DAVISON & Co., Law Printers, 27 Montgomery st., Jersey City.

In Chancery of New Jersey.

HENRY LUERS et al., administrators, &c., with the will annexed of Henry Luers, dec'd, Complainants. and PETER BRUNJES and others, Defendants.	On Bill for discovery.

BRIEF OF APPELLANT.

The history of this matter is briefly as follows:

Prior to eighteen hundred and sixty-seven Peter Brunjes, Henry J. Ockershausen, and Henry Luers were in partnership in the sugar refining business in New York.

Luers died, and Brunjes and Ockerhausen continued the business and took the partnership property. They paid from time to time the representatives of Luers' estate what was due to them, excepting thirty-eight thousand dollars which was coming to his widow. For this sum they gave, on the first of May, eighteen hundred and seventy-five, their bond and mortgage upon all of the property previously belonging to the firm, to the executors of said Luers' estate, Peter Brunjes himself being one of them.

This mortgage was afterwards foreclosed in eighteen hundred and seventy-nine, and the property sacrificed, as often happens, so that there remained a judgment for deficiency of thirty-three thousand and fifteen dollars and eighty-six cents.

This judgment, the complainants, the representatives of the Luer's estate, are now seeking to enforce against Peter Brunjes, and collect it out of property belonging to his wife.

In eighteen hundred and seventy-seven, about two years before the foreclosure of the mortgage against Brunjes and Ockerhausen, Otto Kohler gave to Peter Brunjes a chattel mortgage for thirty-two thousand six hundred and eighteen dollars and thirty-four cents to secure a debt due to him, Brunjes, and to other creditors of Kohler, or Kohler & Kamena. A part of this mortgage was at the same time, in the same year, assigned to Mrs. Brunjes in part payment of money previously borrowed by her husband of her.

In eighteen hundred and seventy-eight this mortgage was renewed by giving two other mortgages, one for eleven thousand five hundred dollars to Anna C. Brunjes, wife of Peter Brunjes, and one to Peter Brunjes for sixteen thousand five hundred dollars.

These mortgages have been renewed from time to time, until the month of March last, when Anna C. Brunjes had her mortgage foreclosed, and the proceeds of the sale under it, amounting to something over three thousand dollars, remain in the hands of a receiver appointed by this Court.

It is this money which the complainants seek to recover and take from Mrs. Brunjes.

The ground upon which the complainants seek to obtain this money from Mrs. Brunjes, is that it is really her husband's property; that he assigned her an interest in the thirty-two thousand six hundred and thirty-four dollars and thirty-four cents mortgage, and afterwards caused the mortgage for eleven thousand five hundred dollars to be made to her, to cover up his property and prevent its being reached by his creditors.

The only evidence which bears upon this question is that of Mr. and Mrs. Brunjes, given, not in this suit, but under supplementary proceedings taken by the complainants upon their judgment in New York against said Peter Brunjes and Henry J. Ockerhausen.

The examination of Mr. and Mrs. Brunjes taken in that matter in New York, is produced and offered in evidence here by the complainants in this cause for the purpose of proving this alleged fraud.

Mrs. Brunjes has the property in her possession, and is presumptively the owner. She has had it in her possession since eighteen hundred and seventy-seven, two years before the complainants obtained their judgment for deficiency against her husband. She obtained it when so far as appears, her husband had no reason to suppose himself to be insolvent. He had been a man of wealth, and still owned a large amount of property.

Neither Mr. nor Mrs. Brunjes offer themselves as witnesses for the purpose of recovering this property. She has the property, and the complainants call upon her and her husband to testify for the purpose of wresting it from her.

They do not call upon them to testify in this cause where they could be cross-examined so as to bring out the whole truth more fully and clearly, but they simply introduce their examination taken under supplementary proceedings in New York, where no cross-examination was had.

Certainly the complainants are bound by the statements of these witnesses, especially when not in the least contradicted by any one.

They both distinctly and positively swear that she loaned him the money, that he owed her for the money thus loaned which he had never repaid, and that in eighteen hundred and seventy-seven he secured her in part by the assignment of a part of the chattel mortgage, which was afterwards renewed to her directly in her own name. They tell clearly and truthfully when she loaned the money, and whence she obtained it for that purpose.

There is no pretence that they have not told the truth.

The wife then is a bona fide creditor of her husband. He has attempted to secure her in part for his indebtedness to her. Shall another creditor then, more than two years afterwards, be allowed to come in, and by the aid of a Court of Equity, take from the wife the small security thus in good faith put in her hands.

The cases of Besson v. Eveland, 11 C. E. Gr. 468, and Post v. Stiger, 2 Stew. 554, and Clarke v. Rosencrance, 4 Stew. 665, all admit that if a wife be a bona-fide creditor of her husband, he may secure her in the same manner that he may secure any other bona-fide creditor.

In the case of Post v. Stiger, the Vice Chancellor uses this language. "But was the deed bottomed on the debt due from the husband to the wife, which both treated from its contraction to the date of the deed as a just obligation of the debtor and the right of the creditor, and which the husband always intended to pay and the wife to demand, and not a mere pretence of claim, arising from the appropriation of property or money of the wife by the husband, with her consent, without expectation of payment by her, and without intention on his part, of incurring an obligation, but which had just sufficient substance to relieve her from a painful consciousness of perjury in attempting to sustain it by an oath? A claim by a wife against her husband, first put in writing when his linbilities begin to jeopardize his future, should always be regarded with watchful suspiciou, and when attempted to be asserted against creditors upon the evidence of the parties alone, uncorroborrated by other proof, should be rejected at once, unless their statements are so full and convincing as to make the fairness and justice of the claim manifest. Any other course will encourage fraud, and greatly multiply the hazard of business.

The evidence in proof of the debt in this case is extremely unsatisfactory. It comes almost entirely from the mouth

of the debtor. The wife is profoundly ignorant of its amount, and the husband, if he knew, has withheld his knowledge.

The principle embodied in this extract is adopted by the Ordinary in Clark v. Rosenkrans.

The evideuce in each of these cases was of such character as to satisfy the mind of the Court that the claim set up by the wife was a mere pretence, having no real foundation in fact, and that it would be against the plainest principles of equity and justice to allow it to prevail. There is nothing, however, of that kind in this case. Mrs. Brunjes has the property in her possession. She is sued for it, and it is sought to be taken away from her. The only evidence offered by the complainant is the statements made by her and her husband when examined upon supplementary proceedings against him in New York. These statements are clear and explicit that she loaned him the money, which he undertook to pay back to her in this way. They explain also fully whence she obtained the money. These statements are in no way in the least contradicted or impeached.

She was then her husband's creditor, and he secured her in part as he had previously secured the complainants. Now because the property upon which the complainants held a mortgage as security for their money, was sacrificed, so that they bought it in for an amount less than sufficient to liqufdate their claim in full, they seek to take from Mrs. Brunjes the little security which her husband had placed in her hands to pay her in part for the money which she had loaned to him.

A husband indebted to his wife may prefer her as his creditor. In reply to an objection to this in the case of Monroe v. May, 9 Kan. 473, the Court say, "It may be claimed such a rule as this opens the door to fraud; that a husband may borrow money from his wife, go into business, receive credit on the strength of his apparent property, live extravagantly for years,

and the moment any pressure comes, pay his wife in full, and let the other creditors who have trusted him go without anything. In this way a man may live on his creditors' property. The same thing might happen if a man disposed to fraud was doing business on capital borrowed of anybody else. Whether further legislation be needed in such cases is not for us to say. Whether the secrecy of such loan might not sometimes invalidate it, is a question to be decided when fairly presented. It is enough in this case to decide that the repayment in good faith of a loan from his wife does not defraud the other creditors of the husband, or create a trust in their favor."

