

New Jersey Court of Errors and Appeals.

BILL OF COMPLAINT,

[Filed 186]

To his Honor Abraham O. Zabriskie, Chancellor of the State of
New Jersey.

IN CHANCERY.

Humbly complaining showeth unto your honor your orator and oratrix John Kinney and Charity A. Metler, administrator and administratrix of all and singular the goods and chattels, rights and credits which were of Charles W. Metler, late of the Town of Phillipsburg in the county of Warren, in the State of New Jersey, deceased, at the time of his death. That Orison Metler and Delilah Metler his wife, the defendants hereinafter named, who were the father and mother of the said Charles W. Metler, deceased, have lately commenced an action against your orator and oratrix in the Supreme Court of Judicature of the State of New Jersey, and have declared in the said action against your orator and oratrix for a certain promissory note which they allege and pretend was given to the said Delilah Metler by the said Charles W. Metler, now deceased, in his life time, on the third day of May in the year of our Lord one thousand eight hundred and sixty-five for the sum of fifteen hundred dollars, and that the said note was made payable one day after date to the order of the said defendant, Delilah Metler, without defalcation for value received, and which the said defendants allege and pretend is due and owing to the said Delilah Metler with a considerable amount of interest thereon from the estate of the said Charles W. Metler, deceased, and that the said action is brought against your orator and oratrix to recover the amount thereof.

And your orator and oratrix further show unto your Honor that the said Charles W. Metler departed this life on or about the first day of December, eighteen hundred and sixty-five, having

been suddenly and violently killed while a passenger on the Central Rail Road of New Jersey by a collision on said road, which occurred at that time, being aged about twenty-seven or eight years, leaving him surviving your oratrix who is his widow and relict and also an infant child, a daughter now about three years of age, and that on or about the sixth day of December eighteen hundred and sixty five, letters of administration of all and singular the goods and chattels, rights and credits which were of the said Charles W. Metler, deceased at the time of his death, were
 10 by William L. Hoagland, Esq., Surrogate of the County of Warren in the State of New Jersey, granted unto your orator and oratrix, and your orator and oratrix have taken upon themselves the burthen of the administration of the said estate, agreeably to the said grant of said letters.

And your orator and oratrix further show unto your Honor, that the said Charles W. Metler, deceased, in his life time for several years prior to his death, followed the business and vocation of a Locomotive Engineer on different Railroads, and that in that
 20 business and vocation he had saved and accumulated from his earnings and otherwise previous to the time when the said pretended note is alleged to have been given by him to the said defendant, Delilah Metler, property both real and personal to the amount of two thousand dollars and upwards on which there existed at that
 30 time no incumbrance, lien or other indebtedness.

And your orator and oratrix further shows unto your Honor, that the said defendant, Delilah Metler, if any such note she has, as in and by the said defendant's said declaration they pretend she has, did not at the time when the said note is alleged to have
 30 been given, or at any time previous thereto, make pay or render to the said Charles W. Metler any consideration whatever for the said note, nor did the said defendant, Orison Metler, make pay or render to the said Charles W. Metler any consideration whatever for the said note, nor did he have, or give, or furnish to the
 40 said defendant, Delilah Metler, any money or other means for that purpose.

And your orator and oratrix further shows unto your Honor that the said Orison Metler and Delilah Metler his wife, for a period of six years and more prior to the commencement of the said action in the said Supreme Court, have lived separate and
 40 apart from each other. That the said defendant, Orison Metler,

is a shoemaker by trade, and during the period last aforesaid has gone about from place to place, and has worked some portion of his time, but has barely managed to maintain himself, and was and still is possessed of no other means of livelihood. And that the said defendant, Delilah Metler, was for all that time and still is only possessed of a small house and lot in the Town of Phillipsburg on which she resides, and which she purchased about eleven or twelve years ago of one Joseph P. Hardy for about the sum of seven hundred dollars, and that for a part of the said sum of seven hundred dollars she gave to the said Joseph P. Hardy her promissory note which remains, principal and interest, due and unpaid to this day. And that the said Delilah Metler is encumbered with debts and has had no visible means of livelihood for all that time, and was engaged in no business or employment whereby she could make or accumulate any such sum of money or means to render to the said Charles W. Metler for the said alleged and pretended note, and that during the said period of six years and more as aforesaid, the greater part of her living has been furnished and given to her by her children.

And your orator and oratrix further shows unto your Honor that the said Charles W. Metler at the time when the said pretended note is alleged to have been given by him to the said defendant Delilah Metler, as aforesaid, was the owner and proprietor of a house and lot in the Town of Phillipsburg, in the county of Warren aforesaid, and that he owned and possessed a considerable amount of household goods and furniture and other property all of which was paid for and was free from debt, and that the said Charles W. Metler was also possessed of some money besides, which he had earned and saved, a portion of which was loaned at interest, and was able to help himself without pecuniary assistance from others, and that the said Charles W. Metler in his said business and vocation of locomotive engineer as aforesaid, and which he then still followed did not require any means or capital to carry on the same, and that he in his said business and vocation always worked for hire and reward for his said labor and service.

And your orator and oratrix further shows unto your Honor that the said Charles W. Metler in his lifetime was married to your oratrix on or about the second day of October one thousand eight hundred and sixty-two, and that after their said marriage they lived together as man and wife, and that they had born to

them their said infant daughter who is still living as your orator and oratrix have hereinbefore stated; and that a short time after your oratrix's said marriage with the said Charles W. Metler, since deceased, the said Charles W. Metler, purchased a lot of land in the Town of Phillipsburg aforesaid, and built and erected upon the said lot the dwelling house owned by him at the time of his decease as hereinbefore mentioned, and after the completion thereof he with your oratrix, his then wife, moved into the said house and continued to live and reside therein until about the
 10 latter part of the month of March in the year of our Lord one thousand eight hundred and sixty-five, and that during the year one thousand eight hundred and sixty-four, and also that portion of the year eighteen hundred and sixty-five prior to the said month of March, the said Charles W. Metler was most of his time absent from home in the State of Tennessee and other Southern States engaged in the business and vocation of locomotive engineer on various Railroads there, for which he received for his said services as such locomotive engineer from three dollars and fifty cents to four dollars and fifty cents per day, and that he, during the said
 20 time, occasionally visited his said home and family.

And your orator and oratrix farther show unto your Honor that for about a year previous to the said month of March eighteen hundred and sixty-five, the said Charles W. Metler, by and through the instigation of the said defendant, Delilah Metler, as your orator and oratrix have been informed, believe and charge to be true, treated your oratrix, his then wife, with great and undeserved harshness and severity, and seemed to have lost all regard for your oratrix, his then wife and her child, his infant daughter by your oratrix, his then wife, and neglected and refused to furnish, give
 30 or provide them with necessary sustenance and support, and during the latter portion of said time manifested an anxiety and desire to sell and dispose of their said house and lot, and on or about the eighteenth day of March, eighteen hundred and sixty-five, unknown to your oratrix, bargained to sell and dispose of his said house and lot to one John H. Haggerty, for the sum of fifteen hundred dollars, the said price being the precise amount for which the said note is alleged and pretended to have been afterward given by the said Charles W. Metler to the said defendant, Delilah Metler, and which said sum was about the value of the said house
 40 and lot at that time, and himself made and prepared a deed there-

for and persuaded and urged your oratrix, his then wife, to sign the same with him, which your oratrix, after much persuasion and urging finally consented to do, but that as soon as your oratrix had signed and acknowledged the said deed, and before the delivery thereof by the said Charles W. Metler, he informed your oratrix that now that he had obtained the signature of your oratrix to the said deed, which would release all her interest and right of dower in the said property, he had got all he desired of her, and that she must get her clothing and leave immediately and solemnly declared to your oratrix that he intended to take all the 10 money and proceeds of the said house and lot himself, and that he would separate and part from her and leave her, and that he would go to parts to her unknown, and abandon his said wife, your oratrix, to take care of herself as best she could, and that he would not make any provision for the support and maintenance of your oratrix, his then wife and her child, the infant daughter of the said Charles W. Metler, and abused and beat your oratrix severely, and that when your oratrix found this to be the intention and design of the said Charles W. Metler, and before the delivery of the said deed to the said John H. Haggerty, your oratrix again ob- 20 tained the possession of the said deed and thereupon refused to deliver or surrender the said deed for the said house and lot, and kept and retained the same in her own possession, which said deed is now in the possession of your orator and oratrix and ready to be produced as your Honor may direct.

And your orator and oratrix further show unto your Honor, that as soon as the said Charles W. Metler ascertained that your oratrix had possession of the said deed and had thwarted him in his intention and design to get all the proceeds of the sale of the said house and lot and thus to deprive your oratrix and her infant 30 child of all benefit and advantage from the use and enjoyment of the same, he became violently enraged, and openly declared that your oratrix should not have a cent of his property, and in his anger fell at your oratrix and whipped and severely beat your oratrix to compel her by force and violence to deliver to him the said deed, but your oratrix in consequence of the statements and declarations of the said Charles W. Metler to your oratrix of his intention and design as aforesaid, to leave and abandon your oratrix and his infant child and to secure to himself the proceeds of the

said property and leave for parts unknown refused to give the said deed into his possession.

And your orator and oratrix further show unto your Honor, that the said Charles W. Metler, finding he could not prevail with your oratrix by force and harsh means, endeavored by persuasion and more moderate means to induce your oratrix still to join in a sale and conveyance of said property representing and professing to your oratrix that on her compliance and on her consent to a separation, he would give to your oratrix a considerable sum of
 10 money, but your oratrix distrusting the promises and professions of the said Charles W. Metler in that behalf and believing his intentions still to be to deceive your oratrix and by means of said conveyance to obtain the sole and exclusive control and possession of the proceeds of all their said property, and to withhold from your oratrix all benefit, advantage and use of the same, your oratrix refused to give her consent, or to give him possession of the said deed of conveyance or in any other manner to release her interest or right of dower in the said house and lot or any other property of or belonging to her husband, the said Charles W.
 20 Metler, or to separate or part from her said husband.

