party of the first part; then the said sum
 of money herēin mentioned shall become instantly
 due and payable and then it shall and may be
 lawful for, and the said party of the first part 20
 hereby authorize and empower the said party of
 the second party
 and assigns with the aid and assistance of any
 person or persons, to enter the dwelling-house,
 store or other premises and such other place or
 places whatsoever in which the said goods and
 chattels, or any of them, are or may be placed,
 and take and carry away the said goods and
 chattels, and to sell and dispose of the same for
 the best price they can obtain, and out of the 30
 money arising therefrom, to retain and pay the
 said sum above mentioned, and all charges in and
 about the same, rendering the overplus (if any)
 unto the said party of the first part,
 executors, administrators or assigns.

In witness whereof the said party of the first
 part have hereunto set their hands and seals the
 Fifth day of August, in the year of our Lord
 one thousand nine hundred and eleven. 40

Exhibit C-V.

Signed, sealed and delivered in the presence of
JOCOB F. KLUMPP.

J. BENED. EUGSTER (Seal).

Antoinette

10 MARIA A. EUGSTER CANTZLAAR (Seal).

STATE OF NEW JERSEY, }
STATE OF NEW YORK, } ss.
COUNTY OF NEW YORK. }

The mortgagee, Charles E. Seitz, in the foregoing mortgage named, being duly sworn on oath says that the true consideration of the said mortgage is as follows, viz:

20 The sum of \$2,287.50, the balance of the purchase price of the chattels described in the schedule hereto annexed, which were purchased by the parties of the first part from the mortgagee herein, which is still due him, and evidenced by the notes herein described, the deponent further says that there is due him on said mortgage the sum of two thousand two hundred, eighty-seven 50/100 (\$2,287.50) dollars besides lawful interest thereon from the 25th day of March, 1911, and
30 there may further grow due thereon such amounts as are paid for insurance premiums by the party of the second part, his administrators, and assigns under the agreement in said mortgage together with legal interest on such premium or premiums.

CHARLES E. SEITZ.

Exhibit C-V.

Subscribed and sworn to this 3rd day of August, A. D. 1911 before me, at the Borough of Manhattan City, County and State of New York.

10

FRED'K W. ZIEMER,
Notary Public, New York County.
Seal

SCHEDULE REFERRED TO IN THE FORE-
GOING MORTGAGE.

The property affected by the within mortgage consists of two (2) Shuttle Embroidering machines, 10 yards 4/4 repeat, one No. 16766, with Blattstich, 3 automatic boring apparatuses and Stichabstellvorrichtung "System Keller," and one No. 16773 with Blattstich, 3 automatic boring apparatuses and Stichabstellvorrichtung "System Keller."

20

Signed in the
presence of

JACOB F. KLUMPP.

J. BENED. EUGSTER.

MARIA ANTOINETTE EUGSTER CANTZ-
LAR.

30

STATE OF NEW JERSEY,
COUNTY OF HUDSON.

Be it remembered that on this Fifth day of August in the year of our Lord one thousand nine hundred and eleven before me personally appeared J. Ben. Eugster and Maria Antoinette Eugster (nee Cantzlaar) who, I am satisfied, are the grantors in the within Chattel Mortgage named; and

40

Exhibit D-II.

I, having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

10 And the said Maria Antoinette Eugster being by me privately examined, separate and apart from her said husband further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely without any fear, threats or compulsion of her said husband.

JACOB F. KLUMPP,
Commissioner of Deeds for New Jersey.

20

Exhibit D-I.

Pass Book of Jean B. Eugster—not printed.

Exhibit D-II.

30 \$762.50

West Hoboken, N. J., March 25, 1911.

Six months after date we promise to pay to
the order of CHARLES E. SEITZ

Seven hundred and sixty-two 50/100 Dollars
with interest at 6 per cent p. a.

at 100 William Street, New York, Room 455

Value received

J. BENED. EUGSTER.

Due September 25, 1911.

40 No.——

Exhibit D-II.

No. 100

West Hoboken, N. J., Sept. 28, 1911.

COMMONWEALTH TRUST COMPANY

Pay to the
 order of MR. C. SEITZ, 100 William St.
 SEVEN HUNDRED SIXTY-TWO 50/100
 DOLLARS

10

\$762.50

J. BENED. EUGSTER.

Payable Through the Merchants National Bank, Jersey City, N. J.

\$762.50

West Hoboken, N. J., March 25, 1911.

Nine months after date we promise to pay to
 the order of CHARLES E. SEITZ
 Seven hundred and sixty-two 50/100 Dollars
 with interest at 6 per cent p. a.
 at 100 William Street, New York, Room 455
 Value received

20

J. BENED. EUGSTER.

Due December 25, 1911.

No.——

J. BEN EUGSTER

EMBROIDERIES

COR. MOUNTAIN ROAD & CLIFF ST.

No. 156

30

West Hoboken, N. J., Jan. 5, 1912.

COMMONWEALTH TRUST COMPANY

Pay to the
 order of MR. C. SEITZ, 100 William St.
 SEVEN HUNDRED SIXTY-TWO 50/100
 DOLLARS

\$762.50

J. BENED. EUGSTER.

40

Payable Through the Merchants National Bank, Jersey City, N. J.

Exhibit D-II

\$762.50

West Hoboken, N. J., March 25, 1911.

Twelve months after date we promise to pay to
the order of CHARLES E. SEITZSeven hundred and sixty-two 50/100 Dollars
with interest at 6 per cent p. a.

at 100 William Street, New York, Room 455

Value received

No. —

Due March 25, 1912.

J. BENED. EUGSTER.

10

20

J. BEN EUGSTER

EMBROIDERIES

COR. MOUNTAIN ROAD & CLIFF ST.

No. 196

West Hoboken, N. J., March 21, 1912.

COMMONWEALTH TRUST COMPANY

Pay to the

order of

MR. C. SEITZ, 100 William St.

SEVEN HUNDRED SIXTY-TWO 50/100

DOLLARS

\$762.50

J. BENED. EUGSTER.

Payable Through the Merchants National Bank, Jersey City, N. J.

30

40

Exhibit D-III.

No. 89

West Hoboken, N. J., Aug. 23, 1911.

COMMONWEALTH TRUST COMPANY

Pay to the

order of

MR. C. SEITZ

THIRTY-SEVEN 60/100 DOLLARS

10

\$37.60

J. BENED. EUGSTER.

Payable Through the Merchants National Bank, Jersey City, N. J.

No. 62

West Hoboken, N. J., June 27, 1911.

COMMONWEALTH TRUST COMPANY

Pay to the

order of

MR. C. SEITZ

ELEVEN 43/100 DOLLARS

20

\$11.43

J. BENED. EUGSTER.

Payable Through the Merchants National Bank, Jersey City, N. J.

No. 101

West Hoboken, N. J., Sept. 28, 1911.

COMMONWEALTH TRUST COMPANY

Pay to the

order of

MR. C. SEITZ

TWENTY-TWO 87/100 DOLLARS

30

\$22.87

J. BENED. EUGSTER.

Payable Through the Merchants National Bank, Jersey City, N. J.

Exhibit D-III.

10

J. BEN EUGSTER
EMBROIDERIES
COR. MOUNTAIN ROAD & CLIFF ST.

No. 160

West Hoboken, N J., Jan. 13, 1912.

COMMONWEALTH TRUST COMPANY

Pay to the
order of MR. SEITZ, 100 William St., N. Y.