In the case of Drury v. Briscoe, 42 Md. 155, a married woman was entitled to a distributive share of her father's estate, and the proceeds of lands sold under a partition decree. She sold her share, and took the purchaser's note for the purchase money. The husband collected this note as a loan to him from her, to be repaid with interest. He became embarrassed afterward, and set apart two judgments to her use, in order to protect her claim, and the transaction was sustained against other creditors.

In the case of Rowland v. Plummer, 50 Ala. 193, the Court say, "If the husband was indebted to the wife for the use of the moneys of her separate estate which were under his control, he was bound to pay her what he owed. This he could do if he chose without suit, and if he could not pay in money he might take such other steps to secure the payment as could be taken with any other person. Marriage, in this state, does not degrade a woman as a creditor, below the dignity and rights of any other creditor. What any other creditar may do to enforce payments of his debts, or to secure their payment, or composition, she may do as to her separate estate under the limitations of the laws enacted for her protection."

The same principles are laid in Woodworth v. Sweet, 44 Barbour, 268–51 N. Y. 8; McCartney v. Welch, 44 Barbour, 271; 51 N. Y. 626, and numerous other cases, without, I believe, being questioned anywhere.

Wherever it is clear that the wife had a separate estate, which she has allowed her husband to have the use of, to hold that he could not pay it back to her or secure to her without being subject to the charge of defrauding his other creditors would seem to be a most palpable injustice. Such a principle certainly has no equity to support it.

In this case Mrs. Brunjes loaned to her husband all of the money which he undertook to secure to her, without interest, by the chattle mortgage. She did not, at the time of the loan, demand of him any security or any written obligation for it, because she supposed he could pay it back at any time she required it. Such demand would have been as repugnant to her feelings as it might have been irritating and offensive to him. But she was none the less his creditor to that amount, and he was under no less obligation to pay her back her money when she wished him to do so. Under these circumstances, it is manifestly in accordance with the plainest principles of equity, that she should retain what she has, and it would be doing a very great wrong to take it faom her and give it to another.

Wallingford v. Allen. 10 Peter's Rep. 5
Babcock v. Eckler. 24 N. Y. Rep. 623
Schaffner v. Reuter. 37 Barbour. 44.
Jaycox v. Caldwell. 51 N. Y. 395.
Savage v. O'Neil. 44 N. Y. 298.

New Jersey Court of Errors and Appeals.

Between PETER BRUNJES, & OTHERS, *Appellants,* *and* HENRY LUERS, *& als.*, *Admrs., &c., Respondents.*	*Argument for Respondents.*

The bill is filed by a judgment creditor to set aside transfers alleged to be fraudulent. So far as the real estate is concerned, the respondents seek no relief, considering it of no value above liens. The only question in the case is whether the transfer by Peter Brunjes to his wife of a chattel mortgage for $11,500, on a brewery, stock and fixtures is fraudulent.

The material facts appear in the case on pages 1, 2, 10, 11, 13 and 14.

It appears that from 1853 to 1858, Peter Brunjes received money of his wife's estate with her consent, in all amounting to about $11,000. No note or security was given, nor was any account or memorandum kept by either husband or wife. About the year 1858, Peter Brunjes entered into partnership with Henry Luers, and others, as sugar refiners, and used this money as his own in that business (Case, page 10, lines 30 to 40). Henry Luers died in 1865 and the debt of the respondents is a part of what was due him on partnership account (Case, page 1, lines 38 to 40; page 2, lines 1 to 16). Thus it is

manifest that it was by the aid of this money from his wife's estate that Peter Brunjes was enabled to enter into business with Henry Luers, and that on the faith of this capital and its proceeds Henry Luers became the creditor of Brunjes for the debt which the complainants seek to recover in this suit.

In 1878 Peter Brunjes caused a chattel mortgage held by him for $11,500 to be renewed in the name of his wife, thus transferring the same to her. In the same year a foreclosure was begun in New York of a mortgage which he had given to secure the estate of Luers, and resulted in a judgment for deficiency, on which judgment has been entered in this State for $33,603.87, which remains wholly unsatisfied. To enforce this judgment the bill in this cause was filed.

At common law it was the rule that if a married woman authorized money settled to her separate use paid to her husband or permitted him to receive her income she could never recall it. Caton *vs.* Rideout, 1 Mac. & G., 601. See also Darnaby *vs.* Darnaby, 14 Bush. (Ky.), 345, a common law decision where the Court held that after a husband became insolvent and made an assignment his wife could not enforce against creditors an agreement made by her husband to convey to her land in his name, bought with her money.

Although the Married Women Acts have introduced a new element into this class of cases, still the fact of the close relationship has always been reckoned of importance in determining whether the payment of money between husband and wife is to be regarded as a loan or a gift. Thus in the case of Steadman *vs.* Wilbur and wife (7 R. I., 486), where the Court sustained a transfer by the husband to the wife as founded on fair consideration, the Court nevertheless uses this language: "The wife cannot, indeed, when her husband becomes insolvent, convert into debts as against his creditors, former deliveries to him of her money or other property, or permitted receipts by him of the income or proceeds of sale of her separate estate, which at the time of such delivery or receipt were intended by her as gifts to assist him in

his business or to pay their common expenses of living; and considering the relation between them the law would not merely from such delivery or receipt imply a promise on his part to replace or repay, as in case of persons not thus related, but would require more, either in express promise or circumstances, to prove that in these matters they had dealt with each other as debtor and creditor."

In Paulk *vs.* Cooke, 39 Conn., 571, creditors attacked a transfer by a husband to his wife. The defense was that the transfer was made in payment of a debt due to the wife for money advanced to her husband in years past. The Court says: "For a long time prior to the purchase of the property in question Mr. Cooke intended that the money so received by him should at some time be restored, but no note or other obligation was given for the money, and no account or memorandum was made by either party. It does not appear to us that these sums of money were regarded by the parties at the time as the sole and separate estate of the wife in such sense that when received by the husband the relation of debtor and creditor was created between them."

In Maryland it is settled that the appropriation by the husband of the wife's separate estate with her consent will not constitute a good consideration for a conveyance to her after he is in debt unless there is an agreement by him to repay the money so appropriated.

Edelen *vs.* Edelen, 11 Md., 420.
Kuhn *vs.* Stansfeld, 28 Md., 210.

These Maryland decisions thus establish a rule that there must be a promise to repay to constitute a debt to the wife. Such a rule would fully sustain our case, for no promise to repay was made by Brunjes; but we are inclined to concede, as was held in the Rhode Island case, above cited, that circumstances might show a debt by the husband in the absence of a promise by him to repay. On the other hand, even if such promise were made circumstances might show a gift, as for instance if the wife kept no account of the money and delayed for over twenty years and until her husband became insolvent before press-

ing her demand for repayment. A recent decision in the U. S. Supreme Court cited by the Chancellor fully sustains the decree. In Humes *vs.* Scruggs, 4 Otto, 92, it is held that if a wife permits her money to be mixed with her husband's property and used to buy real estate or to give him credit in his business, and it is so used for years, such real estate becomes property of the husband to pay debts, and cannot be turned over to the wife on the eve of bankruptcy.

The decisions to the same effect in N. J. Chancery are frequent. In Annin *vs.* Annin, 9, C. E. G., 189, the wife had paid some money on mortgages and taxes on her husband's property, and the Chancellor said, "the presumption is that whatever she thus paid was a voluntary contribution, a gift to her husband."

