COURT OF ERRORS AND APPEALS.

Between JOHN S. CARPENTER AND MARY ANN CARPENTER, HIS WIFE, *Appellants,* *and* GEORGE CARPENTER'S EXECUTORS. *Appellees.*	*On Bill, &c. Petition of Appeal.*

POINTS OF COUNSEL OF APPELLANTS.

It is not pretended that there is any proof of actual fraud: the decree was made upon the ground that the object of the conveyance was to protect the property against the future indebtedness of John S. Carpenter.

First—The conveyance was not made in contemplation of future indebtedness, but in perfect good faith, for the objects stated in the answer. It was made at the request of the wife and daughters, through James A. Thompson—their object being to prevent the making of any other similar investments; and John S. Carpenter made the transfer to quiet their fears and satisfy them.

a—The deeds were dated November 8th, 1866, and were recorded November 10th, 1866.

b—John S. Carpenter was not a partner in the Brooklyn business, and had no interest in it, except that which he acquired under his agreement with Baker, by which Baker was to pay him one-half of his (Baker's) interest in the net profits, [Exhibit "A," pages 20 and 21.]

He was not liable in any manner for the firm debts. He had no voice in the stoppage of the business. When the conveyance was made the business was running prosperously, as he believed, and he was satisfied with his then connection with it. He did not and could not have anticipated its discontinuance, and the necessity or importance arising therefrom of his engaging in the ~~premises~~ business on his own account.

c—When he embarked in business for himself, in Jersey City, in the Spring of 1867, he did not resort to the farm to raise the required funds, nor did he seek to obtain credit or make debts upon his former financial standing; but he applied to James A. Thompson, by whose advice the conveyance was made, to endorse his paper at the Bank. Thompson consented to do so, and continued to be his sole endorser until the Spring of 1869—during which time all the monies which were required by Carpenter in the business were raised upon Thompson's endorsement. Carpenter made no other indebtedness of any kind, and in the Spring of 1869, the indebtedness at the Bank was divided between Thompson and George Carpenter: in other words, two years and a half after the conveyance was made, George Carpenter endorsed John S. Carpenter's note for $3,500, payable six months from date, and voluntarily assumed one-half the liability of James A. Thompson, who had advised the transfer. This indebtedness did not in fact accrue to George Carpenter until September 23d, 1869—nearly three years after the conveyance was made—and as John S. Carpenter owed no other debts except this, his Honor, the Chancellor can only be sustained upon the assumption that on Nov. 8th, 1866, when the conveyance was made, John S. Carpenter intended to procure his brother's endorsement, March 20th, 1869, upon a note at six months, and not to pay it at maturity. The conveyance, to be fraudulent, must have been made with a meditated design to contract debts in the future. "There is "nothing inequitable or unjust in a man's making a voluntary con- "veyance or gift, either to a wife or a child, or even to a stranger, if it "is not at the time prejudicial to the rights of any other person, or in "furtherance of any meditated design of future fraud or injury to "other persons."—Storey's Eq. Jur., Sec. 356.

Second—The Chancellor states that an important consideration in the case is that at the time the note was signed by George Carpenter, John S. Carpenter represented to George that he (John) still owned the farm, and that Mrs. Carpenter must have heard this representation, and was therefore a party to the fraud.

a—No such representation was made. It is denied by John in the answer and in his testimony. [Testimony of John, page 38, line 13. Testimony of Emily, page 44, line 30. Testimony of Susan, page 46, line 13.]

b—George was not induced by such representations to sign the note.—page 31, line 20.]

c—Mrs. Carpenter heard no such representation, if any was made, and knew nothing about the note till long after it was signed. [Pages 42 and 43, to line 13.] The daughters knew nothing about this note till long after it was signed. [Testimony of Emily, page 44. Testimony of Susan, page 34, line 24.]

d—The evidence upon this point was illegal and incompetent, and should not have been considered by the Chancellor, and could not have been made a ground for relief. The Bill charges that George supposed when he signed the note that John still owned the farm, and that John so represented at the time. It does not allege that Mrs. Carpenter was present or that she heard the representation, and does not in any manner connect her with it. [Page 6, line 30.] The *allegata et probanda* must correspond. "Relief cannot be granted for matters "not charged in the Bill, although they be apparent from other parts "of the pleading and evidence."—[Storey's Eq. Pl., Sec. 257. Ryerson and als, vs. Tuers' Executors and als, 2 Hal. Ch. 618.

In Chancery of New Jersey.

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Between

GEORGE CARPENTER,
Complainant,
and
JOHN S. CARPENTER and MARY ANN, his wife,
Defendants.

On Bill for Relief.

S. TUTTLE, *Solicitor.*

To the Honorable ABRAHAM O. ZABRISKIE, Chancellor of the State of New Jersey:

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Humbly complaining, showeth unto your Honor, your orator George Carpenter, of the township of Wallkill, in the county of Orange, and State of New York, that on the eighth day of November in the year of our Lord one thousand eight hundred and sixty-six, one John S. Carpenter, of the township of Vernon, in the county of Sussex, in the State of New Jersey, was seized in fee simple of all those tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the township of Vernon, in the county of Sussex, and State of New Jersey, butted and bounded as follows: The first tract beginning at a white oak tree marked on four sides with a blaze and three notches, on the southeast side of a hill and on the northeast of a pond called the "little pond," and stands north fourteen degrees, west six chains and fifty links from a rock that stands on the edge of said pond; thence (1) north, sixty-one degrees west six chains; thence (2)

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north, three degrees east twenty chains; thence (3) north, forty-two degrees east thirty chains; thence (4) south, forty-seven degrees east ten chains; thence (5) south, thirty degrees west nineteen chains; thence (6) south, forty-four degrees and thirty minutes east eleven chains; thence (7) south, twenty-four degrees west ten chains; thence south, seventy-four degrees west seventeen chains and eighty links to the place of beginning; containing seventy-six acres and nineteen one-hundredths of an acre.

The second tract begins at a stake where a white oak tree formerly stood, and is south eighty-five degrees west six chains and ninety links from the west corner of Joseph Hide's house, and is the beginning of a survey returned to Oliver Delancy, and runs from thence; (1) north, fifty degrees west nine chains; (2) south forty-nine degrees west thirty-six chains; (3) south fifteen degrees west thirteen chains; (4) south, sixty-three degrees east four chains and fifty links; (5) north, forty-two degrees east twenty-one chains; [6] south, forty-seven degrees east seventeen chains; [7] north, fifty-three degrees east twelve chains and seventy links; [8] north, fifty degrees west nine chains and fifty links; [9] north, fifteen degrees east fifteen chains and fifty links to the beginning; containing sixty-eight acres and fifteen one-hundredths of an acre.

The third tract lying and being on the Pochuck Mountain, on both sides of the road leading through the place of Anthony Parcel and Charles Rhodes, beginning at heap of stones lying about north sixty two degrees west ten chains from a pond called Grant's pond; said heap being the second corner of a tract of seventy-six acres and nineteen hundredths of an acre, *record* to the Earl of Perth in S. 7 page 19, late the property of the said Parcel, thence [1] north, one degree and twenty minutes east twenty chains; thence [2] north, forty degrees and twenty minutes east six chains and seventy links; thence [3] north, sixty four degrees west two chains ten links; thence [4] north, fourteen degrees east seven chains and fifty links; thence [5] north, forty-eight degrees west fifteen chains and twenty links; thence [6] west, nine

chains; thence [7] south, six degrees west thirty-three chains; thence [8] south, sixty-one degrees east twenty-two chains to the place of beginning containing seventy-one acres and twenty-five one hundredths of an acre.

And your orator further shows that on the day and year aforesaid, the said John S. Carpenter, and Mary Ann his wife, by their deed dated on that day, conveyed all the above described lands and premises unto their daughter Susan Carpenter, which said deed was on the tenth day of November in the same year, duly acknowledged and recorded in the office of the Clerk of the county of Sussex, in book "P. 5" of deeds, page 10, &c., as by reference thereto will more fully and at large appear.

And your orator further shows, that on the day of the date of the aforesaid deed, the said Susan Carpenter, by her deed dated on that day, conveyed the same land and premises above described, to the said Mary Ann Carpenter wife of the said John S. Carpenter, in fee simple, which last said deed was on the tenth day of November, in the same year duly acknowledged and recorded in the Office of the Clerk of the county of Sussex in book "P. 5," of deeds, page 12, &c., as by reference thereto will more fully appear.

And your orator further shows that on twentieth day of March, in the year eighteen hundred and sixty-nine, your orator and the said John S. Carpenter, made their joint promissory note, dated on that day, for the sum of three thousand five hundred dollars, payable in six months from the date thereof, to one James A. Thompson; that your orator was in no way interested in or benefited by the consideration of the said note, but signed the same as surety for the said John S. Carpenter at his request.

And your orator further shows, that when the said promissory note became due and payable, to the said James A. Thompson, according to the tenor and effect thereof, the same was not paid or discharged by the said John S. Carpenter, or any one on his behalf, but the same remained wholly due and unpaid until the twenty-second day of March,

in the year eighteen hundred and seventy, when an action was commenced by the said James A. Thompson, against the said John S. Carpenter and your orator, in the Supreme Court of the State of New Jersey, for the recovery of the amount due upon said note, and such proceedings were thereupon had, that on the fifteenth day of July in the year last aforesaid, a judgment was recorded in the said Court against the said John S. Carpenter and your orator for three thousand eight hundred and fifty-two dollars and forty cents, as by the records of the said court reference thereto being had will more fully appear.