THIRTY-FOUR 30/100 DOLLARS

\$34.30

J. BENED. EUGSTER.

Payable Through the Merchants National Bank, Jersey City, N. J.

20

J. BEN EUGSTER
EMBROIDERIES
COR. MOUNTAIN ROAD & CLIFF ST.

No. 180

West Hoboken, N. J., Feb. 19, 1912.

COMMONWEALTH TRUST COMPANY

Pay to the
order of MR. C. SEITZ

ONE 92/100 DOLLARS

\$1.92

J. BENED. EUGSTER.

Payable Through the Merchants National Bank, Jersey City, N. J.

30

J. BEN EUGSTER
EMBROIDERIES
COR. MOUNTAIN ROAD & CLIFF ST.

No. 197

West Hoboken, N. J., March 21, 1912.

COMMONWEALTH TRUST COMPANY

Pay to the
order of MR. C. SEITZ

FORTY-FIVE 70/100 DOLLARS

\$45.70

J. BENED. EUGSTER.

Payable Through the Merchants National Bank, Jersey City, N. J.

40

Exhibit D-IV 1/2.

J. BEN EUGSTER

EMBROIDERIES

COR. MOUNTAIN ROAD & CLIFF ST.

No. 166

West Hoboken, N. J., Jan. 23, 1912.

COMMONWEALTH TRUST COMPANY

Pay to the order of

MR. BENED. STEINAUER, Milkman

10

TWENTY-FOUR 61/100 DOLLARS

\$24.61

J. BENED. EUGSTER.

Payable Through the Merchants National Bank, Jersey City, N. J.

J. BEN EUGSTER

EMBROIDERIES

COR. MOUNTAIN ROAD & CLIFF ST.

No. 155

West Hoboken, N. J., Jan. 2, 1911.

COMMONWEALTH TRUST COMPANY

20

Pay to the order of

MR. CHARLES G. KLINK, 514 Germania Ave.

NINETY 00/000 DOLLARS

\$90.00

.....
J. BENED. EUGSTER.

Payable Through the Merchants National Bank, Jersey City, N. J.

30

40

Exhibit D-IV½.

10

J. BEN EUGSTER
EMBROIDERIES

COR. MOUNTAIN ROAD & CLIFF ST.

No. 422

West Hoboken, N. J., July 18, 1913.

COMMONWEALTH TRUST COMPANY

Pay to the
order of MRS. MARIA ANT. EUGSTER

TWO HUNDRED FIFTY 00/000 DOLLARS

\$250.00

J. BENED. EUGSTER.

Payable Through the Merchants National Bank, Jersey City, N. J.

20

J. BEN EUGSTER
EMBROIDERIES

COR. MOUNTAIN ROAD & CLIFF ST.

No. 354

West Hoboken, N. J., Feb. 4, 1913.

COMMONWEALTH TRUST COMPANY

Pay to the order of

MADAME EUGSTER MARIE ANTOINETTE

THREE HUNDRED 00/000 DOLLARS

\$300.00

J. BENED. EUGSTER.

Payable Through the Merchants National Bank, Jersey City, N. J.

30

J. BEN EUGSTER
EMBROIDERIES

COR. MOUNTAIN ROAD & CLIFF ST.

No. 184

West Hoboken, N. J., March 2, 1912.

COMMONWEALTH TRUST COMPANY

Pay to the
order of MRS. EUGSTER CANTZLAAR

ONE HUNDRED TWENTY 00/000 DOLLARS

\$120.00

J. BENED. EUGSTER.

Payable Through the Merchants National Bank, Jersey City, N. J.

40

*Exhibit D-IV*¹/₂.

J. BEN EUGSTER
EMBROIDERIES

COR. MOUNTAIN ROAD & CLIFF ST.

No. 321

West Hoboken, N. J., Dec. 2, 1912.

COMMONWEALTH TRUST COMPANY

Pay to the order of

MADAME MARIE ANTOINETTE EUGSTER
FOUR HUNDRED 00/000 DOLLARS

10

\$400.00

J. BENED. EUGSTER.

Payable Through the Merchants National Bank, Jersey City, N. J.

Exhibit DD-1.

No. 61

20

West Hoboken, N. J., June 27, 1911.

COMMONWEALTH TRUST COMPANY

Pay to the
order of

MR. C. SEITZ

SEVEN HUNDRED SIXTY-TWO 50/100

DOLLARS

\$762.50

J. BENED. EUGSTER.

30

Payable Through the Merchants National Bank, Jersey City, N. J.

40

Exhibit DD-2.

C. SEITZ,

100 William Street, New York.

Cable address: Cary, Newyork.

Telephone: 4990 John.

ADOLPH SAURER'S

Embroidering Machines

"GRAND PRIX" awarded at World's
Exposition, Paris, 1900.

10

New York, February 21, 1912.

J. BEN. EUGSTER,

325-327 Mountain Road, Nr. Cliff St.,
West Hoboken, N. J.

Dear Sir:

I beg to acknowledge receipt of your check for \$1.92 and herewith return you your note for \$762.50 due December 25th, 1911, receipted and cancelled.

20

It is self understood that if you should discount your next note due March 25th, you will be entitled to a reduction at the rate of 6% per annum.

30

Are you not in the market for a new machine? Our new High Model 10 yard machines seems to be a great success, and if you should intend to order any more, I should like to call your attention to the fact that, unless I might have one odd machine within a few weeks, I could not get any machines delivered from Arbon sooner than the beginning of July upon cable order today, and I am afraid that deliveries will very soon be much later, as I am negotiating for some pretty large orders, which, of course, would come ahead of any subsequent ones.

Hoping to have the pleasure to hear from you, I remain,

Yours truly,

C. SEITZ.

40

Exhibit DD-3.

C. SEITZ,
 100 William Street, New York.
 Cable address: Cary, Newyork.
 Telephone: 4990 John.
ADOLPH SAURER'S
 Embroidering Machines
 "GRAND PRIX" awarded at World's
 Exposition, Paris, 1900.

New York, March 22, 1912.

10

MR. J. BEN EUGSTER,
 325-327 Mountain Road, Cor. Cliff St.,
 West Hoboken, N. J.

Dear Sir:

I beg to acknowledge receipt of your letter of yesterday covering checks for \$45.70 and \$762.50 in settlement of the balance of your account.

Enclosed I return you your note cancelled and the chattel mortgage.

20

I am very sorry to hear that you have had so much trouble, and hope that you will have easier times again, after the strike and other matters have been straightened up.

C. S./N.

Yours very truly,

C. SEITZ.

30

40

Exhibit CD-3½.

COPY

New York, December 15, 1910.

MRS. MARIA A. EUGSTER-CANTZLAAR,
421 Spring Street,
West Hoboken, N. J.

10

Dear Madam:

I beg to acknowledge with thanks receipt of your favor of today, covering check of \$500—second instalment on your second shuttle machine, as per terms of contract.

Yours very truly,

(Signed)

C. SEITZ.

20

Exhibit CD-4.

NOT PRINTED.

30

40

Exhibit CD-5.

COPY

December 13, 1910.

MRS. MARIA A. EUGSTER-CANTZLAAR,
421 Spring Street,
West Hoboken, N. J.

10

Dear Madam:

I beg to notify you that your second machine arrived here today per S/S Noordam, from Rotterdam in cases A. S. No. 923-937, 15 packages.