And your orator and oratrix further show that the said Charles W. Metler, finding that he could not prevail with your oratrix to join with him in any conveyance of the said house and lot as aforesaid, or to consent to voluntarily separate and part from her said husband, the said Charles W. Metler, he finally during the latter part of the said month of March, in the year eighteen hundred and sixty-five left your oratrix and her said child, the said infant daughter of the said Charles W. Metler, and went to board and
 30 reside with the said defendant, Delilah Metler, and rented out the house and lot aforesaid, and thus separated himself and parted from your oratrix, and refused to allow or permit your oratrix to live any longer with him, or to furnish or provide your oratrix with any maintenance or support whatever.

And your orator and oratrix further show unto your Honor, that in order to work upon the feelings and affection which your oratrix had for her infant child, and thereby compel your oratrix to consent to sign such conveyance of the said house and lot as aforesaid, the said Charles W. Metler, without the consent and
 40 against the strong remonstrances of your oratrix, took from her her said infant child, the daughter of the said Charles W. Metler,

and carried her to the house of the said defendant, Delilah Metler, and there kept the said infant child to the time of his death, when your oratrix again obtained possession of her said infant child.

And your orator and oratrix further show that the said Charles W. Metler, at the time he parted and separated himself from your oratrix as aforesaid, also took and removed from their said house in which he and your oratrix until then resided as aforesaid, all the household furniture, goods and effects which they had, against the will and consent of your oratrix, and carried and removed the same to the house and premises of the said defendant, Delilah Met- 10
ler, in whose hands and possession they still remain.

And your orator and oratrix further show, that after the grant of letters of administration to them by the Surrogate of the county of Warren, as aforesaid, after the death of the said Charles W. Metler, your orator and oratrix, on or about the fifteenth day of December, eighteen hundred and sixty-five, as such administrators aforesaid of the said Charles W. Metler, deceased, made demands of the said defendant, the said Delilah Metler, of all the said household furniture and all the goods, chattels and effects which were of the said Charles W. Metler, deceased, at the time of his 20
death, which were in her possession or control, but that the said defendant, Delilah Metler, refused to surrender up the same or any portion thereof, or to furnish your orator and oratrix as such administratrix and administrator as aforesaid, with any information of the quantity, quality, kind or value of the same, and that your orator and oratrix have been compelled to institute an action of Trover against the said defendants to recover the value thereof in the Circuit Court of the county of Warren, which said action is still depending and undetermined in the said court.

And your orator and oratrix further show unto your Honor that 30
shortly after the said Charles W. Metler parted and separated himself from your oratrix, as aforesaid, and went to board and reside with the said defendant, Delilah Metler, as aforesaid, and about the time when the said pretended note is alleged to have been given, the said Charles W. Metler not being at that time engaged in any employment, concluded to go to the oil producing regions of Pennsylvania, and being uncertain and fearful that he might not live to return home again, and desiring to deprive, hinder and prevent your oratrix from deriving, having or receiving any maintenance, or benefit, or advantage of or from his said prop- 40

erty in case he should not live to return, the said Charles W. Metler made the said promissory note, if any such note the said defendant Delilah Metler has, and handed it to her, without having received any consideration whatever from the said defendant, Delilah Metler, or any other person therefor, but made the said note, if any such note she has, as in and by the said defendant's said declaration they allege and pretend she has, to enable her the said defendant, Delilah Metler, in case of the death of the said Charles W. Metler, to recover the said property and thus prevent
 10 and hinder your oratrix from getting or receiving any part of the same; but with the express understanding nevertheless that in case the said Charles W. Metler should live to return home from the said oil regions, that then and in that case the said defendant, Delilah Metler, should surrender up the said pretended note to the said Charles W. Metler on his said return; but that afterwards when he the said Charles W. Metler, did return home from his said visit to the said oil regions, she, the said defendant, Delilah Metler, refused to surrender or give up the said pretended note to the said Charles W. Metler according to the said agreement, and
 20 notwithstanding that no consideration was ever made, paid or rendered for the said pretended promissory note by the said defendant, Delilah Metler, Orison Metler or any other person therefor.

And your orator and oratrix further shows unto your Honor, that the said defendant, Orison Metler, since the commencement of the said suit in the said Supreme Court by the said defendants against your orator and oratrix to recover the said alleged and pretended note aforesaid, has, in conversation had with your orator and oratrix respecting the same, admitted to your orator and oratrix that he never knew or heard anything whatever about any
 30 such note as the said defendants in their declaration allege and pretend was given by the said Charles W. Metler to the said defendant, Delilah Metler, until after the said suit was commenced; and he also admitted that he did not furnish in any manner any money or other means as a consideration for the same, and has no knowledge that his said wife, the said defendant, Delilah Metler, ever paid or rendered any consideration to the said Charles W. Metler for the said pretended note, and that he never was aware that she was possessed of means to do so, and does not believe that she paid or rendered any consideration for the said pre-
 40 tended note.

And your orator and oratrix further show unto your Honor that the said defendant, Delilah Metler, if any such note she has, as in and by the said defendant's said declaration they allege and pretend she has, ought to yield and surrender up the same unto your orator and oratrix to be cancelled, and that your orator and oratrix are entitled to have the same for that purpose, and that the said defendant, Delilah Metler, ought to have surrendered up to your orator and oratrix such pretended note, if any she has, at the said time when your orator and oratrix as such administrator and administratrix as aforesaid made such demand upon her for 10 all the household furniture, goods, chattels and effects then in her possession which were of the said Charles W. Metler, deceased, on the said fifteenth day of December, in the year eighteen hundred and sixty-five, as hereinbefore stated, as in equity and good conscience it was her bounden duty to have done. But now so it is, may it please your Honor, the said defendants contriving and confederating together with divers persons at present unknown to your orator and oratrix, whose names when discovered your orator and oratrix pray that they may be at liberty to insert herein with apt and proper words to charge them as parties hereto, and 20 contriving to wrong, injure and defraud the said estate and your orator and oratrix and the said infant child in the premises, the said defendants absolutely refuse to deliver up to your orator and oratrix the said note which they allege and pretend was given by the said Charles W. Metler to the said defendant, Delilah Metler, and which they allege and pretend the said defendant, Delilah Metler, still has.

And the said defendant, Delilah Metler, sometimes pretends and gives out that she actually has such note of the said Charles W. Metler, deceased, made and executed by him in his lifetime, as 30 in the said declaration in the said action in the said Supreme Court the defendants allege and pretend she has. And she further pretends and gives out that the same was actually given by the said Charles W. Metler to her for a valuable consideration which he received of her therefor.

And the said Delilah Metler, at other times, also pretends and gives out that she was not indebted or in embarrassed circumstances before and at the time when she alleges and pretends the said note was given to her by the said Charles W. Metler in his lifetime, and that she did not owe a part of the said consideration for 40

her said small house and lot as aforesaid, and at other times the said defendant, Delilah Metler, pretends and gives out that she was engaged in a visible business and employment, and that she had earned and accumulated therein and thereby sufficient means in amount and value to render to the said Charles W. Metler as and for the consideration of the said note of fifteen hundred dollars which she alleges the said Charles W. Metler gave to her, and which she alleges and pretends she has, and that she actually gave in money and other things of those means fifteen hundred
 10 dollars to the said Charles W. Metler in his lifetime before the execution of the said note, in consideration therefor, and which he received of her, and that he gave the said alleged and pretended note for the same,

And at other times she pretends and gives out that her husband the said defendant, Orison Metler, made and rendered to the said Charles W. Metler, in his lifetime at the said time when the said pretended note is alleged and pretended to have been given to her the said defendant, Delilah Metler, by the said Charles W. Metler, deceased, a good and valuable consideration, or at least some
 20 consideration for the said pretended note, and at other times she pretends and gives out while admitting that she was not herself possessed of sufficient means before and at the time when the said pretended note is alleged and pretended by her to have been given to her the said defendant, Delilah Metler, by the said Charles W. Metler, deceased, in his lifetime as aforesaid, that the said defendant, Orison Metler, the said husband of the said defendant, Delilah Metler, furnished and gave to her the said defendant, Delilah, means to render to the said Charles W. Metler for the said pretended note, and that she gave and rendered the same to the said
 30 Charles W. Metler in his lifetime at the time when the said pretended note was given by the said Charles W. Metler to her the said defendant, Delilah Metler, as she alleges and pretends it was given. And at other times she pretends and gives out that the said Charles W. Metler, deceased, in his lifetime, and not on or about the time when she alleges the said note was given to her the said defendant, Delilah Metler, by the said Charles W. Metler, deceased, as aforesaid, go to visit the oil producing regions of Pennsylvania.

And at other times the said defendant, Delilah Metler, while
 40 admitting that the said Charles W. Metler did in his lifetime on

the third of May, eighteen hundred and sixty-five, or shortly thereafter, visit the oil producing regions of the State of Pennsylvania as your orator and oratrix have hereinbefore stated, pretends and gives out that the said Charles W. Metler did not, in anticipation and fear that he might not live to return home again, and for the purpose of depriving, hindering and preventing your oratrix from getting or receiving any of his said property or estate in case he should not live to return home again or any maintenance therefrom, give the said note to the said defendant, Delilah Metler, and that there was not an express understanding and agreement 10 between the said Charles W. Metler and the said defendant, Delilah Metler, that in case he did live to return home again that the said defendant, Delilah Metler, was in such case to surrender up to him the said Charles W. Metler, his said note.