10 And your orator further shows that a writ of Fieri Facias de Bonis et Terris upon said judgment was duly issued out of the said court, directed to the Sheriff of the County of Sussex, which was duly returned by the said Sheriff to the said Supreme Court, wholly unsatisfied as against the said John S. Carpenter.

And your orator further shows that in consequence of the inability of the said James A. Thompson, to obtain the amount of said judgment out of the estate of the said John S. Carpenter, your orator was 20 compelled to pay to the said James A. Thompson the amount of said judgment with the costs of the same and interest thereon accruing.

And your orator further shows, that on the fourth day of December, in the year one thousand eight hundred and seventy-one, he commenced a suit in the Supreme Court of this State against the said John S. Carpenter, to recover the amount so paid out for him by your orator, as aforesaid, and that on the twentieth day of February, in the year eighteen hundred and seventy-two, he obtained a judgment in said suit against the said John S. Carpenter, for the sum of four thousand two 30 hundred and sixty-eight dollars and seventy cents damages, and thirty three dollars and sixty-three cents costs of suit, for which said sums a writ of Fieri Facias de Bonis et Terris upon said judgment, was on the day last aforesaid duly issued out of the said Court, directed to the Sheriff of the County of Sussex, returnable to the February term of said court, for the year aforesaid, which said writ was duly returned by

the said Sheriff to the said term unsatisfied, there being no goods or lands of the said John S. Carpenter, upon which to levy,

And your orator further shows, unto your honor that a short time prior to the making of the aforesaid deeds, by which the above described property was transferred to the said Mary Ann, wife of the said John S. Carpenter, the said John S. Carpenter, had, with three other persons to your orator unknown, entered into a co-partnership for the purpose of carrying on the business of manufacturing the Union Metal and other articles, in Jersey City in this State; that said business required the investment of large sums of money by the said John S. Carpenter, and was of an experimental and speculative nature. 10

And your orator further shows, that the business of the said co-partnership was largely carried on by money furnished by the said John S. Carpenter from time to time, to procure which, the said John S. Carpenter, would give his promissory notes indorsed by his friends, and procure the same to be discounted.

And your orator further shows that a short time after the commencement of the said business of the said co-partnership, the said John S. Carpenter, became apprehensive that the said business would prove unsuccessful and a financial failure, and in order that he might have his property secured, and beyond the reach of his creditors in case the money invested in the business of the said co-partnership should be lost, he secretly and fraudulently conveyed all his real estate before described, to his said daughter Susan Carpenter, as hereinbefore stated, by whom the said real estate was immediately thereafter conveyed to the said Mary Ann Carpenter, wife of the said John S. Carpenter, as hereinbefore mentioned and set forth. 20

And your orator further shows, unto your honor, and charges the fact to be, that the said conveyance by the said John S. Carpenter to Susan Carpenter, and the said conveyance by Susan Carpenter to the said Mary Ann, wife of the said John S. Carpenter, were each of them wholly without any valid consideration in law or in equity, and were given for the express and sole purpose of putting the title of the prop- 30

erty of the said John S. Carpenter in the name of his said wife, and out of the power of his creditors to sell the same for the satisfaction of their debts, in case he should become involved in the said manufacturing business at Jersey City, and unable to pay from that concern, the debts incurred by him for the purpose of carrying on that business; and although the consideration of the said deed from John S. Carpenter, and Mary Ann his wife, to the said Susan Carpenter is therein stated to be the sum of nine thousand dollars, yet your orator charges that no such sum of money, nor any money whatever, passed from the said
10 Susan Carpenter to the said John S. Carpenter, or Mary Ann his wife; and although the said deed from the said Susan Carpenter by the said Mary Ann Carpenter, is therein stated to be for the consideration of nine thousand dollars, yet your orator charges that in fact no money whatever, nor any valid consideration of any kind, passed from the said Mary Ann Carpenter to the said Susan Carpenter.

And your orator further shows that the said promissory note for three thousand five hundred dollars, hereinbefore mentioned was given by the said John S. Carpenter to the said James A. Thompson, for
20 money advanced by the said James A. Thompson to the said John S. Carpenter, to enable him to take up and pay another promissory note, given in the course of the said union metal business in Jersey City, and which at that time had become due and payable.

And your orator further shows, that, although he is the brother of the said John S. Carpenter, yet he never learned of the transfer of the said property, of the said John S. Carpenter to his said wife, until in the month of May, in the year eighteen hundred and sixty-nine, and after he had become bound as a surety upon the said note for three thousand five hundred dollars; that at the time your orator signed said
30 note he supposed that the said John S. Carpenter was still owner of the said real estate; that the said John S. Carpenter so represented to your orator at that time, and stated that your orator would undergo no risk in signing the said note, because the property of him, the said John S.

Carpenter, was abundantly sufficient to secure your orator against any possible loss that might arise from signing the said note.

And your orator further shows that at the time he signed the said note, the said John S. Carpenter represented to your orator, that the business of the said co-partnership was in a flourishing and prosperous condition, and that he expected soon to receive funds from the same which would enable him to pay off the said note; whereas in truth and in fact the said partnership at that time was in embarrassed and failing circumstances, and had ever since its commencement been carrying on its business at a heavy loss, and as a financial experiment 10 was a failure; and your orator charges that the said John S. Carpenter, then knew of the failing and embarrassed condition of the said partnership, and did not expect, and had no good and sufficient reason to expect, that he would receive moneys from the said partnership, to pay off the said note; but that he wilfully and fraudulently made the aforesaid false representations to your orator for the purpose of cheating and defrauding your orator in the premises.

And your orator further shows that the said John S. Carpenter has relinquished his interest in the said manufacturing business at Jersey City, on account of the unprofitableness of the said business, and the 20 great and constant pecuniary loss attendant upon the same; and that he has now no property, real or personal, other than that hereinbefore described, out of which your orator can make the amount of his aforesaid judgment against him.

And your orator further shows unto your honor that he has frequently applied to the said John S. Carpenter and Mary Ann his wife, and requested them to pay and discharge your orator's said judgment, with which reasonable request of your orator, your orator hoped that the said John S. Carpenter and Mary Ann his wife, would have complied, as in justice and equity, they ought to have done. But now so 30 it is, may it please your honor, that the said John S. Carpenter and Mary Ann Carpenter his wife, combining and confederating together and with divers persons, at present unknown to your orator, whose

names when discovered your orator prays he may be at liberty to insert herein, with apt words to charge them as defendants hereto, and contriving how to wrong and injure your orator in the premises, they, the said John S. Carpenter and Mary Ann his wife, absolutely refuse to comply with such requests, and they at times pretend that the said deeds from the said John S. Carpenter, and Mary Ann his wife, to the said Susan Carpenter, and from the said Susan Carpenter to the said Mary Ann Carpenter, were not in contemplation of indebtedness about to be incurred by the said John S. Carpenter, and for the purpose of putting his property beyond the reach of his then existing and subsequent creditors, but in good faith, and for a valid and lawful consideration, whereas your orator charges the contrary thereof to be the truth; and at other times they give out and pretend that at the time your orator signed the said promissory note as aforesaid, your orator was well aware that the title to the said farm was lawfully vested in the said Mary Ann Carpenter, whereas your orator charges the contrary thereof to be the truth; and other times they pretend that the said property is lawfully owned and held by the said Mary Ann Carpenter, and is not now nor ever has been subject to the lien of your orator's said judgment, whereas your orator charges the contrary thereof to be the truth.

All which actings, doings and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator in the premises. In tender consideration whereof, and for as much as your orator is remediless in the premises, at and by the strict rules of the common law, and is relievable only in a court of equity, where matters of this nature are properly cognizable and releivable. To the end therefore, that the said John S. Carpenter and Mary Ann Carpenter his wife, and their confederates, when discovered, may upon their several and respective corporal oaths, to the best and utmost of their respective knowledge, remembrance, information and belief, full true, direct and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and each of them distinct

ly interrogated thereto, and more especially that they may, in manner aforesaid, answer and set forth whether, the said John S. Carpenter was not on the day and year hereinbefore stated, or at any other time seized in fee or otherwise, of the land and premises hereinbefore described or of any other real or personal estate; and whether the said defendants did not, on the day hereinbefore mentioned, or at any other time make a conveyance of the said land and premises, or of any land and premises or other property to Susan Carpenter, and, if so, when, and in what manner, and what amount; and whether the said Susan Carpenter did not on the same day, or on some other day convey the same property to the said Mary Ann Carpenter, and if so, when and in what manner; and whether any money passed from the said Susan Carpenter or any other person to the said defendants or either of them for the said conveyance from them to the said Susan Carpenter, and if so from whom, and to which of them, and how much; and where or from whom, and how was the same obtained, and whether any valid or valuable or other consideration passed from the said Susan Carpenter to the said defendants, or either of them, for the said conveyance, and if so, what, and in what manner; and whether any money or other valid or valuable consideration passed from the said Carpenter to the said Susan Carpenter, for the said conveyance to the said Mary Ann Carpenter, and if so, what and how much, and how, when and where obtained; and whether the said conveyances were not employed for the purpose of transferring the title of the said John S. Carpenter in his said property to his said wife the said Mary Ann Carpenter; and whether the said Susan Carpenter is not the daughter of the said John S. Carpenter and Mary Ann Carpenter; and whether the said Susan Carpenter was at the time of the making of the said deed to her, or had been prior thereto, the owner of any property, real or personal, or possessed in her own right of any money, and if so, when how much, of what kind, and from whom or from what source obtained; and whether the said Mary Ann Carpenter was then, or had been prior thereto, the owner of any property of any kind, and if so,