Kindly send me your check of \$500—second installment on this machine, also chattel mortgage with descriptions as follows:

“One Shuttle Embroidering Machine No. 16773, Model 1908 ”10 Yard 4/4 repeat, with Blattstich, 3 automatic Boring apparatuses and Stichabstellvorrichtung System Keller.

20

The description for the first machine you have already received.

Yours very truly,

(Signed)

C. SEITZ.

30

40

Exhibit CD-6.

COPY

New York, December 5, 1910.

MRS. MARIA ANTOINETTE CANTZLAAR,
 421 Spring Street,
 West Hoboken, N. J.

10 Dear Madam:

I beg to notify you that one of your 10 yard Shuttle embroidering machines has arrived to-day in cases A. S. 868-882, 15 packages, ex S/S Nieuw Amsterdam from Rotterdam.

Kindly send me your check for \$500 on this machine for second installment as per terms of contract, and oblige,

Yours very truly,

20 (Signed)

C. SEITZ.

P. S.—Kindly let me know by whom you want the machine hauled, so that I can make out the delivery order. I would recommend Erhart Bros., Brooklyn, who do satisfactory work.

30

40

Exhibit CD-7.

COPY

August 4, 1911.

MR. J. BEN. EUGSTER, AND MRS.
 MARIA ANTOINETTE EUGSTER,
 325 Moutain Road,
 West Hoboken, N. J. 10

Dear Sir and Dear Madam:

I beg to hand you enclosed the 3 promissory notes of \$762.50, due September 25, 1911; \$762.50, due December 25, 1911, and \$762.50, due March 25, 1912, and Chattel Mortgage in duplicate which have to be signed by both of you and acknowledged by a Notary Public.

Kindly attend to this at once so that the bearer can get the Chattel Mortgage recorded tomorrow morning early, the afternoon being a legal holiday. 20

Yours very truly,

(Signed)

C. SEITZ.

30

40

Exhibit CD-1.

COPY

New York, October 8, 1910.

MR. JEAN BENEDICT EUGSTER,
826 Charles Street,
West Hoboken, N. J.

10

Dear Sir:

I beg to hand you enclosed as requested contract in the name of Mrs. Cantzlaar for the 2 machines you kindly ordered from me.

It is understood that after the marriage with this lady, your intended wife, has taken place next month or sooner, the contract will be transferred to both of you.

20

In the meanwhile and for good orders' sake you will kindly countersign the contracts and letters in triplicate which form part of the contract, and oblige,

Yours very truly,

(Signed)

C. SEITZ.

30

40

Final Decree.

(Filed Feb. 15, 1916.)

IN CHANCERY OF NEW JERSEY.

Between

MARIE ANTOINETTE CANTZLAAR
EUGSTER,*Complainant,*

and

JEAN BENEDICT EUGSTER,
Defendant.

10

On Bill, &c.
Final Decree.

This cause coming on to be heard in the presence of J. Emil Walscheid, of counsel with complainant, and Weller & Lichtenstein, of counsel with defendant, and the pleadings having been read, and the proofs and depositions having been taken and argument of the respective counsel having been heard and considered, and the Court having duly considered the pleadings, proofs, depositions and arguments, and it appearing to the court that complainant and defendant are entitled to relief in said cause;

20

IT IS, on this fourteenth day of February, 1916, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the Chancellor by virtue of the power and authority of this Court, and the acts of the Legislature in such case made and provided, does hereby ORDER, ADJUDGE and DECREE that the embroidery business heretofore carried on by the defendant upon the lands and premises described in the bill of complaint and known as Lot 13-E, plot 13 in Block 179 of the

30

40

Final Decree.

10 Town Map of the Town of West Hoboken, consisting of two shuttle embroidery machines, system "Sauer," all mending machines, sewing tables, plain tables, electric lights, electrical lighting fixtures, electrical and other motors, appurtenances, appliances and devices whatsoever in and about said business and used in connection with said business on the 7th day of March, 1914, including therein all office furniture and fixtures, book accounts and books of account of said business, and also the bank account maintained by the defendant in the Commonwealth Trust Company of West Hoboken, New Jersey, are now and since the installation of said business have been the sole and separate property and estate of the said complainant, subject, however, to a lien for the payment of the debts of said business and the sum of \$3,190.77 found to be due defendant on an accounting from complainant and said business.

20 And it is further ORDERED, ADJUDGED and DECREED that the co-partnership heretofore existing between the complainant and defendant in connection with the conduct of said embroidery business, be and the same is hereby dissolved.

30 And it is further ORDERED, ADJUDGED and DECREED that complainant, within ten days from the date hereof, pay to defendant, or his solicitors, the sum of \$3,190.77, the amount due defendant from complainant and said business, on the dissolution of said co-partnership, complainant having taken and now being in possession of all the assets of said co-partnership excepting moneys in bank and outstanding accounts.

40 And it is further ORDERED, ADJUDGED and DECREED that if complainant shall fail to pay

Final Decree.

defendant said sum of \$3,190.77 within twenty (20) days as aforesaid, and shall fail to pay the debts of said business as appears from the books and other records of the business within the same time, then and in that event Isidor Brand be and he hereby is appointed receiver of all the said property used in connection with said embroidery business, together with said moneys in bank and outstanding accounts, and sell and dispose of said goods, chattels, furniture, fixtures, machinery and other property belonging to said embroidery business at public sale, and that out of the proceeds derived from such sale, said moneys in bank and business and outstanding accounts, he to pay the debts of said business and the sum of \$3,190.77 to the defendant, and the balance, if any, to the complainant, or her solicitors.

Respectfully advised,

E. R. WALKER,

VIVIAN M. LEWIS,

V. C.

C.

30

40

MEMORANDUM.

(Filed July 23, 1917.)

IN CHANCERY OF NEW JERSEY.

	Between	} On Bill, &c. Memo.
10	MARIE ANTOINETTE CANTZLAAR EUGSTER, <i>Complainant-Appellant,</i>	
	and	
	JEAN BENEDICT EUGSTER, <i>Defendant-Respondent.</i>	

20 J. EMIL WALSCHEID, Esq.,
For the Complainant-Appellant.

EDWARD P. STOUT, Esq.,
For the Defendant-Respondent.

LEWIS, V. C.:—

30 This case was decided orally by me in the early part of 1916. The Complainant and Defendant were married at the time the questions herein involved were under consideration. Since that time, and recently, they have been divorced. Differences over their domestic affairs led to quarrels regarding their business arrangements.

The consequence of it was, that the complainant brought this suit against the defendant for an accounting of the profits of a certain embroidery business at West Hoboken, to have a receiver appointed for the business and to restrain him from disposing of it.

40 The parties first met in 1910, and after a short courtship were married. The husband was skilled in the manufacture of embroidery and the com-

Memorandum.

plainant possessed some estate. Before marriage it was agreed between them that the complainant should purchase land in West Hoboken, erect a factory and equip it with machinery for the embroidery business, and the defendant should take exclusive charge and management of the business. The land at West Hoboken was purchased with the complainant's money, and the plant was established thereon. It appears from the testimony that the complainant sought the advice of the defendant in all things; that he put the factory in running order, devoting his whole time to the business, and had sole charge of all affairs connected with it. 10

The undertaking was a success and the enterprise soon showed a profit. The husband was an industrious man and evidently thoroughly understood the business. 20

Matters appear to have gone on smoothly until the matrimonial difficulties began. Many disputes as to the conduct of the business naturally arose as soon as these took place. The complainant says that the defendant would not permit her to enter the factory, and deprived her of access to the books. He denies this, and says that he always offered her full information regarding the business, but that she said on several occasions she wanted nothing to do with it. 30

After the testimony had been heard by me relative to the contractual relations between the parties, by consent of both, I referred the matter of the accounting to William C. Asper, Esquire, a Special Master, to take and state an account of the business as of March the 9th, 1914, and the following facts were established before him and reported to this Court: 40

Memorandum.