And the said defendant, Delilah Metler, further pretends and gives out that the said Charles W. Metler after his return from the said oil regions, never did demand of her the said defendant, Delilah Metler, the said note which she alleges and pretends was given her by the said Charles W. Metler, and which she still pretends to hold. 20

And at other times the said defendant, Delilah Metler, pretends and gives out that notwithstanding the said Charles W. Metler, if he ever gave the said note, gave it at the said time when he was about to visit the oil regions and expressly to prevent and hinder your oratrix from getting or receiving any portion of his property or estate in case he should not live to return, or any maintenance therefrom, and with the express understanding and agreement that the said note should be surrendered and given up to him the said Charles W. Metler in case he should live to return home again, and although the said Charles W. Metler did live to return home 30 again, and upon his return did demand of her the said Delilah Metler the said note, she was not bound to surrender and give up the said note. And at other times the said defendant, Delilah Metler, pretends and gives out that the said Charles W. Metler, from the time he became of the age of twenty-one years until the month of March, eighteen hundred and sixty-five, in his said business and vocation of locomotive engineer, did not by his said earnings and otherwise accumulate and save money sufficient in amount to pay for his said lot and his said dwelling house which he erected thereon, and also for all his household and kitchen furniture, 40

goods and effects, and that the same was not clear and free of and from all debts and incumbrances, and that the said Charles W. Metler did not have any money loaned at interest, and that he was able to take care of and help himself in his said business without pecuniary assistance from others, and at other times the said defendant, Delilah Metler, pretends and gives out that for and during the period of six years and more while she has been separated from her said husband the said defendant, Orison Metler, that the greater part of her living has not been furnished and
 10 given to her by her children, and specially that the said Charles W. Metler did not furnish her, the said defendant, Delilah Metler, with any money or means for her living. And at other times the said defendant, Delilah Metler, pretends and gives out that at the time when she alleges and pretends the said note was given to her by the said Charles W. Metler, that she, the said defendant Delilah Metler, had and was possessed of sufficient money and means besides her said small house and lot which she purchased of the said Joseph P. Hardy, as your orator and oratrix have hereinbefore stated, to render unto the said Charles W. Metler the said
 20 sum of fifteen hundred dollars for the consideration of the said pretended note.

Whereas your orator and oratrix expressly charge the contrary of all those several pretences to be the truth, and more especially do your orator and oratrix charge that no money or other good or valuable consideration whatever, was ever made or rendered to the said Charles W. Metler by the said defendants or either of them for the said promissory note, if any such note she has, and that the truth would so appear if the said defendants would set
 30 forth the matters and particulars aforesaid, and your orator and oratrix further charge that there is no actual and subsisting indebtedness and liability on the part of your orator and oratrix as administrator and administratrix of the said Charles W. Metler, deceased, to pay the same, and that the said defendants, and especially the said defendant, Delilah Metler, has no equitable claim therefor.

And your orator and oratrix further charge that the said defendants, at the time when they allege and pretend the said note was given to the said defendant, Delilah Metler, were pecuniarily in low and straitened circumstances, and were possessed of no

money or other means sufficient to render to the said Charles W. Metler as the consideration for the said note.

And your orator and oratrix especially charge that the said defendant, Delilah Metler, in particular, before and at the time when the said note is alleged and pretended to have been given, was in embarrassed and straitened circumstances, and owed a part of the consideration money for her said small house and lot, and was otherwise indebted and pecuniarily embarrassed, and did not have or possess sufficient money or means without or even with her said small house and lot, (which she nor they neither mortgaged nor conveyed so far as your orator and oratrix can learn) to give or render to the said Charles W. Metler as and for the consideration for the said promissory note which she alleges and pretends she has, and your orator and oratrix further charge that the said defendants, either or both of them, before and at the time when the said pretended note is alleged to have been given were not nor were either of them possessed of sufficient property, nor did they have sufficient credit in the neighborhood in which the said defendant, Delilah Metler, lived and was known, to obtain or procure a loan of money to the amount of fifteen hundred dollars, or any other sum approximating that amount to give or render to the said Charles W. Metler as and for the consideration of the said note which the said defendants, and especially the said defendant, Delilah Metler, alleges and pretends the said Charles W. Metler gave to her.

And your orator and oratrix further charge that the said defendant, Delilah Metler, did not do, have or carry on any visible business or employment in or by which she earned, made or could make or accumulate any money or other means which would enable her to make or render to the said Charles W. Metler, the said sum of fifteen hundred dollars or any other considerable sum as and for the consideration for the said pretended note, and that the said defendant, Orison Metler, the husband of the said defendant, Delilah Metler, for several years prior to the time when the said note is alleged to have been given, lived separate and apart from the said defendant, Delilah Metler, and that the said defendant, Orison Metler, did not have, or possess, or furnish either to the said Charles W. Metler, or to the said defendant Delilah any money or other means whatever as and for the consideration of the said note which the said defendant, Delilah Metler, alleges and

pretends she has, nor did the said defendant, Orison Metler, ever know or hear of any such note being given by the said Charles W. Metler to the said defendant, Delilah Metler, until after the commencement of the said action in the said Supreme Court against your orator and oratrix as they have hereinbefore stated. And your orator and oratrix further charge that from the time when the said defendants, Orison Metler and Delilah Metler, separated and parted from each other until the decease of the said Charles W. Metler, the said defendant, Delilah Metler, was maintained
 10 and supported chiefly by her children who earned, furnished and gave to her her living, a large proportion of which was contributed and given to her by her said son, the said Charles W. Metler, deceased, who from the time he was twenty-one years of age until his decease from time to time during the said period furnished and gave to her flour, groceries, clothing, coal and other necessary things for her support and maintenance.

And your orator and oratrix further charge that the said Charles W. Metler from the time when he arrived at the age of twenty-one years until the time of his decease maintained and supported
 20 himself, and in his said business and vocation of locomotive engineer, from his earnings and otherwise saved and accumulated a considerable sum of money, and that after his marriage with your oratrix, out of the said monies which he had earned and otherwise made and saved he purchased and paid for his said lot and built and erected thereon his said dwelling house, and purchased his said household and kitchen furniture, goods and other effects which he had, and that all the said property and paid for by the said Charles W. Metler for more than a year prior to the time when the said note is alleged and pretended to have been given to the
 30 said Delilah Metler, and that the same was not subject to any lien, encumbrances or other indebtedness, and that at the time when the said Charles W. Metler separated and parted himself from your oratrix, his said wife, and went to board and stay with the said Delilah Metler, as your orator and oratrix have hereinbefore stated, beside the moneys which he had loaned at interest had a considerable sum of money which he had earned during the year or more prior to that time while engaged in the said business and vocation of locomotive engineer in the State of Tennessee and other Southern States, as your orator and oratrix have here-
 40 inbefore stated, and which he then had and took with him at the

said time when he rented out his said house and removed his said furniture, goods and effects to the house of the said Delilah Metler, at the time when he parted and separated himself from your oratrix as aforesaid and went to board and stay with the said Delilah Metler as aforesaid. And your orator and oratrix further charge that the said Charles W. Metler, at the time when the said note is alleged and pretended to have been given by him to the said Delilah Metler was clear and free from debt and had considerable money, and had no occasion in his said business to use any capital, and therefore had no occasion to loan or borrow any money 10 of or from the said defendant, Delilah Metler, nor did he require any pecuniary aid at that time.

And your orator and oratrix further charge that at the time when it is alleged the said Charles W. Metler gave the said note to the said defendant, Delilah Metler, the said Charles W. Metler feeling ill disposed toward your oratrix, from whom he had shortly before then separated and parted himself, being about to visit the oil regions of Pennsylvania, in anticipation and fear that he might not live to return, if any such note he made as it is alleged and pretended he did, made it for the purpose of preventing, hind- 20 ering and depriving your oratrix, the wife of the said Charles W. Metler, from getting or receiving any part of his said property or estate, in case he should not live to return again, or from obtaining any maintenance or support therefrom and for no other or different purpose, and that no consideration whatever was given for said note. And your orator and oratrix especially charge that if any such note was given by the said Charles W. Metler to the said defendant, Delilah Metler, as she alleges and pretends there was, it was given with the express understanding and agreement 30 made at that time by and between the said Charles W. Metler and the said Delilah Metler that in case the said Charles W. Metler should live to return home again, the said note should be delivered up to the said Charles W. Metler when he should so return home again.

And your orator and oratrix further charge that if the said Delilah Metler ever received of and from the said Charles W. Metler the said promissory note which she alleges and pretends she did, and which she alleges and pretends she still has, that the said note was given not only without consideration therefore, but for the express purpose and with the understanding that the same should be 40

used to cover up and encumber the property of the said Charles W. Metler, thereby the better to enable the said Charles W. Metler to avoid and shield himself from his liability and duty to maintain and support your oratrix, and more particularly for the purpose of hindering and preventing your oratrix from getting or obtaining any portion of the estate of the said Charles W. Metler in case he should not return from his said intended visit to the oil regions as aforesaid; and they further charge that the said agreement and combination was unlawful and fraudulent in inception
 40 and purpose; and that the same was conceived and planned with the deliberate purpose and design to injure and defraud your oratrix and for no other purpose.

And your orator and oratrix further charge that if the said Delilah Metler and Orison Metler, for the benefit of the said Delilah Metler, shall be able in the said suit in the said Supreme Court brought against your orator and oratrix, as aforesaid, to recover the amount of the said note together with the costs of the said action of and from the estate of the said Charles W. Metler, and shall continue successfully to hold and retain the said house-
 20 hold and kitchen furniture, goods, chattels and other effects of the said Charles W. Metler, deceased, which she refused to give up to your orator and oratrix as such administrator and administratrix as aforesaid at the time when they made demand thereof as herein before stated, and which she still holds and has possession of, and to recover the value of which your orator and oratrix have been obliged to institute an action of Trover in the Circuit Court of the County of Warren as aforesaid, and shall further be able by any dishonest or improper means to resist successfully a recovery in
 30 the said action of the value of the said household and kitchen furniture, goods, chattels and effects, the said defendant Delilah Metler will then have accomplished her said purpose, and will have succeeded in obtaining and the entire property and estate of the said Charles W. Metler, deceased, which at the time when the said note is alleged and pretended to have been given by the said Charles W. Metler to the said defendant Delilah Metler, as aforesaid, was free and clear of and from all liens, incumbrances or other indebtedness whatever, and by her unlawful and fraudulent conduct in retaining and using the said note for that purpose, and
 40 in the unlawful detention of the said household and kitchen furniture, goods, chattels and effects, will have consumed and swept