In Besson *vs.* Eveland, 11 C. E. G., 471, the Vice-Chancellor said that the wife had permitted the husband to hold her property for years and incur debts on the faith of it, and could not now step in and withdraw it from creditors.

In Clark *vs.* Rosencranz, 4 Stew., 665, the wife had permitted her husband to receive $1,200 from her father's estate. No promise to repay was proven, and the Chancellor held that there was no contract to repay the wife which could be sustained against the creditors of the husband.

COLLINS & CORBIN,
Counsel for Respondents.

Clerks Table No 3

DAVISON & Co., Law Printers, 27 Montgomery st., Jersey City.

In Chancery of New Jersey.

Between HENRY LUERS ET ALS., Compl'ts, and PETER BRUNJES, Def't.	Copy of Bill.

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To His Honor THEODORE RUNYON, *Chancellor of the State of New Jersey:*

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Humbly complaining, showeth unto your Honor your orators Henry Luers, Eliza T. Matley, and Amelia M. Raffloer, trustees and administrators with the will annexed of Henry Luers, deceased.

1. On the first day of May, eighteen hundred and seventy-five, Peter Brunjes and Henry J. Ockershausen were indebted unto Lawson W. Fuller and Peter Brunjes, executors of the will of Henry Luers, deceased, in the sum of thirty-eight thousand dollars, which indebtedness arose about the year 1867, when Henry Luers died, and represented the interest of said Henry Luers in a firm of sugar refiners, of which Henry Luers and the said Brunjes and Ockershausen were members and being so indebted, the said Peter Brunjes and Henry J. Ockershausen gave their bond to secure the payment of said sum, whereby they bound themselves jointly and severally to pay said sum to said executors.

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2. The said bond was transferred to your orators, and your orators having foreclosed a mortgage in the City of New York, given to secure said bond, recovered a judgment in the New York Supreme Court, on the eighteenth day of March, 1879, for the deficiency due on said bond, being the sum of $33,015.86 against the said Peter Brunjes and Henry J. Ockershausen.

3. The said judgment being wholly unsatisfied on the tenth day of June, A. D. 1879, your orators commenced suit on said judgment in the New Jersey Supreme Court on the nineteenth day of August, A. D. 1879, recovered judgment in said suit against said Peter Brunjes and Henry J. Ockershausen for the sum of thirty-three thousand six hundred and five dollars and eighty-seven cents, debt and costs, being the amount of said New York judgment with interest and costs.

4. On the nineteenth day of August, A. D. 1879, execution was issued on said judgment out of the New Jersey Supreme Court to the Sheriff of the County of Hudson, and was returned by said Sheriff at the November term of said Court unsatisfied. Nothing has been realized on said judgment or execution.

5. At the time said bond was made the said Peter Brunjes and Henry J. Ockershausen were reputed to be men of wealth and financial responsibility, and were in possession of large amounts of property, your orators believe that they have money and property and things in action belonging to and held in trust for them and for each of them over and above the amount reserved by law to an amount exceeding one hundred dollars.

6. One Otto Kohler is largely indebted unto the said Peter Brunjes. On or about the ninth day of March, A. D. 1876, the said Otto Kohler executed unto the said Peter Brunjes a mortgage dated on that day to secure the payment of thirty thousand dollars in February, 1877, which mortgage was duly acknowledged

and was recorded in Hudson County Register's Office, on the 10th day of April, A. D. 1877, in Book 129 of Mortgages, on page 544, and thereby the said Otto Kohler mortgaged unto the said Peter ——— a large number of lots of land at Guttenberg, in the County of Hudson.

7. On or about the twenty-ninth day of March, in the year 1878, by deed dated on that day, the said Peter Brunjes and Anna C., his wife, conveyed unto 10 Adelheit Kohler certain lands in the Township of Union, Hudson county, New Jersey, known on a map entitled "map showing the partition among the heirs of John Barthoff, deceased, filed December 13, 1865," as lots 3 a, 3 b, 4 a, 4 b, 2 a, 2 b, 6 a, 5 a, 5 b and 10, which deed was recorded on the ninth day of April, A. D. 1878, in Hudson County Register's Office, in Book 321 of Deeds, on pages 538, &c.

The consideration stated in said deed is $1,000. Your orators charge that said conveyance was without 20 consideration and was made to hinder delay, and defraud your orators' creditors of said Peter Brunjes, and that said conveyance is void.

8. On or about the 8th day of April, A. D. 1878, Otto Kohler and Woltza Kamena executed and delivered unto Anna C. Brunjes, wife of Peter Brunjes, a chattel mortgage dated on that day, to secure the payment of the sum of $11,500 one year after its date upon goods and chattels in the brewery of Kohler & Kamena, 30 in Guttenburg, N. J., which mortgage was filed in Hudson County Register's Office April 10, 1878, and refiled in the same office April 7, 1879.

9. On or about the fifth day of April, A. D. 1879, John Shaw, Francis McTownsend and Peter Brunjes, trustees for the creditors of the firm of Kohler & Kamena, consisting of Otto Kohler and Woltza Kamena, joined with Otto Kohler and Peter Kohler in making a chattel mortgage, dated on that day, unto Anna C., wife 40

of Peter Brunjes, to secure the payment of the sum of $11,500 upon the stock and fixtures of the brewery formerly of Kohler & Kamena, at Guttenburg, which mortgage was filed in Hudson County Register's Office April 25, 1879. Your orators charge that said mortgages were given to secure a debt due to the said Peter Brunjes, and that it was made to said Anna C. Brunjes to hinder delay and defraud your orators in the collection of their debt.

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10. On or about the eighth day of April, A. D. 1878, Otto Kohler executed and delivered unto Peter Brunjes a chattel mortgage, dated on that day, for $16,500, payable one year from date, which was filed April 10, 1878, and refiled April 8th, 1879, upon the brewery property formerly of Kohler & Kamena, at Guttenberg.

To the end that the said Peter Brunjes, Henry J.
20 Ockershausen, Anna C. Brunjes, wife of Peter Brunjes, Otto Kohler, Adelheit Kohler, his wife, Peter Kohler, Woltza Kamena, John Shaw, and Francis McTownsend, may (without oath, answer on oath being waived) answer all and singular the premises, and may set forth and discover the real estate belonging to Peter Brunjes, and conveyed as hereinbefore mentioned, and what disposition has been made of or encumbrance put upon the same, and what personal estate the said Peter Brunjes has belonging to or held in trust for
30 him, and that the defendant, or some of them, may be decreed to pay your orators the full amount due to them, that the deed of conveyance by Peter Brunjes to Adelheit Kohler may be declared fraudulent and void, and may be set aside, and the lands thereby conveyed, be sold under the direction of this Court, and the proceeds applied to pay your orators' judgment; that the chattel mortgage held by Anna G. Brunjes may be declared to be held in trust for the said Peter Brunjes, and that a receiver may be appointed to re-
40 ceive said chattel mortgage, and to receive the said

mortgage made by Otto Kohler to Peter Brunjes upon lands of the said Otto Kohler in Guttenberg, and to receive any other property which may appear to be held in trust for or to belong to said Peter Brunjes and Henry J. Ockershausen, and to apply the proceeds thereof to your orators' claim, and that the payment or transfer of the said mortgage made by Otto Kohler to Peter Brunjes for $30,000, dated March 9, 1876, and the payment or transfer of said two chattel mortgages, one made by Kohler & Kamena, dated April 8, 1878, 10 and the other by John Shaw and others, dated April 5, 1879, to Anna C. Brunjes, wife of Peter Brunjes, each for $11,500, and the payment or transfer of said chattel mortgage made by Otto Kohler to Peter Brunjes for $16,500, dated April 8, 1878.