1. Assets of the business, exclusive of merchandise and supplies:

	Cash	\$1,359.87	
	Machinery and equipment....	6,022.66	
	Office furniture	47.60	
10	Accounts receivable	612.30	\$8,042.43

2. Liabilities of the business:

	Due complainant.....	\$2,605.42	
	Due defendant.....	39.18	
	Bills payable.....	231.63	\$2,876.23

Net assets or profits, exclusive of merchandise and stock.....\$5,166.20

20 The above figures are admitted by both complainant and defendant to be correct.

3. Inventory and appraisalment of the merchandise and supplies made by the defendant as of March 7, 1914, and testified to by him.....\$1,077.00

This appraisalment was disputed by the complainant, and each party selected a representative to make an appraisalment.

30 This appraisalment was made on July 28th, 1914, and the evidence taken before the Master shows that a great deal of the merchandise and supplies had been used by complainant (or removed from the factory) subsequent to March 7th, 1914; therefore, the appraisalment made by them is valueless and defendant's appraisalment stands uncontradicted.

Total net assets or profits of the business

40

\$6,243.20

Memorandum.

One-half of profits due defendant.....	\$3,121.60
Plus debt of business.....	39.18
	\$3,160.78

Subsequent to the filing of the above account, and on February the 15th, 1915, a final decree was filed, declaring that the machinery, equipment and other assets of the business in question were the sole and separate estate of the complainant, but subject to a lien for the payment of the debts of the business, and the sum of \$3,190.77 was found to be due the defendant on the accounting and that the complainant should pay to the defendant that sum of money. 10

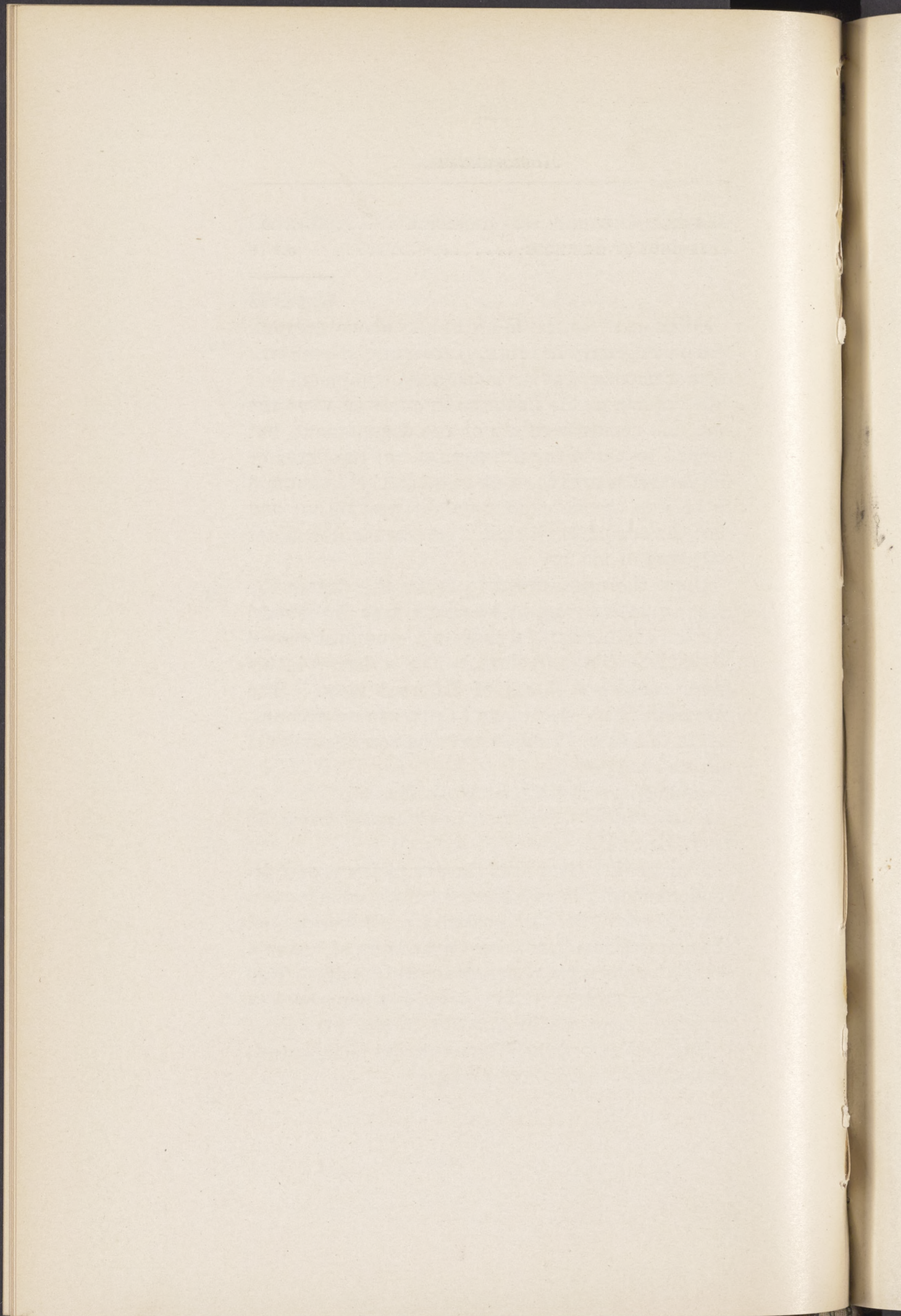
Upon the application to settle the decree the single question raised, as I recall it, by the counsel for the complainant, was that a cross-bill should be filed by the defendant before a decree in his favor could go. I am of different view. The cross-bill is not necessary to procure an accounting in this case. Relief can be had on the original bill and answer. 20

Johnson vs. Butler, 31 N. J. Eq., 35.

U. S. Fidelity & Guaranty Co. vs. Newark, 72 N. J. Eq., 841. 30

And further than this, the complainant and defendant herein have litigated before me all questions involved in this business controversy, and the complainant is not deprived of any of her substantial rights by a decree in this suit. This brings the matter within the views expressed in *Vanderveer vs. Holcomb*, 17 N. J. Eq., 87.

The findings of the Master should be sustained and a decree accordingly entered. 40



New Jersey Court of Errors and Appeals

10

Between

MARIE ANTOINETTE CANTZLAAR-
EUGSTER,
Complainant-Appellant,

and

JEAN BENEDICT EUGSTER,
Defendant-Appellee.

Appeal From
Court of
Chancery.

20

BRIEF ON BEHALF OF COMPLAIN- ANT-APPELLANT.

Statement of the Case.