away the whole of the estate of the said Charles W. Metler, dec'd, and will thereby have deprived, hindered and prevented your oratrix, his lawful wife, and her infant daughter, his legitimate child, from having, getting or receiving any part of the said property and estate of your oratrix's said husband the said Charles W. Metler, deceased. And your orator and oratrix further charge that if any such note the said defendant Delilah Metler has, as she alleges and pretends she has, which was given by the said Charles W. Metler in his life time, she ought to have surrendered up the said note to the said Charles W. Metler in his life time, and afterwards to your orator and oratrix, when they made the demand of the said furniture, goods, chattels and other effects as aforesaid, and ought now by the order of this honorable Court to be compelled to yield up the same to your orator and oratrix to be cancelled, and that the said note ought to be declared fraudulent and void, and that the said defendants, and especially the said defendant Delilah Metler, ought to make discovery to your orator and oratrix of all and singular the circumstances in any wise touching or concerning the giving of the said note by the said Charles W. Metler which she alleges and pretends she has, the object and purpose for which the said note was given, what was the true consideration for the same, if any there was, and all other circumstances attending and relating to the same, and your orator and oratrix insist that she shall make such discovery. And your orator and oratrix further charge that they are advised that a discovery by the said defendants, and especially the said defendant Delilah Metler of the premises aforesaid, is absolutely necessary, and they further insist and charge that it ought to be made in order to enable your orator and oratrix to properly defend the said action and to take care of, and protect the interests which your oratrix and her said infant child have in the said action which the said defendants have so as aforesaid commenced against your orator and oratrix in the said Supreme Court, and your orator and oratrix further charge that the said defendants ought to be restrained by injunction issuing out of this honorable Court from taking any other or further proceedings in the said action at law which they have commenced against your orator and oratrix in the said Supreme Court to recover the said note, or from commencing any other action or proceeding at law to recover the said note either in the said Supreme Court or any other Court, or from

transferring or negotiating the said promissory note which the said defendant Delilah Metler alleges is of a negotiable character, until they the said defendants, and especially the said defendant Delilah Metler has answered and discovered the premises, and that unless the said defendants shall be able to clearly show a good, full and valuable consideration rendered for the said note clear and free of dishonesty and fraud, the said injunction ought to be made perpetual against the said defendants;—all which actings, doings, pretences and refusals of the said defendants are contrary

10 to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator and oratrix in the premises. In consideration whereof and forasmuch as your orator and oratrix are remediless in the premises at the common law and cannot have a complete discovery of the matters aforesaid and adequate relief in the premises without the aid of a Court of Equity, where matters of this nature are properly cognizable and relievable. To the end thereof that the said defendants, Orison Metler and Delilah Metler, and their confederates, may upon their several and respective corporal oaths to the best and utmost of their several and re-

20 spective remembrance, information and belief, full, true, direct and perfect answers make to all and singular the matters herein before stated and charged as fully and particularly as if the same were hereinafter repeated, and they and every of them thereunto distinctly and particularly interrogated, and that not only to the best of their several and respective knowledge and remembrance, but also as to the best of their respective knowledge, information and belief, and more especially that they may answer and set forth whether the said defendant Delilah Metler actually has or is possessed of any such promissory note as she alleges and pretends she

30 has, and whether the said note was made and given by the said Charles W. Metler, and when and where it was made and given, and how long she has had the possession of the said note, and who was present at the time when the said note was given, and whether the body of the said note was written before or after the signature of the said Charles W. Metler was written, and if afterwards, how long afterwards, and whether the signature of the said Chas. W. Metler to the said note was written by himself or some other person with his authority, and who; and if by some other person, was it at the request of the said Charles W. Metler; and whether

40 there was any actual consideration given or rendered for the said

note; and if any was given or rendered, when and by whom was
 it given or rendered; and how much was given or rendered; and
 how was it given or rendered; and what part and how much, if
 any, of the consideration of the said note was rendered in money,
 and by whom was the said money furnished and rendered to the
 said Charles W. Metler; and if by the said Delilah Metler how
 much money was paid by the said defendant Delilah Metler to the
 said Charles W. Metler, and whether it was paid before, at the
 time or after the said note was given; and if any money was given
 by the said defendant Delilah Metler to the said Charles W. Met- 10
 ler as part or all of the consideration of the said note, that she
 state when, where, of whom and on what account, and who was
 present at the time she received the said money, and how she ob-
 tained it; or if she acquired it in business or employment, then in
 what business and employment, and when and where was the same
 carried on, done or performed, and when, where and with whom
 and in what place the said moneys were deposited, between the
 time or times when she received them, and the time when she paid
 them to the said Charles W. Metler for said note; and where the 20
 said monies which were paid by her, all paid and given at one
 time or at different times and in different sums; and if in different
 sums, how many sums; of whom did she receive them and what
 was the amount of each sum and when and at what times was each
 sum rendered, and who was present; and that she further answer
 and set forth how much and what part, if any, of the considera-
 tion of the said note was rendered in things other than money, and
 what things and the value of each; when, where and from whom
 she obtained and received them, and on what account and at
 what time and who was present at the time when she ren-
 dered them to the said Charles W. Metler; and whether 30
 the said defendant, Orison Metler, furnished or supplied the said
 defendant, Delilah Metler, with any money to render to the said
 Charles W. Metler for the said note; if yea, when, where and how
 much did he furnish or supply to the said defendant, Delilah Met-
 ler, for that purpose, and who was present; and when, where and
 in what manner and from whom did he obtain the same; and
 whether he the said Orison Metler furnished any other means or
 things; and if yea, what means or things did he furnish to the said
 Delilah Metler for that purpose, and from whom, when, where and
 how did he get and receive them; and when and where did he 40

- deliver them to her; and who was present when the same were delivered; and if the said Orison Metler did not furnish to the said defendant Delilah Metler any money or means, then whether he furnished, paid or rendered to the said Charles W. Metler any money or other things, as, and for the consideration or any portion thereof of the said note, and whether the same or any portion thereof, and what portion was in money or other things or both; of whom, when and where he received the same and who was present; and when and where did he render the same to the said Chas.
- 10 W. Metler; and if he did not render any consideration for the said note to the said Charles W. Metler, that the said defendant Orison Metler state whether he ever knew or even heard any thing about the giving of the said note by the said Charles W. Metler to the said defendant Delilah Metler until he heard of the same after the commencement of the said action in the Supreme Court, and whether he did not inform your orator and oratrix that he did not hear or know of it until after the commencement of the said action; and whether he, the said Orison Metler, and the said defendant Delilah Metler, either or both of them had sufficient credit in
- 20 the neighborhood where the said Delilah Metler lived and was known, without or even with the said small house and lot to borrow or loan the sum of fifteen hundred dollars, or any other considerable sum to render to the said Charles W. Metler for the said note; and whether he and the said Delilah Metler either or both of them were possessed of sufficient money or other means beside the small house and lot of the said Delilah Metler to render to the said Charles W. Metler as a consideration for the said note; and if yea, when, where, in what manner and of whom did they or either of them obtain the same; and whether they or either of
- 30 them used any portion of such money or other means beside the said small house and lot, and what portion did they or either of them pay or give of the same to the said Charles W. Metler for the said note; and whether the said defendants either or both of them, and if either, which of them ever mortgaged or otherwise conveyed the said small house and lot of the said Delilah Metler for money or means to pay or render to the said Chas. W. Metler for the said note, and if so, how much money or means was thus raised, and what portion thereof was given or rendered to the said Charles W. Metler as a consideration for the said note,
- 40 and how was the residue of the consideration of the said note, if

consideration there was, made up or to be made up, and when and where it was made up; and to whom and when was the said small house and lot mortgaged or otherwise conveyed; and is there any, and if any, what record of the same; and if the consideration for the said note or any part of it was furnished by the said Delilah Metler that she answer and state what part and for what object or purpose the said Charles W. Metler borrowed or loaned from her the said money; in what business was he engaged at the time, and whether it ~~was~~ necessary for him to have or use the said money or any portion thereof, and what portion in the said business, and 10 whether he did use any part of the said monies, and what part in the said business, and where the said business was carried on, and how long the same was carried on there; and what amount of capital, if any, was invested in said business, and what he did with the residue of the said money not invested in said business; or if no business was carried on by the said Charles W. Metler, then that she set forth and state for what other object or purpose did the said Charles W. Metler obtain or loan said money of her, and was the said money or any portion of it used for the said other purpose; and if not, then what did the said Charles W. Metler do 20 with the said money, when, where and with whom and in what manner was it deposited, loaned or invested; and what evidences, receipts, notes, bonds, mortgages or deeds did he have, get or receive of and concerning the said transactions, if any transactions there were, and what has become of them, when, where and with whom were or are they deposited; and if the said moneys were not deposited, loaned or invested, did the said Charles W. Metler return the said money or other things to the said Delilah Metler, and if yea, when, where and how much did he return to her, or if he did not, then what did he do with the said moneys, and where 30 were they at the time when the said Charles W. Metler was suddenly killed by the said collision on the said Rail Road; and whether the said monies were in the house of the said Delilah Metler where the said Charles W. Metler boarded and with whom he lived; and if yea, what amount of moneys did he have or leave at the time he was so killed as aforesaid, and what has since become of them; and whether the said defendant has tendered the same or any part thereof, and what part to your orator and oratrix, or any information thereof, and what information, and if not, why not; or if no money or other consideration was given, paid 40