when, what kind, how much, and how and whence obtained; or of any money of her own, and how much and how, when and where obtained; and also whether the said John S. Carpenter did not engage in business in Jersey City as hereinbefore stated, and if so, when, and with whom, and in what business, and with what amount of capital, and by whom furnished; and also whether he borrowed any money to engage in or carry on said business in Jersey City, and if so, of whom, and how much and upon what terms and upon what security; and whether he gave his note to James A. Thompson with your orator as surety as hereinbefore mentioned and set forth or not; and what the consideration of
10 the said note was; and whether he obtained any money therefor, and how much, and in what way the money obtained upon the said note, if any was so obtained, was expended; and whether said money was not used to discharge debts incurred in the said business carried on at Jersey City; and whether he, the said John S. Carpenter, has ever paid the said note or any part thereof, to the said James A. Thompson or to any other person; and whether your orator has not been compelled to pay and discharge the same out of his own funds as hereinbefore stated, and whether your orator has not obtained a judgment against the said John S. Carpenter in the Supreme Court of this State, as hereinbefore
20 set forth; and whether the said John S. Carpenter, or any one for him, has paid the said judgment or any part thereof to your orator; and whether the said judgment of your orator is still in force and subsisting as against the property of the said John S. Carpenter; and whether the said business in Jersey City was profitable to the said John S. Carpenter or not; and how much profit or loss accrued to him from the said business, and whether the same is still being carried on, or whether it has been discontinued and closed out, and if discontinued, when and with what profit or loss to the said John S. Carpenter, and whether the said John S. Carpenter is now, or at the time of the recovery of the
30 said Judgment by your orator, was the owner of any property, real or personal, or of any rights or credits in his own right, and if so, what, how much and in whose hands; and whether the said John S. Car-

penter was worth anything at that time he engaged in the said business in Jersey City, and if so how much, and in what manner he has lost or disposed of any part or all of his property since that time; and also what the true intent and object of the aforesaid transfer of his above described real estate to his said wife was; and whether he did not, at the time your orator signed the said note to the said James A. Thompson, represent to your orator that he still owned the said property, and that his property was sufficient to secure your orator against all loss to happen from his signing said note; and whether the said John S. Carpenter and Mary Ann his wife have not always refused, and still do refuse, to pay your orators said judgment or any part thereof, or to secure the same in any way, or to allow the said judgment to become a lien upon the said real estate; and whether the said defendants do not still reside upon the said farm and use and occupy the same as the property of the said John S. Carpenter, and under his control; and whether the said John S. Carpenter now has, or since the making of the said note has had, any property out of which the said note, or the judgment recovered thereon could be or might have been made and collected, and if so what property, and if since disposed of, to whom and for what; and that the said John S. Carpenter and Mary Ann his wife, may be decreed to pay to your orator the amount of your orator's said judgment, and that the same may be decreed to be a lien upon the property so conveyed to the said Mary Ann Carpenter as aforesaid; that the said deeds to the said Susan Carpenter and to the said Mary Ann Carpenter may be held to be null and void; and that in case the said defendants refuse to pay to your orator the amount of his said judgment, the said property may be sold and the proceeds of said sale or as much thereof as is necessary for that purpose, be applied to pay to your orator the amount of his said judgment; and that your orator may have such further or other relief in the premises, as the nature of the circumstances of this case may require, and to your honor shall seem meet.

May it please your honor, the premises considered to grant unto your orator, the State's wit of subpœna, issuing out of and under the

seal of this honorable court, to be directed to the said John S. Carpenter, and Mary Ann Carpenter his wife, therein and thereby commanding them and each of them, on a certain day and under a certain penalty therein to be specified, to be and appear before your honor, in this honorable court, then and there to answer all and singular the premises contained in this your orator's bill of complaint; and to stand to and abide by such order and decree in the premises as shall seem meet and agreeable to equity and good conscience. And your orator will ever pray &c.,

10 SOCRATES TUTTLE,

Solicitor for and of Counsel with Complainant.

IN CHANCERY OF NEW JERSEY.

Between GEORGE CARPENTER, *Complainant,* *and* JOHN S. CARPENTER and MARY ANN, his wife, *Defendants.*	*On Bill.* *Answer.*

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The joint and several answer of John S. Carpenter, and Mary Ann his wife, to the bill of complaint of George Carpenter, complainant :

These defendants, now and at all times hereafter, saving and reserving to themselves all manner of benefit, and advantage of exception 20 to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say : That they admit that the said John S. Carpenter was, at or about the time the said bill set forth, seized in fee simple of all those tracts of land and premises, in the said bill described, and that he did on the day stated in said bill, convey the said land and premises to Susan Carpenter, the daughter of these defendants, and that the said Susan Carpenter, did on the same day convey the said lands, to the defendant Mary Ann Carpenter, and that 30 deeds conveyance for the same were recorded at the places and times in said bill stated and set forth.

And these defendants in further answering admit, that the defen-

dant, John S. Carpenter, and the complainant gave their promissory note, as in the said bill alleged and set forth to James A. Thompson, and that said note was signed by the complainant as surety, and was for the sum mentioned in said bill, and that the same was not paid at maturity, and that suit was brought on said note, against the said complainant and defendant, John S. Carpenter, and judgment obtained thereon ; and that said judgment was afterwards paid by the complainant and that suit was brought by the complainant against the defendant, John S. Carpenter, for the amount so paid by the said complain-
10 ant, and judgment obtained, and that a writ of execution was issued thereon and returned unsatisfied, as in said bill alleged and set forth.

And these defendants in further answering the said John S. Carpenter, of his own knowledge, and the said Mary Ann Carpenter, upon information and belief, expressly deny that a short time prior, or at any time prior to the making of the said deeds, by which the said lands and premises were transferred to the said Mary Ann Carpenter, the said defendant John S. Carpenter, had entered into a co-partnership with three other persons, or with any other person or persons, for the purpose of carrying on the business of manufacturing the union metal and
20 other articles, or any other business in Jersey City, in this State or elsewhere; and these defendants also deny that the said deeds of conveyance from the said John S. Carpenter, and Mary Ann Carpenter, to the said Susan Carpenter, and from the said Susan to the said Mary Ann Carpenter, were fraudulent, or intended so to be, and they each for himself and herself, expressly deny that the said conveyances were made with any such purpose or with any such intent, or that they were made fraudulently or secretly, and they show and insist that at the time the said deeds were made, the said John S. Carpenter was free from debt, except a certain mortgage debt, of six thousand dollars,
30 which was secured by the said real estate, and these defendants say that the following is a true statement of the business matters of the said John S. Carpenter, prior to the execution of the said deeds of conveyance, so far as the same are in any way connected with the execu-

tion of the said deeds, and also a full and true statement of all the circumstances attending the execution of the said conveyances, and of the reasons why the same were executed, and of the motives actuating these defendants in making the said transfer; that prior to the execution of the said deeds, and on or about the first day of April, eighteen hundred and sixty-six, this defendant, John S. Carpenter, agreed and contracted with one J. R. Baker, then of Jersey City in this State, to pay to him the sum of six thousand dollars, for one half his, the said Baker's interest in the right to make and use a certain article known as the "union metal," being a composition of certain metals having anti- 10 friction qualities and valuable for use in machinery, and also for one-half his, said Baker's interest in the net profits of the manufacture of said article, that prior to the last mentioned date, one T. R. Ely of the State of New York, had, or claimed to have discovered the art of making the said union metal, and had associated with him one A. L. Havey, and the said Ely and Havey had been for some time prior to said date, experimenting with and manufacturing said metal at Williamsburgh, in the State of New York, as these defendants are informed and believe; and that said Ely and Havey wishing to obtained more capital to continue the experiments and more extensively manufacture said 20 metal, offered to sell to the said Baker a sixth interest in the right to make the same, and give him one-sixth of the net profits of the manufacture of the same for the sum of six thousand dollars; and that the said Baker, being acquainted with this defendant John S. Carpenter, in order to raise the money to make the said purchase, applied to him and offered him one-half the interest which he, the said Baker proposed to purchase, if this defendant John S. Carpenter would raise said sum of six thousand dollars, and this defendant John S. Carpenter, thinking and believing the said invention to be valuable and worth a large amount of money, contracted with the said J. R. Baker, to pay him six 30 thousand dollars for a half of his, the said Baker's interest, in said metal and the right to make and sell the same, and one-half of what he the said Baker was entitled to receive from the manufacture thereof,

and that in pursuance of such contract, this defendant John S. Carpenter, did raise by temporary loans, during the Spring and Summer of said year eighteen hundred and sixty-six, the said sum of six thousand dollars, and paid the same to said J. R. Baker, on said contract, and that in pursuance of said contract the said J. R. Baker, did afterwards and on the ninth day of June, of said year, eighteen hundred and sixty-six, make, execute and deliver to this defendant, John S. Carpenter, and deed, contract, or writing hereto annexed and marked "A" which these defendants ask may be taken as a part of this their answer.