The appellant is a married woman. She brought her suit in the Court of Chancery against her husband to recover possession and control of her separate estate, and for an accounting by the husband of the profits made by him with her separate estate while he was withholding it from her and employing it against her will. The Court of Chancery decreed that the property claimed by the wife was then and always had been her separate estate, subject, however, to the debts of the business which had been carried on with said separate estate by her husband, and the sum of \$3,190.77 found to be due the husband on account of profits made by him

30

40

in the business which he conducted with her separate estate. To arrive at this result the Court found that a partnership had existed between complainant and defendant up to the time of the trial and decreed that this partnership be dissolved. From the portion of the decree which dissolves the partnership and from the portions which give to the defendant affirmative relief, the complainant has
 10 appealed.

The facts as they appear from the testimony of complainant briefly stated are as follows:

Marie Antoinette Cantzlaar, then a widow, met Jean Benedict Eugster some time in April, 1910. In August of that year he proposed marriage to her and they were married on the 23rd day of November, 1910. When the complainant met the defendant, he was working as a stitcher in the embroidery
 20 business, but was very often out of a job. He had worked in that business in Switzerland and knew it thoroughly. The complainant also had been in the embroidery business in Switzerland. They talked about the matter and she finally told him that she would buy for herself two embroidery machines, and that he could manage the business to be done with these machines. This was done in contemplation of marriage (page 40). After they had decided that she was to buy the embroidery machines, they
 30 looked around to find a shop for rent but finally determined that it would be better if complainant invested her money and built her own shop and house. She thereupon bought land and built a three-story house. This building was arranged for tenants upon the two upper floors; the embroidery shop was on the ground floor. On October 8th, 1910, and before marriage, complainant purchased two Swiss embroidery machines for \$4,287.50, paying part cash, the balance to be paid on some date after marriage, payment to be secured by notes and chattel
 40

mortgage. The machines arrived shortly after complainant and defendant were married (page 45, fols. 10-20). They were installed in the building which had been erected for that purpose and the defendant thereupon began the manufacture and sale of embroideries. A few weeks after the marriage, the defendant came to the complainant with a paper and said that she should read that paper; that he wanted her to sign it; that he wanted some kind of security in his hands as he wanted some profits out of *his business*. She read it and refused to sign it (page 45, fols. 20-40). About two weeks after this, the defendant again came to his wife with another paper. This paper provided that Mr. Eugster was to receive twenty-five dollars per week for his salary and that *after* the chattel mortgage securing balance of purchase price of machinery had been paid, he was to receive half of the profits of the embroidery business which he was to manage. This paper also provided that the complainant should get twenty-five dollars a month for shop rent, so that it could help pay the interest on the mortgage placed upon the building and that out of the twenty-five dollars weekly salary which he was to receive, he was to give to his wife fifteen dollars for the household (page 47, fols. 1-20). This paper differed from the first paper in that the first paper provided that the husband was to have the privilege of selling the wife's real estate whenever he wanted to do so.

The second paper was signed by complainant. It had been shown to her by her husband a few days before she signed it. He then said that she should read it over. At that time there was quite a fight about this paper and she was not willing to sign it; but he was fighting all the time with her and tormenting her until she signed it (page 47, fols. 20-30). This paper was written in German in his own

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handwriting (page 47, fols. 30-40). After she signed it, he put it in his pocket and she has never seen it since that time (page 48, fols. 1-10). When this paper was signed, the machinery was not running yet. The business started in March, 1911. When the machinery began to run, the defendant managed the business and made all contracts while she had to pay the bills (page 48, fols. 20-30). She had nothing to say but to pay the bills. He would not show her anything and kept his desk locked (page 49, fol. 20).

When the defendant married the complainant, he had forty dollars and no more (page 48, fol. 30).

When the complainant signed the paper for her husband, she did not consult a lawyer; she said to Mr. Eugster to go to a lawyer, that they would go to a lawyer together to draw up the paper, but he said he did not want to do such a thing, that he could not read English and something could be put in the paper that he did not understand; he did not trust them, he was afraid something would be written in the paper and that he could not understand it (page 50, fols. 1-10). The cost of installing the machinery plant of the business was paid by the complainant (page 50, fols. 10-20). From March, 1911, up to the time of the institution of the suit (bill filed November 18th, 1912), complainant received no money out of this business, excepting that he gave her a few checks (page 51, fols. 10-20) in repayment of specific sums which she had loaned him (page 51, fols. 20-40). Nor did the husband contribute anything towards her support after October 12, 1912.

The defendant admitted that complainant had purchased the embroidery machines and paid for the installation of the factory. He admitted that his whole estate at the time of his marriage amounted to \$90.00 (page 101, fol. 30). He was a native

of Switzerland and had received a business education there (page 99). He came to this country in 1908 (page 100, fol. 10). Whatever money he had paid on account of machinery and the plant had been earned by the business (page 101, fol. 30). In the latter part of March (1911) he *took possession of the machinery and plant as his own and for himself* (page 103, fols. 1-10) *although his wife always claimed to own the machinery and plant* (page 98, fols. 20-30). He did not buy the machines from her, he paid them off (page 103, fol. 30) was one of the claims which he advanced. He opened a bank account and *all the money which went into this account came out of the earnings of this business* (page 106, fols. 1-10). It was in the beginning of March, 1911, that complainant signed the paper she testified about (page 106, fol. 20). But this paper no longer existed because *complainant had torn it to pieces* (page 103, fol. 30). *He denied absolutely that the paper contained the matter which complainant said it did* (page 107). *There was to be no profit sharing between them.* "Everything, the machines belonged to me" (page 108, fol. 1) is what he swore.

The defendant also swore that right after marriage his troubles with his wife began, that these troubles grew with time, *and when he had his wife sign the paper which he brought her they were not friendly* (page 127, fols. 10-20). He told his wife that *under the laws of Switzerland the property of the wife is the property of the husband and that he considered that to be the arrangement under which he held his wife's property* (page 130, fols. 20-30). He also emphatically maintained that *he had never arranged to be in partnership with his wife in this business* (page 133, fol. 30). His wife was having trouble with the building and told him *he should have nothing to do with the building*

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whereupon he retorted "that as long as I should have nothing to do with building she should have nothing to do with the business (page 134, fol. 30). At that time he did not say that the business was to be a partnership but did assume exclusive control of the business and told her. As it now stands I will take the machines and pay you back" (page 10
135, fols. 1-20). This was about the beginning of March, 1911. It was there that he told her he would assume the management of the business, and it was because she would not let him have anything to say about the building that he decided. "If I am not to know anything about the building then she is not to know anything about the business (page 137, fols. 1-20).

In July and August, 1912, a few months before the bill was filed he wrote her two letters extracts from which were read in evidence (pages 128-129).
20 These extracts are:

30 "I yield to the hope that God the Just will prevent that a murder be done in the house. In about eight months I will have earned the \$2,000, which I must give you; then I can play the big drum and can say: now is the time when we can separate without having to do too much damage to each other. If you will then make an acceptable lease with the purchaser of my machines it will be well for both of us; if not, I will take my machines away from West Hoboken and will set them up and run them some place else; until such time I will remain in the house, and woe to the beast who attempts before that time to make my life in our house impossible."

(Extract from letter of August 6, 1912.)