- or rendered for the said note, that then the said defendant Delilah Metler answer and set forth what was the object and purpose for which the said note was given; and whether the said note was not given for the purpose of encumbering and covering up the property and estate of the said Charles W. Metler, and to deprive, hinder and prevent your oratrix from deriving, receiving or getting any part of the property or estate of the said Charles W. Metler; and that the said defendant Delilah Metler further answer and set forth whether she has not commenced a suit in the Supreme Court of
- 10 Judicature of the State of New Jersey in the name of the said defendants Orison Metler and Delilah Metler against your orator and oratrix as administrator and administratrix of Charles W. Metler, deceased, to recover the amount of the said alleged and pretended note, and whether the declaration filed in the said cause contains a true and correct description of the said note, and whether the said note is a negotiable note as in the said declaration is alleged; and whether the said Charles W. Metler did not depart this life on or about the first day of December, eighteen hundred and sixty-five, and whether the said Charles W. Metler
- 20 was not suddenly killed by a collision on the said New Jersey Central Rail Road while riding as a passenger in one of the passenger cars of the said road; and whether he was not aged about twenty-seven or eight years at the time of his death; and whether your oratrix was not married to the said Charles W. Metler on or about the second day of October, eighteen hundred and sixty-two; and whether he did not have an infant daughter surviving him, now about three years of age, and whether letters of administration of all and singular the goods and chattels, rights and credits which were of the said Charles W. Metler at the time of his death
- 30 were not granted to your orator and oratrix by the Surrogate of the County of Warren on or about the sixth day of December, eighteen hundred and sixty-five, and whether your orator and oratrix have not taken upon themselves the burthen of the administration of the said estate agreeably to the grant of the said letters, and whether the said Charles W. Metler in his life-time, for several years prior to his death, did not follow the business and vocation of a locomotive engineer; and whether in that business and vocation he had not saved and accumulated from his earnings and otherwise previous to the said time when the said note is alleg-
- 40 ed and pretended to have been given by him, property both real

and personal to the amount of two thousand dollars and upwards ; and whether the same was not free and clear of all incumbrances or indebtedness ; and whether the said defendants Orison Metler and Delilah Metler for a period of six years and more prior to the commencement of the said action in the said Supreme Court against your orator and oratrix did not live separate and apart from each other ; and whether the said Orison Metler has not during that period gone about from place to place and has barely managed to maintain himself ; and whether he was or is possessed of any other means of livelihood ; and whether the said defendant Delilah 10 Metler for all that period was possessed of any other means beside a small house and lot in the Town of Phillipsburg, where she then and still resides, and what means, and whether she did not purchase the said small house and lot about eleven or twelve years ago for about seven hundred dollars ; and whether she did not give to the said Joseph P. Hardy her promissory note for part of the purchase money of the said small house and lot ; and whether the said note does not remain, principal and interest due and unpaid to this day, and whether the said Delilah Metler has not for all that period been otherwise encumbered and embarrassed with debts to 20 a considerable amount ; and whether she has during all that time had any visible means of livelihood : and whether she was engaged in any visible business or employment for and during that time, whereby she could make or accumulate money or means to the amount of fifteen hundred dollars to render for the said note ; and what business and employment had she during that time ; and how much money did she make or accumulate in the said business and employment, if any such she had ; and that she answer and set forth whether in fact the greater part of her living for a period of 30 six years and more has not been furnished and given her by her children ; and particularly that she answer and state whether the said Charles W. Metler did not furnish and give to her a large proportion of her living and support previous to his death, and whether he did not furnish and give to her from time to time during the said period considerable sums of money, and also flour, groceries, clothing, coal and other necessary things for her support ; and whether he was not the owner and proprietor of a house and lot in the Town of Phillipsburg, in the County of Warren, at the time when she alleges the said note was given by the said Charles W. Metler to the said defendant Delilah Metler ; and whether he 40

did not also at that time own and possess a considerable amount of household goods and furniture and other property and effects, and whether the same was not all paid for and the said Charles W. Metler free from debt therefor, and whether he was not also possessed of some money beside, which he had earned and saved, and whether a portion of said money was not loaned at interest; and how much and to whom; and whether at the time when he died and was killed there was not among his goods, chattels and effects a note of hand belonging to him which had been given to him by

10 a brother-in-law of the said Charles W. Metler for money loaned, and whether he was not able to help himself without pecuniary assistance from others, and whether the said Charles W. Metler, in his said business of locomotive engineer, required or could use any capital to carry on the said business and vocation of locomotive engineer, and what capital was required to carry on said employment; and whether he did not always work for hire and reward in his said vocation and business; and whether the said Charles W. Metler did not build a dwelling house on the lot which he owned in the Town of Phillipsburg at the time of his

20 death, after his marriage with your oratrix; and whether after the completion thereof he, with your oratrix, his then wife, did not move into the said house and live and continue therein until the latter part of the month of March, eighteen hundred and sixty-five; and whether for fifteen months and more previous to the said month of March he was not absent from home in the State of Tennessee and other Southern States engaged in his business and vocation of locomotive engineer on various rail roads there, and visit his home occasionally; and whether he did not during that time receive large wages, amounting to from three dollars and fifty cents

30 to four dollars and fifty cents per day; and whether the said Charles W. Metler did not for a year or more previous to the month of March, eighteen hundred and sixty-five treat your oratrix with great harshness and severity; and whether the said Delilah Metler did not during the said last mentioned period frequently write and cause to be written and sent to the said Charles W. Metler in the State of Tennessee and other Southern States where he then was, letters designed to alienate his affections from your oratrix, his then wife, and whether the said Charles W. Metler did not for the said year and more aforesaid neglect to furnish and provide

40 your oratrix, his then wife, and her child, his infant daughter, with

necessary sustenance and support; and whether he did not try to persuade and oblige your oratrix to join with him in a sale of their said house and lot to one John H. Haggerty, and whether he did not whip and beat your oratrix for refusing to do so; and whether the said Charles W. Metler did not separate and part from your oratrix and refuse to make any provision for the support and maintenance of herself and her said child, as your orator and oratrix have hereinbefore stated; and whether after said separation he did not go to board and stay with the said defendant Delilah Metler at her house, and whether a short time afterwards he did 10 not take from your oratrix her infant child; and whether he did not declare to the said Delilah Metler that his object in wanting your oratrix to sign the said deed, was to obtain the proceeds of the said property and have and abandon his then wife, your oratrix, and go to parts unknown to her, and to deprive, hinder and prevent your oratrix from receiving any benefit or advantage from their said property; and whether the said Charles W. Metler about the latter part of the month of March, when he parted and separated himself from your oratrix as aforesaid, did not take and remove from their said house all the household furniture goods and 20 other effects which they had, and carry and remove the same to the house premises of the said Delilah Metler, and whether the same were not at the house and in possession of the said defendant Delilah Metler at the time when the said Charles W. Metler came to his death and was killed as aforesaid, and whether there were not also other goods there at that time in the possession and control of the said defendant Delilah Metler, and what goods, which he had bought after his separation from your oratrix as aforesaid; and whether the said Charles W. Metler shortly after he parted 30 and separated himself from your oratrix and went to board with the said Delilah Metler, about the date when the said note is alleged to have been given, visit the oil producing regions of Pennsylvania; and whether the said Charles W. Metler did not before he started to the said oil regions give the said note which the said defendant Delilah Metler alleges she has; and whether the same was not given to hinder and prevent your oratrix from having, deriving or receiving any maintenance, benefit or advantage of or from his said property or estate, in case he should not live to return; and if any such note was given by the said Charles W. Metler to the said Delilah Metler as she alleges there was, whether it 40

- was not without any consideration therefor, and whether it was not made to enable the said defendant Delilah Metler in case of the death of the said Charles W. Metler before he should return home to obtain judgment thereon and thereby consume and sweep away the said property and estate, and to so prevent and hinder your oratrix from getting or receiving any part of the same; and whether the said note, if any such was given, was not given with the express understanding nevertheless, that in case the said Chas. W. Metler should live to return home from the oil regions that the
- 10 said Delilah Metler in that case should surrender up the said note to the said Charles W. Metler on his said return; and whether the said Charles W. Metler after his said return did not demand the surrender of the said note of the said defendant Delilah Metler; and whether the said defendant Delilah Metler after the said Chas. W. Metler afterwards returned did surrender and give up to him his said promissory note as she had agreed to do; and if she did how did she again obtain possession thereof, and when and where did she find or get it; and was the same among his goods and effects when she found it; or if the said defendant Delilah Metler
- 20 did refuse to give up the said note on the return of the said Chas. W. Metler, that she answer and set forth why she refused to do so; and why she did not surrender the said note to your orator and oratrix at the time when they made the said demand of her of the goods, chattels and effects of the said Charles W. Metler as aforesaid; and that the said defendants may make a full and true disclosure and discovery of all and every of the matters hereinbefore stated, charged and enquired after, and that they the said defendants, and particularly the said defendant Delilah Metler, be especially decreed to surrender up to your orator and oratrix the
- 30 said promissory note of the said Charles W. Metler, (which she alleges she has), to be cancelled, and that a writ of Injunction may issue out of this Honorable Court restraining the said defendants or either of them from any other or further proceedings in the said action at law already commenced by them against your orator and oratrix in the said Supreme Court to recover the said promissory note, or from commencing or prosecuting any other action or proceedings at law in the said Court, or in any other Court, against your orator and oratrix for and touching the recovery of the said note, and from transferring, assigning or negotiating the said pro-
- 40 missory note, and that your orator and oratrix may have such

other and further relief in the premises as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered to grant unto your orator and oratrix not only the states writ of subpoena issuing out of and under the seal of this honorable Court, addressed to the said Orison Metler and Delilah Metler; therein and thereby commanding them and each of them at a certain day and under a certain penalty, therein to be expressed; personally to be and appear before this honorable Court then and there to answer all and singular the premises aforesaid, and to stand, to perform and abide 10 by such order and decree therein as to your Honor shall seem meet, equitable and proper, and also a writ of injunction issuing out of and under the seal of this honorable Court, directed to the said Orison Metler and Delilah Metler, their attorney, agents, aiders and counsellors, restraining them and each of them from any other or further proceedings in the said action at law already commenced by the said defendants, against your orator and oratrix in the said Supreme Court for the recovery of the said note or from commencing or prosecuting any other action or proceedings at law in the said Court or any other Court against your ora- 20 tor and oratrix for and touching the recovery thereof, or from transferring, assigning or negotiating the said promissory note to any other person, and your orator and oratrix as in duty bound will ever pray.

J. F. DUMONT,

Solicitor for and of Counsel with Complainants.

State of New Jersey, Warren County, SS.