10 And these defendants further say the said John S. Carpenter of his own knowledge, and the said Mary Ann Carpenter upon information and belief, that this defendant, John S. Carpenter, raised the principal part of said six thousand dollars by temporary loans, and that he afterwards procured a loan of six thousand dollars on his said real estate and took up the said temporary loans. And these defendants further show, the said John S. Carpenter, of his own knowledge, and the said Mary Ann Carpenter, upon information and belief, that at the time this defendant, John S. Carpenter, purchased the said interest of the said J. R. Baker, he had no intention to pur-
20 chase any further or greater interest, or to make any other or further contract with any person or persons, and that during the whole of said year eighteen hundred and sixty-six, and a part of the following year eighteen hundred and sixty-seven, he did not contract any liability beyond that which he had contracted as aforesaid, and had paid by the money seccured by the said real estate; and that the said agreement with the said J. R. Baker, did not provide for, or contemplate, any other or further expenditure or liability on the part of the said defendant, John S. Carpenter, and that he did not by his said purchase become directly or indirectly responsible for the engagements of others in
30 the manufacture of said metal, and that there was no such intention.

And this defendant, Mary Ann Carpenter, answering for herself says, that she was not at the time informed by her said husband of the exact nature of the purchase made by him of the said J. R. Baker, or

the amount he had agreed to pay therefor, but that she understood and believed at the time that he had purchased some interest in a patent right out of which he claimed he would make a large sum of money, and that she ascertained that he was using large sums of money to pay for the said interest, and she and her children became alarmed on account of his transactions, and feared that he would be drawn into other speculations by which the property which he then owned would be wasted; that she had no confidence in the value of the purchase which her said husband had made, so far as she knew the nature of the same, although he was apparently well satisfied with it, and seemed to 10 think he would realize large profits therefrom; that she and her children and friends, consulted together about the matter and concluded that they would if possible get her husband to convey the property to her, so that he would not make any further investments of the kind which she supposed and believed he had made; that she had no idea of wronging or cheating any one and believed at that time her husband was out of debt, except the said mortgage debt; and that her sole purpose was to prevent her husband from going further into speculation and save the property to herself and her children, by preventing him from making any further purchases of that character; that she got her 20 brother, James A. Thompson, who had been the principal endorser of her husband, to speak to him about making such a transfer, and that her husband at once expressed his willingness to do so, and that very soon afterwards they went to Newton, in the county of Sussex, in this State, to the law office of John Linn, Esq., and the said deeds of conveyance by which the property was transferred to her, subject to the said mortgage, was then and there executed; that no money was paid by her to her said husband on said transfer, and that it was not agreed or intended that there should be, but she shows and avers that the said property was principally the result of the joint toil and industry of her 30 said husband, they having lived together and carried on the farming business for a great many years, and that when they commenced, her husband had only about three thousand dollars, and she about one thousand

dollars, which she had received from her father's estate and placed in her husband's hands, and that was all the capital upon which they commenced business, and all they or either of them ever received except what they made by their said farming operations and she further says, that at that time she had no idea that her said husband had made any arrangement to into business or had any intention so to do, or of incurring liability, or creating indebtedness, but that the said transfer was intended to prevent his doing so and place the property beyond his control.

10 And this defendant, John S. Carpenter, answering for himself says, that he transferred the title of his said property to his said wife, at the time mentioned in said bill, to quiet her fears and satisfy her and his children, and not with any intention or purpose to cheat or defraud any person, and with no intention or expectation of creating any future indebtedness or contracting any future liability.

And he further says and avers, that he did not contract any further liability until almost a year after said transfer was made, and that the history of his subsequent transactions is as follows:

That in the winter of eighteen hundred and sixty-seven, the said 20 Ely and Hovey who were manufacturing the said metal at Williamsburgh, had some difficulties which ended in the winding up of their business, and that the said J. R. Baker then proposed to this defendant that they should commence to make the same metal themselves at Jersey City in this state, and that finally they did make arrangements to do so in a small way and without any intention or expectation of expending much money; that this defendant then undertook to procure some money to aid in starting said business, trusting in said business to repay the same, and that he applied to the said James A. Thompson, who was familiar with all his transactions and knew about the nature 30 of his said business, and about the previous transfer of his property, to endorse for him, and that the said Thompson did endorse for him and continue so to do, and that he from time to time borrowed money on the endorsement of the said Thompson, principally of the First Nation

al Bank of Warwick, relying entirely on his said business, which always promised fair to pay the same, until in the Spring of the year eighteen hundred and sixty-nine he had become indebted in about the sum of six thousand dollars and the bank had become anxious to have the paper paid off and taken up, that at that time said Thompson proposed that defendant should ask his brother George Carpenter, the complainant, to endorse one note for time, for one half of his indebtedness, and he the said Thompson would continue liable for the balance, and that he did request his said brother, so to endorse for him and that he did so; he further says that he made no concealment, nor did he in 10 any way misrepresent his circumstances or business to his said brother to induce him to make such endorsement and that while he does not know that he informed his brother at the time that he had made the said transfer of his property, in the year eighteen hundred and sixty-six, as above stated, he had every reason to believe that he knew about it, as the fact was well known in the family and the deeds of conveyance had long been on record, that he does not now remember the conversation which he had with his said brother fully, but that so far as it relates to his ability to meet said note it was in relation to the business at Jersey City, and his prospect of making money out of the same, and 20 that he then had the utmost confidence in the value of his interests then, and the ultimate success of his business, and may have so expressed himself to his said brother; and this defendant expressly denies that he at that time told his said brother that he still owned the said land and premises or any part thereof, or made any representation of that kind.

And this defendant further says, that the said business in Jersey City was the manufacture of said Union Metal, and a blind hinge, which the said J. R. Baker had patented a short time after the said business was commenced, and that they also purchased a right to make 30 and vend a hay press, and that they expended a considerable sum of money in perfecting the said press, and in order to make the same saleable, and that this defendant raised and expended a considerable sum

of money as above stated, for the purpose of securing, perfecting and developing the said rights and interest, hoping and expecting to be able to make sale of the same at a large profit; that he was disappointed in his expectations, but that he believes now, and has always believed, that the said interests are valuable, and that if he could raise money to develop them and put them in market he could realize largely from the same, but that he was obliged to abandon all further efforts to do so because he was unable to raise any money; that his endorsers lost faith in the enterprise and that he was obliged to wind up the business at Jersey City. That he raised and expended, as above stated, as near as he can now ascertain, between six and seven thousand dollars, and that that sum represents the loss incurred by him if the said rights and interests are of no value; that he still has the said interests and believes the same to be valuable, and is willing to make such disposition of the same for the benefit of the complainant as he may desire and as shall be just to his other creditors. And he further says that he has contracted no debts and owes no money except such as he incurred as herein stated in said business.

And these defendants deny all unlawful combination and confederacy in said bill charged without that, that any other matter or thing material for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge and belief of these defendants. All of which matters and things these defendants are ready to aver, maintain and prove as this honorable Court may direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

COULT, VAN BLARCOM & COCHRAN,

Solicitors for and of Counsel with Defendants.

"A."

Whereas, John S. Carpenter has heretofore advanced me the sum of six thousand dollars, and the said amount is now due him from me:

And, *whereas*, I have invested the said sum in the business of manufacturing "Ely's Railroad Box Metal," and have entered into articles of copartnership with Alfred L. Hovey for conducting the said business. Now this agreement witnesseth: that in consideration of the premises and of the said sum of six thousand dollars, I hereby agree to assign and pay over unto the said John S. Carpenter one-half of my interest in the profits of said copartnership business, being one twelfth part of the net profits of said business.

In witness whereof, I have hereunto set my hand and seal, this ninth day of June, one thousand eight hundred and sixty-six. 10

J. R. BAKER. [L. S.]

In presence of S. C. WELLING.

New Jersey, Sussex County, ss:

John S. Carpenter and Mary Ann Carpenter, his wife, the above named defendants, being each duly sworn, on their oaths, respectively say that the facts, matters and things set forth in the above answer, so far as they relate to their own acts are true, and so far as they relate to the acts of others they believe them to be true. 20

J. S. CARPENTER,

MARY A. CARPENTER.

Sworn to and subscribed, this 6th day of August, A. D., 1872, *before me*,

GEORGE W. RHODES,

Justice of the Peace.

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EXAMINATION OF WITNESSES.

Examination of witnesses in a certain cause depending in the Court of Chancery of New Jersey, wherein George Carpenter is complainant, and John S. Carpenter and others are defendants. Taken at the office of the Surrogate of the County of Passaic, in the City of Paterson, in the said State, on the twenty-second day of October, A. D., one thousand, eight hundred and seventy-two, before Isaac Van Wagoner, one of the Masters and Examiners of this Court, in the presence of Socrates Tuttle, Esquire, of Counsel for said Complainant, and of Joseph Coult, Esquire, of Counsel for said Defendants.