40 "Since you do not appear to know exactly how wealthy you were at the time of our mar-

riage November 23rd, 1910, I demand of you written proof as to how much money and estate you possessed upon the aforesaid day. This done, I will in writing inform you where and how your money is invested * * *." "What I owe you is \$2,000, which you gave me to purchase two ten yard machines, which I will secure to you at the sale of my machines together with the business belonging thereto, by means of an installment * * * or if the purchaser can pay cash it will be paid to you in cash at the time of sale * * *. Of my estate and money, which I have earned with my work and in my business I will give nothing out of my hands; or will I divide, prior to my death, out of my hands anything to which I am legally entitled. We did not make any contract before our marriage, therefore, the legal principle applies—what belongs to the husband belongs to the wife; and what belongs to the wife belongs to the husband; in other words, equal rights. Since you have more estate than I have I will allow you to divorce me from bed and board, upon condition that I pay no alimony, and that you will not demand more than \$40 for the shop without living rooms, from my prospective purchaser, and that we have arrived at a financial settlement personally or through the adjudication of a judge."

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This trial of the case was commenced on January 15th, 1914 (page 38), and was concluded, so far as the taking of testimony relating to relation between the parties is concerned on February 11, 1914 (page 108). At that time defendant's counsel was not ready to sum up the cause and the matter was allowed to stand over until March 10, 1914, when it was referred to a special master "to take

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and state an account in reference to the embroidery business in dispute between the parties in this cause, of all moneys *invested by complainant* in said business and of all moneys *received and expended by defendant* on account of said business from the installation of the same *to the day of the date hereof*" (page 142).

10 Pursuant to this order testimony was then taken showing the moneys invested by complainant in the business and the moneys received and expended by defendant therein and a receipt showing the amount of money invested by complainant and the moneys received and expended by defendant in the business was made (page 160), but this report was not deemed satisfactory by defendant, although it fully complied with the order of reference and the matter was again referred to take additional testimony upon matters *not in the original* order of reference. In the taking of these additional depositions defendant's counsel produced an accountant, *who produced a partnership accounting* between the complainant and defendant and testified to the same (page 183, etc.).

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The partnership accounting was calculated from the beginning of the business to March 7th, 1914 (page 184), *two days prior to the date of the order of reference* (page 142).

30 This partnership accounting showed that the defendant had withdrawn for his *personal use* out of the business \$4,594.57 (page 184).

This partnership accounting charged to the expenses and profits of the business and credited to the defendant, *salary at the rate of twenty-five dollars per week from the beginning of the business to March 7, 1914*, amounting to \$3,825.00 (page 185).

40 The partnership accounting after having deducted all expenses, *including the salary of the*

defendant as aforesaid then showed a net profit balance of \$5,397.83 (page 186). The net profit balance was subsequently corrected to \$6,243.20 (page 194). *This profit balance was, by the decree, divided between complainant and defendant in equal parts.*

In arriving at these figures neither the accountant or the Court took into consideration the testimony of the complainant showed that *only after* the chattel mortgage was paid, was defendant to have any profits (page 47, fol. 1), and that he was to pay his wife \$15.00 per week *but did not do so after Oct. 12, 1912* (page 187). 10

The result of this calculation to the defendant is that if the decree stands, he will have received \$3,121.60 on account of profit and \$3825 on account of salary or a total of \$6,946.60—*for forcibly taking charge of complainant's business and running it against her will.* 20

Argument.

POINT I.

The evidence does not warrant a finding that a partnership existed between the complainant and defendant. 30

The decree "ordered, adjudged and decreed that the co-partnership heretofore existing between the complainant and defendant in connection with the *conduct* of said embroidery business be and the same is hereby dissolved" (page 197). A partnership is defined as "a contract of two or more *competent* persons to place their money, effect, labor and skill, or some or all of them in lawful com- 40

merce or business and to divide the profits and bear the loss in certain proportions.

30 Cyc., 349.

The foundation of the relation lies in *voluntary* contract.

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McCable vs. Sinclair, 66 N. J. Eq., 24.

Wilson vs. Cobb, 28 N. J. Eq., 177-29;
N. J. Eq., 361.

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The defendant does not claim to have operated the embroidery plant under any voluntary agreement with his wife—he was operating it under a *claim of right* adverse to the wife arising out of his understanding of the law. He claimed the business as his own, he excluded his wife from all participation in the same he quarrelled with his wife even before the business was well under way and then and there arbitrarily annexed the business and told her he would pay her off the money which she had invested. Can any one read the testimony given by this defendant and extracts from the two letters, all of which matter has hereinbefore been set out, and say that this man was operating in conjunction with his wife *under a voluntary* agreement made between them. The

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bill in this case was filed in Nov., 1912; as late as August 6, 1912, he was in the most dictatorial manner insisting upon his right to *control* and *to have* her separate estate. In his letter under that date he treats her initial investment of two thousand dollars paid by her in cash when the embroidery machine was bought *as a loan to him* and says, "What I owe you is \$2,000.00 *which you gave me* to purchase two ten yard embroidery machines, which I will secure to you at the sale of *my ma-*

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chines together with the business *belonging there-
to.*

The complainant in her complaint shows that *before the business started* she engaged, in a paper writing to employ her husband to manage her business at a salary of \$25.00 per week and agreed with him that *after the purchase money chattel mortgage was paid* he should share in the property of the business with her, and upon cross examination she said "I *was* always willing to pay him half the profits of the business" (page 66, fol. 1). 10

This is the only evidence in the case upon which a partnership might be predicated and this evidence we contend is not sufficient.

Assuming that the agreement which complainant signed was equitably binding upon her at the time she signed it, she actually had a right to terminate it at will. 20

Martin vs. Insurance Co., 148 N. Y., 17.

Assuming again that the parties were not husband and wife, and that this woman had employed Eugster to manage her business upon the terms outlined in the paper writing, and that immediately after commencing the operation of the business he announced to his employer after a quarrel that "As it now stands *I* will take the machines and will pay you back" (pages 134-5), and had then attempted to put his threat into execution, would not the agreement of employment have been terminated on the spot. And if this is, as should the fact that in this case, the man *actually took possession of the property as his own*, and that this woman, because she was the wife of this man, *could not discharge him*, first upon her against her will a business manager to operate her business just as he saw fit. The statement of the proposition shows its ab- 30 40

surdity. The logical result of the action of the husband in taking possession of this business as his own was a *repudiation* of him of the agreement, and a *leaving of the employ*, which he entered when the agreement was signed and his subsequent conduct should estop him from denying that this was the result.

10 And the result is the same whether we consider the result of the alleged agreement as an equitable partnership or as an equitable contract of employment. In either event, since there was no time of termination stipulated the parties had the right to terminate it at will.

Nor should the fact that complainant on cross examination said, "I was always willing to pay him half the profits of the business" be considered evidence of a continuing contract of employment or of a continuing partnership. What the witness meant was that if he had lived up to *his* obligation there would have been no trouble about profits; that she had always been willing to make the agreement which she did reduce to writing.

20 For the foregoing reason we urge that there was no evidence to support a finding that a partnership existed which required dissolution by the decree.

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POINT II.

The contract between appellant and respondent relative to the operation of the embroidery business is not enforceable in equity.

Undoubtedly, courts of equity will enforce agreements between husband and wife, if fair and if fairly obtained, but the duty of showing that the

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contract was fairly obtained and is fair to the wife rests upon the husband and in the absense of proof to the contrary the agreement will be presumed fraudulent and void.

Farmer vs. Farmer, 39 N. J. Eq., 211.

The agreement in this case was not the free and uncontrolled expression of the will of the wife, she signed the agreement when she was not friendly with her husband *and solely because he was tormenting her all the time* (page 47, fol. 20), and according to defendant complainant after having signed it tore it to pieces (page 103, fol. 30).