May it please your Honor the premises considered, to grant unto your orators not only the State's writ of injunction to be addressed to the said Peter Brunjes and Anna C. Brunjes, his wife, and Henry J. Ockershausen, Otto Kohler, and Adelheit Kohler, his wife, 20 Peter Kohler, Woltza Kamena, John Shaw and Francis McTownsend, commanding them to refrain from assigning, paying, receiving, transferring, or in any manner disposing of any mortgages, to wit, a mortgage deed on lands in Guttenburg for $30,000, made by Otto Kohler to Peter Brunjes, dated March 9, 1876, a chattel mortgage on brewery chattels and stock in Guttenberg for $11,500, made by Otto Kohler and Woltza Kamena, to Anna C. Brunjes, dated April 8, 1878, a chattel mortgage on said brewery chattels and stock for $11,500, made by 30 John Shaw and others, to Anna C. Brunjes, dated April 5, 1879, and a chattel mortgage on said brewery chattels and stock for $16,500, made by Otto Kohler to Peter Brunjes, dated April 8, 1878.

But also the State's writ of subpœna to be addressed to the said Peter Brunjes and Anna C., his wife, Henry J. Ochershausen, Otto Kohler, Adelheit Kohler, his wife, Peter Kohler, Woltza Kamena, John Shaw, and Francis McTownsend, commanding them to be and appear in our said Court to answer all or singular the 40

premises, and to stand to, abide and perform in such order and decree as your Honor shall seem, and as shall be agreeable to equity and good conscience.

And your orators will ever pray, &c.

COLLINS & CORBIN,

Solr. for and of Counsel with Complainants.

STATE OF NEW JERSEY, }
HUDSON COUNTY. } SS.

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Charles L. Corbin, being duly sworn, on his oath says: I am one of the solicitors for complainants, and was one of the attorneys of record for complainants in the suit in New Jersey Supreme Court, wherein they recovered judgment against Peter Brunjes and Henry J. Ockershausen. The judgment was recovered and execution was issued and returned unsatisfied as is set forth in the foregoing bill. I believe that the said judgment debtors have money and property, and things in action due to and held in trust for them over and above the amount reserved by law, to an amount exceeding one hundred dollars.

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I have searched in Hudson County Register's office for property of said judgment creditors, and have found on record, uncancelled, the mortgages to Peter Brunjes and to Anna C., wife of Peter Brunjes, which are set forth in the foregoing bill, and also the deed of conveyance by Peter Brunjes to Adelheit Kohler in said bill set forth.

CHARLES L. CORBIN.

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Sworn to and subscribed at Jersey City, this 15th day of December, A. D. 1879, before me.

WILLIAM H. PRICE,
Notary Public of N. J.

IN CHANCERY OF NEW JERSEY.

The joint and several answer of Peter Brunjes and Anna C. Brunjes, his wife, two of the defendants to the bill of complaint of Henry Luers, Eliza T. Matley, and Amelia F. Raffloer, trustees and administrators of the will annexed of Henry Luers, deceased, complainants.

These defendants, now and at all times hereafter, saving and reserving unto themselves all manner of benefit and advantage of exception to the many errors and imperfections in said bill of complaint contained, thereof as these defendants are advised it is necessary or material for them to make answer unto, say :

1. These defendants have been informed, and believe the statements contained in paragraphs 1, 2, 3, and 4 of said bill of complaint, to be substantially correct ; but they do not know them to be entirely true of their own knowledge ; and they therefore neither admit nor deny the same, but leave the complainants to make such proof thereof as they may be able, and as may be required by the rules and practice of this Court.

2. This defendant, Peter Brunjes, of his own knowledge, and this defendant, Anna C. Brunjes, on information and belief, denies absolutely that the said Peter Brunjes and Henry J. Ockershausen, or either of them, have money or property or things in action belonging to or held in trust for them, over and above the amount reserved by law.

3. These defendants deny that the said Otto Kohler is indebted to said Peter Brunjes. These defendants admit that said Otto Kohler, on or about the ninth day of March, eighteen hundred and seventy-six, executed unto said Peter Brunjes a mortgage to secure

the payment of thirty thousand dollars, which mortgage was acknowledged and recorded as set forth in said bill of complaint, and by which Otto Kohler mortgaged to this defendant, Peter Brunjes, a number of lots of land in Guttenberg, in the County of Hudson.

4. These defendants admit that, on or about the ninth day of March, eighteen hundred and seventy-eight, these defendants conveyed unto Adelheit Kohler certain lands in the township of Union, Hudson county, known on a map entitled, "Map showing the partition among the heirs of John Bartholf, deed filed December 13th, 1865," as lots 3*a*, 3*b*, 4*a*, 4*b*, 2*a*, 2*b*, 6*a*, 5*a*, 5*b*, and 10, which deed was recorded as stated in said bill of complaint. But these defendants deny that said deed was without consideration, or was made to hinder, delay, or defraud the said complainant, or for any fraudulent purpose whatever.

5. These defendants admit that, on or about the eighth day of April, eighteen hundred and seventy-eight, Otto Kohler and Woltza Kamena executed and delivered unto this defendant, Anna C. Brunjes, a chattel mortgage to secure the payment of eleven thousand five hundred dollars upon goods and chattels in the brewery of Kohler & Kamena, in Guttenberg, which mortgage was filed in Hudson County Register's office on the 10th day of April, A. D. 1878, and refiled in said office April 7th, A. D. 1879, as alleged in said bill of complaint.

6. These [defendants admit that, on or about the *fifth day of April, eighteen hundred and seventy-nine*, John Shaw, Francis N. Townsend, and Peter Brunjes, trustees for the creditors of the firm of Kohler & Kamena, joined with Otto Kohler and Peter Kohler in making a chattel mortgage to this defendant, Anna C. Brunjes, to secure the payment of the sum of eleven thousand five hundred dollars upon the stock and fixtures of the brewery, formerly of Kohler & Kamena,

at Guttenberg, which mortgage was filed in the Hudson County Register's office, on the twenty-fifth day of April, eighteen hundred and seventy-nine. These defendants say that said mortgages were given to secure a debt due from this defendant, Peter Brunjes, to this defendant, Anna C. Brunjes, and they deny absolutely that said mortgages, or either of them, were made to hinder, delay, or defraud said complainants in the collection of their debt, or for any unlawful or fraudulent purpose whatever. 10

7. These defendants admit that, on or about the eighth day of April, eighteen hundred and seventy-eight, Otto Kohler executed and delivered unto this defendant, Peter Brunjes, a chattel mortgage for sixteen thousand five hundred dollars, payable one year from date, which was filed on the tenth day of April, eighteen hundred and seventy-eight, and refiled on the eighth of April, eighteen hundred and seventy-nine, upon the brewery property formerly of Kohler & Kamena, at Guttenberg, as is stated in said bill of complaint. 20

8. This defendant, Peter Brunjes, of his own knowledge, and this defendant, Anna C. Brunjes, on information and belief, deny absolutely that the said Peter Brunjes has conveyed or mortgaged, or caused to be conveyed or mortgaged, any real or personal estate whatever in fraud of his creditors, or for the purpose of hindering, delaying, or defrauding any of his creditors, or that he has any real or personal estate or property whatever belonging to or held in trust for him. 30

All which matters and things these defendants are ready and willing to maintain, aver, and prove, and pray hence to be discharged, with their reasonable costs and charges in this behalf most wrongfully sustained.

LINN & BABBITT,
Sol'rs of Defts. 40

Creditor's bill. On final hearing on pleadings and proofs.