GEORGE CARPENTER, a witness produced on the part of the complainant, being duly sworn according to law, on his oath, deposeth and saith:

My name is George Carpenter; I was born January 10th, 1818; I am a farmer; I reside in the town of Wallkill, Orange County, in the State of New York; I am the complainant in this case; I know John S. Carpenter; he is my brother; he is defendant in this case; he lives in the town of Vernon, Sussex County, New Jersey; his wife's name is Mary Ann; John S. Carpenter is about, or a little upwards of sixty years of age; he is a farmer; he must have lived over thirty years where he now lives; I know the farm where he now lives; I worked there many a day; I suppose the farm on which he now lives is the same which he sold to his wife through Susan Carpenter; I suppose it is the same; I have not been there in about two years; I have not been been there since February 14th, eighteen hundred and seventy; John S. Carpenter, the defendant, is owing me money; I signed a note of thirty-five hundred dollars as security for him, but it amounts to more than that now; I signed the note payable to James Thompson; I

signed the note March 18th, 1869; the note was dated the 20th; that is the same note mentioned in the bill of complaint; John S. Carpenter and his wife were at my house, and we were up stairs, and after the women went down he wanted me to sign a note for James A. Thompson, and said James would put the money in the bank and take up the one that was in the bank; I told him no; I told him, I don't want to get into no scrape at all, and he said I wouldn't get into no scrape; I told him that I had never signed only one note, and I had made up my mind never to sign another one; Why, he said, I wouldn't get into no scrape; he said he was telling me the truth, and wasn't lying to me; said he, George, you shan't lose one cent; I told him, no; Why, says he, George, you know my property that I own at home? says I, I know your property, but I don't know how much you are in debt; says he, my property that I own is worth double what I owe; says I, I know nothing about that; he said he only wanted me to sign it for one month, or a month and a half, or two months; he said they had money to New Orleans, already there, and as quick as they could send a man down there and get that money and get back, it would be put in James A. Thompson's hands, and take that note I signed up; he said the money was all ready there, and all that they had to do was to count it out; he said they had sold a hay press there, and the hay press was not quite done when Mr. Crowell went down to New Orleans; then he went down stairs, and as we went down he told my wife in my presence that he wanted me to sign the note and I wouldn't; then he wanted her to sign it, and she told him that she would sign no note for no one; well, then he kept hanging on, and went to get up his horse; then while he was gearing up the horse he kept at me, and I told him no; I told him that I wouldn't sign it any way, without my wife's consent; without she was willing, and we went into the house, and then he was at us both, and I told him I didn't want to get into no scrape; and he said no scrape at all, it would be a great accommodation to me, and I shouldn't lose not one cent; and my woman then said that I might do as I pleased, so I signed it on that condition; when I went to write the note, I wanted to

know when he wanted the note dated, and the length of time, whether one month, or one month and a half, or two months after date; he said I might make it six months; George, says he, the money shall come and be paid to James A. Thompson, on this note; well, the note was wrote six months after date; he said he had property there in Jersey City, and that he signed it away in February, I forget whether the fifth or seventh; he said, as to his property in Jersey City, he said, that when Mr. Crowell, his head man, went to New Orleans, the hay press wasn't quite done so that it worked, and they had got it fixed while he
10 was gone, and as quick as they could send a man down to New Orleans with the hay press the money was ready for them; all they had to do was to count it out; I was afterwards compelled to pay that note; I was sued on that note; at the time I signed that note I never knew that John S. Carpenter had conveyed his farm to Susan, and that Susan had conveyed it to his wife; I never knew and had not heard of it.

1 Q. When John S. Carpenter said to you, as you have stated, "My property what I own is worth double what I am in debt," what property did you understand him to mean?

20 Objected to.

A. The property where he lives on; I mean the farm in the town of Vernon, Sussex County, New Jersey; I did not at that time know of his being the owner of any other land at all; well, I heard him tell of this concern at Jersey City, but I had never seen it.

2 Q. You stated that he said to you when you told him no, in answer to his request to sign the note, "George you know my property I own there home," did he own at that time any other property there home, except the farm and the stock, and the household goods upon
30 it?

A. I don't know any, and I never knew of any; John S. Carpenter has always had, when I have been there, from twenty-five to twenty-seven cows; he had a lot of horses, wagons, and one thing and other;

so far as I know John S. Carpenter has occupied, and cultivated the farm since he sold it to his wife, the same as before.

3 Q. If you had known when you signed that note as security for John S. Carpenter, that he had sold, or conveyed his farm to his wife, what do you say as to whether you would have signed the note at all?

Objected to.

A. No, sir, I would not.

The last of May, or first of June, eighteen hundred and sixty-nine, was the first that I heard that John S. Carpenter had sold or conveyed his farm.

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Cross examination.

Mr. Thompson, I believe, was security for thirty-five hundred dollars, on a note in the bank; this is what I heard at the time; Warwick Bank; I expected that Mr. Thompson would take the note that I signed and hold it, and take up the other note that was in the bank; he advancing the money to take it up; that was what John S. Carpenter said at the time; I understood that Thompson was an endorser on the note in the bank; John S. Carpenter told me that Mr. Thompson would advance the money to take up the note in the bank, on this note; he, John S., told me at this time about his 20 operations in Jersey City and elsewhere; he said he was making hay presses, in Jersey City, union metal, and sash and blinds; he told me that he expected to reap large profits from the business; he had before that explained what his business, and the nature of his business were in Jersey City; he said he expected to make a fortune and be independently rich; he said that he expected the money to pay this note from the sale of a patent right for a hay press for Tennessee, which he said Crowell had sold at New Orleans, he told me that the money was then in New Orleans, and all he had to do was to send a man down there after the money; I was at the farm of John S. Carpenter about a year 30 or two years previous to the signing of that note.

4 Q. I see you have a small book in your hand to which you refer. What does it contain?

A. It contains the day and date when I was there; when I was at John S. Carpenter's house, and what conversation we had.

5 Q. Does it contain a memorandum of the conversation which took place, as you say, between you and John S. Carpenter at your house, at the time the note was signed?

A. No, sir.

After the giving of the note the first I saw John S. Carpenter was, I think, the last of May, eighteen hundre and sixty-nine; the note was not then due, the way it was written; I saw him twice before that time, 10 but nothing was said in relation to the note; the reason why I went to see him at that time, I did not want the note to stand so; his daughter Emily was at my house along the last of May, eighteen hundred and sixty-nine, and she told me about signing his property away, and she told me to come up as soon as I could and see about his property and business, and find out about things; that was the first I had heard about the putting his property out of his hands, and that is the reason why I went up; prior to the giving of the note our families were in the habit of visiting each other.

GEORGE CARPENTER.

Sworn to and subscribed, before me, this)
20 *22d day of October, A. D.*, 1872,)

ISAAC VAN WAGONER,

Master and Examiner in Chancery, N. J.

CATHARINE A. CARPENTER, a witness produced on the part of the complainant, being duly sworn according to law, on her oath, deposeth and saith:

My name is Catharine Amelia Carpenter; I am the wife of the 30 complainant in this case; I know of my husband signing a note for thirty-five hundred dollars, for John S. Carpenter, which is mentioned in this case; he, John S. Carpenter, first spoke to me on coming down stairs, at our house, and asked me if I or my husband would go security

for him; I told him I would not for any one; he urged George Carpenter very much after that; George Carpenter told him he did not want to get into any scrape; he says, you will not get into any scrape, it is just as I tell you, you shall not lose the first red cent; he told him the money should be replaced in a month or a month and a half, perhaps less time; it should be placed in James Thompson's hands, and the note taken up; my husband asked me what he should do; I said, do as you please, but for no one else but a brother; he, John S., repeated several times in succession that my husband should not lose the first red cent.

6 Q. In the course of the conversation which took place in your 10 presence, was any thing said about property, and if so, by whom, and what?

A. John S. Carpenter said, George, my property at home fs worth double that I am indebted; he spoke also of the hay press; that the money was ready for that, when they went to New Orleans, to receive it; which he expected to very soon.

7 Q. State what led John S. Carpenter to say that his property at home, was worth double his indebtedness?

A. As an inducement to get my husband to sign the note.

I first heard of the fact of John S. Carpenter's putting his property 20 out of his hands, after the signing of the note; it was some time after; I first heard it from his daughter at our house; the remark of John S. Carpenter, that his property at home was worth double his indebtedness, was made before my husband put his name to the note; it was on the same day, and at the same interview.

Cross-Examination.

My husband and John S. Carpenter were alone at the commencement of this conversation, up-stairs; I was down stairs; I heard no part of the conversation up-stairs; we were building at the time, and John 30 S. was shown about the house; when he came down and asked me to sign, I was in the kitchen; his wife was there; the remark about the property, that I spoke of, was made in the sitting-room by John S. Car-

penter; I am not positive whether before or after they went to hook up the horse; I am not positive, but think it was after; I am not positive, but I think my daughters were in the sitting-room at that time, and his wife was there.

CATHARINE A. CARPENTER.

Sworn to and subscribed, before me, this 22d day of October, A. D., 1872.

ISAAC VAN WAGONER,

Master and Examiner in Chancery, N. J.

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IN CHANCERY OF NEW JERSEY.

Between GEORGE CARPENTER, *Complainant,* *and* JOHN S. CARPENTER, *et ux,* *Defendants.*	*On Bill.*

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Examination of witnesses in the above entitled case, before Robert I. Hopper, a Master and Examiner in Chancery, at his office in the City of Paterson, on the twenty-eighth day of March, eighteen hundred and seventy-three; in the presence of S. Tuttle, Solicitor of Complainant, and of Coult, Van Blarcom & Cochran, Solicitors of Defendants.