John Kinney and Charity A. Metler on their oaths say that they, John Kinney and Charity A. Metler, are the administrator and administratrix of Charles W. Metler, deceased, and are the complainants in the foregoing bill of complaint named, that deponents have heard the said bill read over and understand its contents and that the facts, matters and things stated and set forth in said bill, so far as they relate to the acts and doings of the said complainants they are true, and so far as they relate to the acts and doings of other persons they believe them to be true, and that 10 all the matters contained and stated in the said bill in reference to the commencement of the said action at law in the Supreme Court

of the State of New Jersey against the complainants named in the said bill by Orison Metler, and Delilah Metler his wife, the defendants in the said bill named, and that the said defendants have declared in said action for a certain promissory note which they allege and declare in said action was given by the said Charles W. Metler, in his life-time, to the said Delilah Metler, for fifteen hundred dollars, payable to her order one day after date, and dated the third day of May, eighteen hundred and sixty-five, are true. And that the statements in the said bill contained in reference to

10 the age, the vocation and business of the said Charles W. Metler, the marriage of the said Charles W. Metler in his life-time to the said Charity A. Metler, the time when they were married, the birth and age of their infant child, where they lived, and how they lived together, and how long, his harsh and cruel treatment of the said Charity A. Metler, and the separation of the said Charles W. Metler from the deponent Charity A. Metler his then wife, and his refusal to live with, maintain or support her, the renting out of the house and lot, the removal of the said Charles W. Metler with his furniture, goods and effects to the house of Delilah Metler in the

20 month of March after his separation from the said Charity A. Metler, and what property, both real and personal, he owned and possessed at that time, the manner in which he had earned and accumulated the money to purchase and pay for the same, and that the same was paid for and was free of debt, and all the other statements in relation to his pecuniary circumstances, and the statements of the time when he died and was killed and how he was killed, what property he left at the time of his death and where the same was, the grant of letters of administration to the said Charity A. Metler and the said John Kinney, the demand of the house-

30 hold furniture, goods and other effects of the said Charles W. Metler, deceased, from the said Delilah Metler, and the further statement in reference to the separation of the said defendants Orison Metler and Delilah Metler, the time of their separation, and the length of time they remained separated, the pecuniary circumstances of the said Orison Metler and the said Delilah Metler, what credit the said Delilah Metler had in the neighborhood where she lived and was known, her small means and her inability to raise sufficient means to render fifteen hundred dollars for such note to the said Charles W. Metler, and the further statement that

40 the said Delilah Metler had no business or employment, and no

visible means of livelihood, that she was maintained and supported by her children who gave her chiefly all her living, these deponents know of their own knowledge to be true as set forth and charged in said bill.

And that the statements in the said bill contained that the said note for which the said action at law was instituted, by the said Orison Metler and Delilah Metler, for the benefit of the said Delilah Metler, if given to her by the said Charles W. Metler, was given without consideration, and at the time when he was about to visit the Oil Regions of Pennsylvania, and for the purpose of incumbering the property and estate of the said Charles W. Metler, and to hinder and prevent the deponent Charity A. Metler, his then wife, from getting or receiving any of the property or estate of the said Charles W. Metler, or any maintenance or support from the same in case the said Charles W. Metler should not live to return, and the express understanding, that should he live to return, the said note should be surrendered up to him, and that he demanded the said note on his return from the said oil regions these deponents believe to be true.

And that the statements in the said bill contained that the said Orison Metler admitted to and the said John Kinney and Charity A. Metler that he knew or heard nothing about the giving of any such note by the said Charles W. Metler to the said defendant Delilah Metler until after the institution of said action in the said Supreme Court to recover the amount thereof, and that he never furnished the said Delilah Metler any money or means to make or pay in consideration for the said note, and did not believe the said Delilah Metler possessed any means sufficient to render to the said Charles W. Metler as a consideration for the said note, are true as stated and set forth in the said bill of these deponents own knowledge.

And that the statement in the said bill contained that a discovery of the circumstances attending the giving of the said note if given it was, and the object and purpose for which it was given and why held by the said Delilah Metler deponents are advised is necessary in order to enable the complainants to defend themselves in the said action, and to protect the interests of the said Charity A. Metler and her infant child is true.

Int. Rev.
5 Ct.
Stamp
Cancel'd

Sworn and subscribed, Sept. 7, A. D. 1866,
before me. CHAS. SITGREAVES,
Master in Chancery.

JOHN KINNEY.
CHARITY A. METLER. 40

To his Honor, Abraham O. Zabriskie, Chancellor of the State of New Jersey.

The petition of Charity A. Metler and John Kinney, administrators of all and singular the goods and chattels, rights and credits which were of Charles W. Metler, late of the town of Phillipsburgh, in the county of Warren, and State of New Jersey, deceased, respectfully showeth that your petitioners have filed in this Court their bill of complaint against Orison Metler and Delilah Metler, praying a discovery and relief touching the matters
 10 therein set forth, and they are advised that the issuing of a writ of injunction is necessary to the effectual relief, they therefore respectfully pray that your Honor will grant them an injunction agreeably to the prayer of their said bill.

J. F. DUMONT,

Solicitor for and of Counsel with Complainants.

Dated Sept. 10th, 1866.

To the Honorable, Abraham O. Zabriskie, Chancellor of the State of New Jersey.

The subscriber, one of the Masters of the Court of Chancery,
 20 designated by the Chancellor to report on the propriety of issuing writs of injunction in the absence of the Chancellor from the City of Trenton, respectfully reports, that having perused the bill of complaint mentioned in the foregoing petition, and the affidavit thereto subjoined, he is of opinion that an injunction should issue agreeably to the prayer of said bill.

All which is respectfully submitted.

J. WILSON, M. C. C.

Dated 10th September, 1866.

JOHN KINNEY, *et. al.*, ADM'S, &C., COMPL'TS, } Rule for Injunction.
 30 *and* }
 ORISON METLER, *et. al.*, DEF'DTS. } Sept. 10, 1866.


James Wilson, Esquire, one of the Masters of this Court, designated by the Chancellor to decide upon the propriety of granting injunctions in the absence of the Chancellor from the City of Trenton, having reported that he is of opinion that an injunction ought to agreeably to the prayer of the bill in this cause. It is

ordered, on motion of John F. Dumont, Solicitor of the Complainant, that an injunction do issue accordingly.

By the Court.

BARKER GUMMERE, CLERK.

NEW JERSEY, TO WIT:

 The State of New Jersey to Orison Metler and Delilah Metler, and agents, and each and every of them, *Greeting* :

Whereas, it hath been represented us us, in our Court of Chancery on the part of John Kinney and Charity A. Metler, Administrator and Administratrix, &c., of Charles W. Mettler, deceased, complainants, that they have lately exhibited their bill of complaint against you the said Orison Metler and Delilah Metler, defendants, to be relieved touching the matters set forth in the bill, in which said bill it is, among other matters, set forth that you, the said defendants, are combining and confederating with others to injure the complainants touching the matters set forth in the said bill, and that the actings and doings of you, the said defendants, are contrary to equity and good conscience.

We therefore, in consideration of the premises, and of the particular matters set forth in the said bill, do strictly enjoin and command you, the said Orison Metler and Delilah Metler, and all and every the persons before mentioned, and each and every of you, under the penalty that may fall thereon, that you and every of you, do absolutely desist and refrain from any other or further proceeding in the action at law already commenced by you against the Complainants in the Supreme Court to recover the promissory note mentioned in said bill or from commencing or prosecuting any other action or proceeding at law in said Court or in any other Court against the Complainants for and touching the recovery of the said note and from transferring, assigning or negotiating the said promissory note until you, the said defendants, shall have fully answered the said bill of complaint, and our said court shall make order to the contrary.

Witness, his Honor, Abraham O. Zabriskie, our Chancellor, at Trenton, the tenth of September, in the year of our Lord one thousand, eight hundred and sixty-six.

BARKER GUMMERE, CLERK.

JOHN F. DUMONT, SOL'R.

IN CHANCERY OF NEW JERSEY.

BETWEEN ORISON METLER AND DELILAH METLER,
HIS WIFE, DEFENDANTS,

and

JOHN KINNEY AND CHARITY A. METLER, ADMIN-
ISTR'R OF CHARLES W. METLER, DEC'D, COM'S.

} Order.

Ordered that the defendants have leave for thirty days to plead, answer or demur to the Complainant's bill and that if defendant's file demurrer they may file it *nunc pro tunc*, and that the hearing on bill and demurrer be had before the Chancellor at Jersey City, on the sixteenth November, A. D. 1866, unless hereafter otherwise ordered and that Delilah Metler be permitted to demur alone if so advised or in connection with her husband.

A. O. ZABRISKIE, C.

Dated Nov. 2, 1866.

IN CHANCERY OF NEW JERSEY.

BETWEEN ORISON METLER AND DELILAH METLER,
HIS WIFE, DEFENDANTS,

and

20 JOHN KINNEY AND CHARITY A. METLER, ADMIN-
ISTRATORS OF CHARLES W. METLER, DEC'D, CO'S.

} Demurrer.

The demurrer of Orison Metler and Delilah Metler, his wife, the defendants to the bill of complaint of John Kinney and Charity A. Metler, Administrators of Charles W. Metler, deceased :

These defendants by protestation not confessing or acknowledging all or any of the matters or things in and by the said bill set forth and complained of to be true in manner and form as the same are therein and therefore set forth, and alleged, say, that they are advised by their Counsel that the Complainants' said bill is insufficient, and to which by the rules of this honorable Court these defendants ought not to be compelled to give or make any answer thereto and they demur to said bill, and for cause of demurrer thereunto these defendants show that the said Complainants have not in and by their said bill made or stated such a case as entitles them in a Court of equity to any discovery from these defendants or either of them, or to any relief against them or either of them as to the matters contained in the said bill of complaint or any of such matters, and because the said bill prays both for dis-

covery and relief when the Complainants are not entitled to any relief in this Court upon the matters and things set forth in the said bill, and because the said bill claims discovery of many matters and things which are totally immaterial and irrelevant and to which things these defendants are in no wise bound to make any answer, and because the said complainants in and by their bill claim discovery of the said defendants as husband and wife and the said defendants cannot be permitted as husband and wife to make any discovery or give any evidence for or against each other.

And because the said Complainants are not entitled to have any 10 discovery from these defendants or either of them of any of the matters set forth in the said bill of complaint, and because the said Complainants cannot require the said Delilah Metler to make discovery against her said husband, Orison Metler, and because the said Complainants cannot make the said Orison Metler make discovery against his said wife, Delilah Metler.