Mr. C. L. Corbin, for complainants.

Mr. John Linn, for defendants.

The Chancellor.

10 On the 1st of May, 1875, Henry J. Ockershausen and Peter Brunjes gave to the executors of Henry Leurs, deceased, a bond conditioned for the payment by them of $38,000, with interest. They also gave a mortgage of real estate to secure the payment of the bond. The mortgage was foreclosed by the complainants, who are administrators with the will annexed of Henry Luers, and under the foreclosure the mortgaged premises were sold in 1879. There was a deficiency. March 18th, 1879, a judgment was entered in the 20 Supreme Court of New York against Ockershausen and Brunjes in favor of the complainants for $33,015.86 of the bond debt, and on the 19th of August, 1879, the complainants recovered judgment thereon in the Supreme Court of this state for $33,605.87. Subsequently, execution against goods and lands was issued on this latter judgment and returned wholly unsatisfied. The object of this bill is to compel the application to the payment of the last-mentioned judgment a mortgage for $11,500 upon the stock and fixtures 30 of a brewery, given to and held by Mrs. Brunjes. The mortgage was given to her for a debt due her husband, and for which, with debts due others, a previous chattel mortgage for $30,000 was given to him in 1876. The personal, individual interest of Brunjes in that mortgage of $30,000 was to the amount of $11,500. After that mortgage was assigned to him he assigned that interest to his wife, and in 1878 a separate mortgage was given to her for it. In 1879 another mortgage was given to her instead of the last-named mort- 40 gage. As will have been seen, the complainants' debt was

contracted in or about 1865. It was part of the consideration which Ockershausen and Brunjes agreed to pay for the interest of Luers in the property of the firm of Brunjes, Ockershausen & Co., of which Luers was a member. He died in or about the year 1865. The complainants insist that the transfer by Brunjes to his wife of the debt of $11,500 due him was fraudulent as to those of his creditors whose debts then existed. The only evidence on the subject of the consideration of the transfer, is the testimony of 10 Brunjes and his wife. It appears from that, that the consideration was money belonging to Mrs. Brunjes, which, after their marriage, he received and applied to his own use. They were married in 1853. She had at that time a house and lot in the City of New York, two notes, one for $2,500, made by her husband's brother, and the other for $800, made by John Hemken, and she had $1,200 in money. She says she lent the $1,200 to her husband very soon after their marriage; that she does not know what he borrowed 20 that money for, nor what he did with it, but guesses he put it in his business; that the two notes were paid to her husband with her consent, and that they were so paid not long after the marriage—within a year, she thinks; that the house and lot were sold about 1855 or 1856, for $4,000 or $5,000 above the amount of a mortgage for $3,000, which after her marriage she had put upon them; that the money for the mortgage and the money for the property were paid to her husband with her consent, and that she 30 does not know what he did with those moneys. They both speak of the money he received from her as having been lent to him. She, however, never received any security for or acknowledgement of any kind from him for it up to the time of the transfer in 1877, a period of about twenty-two years. He never paid or gave to her anything on account of it; never paid her any interest for it, and never gave her any evidence of the alleged indebtedness, and she never asked for any. He says the money was lent to him "right after 40

they were married;" that she gave him the control of it; that she gave it to him; that he put the avails of the mortgage, $3,000, in the grocery business, and put the proceeds of the sale of the property in the sugar business; that between the time when he received the $3,000, and the time when he received the proceeds of the sale, he gave up the grocery business and went into the sugar business, and that he then thought himself a prosperous man. It is quite clear, from their statements, that
10 the money was not lent by the wife to the husband, but that he received it with her full consent, and with like consent, applied it to his own purposes. He does not appear to have ever promised to repay it, nor does it appear that she ever expected him to repay it, but the contrary. He appears to have passed over to his wife all of his property which was of any value. The transfer evidently was not *bona fide*, and it is not valid as against the complainants' debt. There will be a decree accordingly.

20 The case is within the principles of the following cases: Besson v. Eveland, 11 C. E. Gr. 468; Post v. Stiger, 2 Stew. Eq. 554; Clark v. Rosenkrans, 4 Stew. Eq. 665; Miller v. Sauerbier, 3 Stew. Eq. 71; Sayre v. Fredericks, 1 C. E. Gr. 205; Edelen v. Edelen, 11 Md. 420; Kuhn v. Stansfield, 28 Md. 210; Humes v. Scruggs, 4 Otto, 22. See also 1 Bish. M. W. § 123.

IN CHANCERY OF NEW JERSEY.

Between HENRY LUERS and others, Admrs., Complainants, and PETER BRUNJES and wife and others, Defendants.	On Bill, &c. Final Decree.

10

This cause coming on to be heard in the presence of Charles L. Corbin, Esq., of counsel with complainants, and John Linn, Esq., of counsel with defendants, Otto Kohler, Adelheit Kohler, Peter Brunjes, and Anna C. Brunjes his wife, the bill having heretofore been taken as confessed, against the other defendants, and the depositions in the cause having been read, and counsel heard, and it appearing that the complainants have 20 recovered a judgment in the New Jersey Supreme Court, against the defendant, Peter Brunjes, for $33,605.87, and that execution was issued thereon and returned wholly unsatisfied, and the Chancellor being of opinion that the transfer by the defendant Peter Brunjes, to his wife Anna C. Brunjes, of a certain debt due to said Peter Brunjes, secured by a chattel mortgage for $11,500, was void as against the complainants, and that the said mortgage and the proceeds thereof should be applied to pay the judgment 30 of complainants.

And it further appearing from the report of the receiver appointed in this cause, by order made on the seventeenth day of February last, that the said chattel mortgage has been foreclosed, and the mortgaged chattels sold; that the amount realized on said sale was paid to the receiver, and that the amount now in the hands of the said receiver is the sum of three thousand six hundred and seventy-five dollars and 40 fifty cents ($3,675.50).

It is on this day of June, A. D. eighteen hundred and eighty-one, on motion of Collins & Corbin, solicitors for and of counsel with the complainants ordered, adjudged and decreed that the transfer of said debt and of the security therefor by Peter Brunjes to Anna C. Brunjes be set aside, and that said defendant Peter Brunjes and Anna C. Brunjes shall pay to complainants their costs of this suit to be taxed. And it is further ordered that there shall be allowed to said receiver for his compensation the sum of sixty-five dollars, and that said receiver, after reserving from the funds in his hands his compensation, shall pay the remainder of the said sum, to wit: the sum of three thousand six hundred dollars unto the complainants or their solicitors, to be applied to the payment of said costs, and the remainder on account of their said judgment, and on making such payment said receiver shall be discharged.

THEODORE RUNYON, C.

IN CHANCERY OF NEW JERSEY.

Between HENRY LUERS, ELIZA T. MATHEY AND AMELIA M. RAFFLOR, Trustees and Administrators with the will annexed of Henry Luers, dec'd, Comp'ts. and PETER BRUNJES AND ANNA BRUNJES, his wife, and others, Def'ts.	On Bill, &c.

10

The defendant Anna C. Brunjes hereby appeals from the whole and every part of the final decree, made in this Court, in the above stated cause, to the Court of Errors and Appeals in the last resort in all causes.

20

June 11th, 1881.

LINN & BABBITT,
Sol's of Appellant.

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

JNO. LINN,
Of Counsel with Anna C. Brunjes,
the Appellant.

30

NEW JERSEY COURT OF ERRORS & APPEALS.

Between ANNA C. BRUNJES, Appellant. and HENRY LUERS, ELIZA T. MATHEY AND AMELIA M. RAFFLOR, Trustees and Administrators with the will annexed of Henry Luers, dec'd, Respondents.	On Bill, &c. —— Petition of Appeal.