This examination taken on the part of the Complainant by consent of all parties concerned. 20

GEORGE CARPENTER recalled, and being duly sworn according to law, deposeth and saith:

The defendant, Mary Ann Carpenter, was present in the room at the time this note was signed, as detailed in my previous examination; she was present during all the conversation when the note was made; some of the conversation was up-stairs; she was in the room when he wanted me to sign it; whether she heard what was said or not I don't know, all of it I mean; he told in the room there that his property home was worth double what the debt was; she was in the room; my wife was 30 there, and my two children was, I think, most of the time; the conversation was not carried on in a low tone to avoid being heard; I know I talked louder than I usually did; I was bound to make her hear what

was going on; she said nothing herself about the property at that time; she was present in the room when he said, all the money was ready in New Orleans, all there was to do was to count it out; the money for the hay press; she said it never had been profitable, never had realized anything from it yet, and was afraid it never would; John S. Carpenter first spoke to me about the note up stairs, and then we came down into the room; the note was made below.

Cross examination.

10 We had a long talk up stairs alone about this note; I didn't go up there on purpose to talk about it; we talked up there, and then we went down, and he tackled me about it; he went and got his horse up and talked to me about it then, and I told him I wouldn't sign it; he said he had money already in New Orleans, as soon as he could send a man for it; that money was to pay James A. Thompson, and that note was to be taken up; he was to take this note to James A. Thompson, and he was to furnish the money to take a note up out of the Warwick Bank; I understood James A. Thompson was endorser on the note in the Warwick Bank, and he told me he'd have the money to take up this note 20 from the sale of his hay press, in New Orleans, in a month or month and a half; he told me Mr. Crowell had been to New Orleans to sell the hay press, and had come back, and had sold one while he was there; Mr. Carpenter told me his interest in this machine, and in the metal was very valuable; he said he had Mr. Crowell in as his partner, were doing business at Jersey City, metal business, and hay press and blind fastenings; manufacturing what is called the union metal; he also told what he was making, forty cents a pound on the metal; that was the seventeenth of March, at night, eighteen hundred and sixty-eight, the first night he came over; the note was signed the next morning, the 30 eighteenth; he said it cost them twenty cents, and they were getting sixty; before that time I heard from others, the note in the Warwick Bank, had been there some time, two years or more, I knew it had been removed several times then; I guess Mr. Tuttle read over this morning

to me my testimony on a former examination; I think I be sure; I did not swear in my former testimony, that Mr. Carpenter was present at the time the note was made; it was not asked me; I attempted to give a detailed statement of my conversation, and his that day, of all that took place that day between him and me; I don't think that I said anything that time about who was present that day; I mean March eighteenth, when the conversation took place about the note; I became satisfied from what he told me, and what I learned from him of his business that day, that he would be able to pay the note when it was due.

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Re-direct examination.

He said his property he owned home was worth double what he was indebted, and that the money was ready at New Orleans, as quick as he could send a man there after it; he'd sold a hay press was what satisfied me that he could take up the note; I didn't know anything about this union metal manufacture; not then, except what he told me; he told me the second day of April, that same Spring, that they'd lost on everything they went in, never paid; in my wagon house, when he was gearing his horse up.

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Re-cross examination.

I didn't rely on his property at home to pay the note; he said he had the money at New Orleans, and I had to believe it; he said he was telling the truth; all his statements together induced me to sign the note.

Re-direct examination.

I considered John S. responsible pecuniarily, when I signed this note, else I wouldn't have done it; I considered his responsibility to consist in his property home, and that money what he said at New Orleans; I think he said the sum due him at New Orleans was three thousand dollars; afterwards in May when I was up to see him, he said was in hopes they wonld sell a hay press for the State of Tennessee, in

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New Orleans, but that it wasn't ready when Crowell went out, and they'd fixed it since, and that they hadn't sold any yet, but was in hopes they would sell one; at my house he said they had sold one.

1 Q. You say in your direct examination, that you talked very loud because you were bound to make her hear. Whom do you mean by her, and why did you want her to hear? What was your object in talking so loud?

A. I didn't want anything done but what my brother's wife knew what was going on; I wanted her to hear what was going on, so that she couldn't say there was anything underhanded, and she didn't know about it.

GEORGE CARPENTER.

Sworn and subscribed, March 28th, 1873, before me,

ROBERT I. HOPPER,
Master in Chancery.

SUSAN CARPENTER, being duly sworn according to law, deposeth and saith:

I am the daughter of John S., and Mary Ann Carpenter; I reside with my father and mother at Greenwood, in Sussex County, New Jersey, and resided with them in eighteen hundred and sixty-six, at the same place, on the same farm on which I now reside; my father is a farmer; I know that my father went into business with J. R. Baker and others; I think it was in the Spring of the year; the business as I understood was manufacturing of hay press, blind fastener, and union metal; in eighteen hundred and sixty-six, there was six children in our family four daughters and two sons, from fourteen to thirty-one years of age; the fact of my father's being in business in Jersey City, was known and talked of by the family; I know of my father's purchasing an interest in this union metal; his first connection with the union

metal, which was his purchase of the art and right of making it, for which he was to pay six thousand dollars, was in the Spring of eighteen hundred and sixty-six; I think in March; it was known in the family that we had expended considerable money to purchase this right; we talked with him about it, with him before and after the purchase and tried to dissuade him from puschasing, all in our power, because my mother thought they were getting old and ought to have less business instead of more; mother knew nothing about the investment, whether it was good or not; he sent his son down to Jersey City, I believe to learn the business; one time they had a place in Jersey City, and one time in Williamsburg, and I don't know which was the first one; I think George went to Pavonia Avenue, and where he was, father still managed the farm business, more or less, up to a period of three years, subsequent to the transfer of the farm to my mother; Uncle Jimmy Thompson was the first one, and I believe the only one, that suggested to my father the transfer of the farm to me, and from me to my mother.

2 Q. What, if you know, was the reason suggested to your father by James Thompson, for the transfer of the farm to your mother?

Question objected to by counsel for defendants as irrelevant.

A. I don't believe Uncle Jimmy gave any reason; I never heard of any.

Mother and we children never asked him to make this transfer, not to my knowledge; my older sister was away from home; my mother did not to my knowledge; I was spoken to, not over a month before the transfer, about it by my father; he said mother was so dissatisfied he was going to do it to satisfy her mind, because she found a great deal of fault with him because he expended this six thousand dollars; when he paid three thousand dollars she wanted to not pay any more, but just let it go where it was, and not have the art of making it; she'd helped him make the property and thought she ought to have something to say about what was being done with it; I was present in New-

ton when the transfer was made; I was twenty-seven years old then; father had not only laid out money then, but he thought there were valuable metal mines on his farm, and had other projects; one was to buy a tract of land near Amity and build upon it; and had general notions of going in speculations of various kinds and all these things my mother was opposed to; I felt for my part that Ma ought to have the control of things, because he was managing things very poorly on the place, and had so many projects in his head, and my mother was opposed to all of them; she was for laying up money instead of laying it
10 out, and wanted to store up something for her children; but he thought the manufacture of this union metal was a great deal faster way to make money than to farm; mother never had any faith in this union metal, because she never knew anything about it; all the personal property was transferred at this same time by bill of sale to me, and from me to my mother; he thought the personal property was worth three thousand dollars; I was at my Uncle George Carpenter's house in June, eighteen hundred and sixty-nine; I talked with Uncle George about my father's affairs, what business he was in; my sister Emily informed my Uncle George of the transfer; I don't know where my Un-
20 cle was first informed of this transfer; nothing was said to me about this time, by my father or mother, about having procured the endorsement of this note.

Cross examination.

I knew nothiug about the note having been signed until the last of May, eighteen hundred and sixty-nine; I learn't it there from my sister, that was my first information.

3 Q. What did you understand was the nature of your father's interest in this union metal.

30 Objected to by counsel of complainant.

A. He was to have the art of making it and I understood, I don't know whether it was so or not, that he was to have one-twelfth of the profits, Baker was to have one-sixth, and was to give one-half of that

to father; the object of this transfer, as I understand, was to prevent his making any more purchasing of patent rights, lands or anything else; I have heard my father say that my Uncle, Mr. Thompson, spoke to him first about this transfer.

Re-direct examination.

I understand this transfer would prevent my father from making any more purchases, because, we thought he wouldn't use the profits of the farm, when he didn't have control of it; he wouldn't listen to us before, and we thought after that he'd have to; mother said she didn't know anything about these speculations, and didn't want to know anything about them; mother took a dislike to this Baker, and she said not a cent of her property should go to Jersey City; she said he could take his part, and do what he had a mind to with it, hers she was going to keep in the farm. 10

2 Q. What did you understand her to mean, when she said "hers she was going to keep in the farm?"

Objected to as immaterial.

A. She preferred farming to anything else, and would rather leave it there, she had become so attached to the place, and always wanted to live there; she thought she had made as much there as her father had, and ought to have as much, and that I considered as her part of the property. 20

Re-cross examination.

All this conversation was. I guess, after the transfer; he had then taken six thousand dollars out of the farm, and put it in this union metal, and my mother's idea was that after this transfer was made, the property would be safe, and he could spend no more of it in that way, and we had no idea he would go on in this way.

SUSAN CARPENTER. 30

Sworn and subscribed, March 28th, 1873, before me,

ROBERT I. HOPPER,
Master in Chancery.

IN CHANCERY OF NEW JERSEY.

Between GEORGE CARPENTER, *Complainant,* *and* JOHN S. CARPENTER, AND OTHERS, *Defendants.*	*On Bill, &c.*

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Examination of witnesses taken in the above cause, before Levi Shepherd, at his office in Newton, in the County of Sussex, on the seventh day of May, eighteen hundred and seventy-three; in the presence of Lewis Cochran, esquire, of Counsel with the Defendants, and in the presence of John W. Griggs, esquire, of Counsel with the Complainant. This examination taken before me, by the consent of the said counsel of the respective parties.