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And the fact that the signing of this paper was solely defendant's idea appears clearly from the testimony of Jacob Fritsche (page 72, fols. 20-30).

Complainant was also entitled to competent independent advice before the agreement could become effective.

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She asked for such advice (page 49, fol. 30, etc.) but did not get it (page 50, fols. 1-20).

The agreement is unfair to the wife. Viewed merely as a business proposition she agreed to pay for managing a small two machine embroidery business \$1,300.00 per year plus one-half of net profits. Under arrangements the husband according to the decree in this case is entitled to \$6,946.60 for services rendered from April 1, 1911, to March 7, 1914, while the wife received but \$3,160.78. No business man we contend would make a bargain for ordinary services which would result in such a decision.

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The advantage to the husband and the disadvantage to the wife is so great that equity should not enforce the agreement.

Brady vs. Brady, 58 Atl., 931.

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And if for the reason thus adduced the agreement cannot be enforced an equitable assumption it will not be inferred in favor of the husband.

Doughty vs. Miller, 50 N. J. Eq., 529, page 536.

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POINT III.

The evidence does not warrant a finding that defendant is entitled to \$3,190.77 by way of profits.

The bill of complaint was filed Nov. 18, 1912, defendant refused further to support complainant Oct. 12th, 1912 (page 187) yet the defendant was allowed up to March 7th, 1914.

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We respectfully submit that if there was an equitable partnership under which defendant was entitled to profits and if either party had the right to terminate, such termination *must* be inferred from the filing of the bill of complaint, and that from that time forward at least, defendant must be considered a trespasser in the business.

POINT IV.

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A married woman cannot enter into a business partnership with her husband nor can she be held to pay him for service.

A married woman cannot at common law enter into a partnership with her husband.

21 Cyc., 1277.

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Balrow Brothers vs. Parson, 73 Conn., 696, 490 etc., 205.

Lord vs. Porker, 3 Allen (Mass.), 127.
 Bouker vs. Bradford, 140 Mass., 521.
 Gilkerson Sloss Co. vs. Salinger, 56 Ark.,
 105.
 Fuller vs. McHenry, 83 Wisc., 573.

And while the Married Woman's Act, provide
 that she may now make contracts yet the provision
 of section 14 of that enactment distinctly provides
 that nothing therein shall enable husband or wife
 to contract with or to sue each other *except as here-*
tofore. 10

3 C. S., 3237, Sect. 14.

The common law therefore still governs the right
 of a wife to enter into a partnership with her hus-
 band.

If however we assume that the contract which
 was made is not one of partnership but one of em-
 ployment the result also is that the husband has
 no right to recover even in equity. 20

That a wife may employ her husband as her
 agent to conduct and manage a business established
 by her capital is settled in this state.

Taylor vs. Wards, 55 N. J. E., 491.
 Arnold vs. Talcott, 55 N. J. E., 519. 30

No case however has been found by us in this
 state dealing with an attempt by the husband to
 enforce a claim for such services. In Perkins vs.
 Perkins, 62 Barb., 531; 7 Lans., 19, the power of a
 husband or wife to make a valid contract for the
 services of the other is denied. The judge writing
 the opinion concedes the right of the wife to em-
 ploy the husband as agent, but holds that he cannot
 recover for services since they are to be considered
 as given in fulfillment of the duty of supporting 40

her. The suit in that case was by the husband for services rendered without express contract for payment.

In *Lewis vs. Johns*, 24 Cal., 98, the court said *obiter*:

10 “In the absence of an express agreement to that effect, there is no implied obligation on the part of the wife to compensate the husband for services and in either case there could be only an imperfect which neither the husband or creditors could enforce.”

20 It was held in *Kingsman vs. Franck*, 33 Hun (N. Y.), 471, that a creditor of a husband could maintain a judgment creditors action against the wife for services rendered by the husband in her separate business under an express contract for compensation, although the husband could not collect such compensation by legal proceedings.

POINT V.

The defendant held the property of complainant as a trustee ex maleficio and is not entitled to compensation.

30 The defendant *took* and *held* the business assets from the time of his declaration that he would take them and pay his wife therefor, *without her consent and solely because she was the weaker and he had control*. He refused to yield this possession and she was forced to institute this suit. Even after suit started he maintained his possession, and his right to possession. In his answer he denied the profit showing agreement (page 23, fols. 10-40), the benefit of which the Court of Chancery gave him. In
40 his answer he admitted that he took possession of

the plant "*as his own or in law and equity he had a right to do*" (page 25, fols. 10-31), that he owned the business and that she had never claimed it as her own, but had always claimed *that she loaned him the money with* which to buy the machinery and install the plant (page 28, fols. 1-20), that she made him a present of the plant (page 29, fols. 1-30; page 30, fols. 20-30), and that complainant was not entitled to any profits out of the business (page 30, fols. 1-10). 10

His conduct seems absolutely defenceless, and the Court of Chancery in the divorce suit between these parties said of this transaction "a wife is not to be blamed for acquiescing in a separation from her husband who shows her that he married her in order to plunder her."

Engster vs. Engster, 101 Atl. Rep., 575. 20

We submit that defendant was at all times merely a trustee ex maleficio and that he must account for the corpus of the business together with all of its increments and is entitled to no compensation.

CONCLUSION.

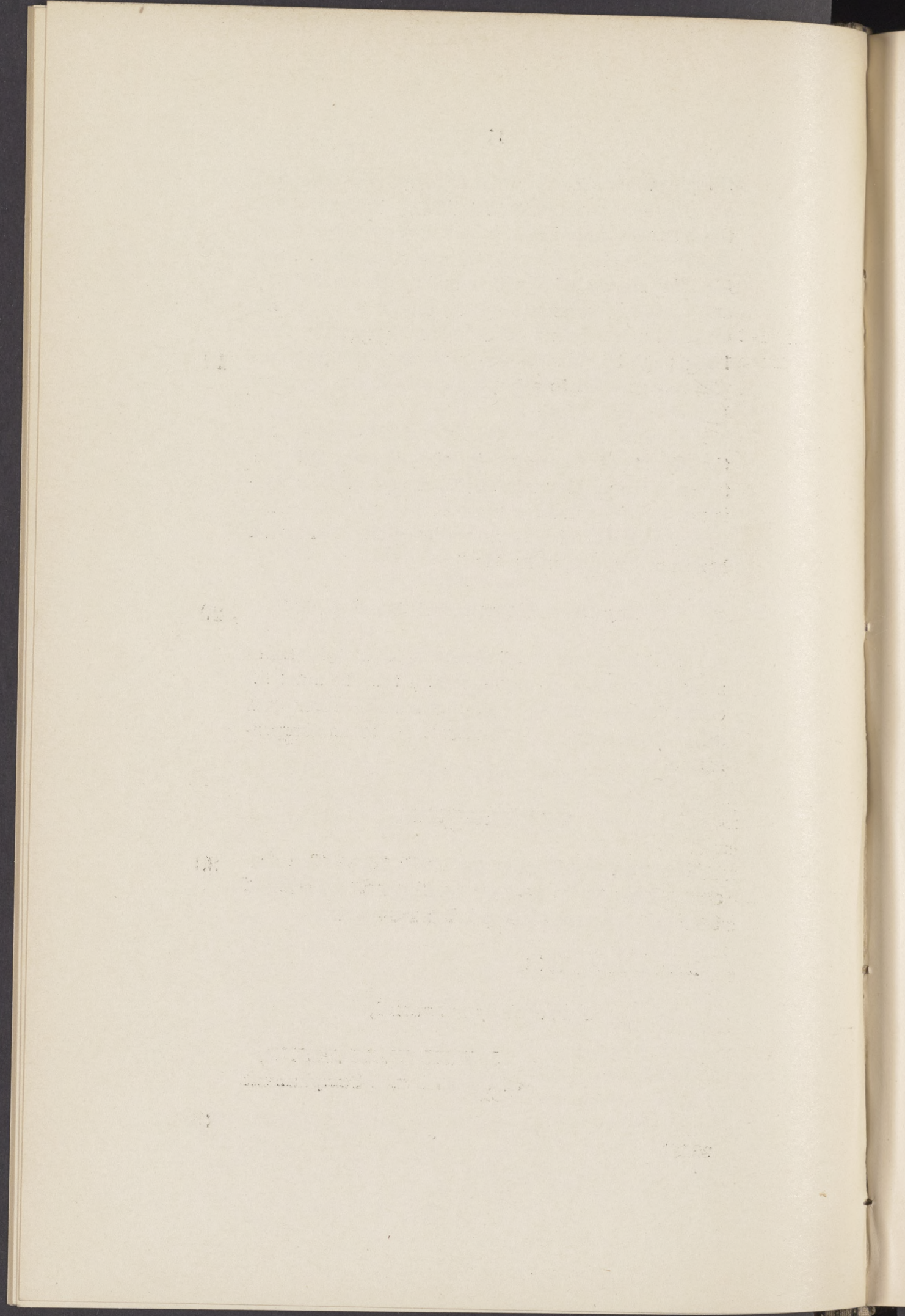
We respectfully submit that the decree below in so far as it grants relief to defendant should be reversed. 30