10

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

20 The humble petition of Anna C. Brunjes, the appellant in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of New Jersey, bearing date the sixteenth day of June, in the year of our Lord one thousand eight hundred and eighty-one, in a certain cause wherein the said Henry Luers, Eliza T. Mathey and Amelia M. Rafflor, trustees and administrators with the will annexed of Henry Luers, de-
30 ceased, were complainants, and the said Anna C. Brunjes and Peter Brunjes, Henry J. Ockershausen, Otto Kohler, Adelheit Kohler, his wife, Woltza Kamina, John Shaw and Francis M. Townsend were defendants, in this respect, to wit: That the said decree adjudges that the transfer of the debt and of the security therefor by Peter Brunjes to said Anna C. Brunjes, recited in the bill of complaint and answer in said cause, be set aside, and that Peter Brunjes and said Anna C. Brunjes shall pay to said complainants
40 their costs of said suit to be taxed, and that the re-

ceiver, after reserving from the funds in his hands his compensation, shall pay the remainder of the sum, to wit: the sum of three thousand six hundred and ten $\frac{50}{100}$ dollars unto the said complainants or their solicitors, to be applied to the payment of said costs, and the remainder on account of their said judgment. And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the transaction of said debt and security therefor 10 by Peter Brunjes to said Anna C. Brunjes was not void as against the complainants, and the mortgage and proceeds thereof should not be applied to pay the judgment of the complainants.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid reversed, set aside, and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

LINN & BABBITT, 20

Sol'rs of Appellant.

JOHN LINN,

Of Counsel with Appellant.

In Chancery of New Jersey.

Between HENRY LUERS and others, *Complts.*, and PETER BRUNJES and others, *Defdts.*	*On Bill, &c.*

10

Examination of the defendants in the above-stated cause, taken before Henry L. R. Vandyck, Master and Examiner in Chancery, at his office 259 Washington street, on Tuesday, the 23d day of December, A. D. at 10 o'clock A. M., under and by virtue of an order made therein bearing date the 15th day of December, A. D. 1879.

20

HENRY J. OCKERSHAUSEN, being duly sworn according to law, on his oath deposes and says : I reside at No. 82 Grand street in Jersey City; I have no occupation at present; my last occupation was that of a sugar refiner in New York City ; I was a member of the firm of Brunjes, Ockershausen & Co.

30

The accounts of that firm are still unsettled; they ceased the business of sugar-refining in 1871 or 1872.

The members of the firm at the time it broke up were Peter Brunjes, myself, and Lawsen N. Fuller.

Mr. Fuller was the junior partner and succeeded Henry Luers, deceased, who was a former member of the firm.

Henry Luers died about 1865; at the time of his death there was not much capital in the business; the capital we had was in real estate and machinery; the surviving

40

partners of the firm took Mr. Luers' interest in the property; it continued to remain there for some time, but it was paid off according to the terms of Mr. Luers' will (as each child came of age it was to have five thousand dollars; the interest was to be paid to the widow), except thirty-eight thousand dollars, the widow's portion; for that thirty-eight thousand dollars a bond and mortgage were given for May 1st, A. D. 1875, by Brunjes and myself to the executors of Henry Luers, who were Lawsen
10 N. Fuller and Peter Brunjes.

The mortgage was on firm property in New York City, and was the first mortgage on some and the second mortgage on the rest; this mortgage has been foreclosed and the property sacrificed; it was for a deficiency on that foreclosure that the judgment in question here was recovered; Luers' executors were partners in the firm; our firm had dealings with the firm of Kohler & Finck, brewers, at Guttenburg, New Jersey; Kohler and Brunjes are brothers-in-law, Kohler having married Peter Brun-
20 jes' sister, Adelaide Kohler; my firm lent them money; Brunjes did that; there was another Brunjes, Herman Brunjes, in the firm up to about 1869; he lent the money of our firm to them; Herman Brunjes was a brother to Peter; those loans amounted to several thousand dollars; they were all settled up; I think that they were settled up at the time Herman Brunjes left the firm; Peter and Herman Brunjes took the responsibility of the loans; I do not know whether Kohler paid them; I believe that the loans were charged on the books of our firm
30 to Peter and Herman Brunjes; there was an account of money loaned to Kohler's firm on the books when I came into the firm; at the time we stopped working, about 1872, Brunjes' capital was all in the property of the firm; he had half and I had half, and it stood us in at about four hundred thousand dollars ($400,000.00); there was a mortgage that is a original mortgage of sixty-seven thousand dollars, and afterwards Luers' mortgage was given; I don't know what money may have been due Brunjes on his own private loans; I don't know how
40 much Kohler or his firm owed him; when our firm re-

tired we paid up all our debts except the mortgages; since we closed business two of the mortgages were foreclosed, leaving a surplus, which went to the complainants; then they foreclosed, leaving a deficiency; there is still a part of the property which has not been foreclosed upon which the complainants have a second mortgage.

At the time of Mr. Luers' death I had a one-quarter interest in the sugar-house property; all the money I had was invested there; I did not own any property or real estate except that; at the time of Luers' death I lived in Jersey City; I came here in 1865; I cannot remember if I came here before or after Luers' death; I moved in No. 82 Grand street; then my wife bought that house; at the time I moved over the price was twenty-five thousand and one hundred dollars, I think; the consideration was fifteen thousand dollars cash, and ten thousand dollars on mortgage; the mortgage has not been paid and is still on the property; the full amount of the mortgage is still due.

The mortgage is held by a man by the name of Mayor, in Switzerland; I pay the interest to J. A. Alry & Son in New York City, agents of the holder of the mortgage; the money paid for the house, fifteen thousand dollars, came from the sale of real estate in Baltimore, which my wife sold; that property was sold by her in 1861 or 1862; the profits Brunjes and I made we put in the business to buy out the other partners and in improvements on the property; since 1865 I have not owned any real estate except the sugar refinery; my wife has not owned any real estate except this house since 1865; she had a mortgage for $30,000 on property in Pennsylvania which was foreclosed, and she had to buy it in; she still holds the property; it is mining property of very little value; it is in Lehigh county; I hold no collectible claim against any one; I hold no notes or bonds and mortgages, no government bonds or other securities; since the death of Henry Luers, I have not transferred any securities held by me to my wife; I have none to

transfer; since the death of Henry Luers I have not given my wife any money for investment.

HENRY J. OCKERSHAUSEN.

Sworn to and subscribed before me this 23d day of December, A. D. 1879.

H. L. R. VANDYCK,
Master in Chancery.

10 ———

OTTO KOHLER, being duly sworn according to law, on his oath deposes and says: I reside at Guttenburg; I am a brewer by occupation; I have a brewery there; I have run a brewery there some twenty years; the firm was formerly Kohler & Finck; Mr. Finck went out of the firm some fourteen or fifteen years ago, and Woltzi Kamena succeeded him; the firm of Kohler & Kamena suspended about a year and one-half ago, as near as I
20 can recollect; the partnership was dissolved then; the firm property then came to the creditors; it was conveyed to trustees; those trustees were Peter Brunjes, John Shaw and Francis M. Townsend; they still hold the title to the property; the business is now carried on by Kohler & Son—that is myself and my son Peter Kohler; I think that at the time the firm suspended there was a chattel mortgage on the brewery property;

Q. I find on file a chattel mortgage made by Kohler & Kamena to Peter Brunjes for thirty-two thousand six
30 hundred and eighteen dollars and thirty-four cents $32,618.34), dated and filed April 10, 1877. What was that mortgage given for?