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JOHN S. CARPENTER, one of the defendants in said cause being duly sworn, on his oath, says:

I am sixty-six years old, my occupation prior to year eighteen hundred and sixty-six, was farming; I have been married forty-one years; my wife after our marriage had means of her own, she derived it from her father, the amount was some ten or twelve hundred dollars; I had some means at the time of my marriage, I had at that time about one thousand dollars; the money she received from her father was not kept separate from mine, it was thrown into a general fund; in eighteen hundred and sixty-six, I engaged in other business; the commencement of that business was to be the first of May, eighteen hundred and sixty-six, I invested in that business six thousand dollars, with J. R. Baker, I

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raised the money by putting a mortgage on our farm; I continued in that business from May until the latter part of the next Winter; I engaged in business in Jersey City, in the latter part of April or the first of May eighteen hundred and sixty-seven; the business had been formerly confined to the anti-friction metal; before this the business had been continued in Williamsburgh; the business in Williamsburgh was commenced the first of May, eighteen hnndred and sixty-six; the business was a mere removal from Williamsburgh to Jersey City; we had got that business ourselves and removed it to Jersey City; it was an enlargement of the business; I had confidence in that business. 10

Question objected to.

My brother signed the note for me, on which this suit is founded, in February, eighteen hundred and sixty-nine; I think the note was signed at George Carpenter's; my wife, Mary A. Carpenter, was present there on that occasion; the first commencement was this, I had a note in the bank, now I asked my brother if he would sign a note of thirty-five hundred dollars, and he said he would if his wife was willing, this was up stairs, the first I spoke to him was between the wagon house, and the barn yard fence, then we were up stairs looking at the improvements in his house, and was speaking about it again; I told him I thought I could pay him in a short time from the business, we could sell in Jersey City; well then they went down stairs and I spoke to his wife; I think that was in the kitchen, I told his wife what he had said, that he said he would sign if she was willing, and she had no objections; she said if he was willing she was and he got paper, pen and ink, and wrote a note and we signed it; and I let James A. Thompson have it; prior to the signing of this note, I had had conversation with my brother, about our business in Jersey City; I told him about having a contract for the hay press, to be got in a stock company contracted with William Show of Newark, which was going to be a great advantage to me, which would amount to me thirty-eight thousand dollars, and one hundred thousand to the patentee, and my share of which I 20 30

owned would amount to thirty-eight thousand dollars; we had a patent blind fastener which he had got some way a little crooked, he never understood it as he ought to, I told him that too and he got on to the press; we had an offer of three thousand dollars for the State of Pennsylvania, and he thought it was the press, I told my brother this also; there was nothing said in regard to my farm at the time of signing that note, I had no farm at that time; I had put my farm into other business; I never said at that time I considered my property at home worth double that debt; I considered my property at that time at Jersey City
10 worth three times that debt and more; my brother did not hesitate about signing the note any further than the consent of his wife; with the consent of his wife he went right on to make the note; I first learned that my brother claimed that I had misrepresented in regard to the farm in February of the next year and along in February, I think; that was at my place, at my house in February; I had seen my brother between those times; I had seen him in May and September; he was at my place in May and wanted to secure that note; in September he complained and said that he wanted to settle his business up; I offered or wanted him to take a mortgage on the patent of the press; in these
20 two interviews my brother did not claim that I had made any misrepresentations in regard to the farm; the first I heard of that was in February following.

The witness being Cross-Examined, says:

My wife obtained some of her money from her father's estate very soon after we were married; I should think about three or four hundred dollars; that was put into furniture and fixtures for her house; this was used for furnishing the house we first moved into and the house which we afterwards built and moved into; my wife owns the
30 farm on which we now live; we have lived on that farm about forty-one years, ever since we were married; it was used to furnish the house on this farm and to stock it; we got the remainder at two different times after that; the first time after that we got about two hundred

dollars; which must have been ten years after she got the first money from her father; that was used to pay for buildings we were putting on the place; cow house, grain house and one thing and another; after that she got six hundred dollars, about two years after that; that six hundred dollars was used to pay the indebtedness on the farm; the title of the farm was at that time in my name.

Question and answer objected to.

My wife allowed me to spend these moneys for the purposes I have stated; I paid it out according to her will and wish; it was at the request of J. R. Baker that I went into this metal business; to raise the money I put in with Baker I put a mortgage on my farm for six thousand dollars; this mortgage was given to Carpenter Howell.

Question and answer objected to.

I had not had the value of my real estate appraised at the time of giving that mortgage. In my opinion it was worth six or eight thousand dollars.

Q. Have you ever had that farm valued ?

Question objected to.

A. Yes, I put it up at public sale once, and all I got offered was thirty-eight dollars an acre. There are two hundred and twelve acres in the farm. I think likely that farm was once appraised at eighteen thousand dollars. I know it was but don't know what it is worth now. When that appraisement was made it was in war time when everything was high.

Question as to value of farm objected.

In eighteen hundred and sixty-six when the metal business was first commenced, J. R. Baker took charge of my interest. There was plenty of this metal manufactured between May, eighteen hundred and sixty-six, and February, eighteen hundred and sixty-seven. I remember about the transfer of my farm to my daughter, and by her to my wife. It took place about in December, eighteen hundred and sixty-six.

Q. When did you first talk to any one about transferring your property to your wife ?

Question objected, on grounds of it not being cross-examination, that the allegations in the answer not being controverted, stands as true.

A. I think it was a month or so before it was done.

It was with James A. Thompson. When I said I had put my farm in other business, I meant to manufacture the metal, and have it in ready cash and make money easier than I could on a farm. It was at the suggestion of James A. Thompson that the transfer of my property was made to my wife. The object of the transfer of my farm to my wife was that it was better for me to have the money than the farm. We had an offer of seventy-five thousand dollars for the metal. I got six thousand dollars for the transfer of the farm. I got it from Carpenter Howell. She was to pay the six thousand dollar mortgage on the farm. She took the title subject to the payment of the mortgage placed by me on the farm. I was not urged by my wife to transfer the farm to her before I done it. I consulted her about it before I did it, she wanted the farm and I was satisfied to take that for it. I don't remember that there was anything said about saving the farm for my wife and children. My wife was dissatisfied about my engaging in this metal business. I suppose she thought I might lose money in that business ; she supposed farming was good enough. I don't know but what she did say that she thought I would lose money in it.

I also transfered the stock and farming fixtures to her, it was all in the same contract, for the stock I had the proceeds of the farm and got the money out of that. I mean the proceeds of the farm after it was transfered to my wife.

I am not now in this metal business. I abandoned the business in the latter part of the month of April, eighteen hundred and sixty-nine. At the time my brother signed the note in question, I was owing that thirty-five hundred dollars in the bank. I did not owe anything of

any amount over and above that. I did not owe in Jersey City eighteen hundred dollars at that time. I did not owe my brother Nehemiah five hundred dollars at that time, this indebtedness of thirty-five hundred dollars had accrued in the business of the metal work and matters connected with it. James A. Thompson was carrying this indebtedness in the bank for me. What was said between the wagon house and barn yard fence on that day was this: by the way, I said to my brother that I would like to have you sign a note for me, he said he did not know how it would be, that was all that was said there. We were looking around the wagon house and I don't know whether they were 10 gearing up or un-gearing the horse, they had been taking away the milk. The first conversation about the note did not take piace up-stairs in the house. It did not take place after we were gearing up, afterwards the above as I have stated, was the first introduction of the conversation about the note. I could not tell whether we afterwards had a conversation about the note while we were gearing up the horse. After the first conversation we went to the barn, and from there to the house, and I think we went up-stairs to look at the improvements. My wife and George's wife were up-stairs looking around, but in another part of the house I think they went before we got around. The first 20 thing I said to him about the note up-stairs was, I asked him whether he had concluded to do it. I don't remember the words of that conversation up-stairs distinctly. George did not say at that time that he did not want to get into any scrape; I never said to him that he would, not get into any scrape; I told him I would pay the note in money, as quick as I could get it; I never told him that I had sold a hay press in New Orleans, and that I was a going to send a man down there and get the money; I told him I was going to send a man by the name of Crowell, to sell the patent right and hay press, to New Orleans and the Southern States, to get money; I did not ask my brother's wife to sign 30 that note; my wife was present when the note was drawn and signed, she did not have anything to say about the note, she did not know anything about it; the note was given for six months, at the time of the

transfer to my wife; I did not calculate to go into more business at all, or to take any more money.

All the foregoing examination objected on part of counsel for the defendants.

The witness being re-examined:

I still claim an interest in the metal, and a half interest in the press; I have been and still am willing to assign my interest to my brother in the metal and in the hay press.

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Objected, on part of complainant.

J. S. CARPENTER.

Subscribed and sworn to, this 7th day of May, 1873, *before me.*

LEVI SHEPHERD,

Master in Chancery of New Jersey.

MARY ANN CARPENTER, one of the defendants in this cause, being duly sworn, on his oath, says:

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I remember the time when this note in question was given at the the house of George Carpenter; I should think he lived twenty miles from our place of residence; he still lives where he then did; I went with my husband to George's at the time the note was given. Our families had been in the habit of visiting each other; I did not know that my husband was then going to George's to see him on business; I heard no conversation at George's house, at that time, of his signing a note for my husband as surety; there was not anything talked about a note, before me, at that time; the first I knew of such a note being signed was when my danghter Emily came home from George's; she

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had been there visiting; this was about two months after the note was signed; I can't state the exact time; Emily, on her return home, told me about it; two or three days after my daughter came home, George and my brother, James A. Thompson, came to our house.