And because the matters set forth in the said bill of complaint are not covered with sufficient certainty.

Wherefore and for divers other good causes of demurrer appearing in the said bill the said defendants do demur thereto, and 20 humbly demand the judgment of this Court whether they shall be compelled to make any further or other answer to the said bill and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

BARTLETT C. FROST,

Solicitor for and of Counsel and

J. G. SHIPMAN,

Of Counsel with the Defendants.

We do hereby certify that we have perused the Complainant's bill and that the demurrer interposed by the said defendants 30 thereto is well founded in point of law.

BARTLETT C. FROST,

Solicitor for and of Counsel and

J. G. SHIPMAN,

Of Counsel with the Defendants.

NEW JERSEY, SS. Orison Metler and Delilah Metler the within named defendants being duly sworn according to law on

their oath say that the demurrer by them in this case pleaded and about to be filed is not interposed for delay but in good faith.

HIS
ORISON X METLER,
MARK.
DELILAH METLER.

Sworn and subscribed before me, this seventh day of }
November, A. D. 1866. }
CHS. SITGREAVES, *Master in Chancery.* }

10 CHARLES W. METLER'S ADM'RS, COMPL'TS, } On Demurrer.
and } Rule for Hearing
ORISON METLER, *et. al.* DEF'DTS. } Entered Nov. 8, '66.

It is ordered on motion of B. C. Frost, Solicitor of Demurrants, that this cause be set down for hearing at the present October Term of this Court, to be held at the State House in the City of Trenton, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard thereon.

By the Court,
BARKER GUMMERE, *Clerk.*

20 IN CHANCERY OF NEW JERSEY.

BETWEEN JOHN KINNEY, *et. al.*, ADMIN'RS, &C., OF } Order
CHARLES W. METLER, DEC'D, COMPL'TS, }
and } Overruling
ORISON METLER AND DELILAH METLER, HIS WIFE, }
DEF'DTS. } Demurrer.

This cause coming on to be heard before the Chancellor, upon bill and demurrer thereto filed by the defendants, in the presence of J. F. Dumont, of counsel with the Complainants, and of J. G. Shipman, of counsel with the Defendants, and the bill and demurrer having been read, and the arguments of counsel heard and considered.

30 It is on this first day of March, A. D. Eighteen hundred and sixty-seven, ordered by the Chancellor, that the demurrer heretofore filed in this cause by the defendants therein, be and the same is hereby overruled, with costs to be paid by the said defendants to the said complainants, or to their solicitor.

And it is further ordered that the said defendants do file their answer or answers, to the complainants' said bill of complaint, within forty days from and after the date of this order.

A. O. ZABRISKIE, C.

IN CHANCERY OF NEW JERSEY.

BETWEEN ORISON METLER AND DELILAH METLER, HIS WIFE, DEFENDANTS, <i>and</i>	} On Bill, &c.
JOHN KINNEY AND CHARITY A. METLER, ADM'RS OF CHARLES W. METLER, DEC'D, COMPL'TS.	
	} Appeal.

10

The defendants hereby appeal from the decree of the Chancellor made in this Court on the first day of March, 1867, in the above stated cause overruling the demurrer heretofore filed therein by the defendants, with costs, and requiring the defendants to file their answer or answer to said bill in forty in forty days from the date of said decree.

BARTLETT C. FROST, *Sol. of Defendants.*

J. G. SHIPMAN, *of Counsel.*

Dated March 7, 1867.

We conceive there is good cause of appeal in the above stated 20 cause.

BARTLETT C. FROST,

J. G. SHIPMAN,

Of Counsel with Defendants.

SEAL I, BARKER GUMMERE, Clerk of the Court of Chancery, of the State of New Jersey, do hereby certify that the foregoing are true copies of the Bill, Petition for Injunction, Report, Rule for Injunction, Injunction, Order for Time, Demurrer, Rule for Hearing, and Appeal, in the cause wherein Charles W. Metler's administrators are Complainants and Orison 30 Metler, &c., are Defendants, now on the files of my office.

In testimony whereof I have hereto set my hand and affixed the seal of the said Court at Trenton, this eighth day of April, A. D. Eight hundred and sixty-seven. (1867)

Fees, \$2.89.

BARKER GUMMERE, CLERK.

IN CHANCERY.

CHARLES W. METLER'S ADM'RS
vs.
 ORISON METLER AND DELILAH METLER.

} Opinion.

ZABRISKIE, C. This suit is for discovery and relief. It is brought by John Kinney and Charity A. Metler, Administrators of Charles W. Metler, dec'd, against Orison Metler and Delilah Metler. Charity A. Metler is the widow of the intestate, and the defendants are his father and mother. The bill sets forth that the

10 complainant was married to the intestate in 1862, that they resided at Phillipsburg in Warren County, and had one child who is still living, that the intestate owned a house and lot, in which they lived, worth about fifteen hundred dollars, that in the year 1865 the intestate through the interference of the defendant, his mother, became estranged from his wife, neglected and ill-treated and refused to provide for her and their child, that in March, 1865, he sold his house and lot and persuaded her to join in a deed to convey it, after which he told her that he now had all he wanted from her and intended to leave her and make no further provision

20 for her or the child, the deed not having been delivered she afterward procured possession of it and kept it from him and the grantee; that he tried to get her to sign and acknowledge another deed by persuasion, threats and severe floggings; that he left her and carried away her infant child for the same purpose, but that she held out and did not give up the first deed or execute a new one; that after this, the intestate, who was by occupation an engineer or engine driver on railroads, and was and had been for years much absent from home in the Western and South-western States, gave to the defendant, Delilah Metler, his promissory note

30 for fifteen hundred dollars: that this note was given without any consideration; that the defendant Delilah had for years been living separate from her husband Orison who was a wandering homeless shoe-maker, without property, and that she had no means or property except a small house, in which she lived, not wholly paid for, and could not give and did not give any consideration for the note; that the note was given her when the intestate was about going out to the Oil Regions, and was given with the understanding that if he returned alive it should be given up to him; that it was given for the amount for which he had agreed to sell

his homestead, being about the value of it and was given with the fraudulent intention and purpose by both parties to enable his mother to cover his property and defeat any recovery his wife might obtain against him for alimony or maintainance, and with the view that in case of his death his mother might have the property and that his wife and child should have none; that the intestate did return alive from the Oil Regions but did not require his mother to give up the note, and on the 1st of December, 1865, met an unexpected death, being killed in an accident on a railroad in this state, and that the defendants have lately commenced an action in 10 the Supreme Court against the complainants upon said note, and have declared on it as on a note given on the third day of May, 1865, for fifteen hundred dollars, payable to the order of the defendant Delilah Metler, and that that suit was commenced without the knowledge or consent of the defendant Orison Metler.

The bill insists that complainants are entitled to a discovery to aid them in their defence at law, and also to relief in this Court, and prays for a discovery and for a relief, by perpetually enjoining the suit at law and ordering the note to be given up to be cancelled.

20

The defendants demur to the bill generally and allege as a special ground of demurrer to the discovery, that the defendants being husband and wife are not either of them bound to make any answer or discovery that may affect the claims or rights of the other.

The first question is whether the complainants are entitled to the relief sought for. That relief is to have a perpetual injunction against the proceedings at law, and to have the note delivered up to be cancelled. The note being without consideration is void, and cannot be recovered upon at law, and it is contended that as 30 the complainants have a complete defence at law they cannot resort to equity. Such no doubt is the general rule, and were the present suit at law the only matter to be relieved against it might decide this case, but here is a note not void on its face, which in case of a discontinuance or non-suit, might be held until the evidence of its being without consideration could not be had and then, a suit on it brought against these parties, or against the infant heir to the amount of assest descended. And in such case the jurisdiction of Courts of Equity, to order the security to be given up to be cancelled, is now well established. There has been some 40 diversity of opinion and decision on this point, and more in cases

where the instrument asked to be cancelled is at law void upon its face, but even then the weight of authority is in favor of it. In cases where the instrument is on its face valid, and especially if negotiable, the jurisdiction of the Court is founded upon principles adopted among other cases on bills *quia timet* and is now settled by authority.

- 1 Sto. Equity Jur., Sec. 699—702.
- 3 Bro. C. C. Ves. to p. 17, Renshaw vs. Jordan.
- 2 Ves. p. 483, Newman vs. Milner.
- 10 7 Ves. 3, Broomley vs. Holland.
- 7 Ves. 411, Jervis vs. Holland.
- 13 Ves. 581, Jackman vs. Mitchell.
- 1 Russ, 293, Wynne vs. Callender.
- 6 Peter, 95, Peissall vs. Elliot.
- 1 J. C. R., 526, Hamilton vs. Cummings.

As the complainants are entitled upon the case made in their bill to have this note delivered up to be cancelled, the demurrer cannot be sustained to the relief. It is bad in part. But it is a well-established rule in equity when a demurrer is too extensive or

20 bad in part, that it must be wholly over-ruled.

Sto. Eq. Plead., Sec. 443, 448 and 692.

1 Dan. Ch. Pr. (Perk. Ed.), 569 and 608.

This is a demurrer to the whole bill and includes both the relief and discovery.

The causes of demurrer assigned, which together must be co-extensive with the demurrer, are in part to the relief and in part to the discovery. And then by that rule, although the demurrer might be good to the discovery, yet being bad in part it must be wholly over-ruled. The only exception to this rule, if there is

30 any, is where a bill for discovery also prays relief, and a general demurrer is held good to the relief, but not to the discovery.

In such case the former English decisions and the decisions in America hold that the demurrer will not be a bar to the discovery.

The modern English cases hold that it will on the ground that the discovery being only the means for the relief, if that relief cannot be granted, the discovery is of no avail.

1 St. Eq. Jur. 70. Dan. Ch. Pr. 569.

This Court in *Miller vs. Ford*, Saxt. 365, adopted the modern English rule, that when a plaintiff on a bill praying relief is not

40 entitled to relief, he is not entitled to discovery.