A. I don't recollect all the items; it was for money that we had gotten through Mr. Brunjes.

Mr. Brunjes is my wife's brother; he was a sugar refiner of the firm of Brunjes & Ockershausen, sugar refiners; it was not all money from him; I don't recollect the exact amount that was from him. Brunjes lent me some money some years ago; we had a running account; we
40 borrowed and paid from time to time; I don't recollect

if, or not, that account was with the firm of which Brunjes was a member.

Herman Brunjes was also at one time engaged with Peter Brunjes in the sugar refinery; he was also a brother-in-law of mine.

Q. There was a mortgage by Otto Kohler to Peter Brunjes, recorded on April 10th, 1877, for thirty thousand dollors ($30,000); was that to secure the same debt as the chattel mortgage?

A. Yes, I suppose that was meant for—that. The trustees own the land upon which that mortgage was given; I suppose that when the liabilities are all discharged I will then own it.

Q. There was a deed made by Otto Kohler to Peter Brunjes, recorded on the same day, that is April 10th, 1877, of a number of lots on the Bertholf Map. Was that given on account of the same indebtedness?

A. It was given as a collateral.

Q. About a year after that chattel mortgage became due there appear on file two other chattel mortgages dated April 8, 1878, and filed April 10, 1878—one by Kohler & Kamena to Anna, wife of Peter Brunjes, for eleven thousand five hundred dollars ($11,500), the other to Peter Brunjes for sixteen thousand and five hundred dollars ($16,500). Were those mortgages given for the same debt that the first one was?

A. Yes, I suppose so. The mortgages came to be made to Anna Brunjes, wife of Peter Brunjes, because Peter Brunjes directed it to be so made; I understood that the money came from her; she was a widow when Peter Brunjes married her, and was reported to have money; I did not see it.

Q. Was this eleven thousand five hundred dollars the amount that you had received from Peter Brunjes?

A. Yes, I suppose so; I suppose that it was taken off the book.

Q. In April, 1879, the two last mentioned chattel mortgages were refiled, and in the same months two other chattel mortgages for the same amounts made by Townsend & Brunjes, one to Peter Brunjes and one to

Anna C. Brunjes and put on file. Were those for the same debt as the previous mortgage?

A. I suppose so; the whole amount was due on these last two mortgages. I don't recollect if, or not, any interest has been paid on those mortgages. I don't know if any interest has been paid on them since last Spring. I don't recollect if or not any interest was paid on those mortgages before last Spring.

Q. Is the whole amount of those mortgages still due?

10 A. Yes, sir; I do not know anything about the property or business of Henry J. Ockershausen.

OTTO KOHLER.

Sworn to and subscribed before me, this 3d day of January, A. D., 1880.

H. L. R. VANDYCK,
Master in Chancery.

CHARLES L. CORBIN, being duly sworn according to
20 law, on his oath deposes and says: I am one of the solicitors of the complainants; the judgment in this case was recovered upon a judgment previously recovered in the Supreme Court of New York, in and for the City and County of New York; in that New York suit an examination was held on proceedings supplementary, to execution on the 26th day of December last, in the Court House in New York City, when and where Peter Brunjes was examined under oath, and the examination was continued on January 6th, A. D., 1880; it was read over to
30 Peter Brunjes, and he signed it and swore to it, before Judge Donohue; I conducted the most of his examination; on the 9th day of January, in the same proceedings, in New York, Anna C. Brunjes was examined by me, and her testimony was taken down in writing, read over to her, and signed and sworn to by her before Judge Donohue; counsel for Mr. and Mrs. Brunjes was present at those three examinations.

The examination signed by Peter Brunjes and
40 Anna C. Brunjes before Judge Donohue is offered in evidence and marked "Exhibit P 1."

This testimony may be required to be filed in New York; I offer in evidence a copy which has been compared by me with the original, it is a full and correct copy of "Exhibit P 1"

Offered in evidence and marked "Exhibit P. 2."

CHARLES L. CORBIN.

Sworn and subscribed before me, this 19th day of January, A. D. 1879. 10

H. L. R. VANDYCK,
Master in Chancery
Of New Jersey.

Copy of the record of the judgment recovered in the New Jersey Supreme Court in the case of Henry Luers *et al. vs.* Peter Brunjes and Henry J. Ockershausen, offered in evidence and marked "Exhibit P 3," also the judgment roll of judgment obtained in New York Supreme Court, between 20 the same parties, marked "Exhibit P 4."

Thereupon the examination was declared closed on the part of the complainants under the said order.

H. L. R. VANDYCK,
M. C.

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Exhibit P 1.

IN SUPREME COURT

CITY & COUNTY OF NEW YORK

HENRY LUERS *et al* Trustees &c

10 *vs*

PETER BRUNJES and HENRY T. OCKERSHAUSEN.

DEC. 26, 1879

Examination in proceedings supplementary to execution in above entitled action at Supreme Court Chambers in 20 the County Court House, New York City before Hon Hooper C. Van Vorst, Judge.

Present.—C. L. Corbin & Edwin Baldwin Esqrs of Counsel for Plffs & Judgt Crs Peter Brunjes Deft & Judgt Dr in person & Geo F Martens Esq his Counsel.

PETER BRUNJES the judgt debtor being duly sworn testified

I am one of the Defts in above entitled action. Reside 30 in New York City—No. 229 East 18th Street. Have no occupation. My last occupation was that of Refining Sugar. Firm was Brunjes Ochershausen & Co. They ceased operations in 1872. Henry Luers was one of my former partners. He died about 1865. At the time of his death Henry Ockershausen, Peter Brunjes & Henry Luers and Hermann Brunjes constituted the firm. Hermann Brunjes was my brother & is still living. He lives in Harlem. I know Otto Kohler. His wife, Adelheit Kohler, is my sister. His business is that of a Brewer 40 in Guttenberg New Jersey. At the time of the death of

Henry Luers, Kohler was a Brewer in Guttenberg & has continued to be ever since. He had a partner. the first one was Andrew Fink. The next was Woltje Kamena. The firm of Kohler & Kamena suspended payment & got three years extension. The firm is now out of business. The present firm is Kohler & Son—consists of Otto Kohler & Peter Kohler his son. The title to the Brewery property is in three Trustees, as I believe. I am one of the Trustees. The others are John Shaw, of Patterson, a maltster & Brewer, Francis 10 M. Townsend is another. He lives in New York. He is a malt & hop dealer. These Trustees were appointed at the time of the suspension. They were appointed for the benefit of creditors of the firm of Kohler & Kamena. I was one of the creditors of the firm, in an amount of between $11,000 or $12,000. They owed me that sum for money lent to Kohler & Fink, ten or fifteen years ago. It was loaned at different times. None of that money was lent to Kohler & Kamena. Kohler & Kamena assumed that debt I think. I loaned Kohler 20 Kamena $200, $500 & $6000 at different times as they needed & then they paid it back again. They owed me nothing except the money which I loaned to Kohler & Fink. I never loaned Otto Kohler individually any money. I did not lend his wife any, that I know of. She never loaned me any. I never owed her any money. At the time I loaned the money to Kohler & Fink I think I got notes for it. I never had any security for the money except a mortgage. The first mortgage I had was given a long while ago. It was a chattel mortgage 30 upon the Brewery chattels. Whether it covered the land or not I do not know.

Ques. There is on file in the Registers office of Hudson County N. J. a chattel mortgage to Peter Brunjes for $32.618 34 made by Kohler & Kamena dated April 10. 1877 upon the Brewery chattels & fixtures. What was that mortgage given for?