March Term, 1918.

Respectfully submitted,

J. EMIL WALSCHEID,
Of Counsel with Complainant.

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New Jersey Court of Errors and Appeals

Between

MARIE ANTOINETTE CANTZLAAR
EUGSTER,

Appellant,

and

JEAN BENEDICT EUGSTER,
Respondent.

On Bill, &c.,
On Appeal
from the
Court of
Chancery. 10

BRIEF FOR RESPONDENT.

Statement of the Case.

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This suit was brought by the complainant against her husband, the defendant, to terminate their agreement relative to an embroidery business, and for an accounting of the profits.

The appellant, in her brief, has attempted to cloud the real issues involved by placing great stress upon certain phases of the testimony, which are not pertinent and material.

The facts essential to determine this controversy, are accurately and succinctly stated in the 30 memorandum of Vice Chancellor Lewis (Case, pp. 220-223).

The Court below decreed, by virtue of the agreement between the parties, that the assets of the business were the sole estate of the complainant subject, however, to a lien in favor of the defendant for one-half of the profits. The complainant appeals from that part of the decree which is in favor of the defendant.

The questions involved are:

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1. Whether it was necessary for the defendant

to file a cross bill to obtain a decree against the complainant under an original bill filed by her, praying for an accounting.

2. Whether a contract between husband and wife relative to a business adventure is enforceable in a Court of Equity.

3. Whether, under the contract, the defendant was entitled to one-half of the profits of the business.

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ARGUMENT.

POINT I.

It was not necessary for the defendant to file a cross bill to obtain a decree in his favor.

The bill of complaint in the instant case prayed for an accounting of the profits of the embroidery business and other relief. An answer was filed by the defendant, and the case was heard on the original bill and answer. The Court below decided that the defendant was entitled to one-half of the profits of the business.

In *Johnson v. Butler*, 31 N. J. Eq. 35, it was held that a cross bill was unnecessary in such a case.

In *United States Fidelity & Guaranty Co. v. Newark*, 72 N. J. Eq. 841, at 849, the Court said: "A cross bill is not necessary to procure an accounting. All the relief which can be had under any prayer for an accounting can be had on the original bill and answer, so that the cross bill is not only entirely unnecessary but is worse than useless because it adds to the expense and delay of finally adjusting the issues presented."

See also *Scott v. Lalor*, 18 N. J. Eq. 301.

This question is abandoned by the appellant in her Brief, but it is to be noted that the learned Vice Chancellor, in his memorandum, says (Case, p. 223, ll. 20-24) that the only question raised by

counsel for the complainant, upon application to settle the final decree, was that a cross bill should be filed by the defendant before a decree could be made in his favor.

Manifestly, it was not necessary for the defendant to file a cross bill to obtain a decree in his favor, in the instant case.

POINT II.

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A contract between husband and wife is enforceable in a Court of Equity.

It is conceded that the defendant and complainant, then husband and wife, entered into a contract relative to the establishing of an embroidery business. The question is, can this contract be enforced in a Court of equity?

In *Wood v. Chetwood*, 44 N. J. Eq. 64, at 66, the Court said: "Courts of equity alone can give a remedy on a contract made between a husband and his wife, whether redress is sought by one of the original parties against the other, or by or against legal representatives of one or both of the original parties."

The Court, in support of this proposition, cited the following cases:

Woodruff v. Clark, 42 N. J. L. 198.

Gould v. Gould, 35 N. J. Eq. 37.

Rusling v. Rusling, 47 N. J. L. 1.

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In *Arnold v. Talcott*, 55 N. J. Eq. 519, at 521, the Court said: "The inability of husband and wife to contract with each other exists at law only; in equity, their contract relative to the wife's separate property is as valid as if the wife were a *feme sole*."

Obviously, under the above authorities, the contract between the complainant and defendant, rela-

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tive to the embroidery business, was enforceable in a Court of equity, and their respective rights and liabilities could be determined by the Court.

POINT III.

The defendant was entitled to one-half of the
10 profits of the embroidery business.

The complainant alleges in her bill that she agreed with the defendant to divide the profits of the embroidery business equally between them (Case, p. 9, ll. 12-13). She also swears to the same effect in her affidavit, which is annexed to the bill (Case, p. 16, ll. 38-40), and she testified: "I was always willing to pay him half of the profits of the business" (Case, p. 66, ll. 5-6).

20 In view of the above, there can be no doubt that the complainant agreed to divide the profits of the business equally with the defendant and, by virtue of the authorities cited under Point II, he is entitled to same.

It is to be observed that the business was a success, due to the skill and industry of the defendant (Case, p. 221, ll. 19-20), and that the complainant received all of the moneys advanced or invested by her in the business, plus one-half of the profits (Case, pp. 222-223). The amount due her
30 at the time of the accounting was \$2,605.42 (Case, p. 185, l. 35; p. 222, l. 13), which she admitted was correct (Case, p. 186, ll. 19-21; p. 222, ll. 19-20). The total amount of money advanced or invested by her was \$3,850 (Case pp. 20-21), which was returned to her, in addition to one-half of the net profits, amounting to \$3,121.60 (Case, p. 223, l. 5). In other words, she received an income of \$3,121.60 on an investment of \$3,850 for a period of little
40 over three years (Dec. 8th, 1910-March 9th, 1913).

Evidently, the agreement was most advantageous to the complainant, for she almost doubled her investment through the efforts of the defendant.

For the reasons stated above, it is respectfully submitted that the decree under review, should be affirmed.

QUEEN & STOUT,
Solicitors for Respondent. 10

EDWARD P. STOUT,
Of Counsel.

March Term, 1918.

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