But this doubtful exception does not affect the converse proposition, that where on demurrer to the whole bill, the complainant is held entitled to the relief, the demurrer cannot be sustained as to the discovery, even if a demurrer to the discovery alone would be good. The expression in *Hunt vs. Miller* that when a party is not entitled to relief he is not entitled to a discovery, is strictly correct when applied as it was in that case to a bill for relief, but not correct when applied to a bill for discovery only when not praying relief.

The general rule is that in all cases where the complainant is 10 entitled to relief he is entitled to discovery.

But to this there are exceptions as in cases where the discovery would subject the defendant to indictment, forfeiture or penalty, when it would be a breach of professional confidence or would be of matters irrelevant and immaterial to the relief sought, in all which and similar cases a demurrer may be taken to the discovery only.

1 Dan. Ch. Pr. 571, 588 to 607.

It is clear therefore, that whether a demurrer to the discovery in this case on the ground assigned would be good or not, that the 20 demurrer must be over-ruled; it cannot be sustained in part.

This state of the pleadings would render it unnecessary to consider the question raised and argued whether the defendants can be compelled to answer and make discovery, when the answer of either may affect the other, on account of their relation as husband and wife. But as this Court may in its discretion before actual decree give leave to amend the demurrer, or to put in a less extended demurrer, (1 Dan. Ch. Pr. 709), and the matter has been argued, it is necessary to consider and determine it.

And here the question is, whether either of the defendants can 30 be required to answer or could be protected by demurrer from the discovery?

And first can the defendant Delilah Metler be protected from discovery. The subject matter of the suit is a note given to her by her son in May, 1865. She was then married and by the Married Woman's Act of 1851 she was entitled to receive and hold it to her own separate use as if she were a single female, free from the control of her husband.

He has no interest in it nor the controversies concerning it.

The suit at law was brought by her, his name was used by her 40

without his knowledge, because the law required him to be joined in a suit brought by her for her own rights. She has perhaps the right so to use it without his authority. This suit is of necessity brought against both, but it is to enjoin *her* suit and to compel *her* to give up and cancel the note, which she is charged with obtaining without consideration and for the purposes of fraud. I do not find anything in the statutes, or decisions of the Courts, or in the policy of the law arising out of the peculiar relations of husband and wife, to protect her from making a discovery relating wholly
10 to her own conduct and affecting only her own interests.

I do not see any reason why in such case under the recent acts, she may not even be compelled to testify against herself.

A married woman is not compelled to make discovery, or to testify in suits against or by her husband, when he is the party interested or to be charged. And this whether she is a party with him or not.

But there is no case in which it is held, that she need not make discovery or testify where the suit concerns herself or her property only. I agree with the Court in *Headlong and wife vs. Barnes*,
20 and with the cases there cited that it is the policy of the law arising out of the relation of husband and wife, and not the mere matter of interest, on which her exclusion is founded.

But this must briefly assent to the proposition taken in one of the opinions, that if the suit was for property wholly her own, and her husband joined for form only, as the judgment would be against him as well as herself, she could not testify.

Even if the judgment could be against him for costs the maxim *de minimis* would there apply.

But if he had a joint interest with her in the lands, as was the
30 fact for aught that appears in the case, then as she could not be sworn, Barnes could not, as the act prohibits it, and the decision was that required by the act.

But where the wife alone is the real plaintiff or defendant she is made competent by the act of 1859, which must be read, notwithstanding its peculiar wording, as if it expressly made all parties competent to testify.

If it only removed the disqualification of interest, as before it nominal parties without interest could not testify, no party could yet be sworn. The contrary is the well-settled construction, and
40 all parties not within the exceptions are competent.

There is nothing in the words of the act and no reason in the policy of the law why a woman, having a suit, should not be permitted or compelled to testify when her husband has no interest.

Her evidence in such cases as in this would affect her own rights only; and here the old sound maxim should be applied—*cessante ratione cessat ipsa lex*. This maxim must govern in the application of a rule founded solely on a reason of policy.

And this is a case in which the observations repeated with approval by Chancellor Green, in *Wheaton vs. Phillips*, 1 Beas. 221, should have great weight - “that remedies must adopt themselves 10 to the times and new maxims and customs as they arise.”

The English cases cited in *Headlong vs. Barnes* are those in which where the husband alone was the party. The act of 14 and 15, Viet, ch. 99, Aug. 1851, called Lord Brougham’s act, only enacted that parties to the suit should be sworn.

The act of 16 and 17, Viet. Ch. 83, called Lord Campbell’s act, and founded on his observation in *Stapleton vs. Crofts*, allowed and compelled the husbands and wives, if parties, to be sworn.—The act of this state is in effect the same as Lord Brougham’s, and under that the Court of Common Bench unanimously allowed the 20 wife to be sworn in a suit brought by her in the name of her husband and herself for an injury to her, this case of *Stokehill and wife vs. Pettingill* is reported in a note to *Stapleton vs. Crofts*, 10 En. L. & Eq. R. 458. But on account of Lord Campbell’s act of 1853 is not found in the regular reports.

In New York the amendments to the Code, § 399, passed successively in 1857, 1860, and 1862, each provided: “That a party to an action may be examined as a witness in his own behalf or in behalf of any other person.” It was held that this did not make the husband or wife of a party a competent witness. 30

But when the husband or wife was the meritorious party although the other was joined such party was competent.

30 Barb 506, *Marsh vs. Potter and wife*.

31 Barb. 277, *Babbett and wife vs. Thomas*.

37 Barb. 44, *Schaffner vs. Renter and wife*.

43 Barb. 492, *Hooper vs. Hooper and wife*.

The Massachusetts act of 1856, C. 188, authorizes parties to all actions to testify for themselves. And their courts hold that she is a competent witness in a suit brought for a personal injury to herself in the names of herself and husband—9 Grey, 321, 40

Snell and wife vs. Westford—and this after they had determined that she was not competent when her husband alone was the party. Id. 72, Barber vs. Goddard.

The cases as to the rights of a discovery from a married woman in Courts of Equity are expressly put upon the ground that her evidence would charge or benefit her husband, and I find no case in which she has been protected from discovery where the question was as to her own rights and her husband was joined for form or because he was a necessary party.

- 10 And in the case where she has been protected the courts in their reasoning and distinctions place it on the ground that it is the rights of the husband that are to be affected by her testimony, and in the cases where discovery from her was sought and refused to sustain actions against her husband for debts due from her before marriage the husband was the real and only party interested the must pay.

1 Dan. Ch. Pr. 144.

2 St. Eq. Jur. 1496.

- In Barron vs. Grillard, 3 Ves. & B. 166, the Chancellor says: 20 “The husband is in this case the responsible party and the wife is made defendant merely for form.” The question is then whether a discovery from her can be compelled to give evidence against her husband, no single case of discovery merely has been cited.

In Le Texier vs. Margrave & Margravine of Auspach, 6 Ves. 322 and 15 Ves. 169, on demurrer to discovery by the wife the Court held the question to turn on the fact whether the wife acted as the usual household agent of her husband or whether she had made a substantial contract with him herself.

- In Wrottesley vs. Bendish, 3 P. W. 236, it was taken for granted that by the settled practice the wife must answer when made a 30 co-defendant with her husband, and Ld. Chancellor Talbot says: “but as in all times heretofore the wife as well as her husband has been compelled to answer, I would not take upon myself to overthrow what has been the constant practice.”

Besides if this was not settled by authority the consequences of protecting the wife from answer and discovery would under the change of law as to married women be disastrous and protect outrageous frauds, and are such that in a new question should settle it against the protection.

- 40 A married man could by any fraud possess himself of property

or securities, and by taking them in name of his wife could protect both her and himself from answering and thus avoid that discovery which is one of the most effectual means of administering justice in this Court.

No demurrer therefore could protect the defendant Delilah Metler from answering and making discovery. The same reasoning would protect the defendant Orison Metler from making discovery that might be used against his wife who is the real defendant.— Did not the proviso in the act of 1859 excluding the wife imply upon settled principles of interpretation that the husband might be 10 a witness against his wife.

By this implication ever since the passage of this act in divorce cases in this Court, the husband has been admitted as a witness against his wife and the wife has been admitted upon the implication arising from the exception in this proviso.

The Court will see to it on the hearing of the cause that the husband's answer shall not be used as evidence against the wife, if in any way prohibited by the rules or policy of the law.

The demurrer must be overruled with costs.

NEW JERSEY COURT OF APPEALS—IN THE LAST 20 RESORT IN ALL CAUSES IN LAW AND EQUITY.

BETWEEN ORISON METLER AND DELILAH METLER, HIS WIFE, APPELLANTS,	} On Bill, &c.
<i>and</i>	
JOHN KINNEY AND CHARITY A. METLER, ADMIN- ISTRs OF CHAS. W. METLER, DEC'D, APPELLEES.	} Petition of Appeal.

To the Honorable, the Court of Appeals in the Last Resort in all Causes of Law. The humble petition of Orison Metler and Delilah Metler his wife the Appellants in the above stated cause respectfully show, that your petitioners find themselves aggrieved 30 by a decree made in the Court of Chancery by his honor, Abraham O. Zabriskie, Chancellor of New Jersey, bearing date the first day of March, 1867, wherein your said petitioners were defendants and John Kinney and Charity A. Metler, Administrators of Chas. W. Metler, deceased, were complainants in this respect, to wit: that the said decree adjudges that the demurrer heretofore filed by your petitioners to the bill of complaint of the said John Kinney and Charity A. Metler, Administrators of the said Charles W.

Metler, deceased, should be overruled with costs and that your said petitioners should answer the said bill within forty days from the date of the said decree.

And your petitioners humbly appeal from the whole of the said decree, which decree as aforesaid upon the ground that the same is erroneous for that the said demurrer should not have been overruled but should have been sustained and the complainants' bill dismissed, and these defendants should not have been compelled to answer the said bill.

- 10 Your petitioners therefore pray that the said decree of the said Chancellor may be reversed, set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this honorable Court shall seem meet.

BARTLETT C. FROST,

Solicitor of Appellants.

J. G. SHIPMAN,

Of Counsel with Appellants.

Dated March 7, 1867.