Ans. It was given for money owed me and preferred creditors. I cant tell who the creditors were. They are the creditors named in a mortgage drawn last Spring on 40

the same property. I gave my share of that first chattel mortgage to my wife in part payment of money she loaned me. I gave her the mortgage by an assignment thereof. When the renewal was made I had it made to her for her share. The renewal mortgage was $11.500. Otto Kohler also gave me other security. He gave me a deed of some lots as collateral. Nothing else that I remember. He gave me a mortgage of $30,000, on the Brewery property before. It covered also other lots. That was to secure the same debts. I owed my wife for monies which she had given me. She had property & money & furniture &c when I married her in 1853 or 1852. We were married in New York City She had money loaned out & a house & lot in the City—N. Y City. The money was loaned me right after we were married. She gave me the control of it. She gave it to me. The money was loaned out on a note of my Brother. $2500. or 3000. That note was paid when I went into partnership with my Brother in the wholesale Grocery business. He gave me credit for it on the books. It was in 1853 or 1854—right away after my marriage. I speak of my Brother Hermann. I have never repaid that to her. Never gave her security for it.

The real estate which my wife owned at the time of my marriage was on East River—Pike Slip. It was a store and lot. It was on corner of Water street. She owned it I dont remember whether there was a mortgage as it at time we were married. My wifes name when I married her was Anna C. Eggers. Her maiden name was Schierrenbeck. She got title to the Real Estate under the name of Eggers. It was sold in 1858 I think, for between $7000. and $8000. There was a mortgage of $3000. upon it when the property was sold. It was put on a little while before it was sold. I put the avails of the mortgage $3.000. in the grocery business. The prop. was sold subject to the mortgage for cash. I took the cash which were avails of sale & put it in the sugar business. I had between that time & the time of giving the 3000. mtge given up the grocery business & gone into

the sugar business. I did not give my wife any security for the money either for the money received on the mortgage or on the sale. At that time I thought I was a prosperous man

We consent that the foregoing examination and proceedings under the order herein be adjourned to Tuesday, January 6, 1880, at ten o'clock A. M., same place.

GEORGE S. MARTENS,
Att'y for Def't Brunjes.

10

JANUARY 6, 1880.

Examination of PETER BRUNJES continued, & he testified as follows.

I wish to correct my statement as to my dealings with Kohler & Fink, and Kohler & Kamena. When Kohler & Kamena took the business of Kohler & Fink they took also the Books of ac. of the first named firm, and my ac. with the first named firm was continued with the latter as if there had been no change, & they assumed and agreed to pay it. And what money was afterwards loaned 20 by me to Kohler & Kamena & what was paid me by them was continued on same ac.

Catherine Kohler lives in Hackensack, and is the widow of John F. Kohler, decd—we are trustees under the Will of John L Kohler. He died in 1873. I have no interest in his estate. In former times I loaned John L. Kohler money. He was in our employ. It was repaid me, before his death.

Hermann Brunjes owes me nothing. There are many judgts against Hermann. I do not own any prop on 30 North East corner of Fulton & William streets N. Y. City. I did own it for a little while. It was sold at Referees Sale under foreclosure of mortgage. The Plffs in the mtge suit was Albert Block. Herman Brunjes never gave me a mtge on property South East corner of 125th St & 1st Ave. of $1000. or any other sum.

I owned some property on Washington street—also on Hoboken Street and also on West St. The Washington St. prop. was sold to Mr. Littell for $40.000. That sum all went to pay mortgages. 40

The Hoboken St. property was sold upon the judgt. of foreclosure in this suit.

The West St. property is not sold yet. The Metropolitan Savings Bk have a first mortgage on it of $32.000. or thereabouts. The mortgage given by myself and Ockershausen to Mr Fuller & myself as Trustees for the estate of Henry Luers dec. embraced this West St. property. The property is commonly designated as Numbers 258 and 259 I think. It is between Hoboken
10 & Watts Streets Mr Fuller & myself were succeeded as Trustees by the Plaintiffs in the action. The West St. property is one piece and is used as a store house—A man by name of Ross has charge of it. He has $\frac{1}{3}$ of the receipts for storage and the remaining $\frac{2}{3}$ was to have been paid to Ockershausen & me. We dont get it now. I think the Metropolitan Bank gets it. It is more than a year ago since we received anything from the property. Ockershausen had charge of it.

The two chattel mortgages made by Kohler—one to
20 Anna C. Brunjes & one to the three Trustees were given in satisfaction of all claims held by me individually or as Trustee.

PETER BRUNJES.

The foregoing testimony taken this day and December 26th 1879 after being reduced to writing was read over to the witness and sworn to before me this 6th day of January 1880.

C. DONOHUE.

30 Further examination for witnesses adjourned by consent to Jany 9. 1880 1 P. M. same place.

C. DONOHUE, *J.*

We consent to above.

GEORGE J. MARTENS,
Atty for Deft Brunjes.

Complainants filed the above depositions in the clerk's office, December 24th, 1880, with a notice that the same
40 would be used on the hearing.

IN SUPREME COURT.

LUERS *et al* as Trustees &c

v.

BRUNJES *et al.*

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ANNA C. BRUNJES a witness produced on the part of the Plaintiffs, a judg creditor being duly sworn testified as follows

I am wife of Peter Brunjes. Was married in 1835—at the time of my marriage Mr. Brunjes was a wholesale grocer. At that time I had a house & lot on corner Pike Slip & Water N. Y. City—no other real estate. I had some money in a note for (2500) twenty-five hundred dollars made by Herman H Brunjes. Also another note made 20 by John Heinken for $800. No other notes, or money or Bonds & Mortgages. I had a grocery store that sold for $1200. It was sold before I was married. I had the avails of it at time I was married. So far as I remember my uncle kept it for me. I remember no other property except household furniture—that is nothing of any great value. I loaned the $1200. to my husband after I was married, quite soon after. I don't know what he did with it. I don't know what he borrowed it for. I guess he put it in his business. The two note I have 30 spoken of were paid—they were paid to Mr. Brunjes by my consent. I loaned it to him. That was not long after my marriage—within a year I think. The store & lot on Pike Slip were sold abt 1855 or 1856 I think—perhaps 1858. At the time of my marriage I think the property was clear—there was a mortgage made on it for $3000. by me, and the money was paid by my consent to Mr. Brunjes. I loaned it to hi n I don't know what he used it for. He may have put it in the business or let it out, he didn't tell me. The house & lot were sold for 7 or 40

$8000. The mtge for 3000. came out of that. I loaned the money I got for it to my husband. I don't remember whether he received it when the house was sold. The money was handed over to Mr. Brunjes with my consent when the sale was closed. Mr. Brunjes never paid me any part of this money. He never gave me any land for it. Down to 1877 he gave me no security. He never gave any Bond, or note or writing. I never required him to give me anything of that sort. He never paid me
10 interest nor any part of the principal. About two years ago he gave me a mortgage made by Kohler & Kamena—a chattel mortgage upon Brewing Chattels for ($11.500) eleven thousand five hundred dollars—no part of it has been paid. When the time came to renew that the Trustees had become the owners of the property of Kohler & Kamena & gave me a mortgage for the same amount in renewal & upon same property. That I still hold, and it is still unpaid. I have received no other security except that. I have received no property since
20 my marriage from Mr. Brunjes. I have not received property from any other source. In 1865 my husband was a wealthy man, as I supposed.

ANNE C. BRUNJES.

The foregoing examination taken, reduced to writing, then read to her, subscribed and sworn to before me this 9 day of January 1880.

C. DONOHOE.

30 Further proceedings under order herein for witness adjourned January 17, 1880—10:30. Same plea.

Consent to above.

C. D.

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