Q. What was said if anything, in regard to the note at that time?

Question objected to.

A. There was nothing said about the note, that I heard; my brother James asked when the transfer was made; this was done in the presence of George.

Answer objected to.

I said to him, George, that it had been a long time since I had been there a visiting, and I told him it would have been a good deal longer if I had known the business that was going on; when I was there George said that if it came to and benefited our family he would not care; he said that he could pay it and it would not distress his family. 10

All the above conversation objected to; objected by counsel of complainant.

George was at our house twice afterwards; the second time he was, there was nothing particular said about it in my presence; at the third time there was a good deal said.

Q. Did or did not George Carpenter claim, when he was at your house with Mr. Thompson, that your husband had made some representations in regard to the farm at the time the note was signed? 20

Question objected to.

A. I think not.

The witness being Cross-Examined, says:

When I said it would have been longer before I went to George's house, if I had known the business going on there, I meant the business of the signing of the note; my objection was that I didn't go into that business.

MARY A. CARPENTER. 30

Subscribed and sworn to, this 7th day of May, 1873, *before me*,

LEVI SHEPHERD,

Master in Chancery of New Jersey.

EMILY CARPENTER, of Vernon, in the county of Sussex, a witness on the part of defendant being first duly sworn, on her oath, says:

I am the daughter of the defendants; I was at the house of my Uncle George soon after the note in question was signed; I was there May the twentieth, eighteen hundred and sixty-nine; I had conversation with my Uncle George in regard to the matter.

Q. What, if anything was said between you and your Uncle at that time in regard to the note?

Question objected to.

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A. He told me that he had signed from my father to the amount of thirty-five hundred dollars; I said, "Uncle George what made you do it?" He said that he would not have done it if his wife had said no! I then said "Aunt Catharine, why did you say no;" she said that he, meaning Uncle George had helped her brother, and she wouldn't object to his helping his; then Uncle George said that my father had asked him to sign the note while up-stairs, and he said that my father said, "George, you know that I am worth double enough, you need not be afraid to take hold of it;" I says, Uncle George he must have had reference to his Jersey City business, of course he did not mean the farm, for the farm and the movable property is in Ma's name; to this he made no reply.

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Q. Did he or not at that time claim that your father had referred to the farm, as a part of the property when the note was signed?

Question objected to.

A. No, he said nothing about the farm.

Uncle George and James Thompson came to our house on the twenty-fourth day of May, 1869; there was then something said about the note; Uncle George said if it benefitted our family he would not care, but its going to Jersey City he did not like, it, but he could pay it and not distress his family; and at the time he was at our house, my Uncle again made the same statement he did while I was at his house,

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which I have detailed above; my Uncle was again at my father's house on the next seventeenth of September; I was away spending the afternoon when my Uncle was there and did not hear much, except that my father told him when he signed the note that he was worth enough and need not be afraid to take a hold of it; I next saw my Uncle on the fourteenth day of February, eighteen hundred and seventy, at our house, while there I heard him say to my father that when he signed for him that he had reference to his farm; my father replied and said to that, George you know I never said so; Uncle George then says, we will see whose words are the best, yours or mine; that was the first time that I had ever heard him mention the farm in connection with that business, the signing of the note. 10

All the foregoing testimony objected to on part of the counsel for the complainant.

The witness being Cross-Examined, says:

When I said May twentieth, 1869, Pa. must have meant Jersey City business, of course he didn't mean the farm for the farm and movable property was in my mother's name—I was led to make that remark, because I did not know whether my Uncle knew that the property was in Ma's name or not, and if he didn't I thought he ought to know it. 20

Q. Did you suppose when you made that explanation, that your Uncle George was under the impression that your father referred to the farm when the note was signed?

Question objected to.

A. I understand the question but for my life I can't remember what my impression was at that time.

EMILY CARPENTER. 30

Subscribed and sworn to, this 7th day of May, 1873, before me.

LEVI SHEPHERD,

Master in Chancery of New Jersey.

SUSAN CARPENTER. of Vernon, in the county of Sussex, a witness on part of defendants being duly sworn, on her oath, says:

That I am the daughter of the defendants; the first time after giv- of note, I saw my Uncle at our house on or about the 24th of May, 1869; the conversation then was, so far as I heard about the note was this, Uncle James Thompson wanted to know the date of the transfer of the farm, we told him the date in the presence of Uncle George; he Uncle James, said he heard of our going to Newton about that time, and he supposed that was our business, as he had spoken to my father
10 about it before it was done; Uncle George said that he would not have cared so much if it had went to pa's family, but its going to Jack Baker he did not like it; I went to my Uncle George's a visiting about the eighteenth of June, A. D. 1869; while at his house I said to Uncle George, what made you sign it? He said, I did it to help your father; I saw he was in a tight place and I did it to help him—before they drove out of the yard I knew I had done wrong; then I remembered that I had heard the old story before, that he was going to make so much out of the business.

Q. Did George at your father's house in way, or at the interview
20 last spoken of by you, claim that your father made reference to the farm as a part of his property at the time the note was signed.

Question objected to.

A. No, he did not mention it.

All the forgoing examination of the witness objected to on part of the counsel of the complainant.

The witness being Cross-examined, says:

Q. I see you hold in you hand some papers to which you refer,
30 what are they and what do they contain?

A. The dates of the times, when you saw Uncle George, so that we would have the dates correct; I am a little forgetful about dates; they contain a little of the last conversation I have detailed; they were

made two months ago, they were copied from my sister's journal; the conversations I have related were not copied from my sister's journal.

SUSAN CARPENTER.

Subscribed and sworn to, this 7th day of May, 1873, *before me*,

LEVI SHEPHERD,

Master in Chancery of New Jersey.

The defendants offer in evidence a deed made by John S. Carpenter, and Mary Ann his wife, to Susan Carpenter, bearing date the eighth day of November eighteen hundred and sixty-six, and recorded in Sussex County Clerk's Office in book P, 5, of deeds, page 10, &c., and which is marked by me Exhibit A, on part of the defendants, and the defendants also offered in evidence a certain other deed made by Susan Carpenter, to Mary Ann Carpenter, bearing date the eighth day of November, A. D. 1866, and recorded in Sussex County Clerk's Office, in book P, 5, of deeds, page 12, &c., and which is marked by me Exhibit B, on part of defendants.

LEVI SHEPHERD,
Master.

May 7, 1873.

IN CHANCERY OF NEW JERSEY.

Between GEORGE CARPENTER, *Complainant,* *and* JOHN S. CARPENTER, AND WIFE, *Defendants.*	*Opinion.*

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On final hearing on pleadings and proofs. May Term, 1874.

Mr. Griggs for Complainant.

Mr. Cochran and Mr. Coult for Defendants.

THE CHANCELLOR:

The complainant is a judgment creditor of the defendant, John S. Carpenter, his brother. His judgment was recovered in the Supreme Court of this State on the twentieth day of February, 1872, for $4302.33. Execution against the defendants goods and lands having been duly issued upon it, it was duly returned unsatisfied for want of property whereon to levy. The bill is filed to subject to the payment of this debt a farm in Sussex County, which the judgment debtor owned on the eighth of November, 1866, and which on that day he and his wife, the other defendant in this suit, conveyed in fee to their daughter Susan, by whom, on the same day, it was conveyed in fee to her mother.

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The complainant alleges that those conveyances, by which the title to the property was vested in the defendant, Mary Ann Carpenter, by whom it is now held, are fraudulent and void as to him, on the ground that they were made with intent to hinder, delay and defeat the credi-

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tors of John S. Carpenter. The latter, who was a farmer living on, and tilling the farm in question, on or about the first of April, 1866, contracted with one John R. Baker for one-half of Baker's right to manufacture a patented composition called "railroad box metal" or "union metal," and one-half of Baker's interest in the net profits of the manufacture thereof. For this interest in the license and profits he paid Baker $6000. This money he raised by temporary loans, which he subsequently in the same year paid with that amount raised on a mortgage given by him to Carpenter Howell, upon the farm in question.

10 On the ninth of June, 1866, an agreement in writing was signed by Baker and delivered to John S. Carpenter, by which the former acknowledged the receipt of the $6000, and in consideration thereof covenanted that he would assign and pay over to the latter one-half of his interest (one-sixth) in the profits of a copartnership business for the manufacture of the metal, then carried on by him and Alfred L. Hovey. The mortgage to Carpenter Howell appears to have been given prior to the eighth of November, 1866. It does not appear that John S. Carpenter contracted any further debts or liabilities in the business until some time in the Winter of 1867, when the copartnership above alluded 20 to, having come to an end, Baker proposed to him to enter into copartnership with him in the manufacture of the metal—the business to be carried on at Jersey City—to which Carpenter agreed. They entered into copartnership accordingly, and carried on the business, Carpenter contributing to the capital money which he from time to time obtained by discounts, from the First National Bank of Warwick, on his promissory notes, endorsed by James A. Thompson, the brother of his wife; until the Spring of 1869 he was indebted to the bank for such discounts to the amount of about $7000. For the payment of this money the bank was anxious. About that time Thompson proposed to him that 30 he should divide the liability which he, Thompson, had incurred for him, by getting his brother, the complainant, to endorse his, John S. Carpenter's, note for one-half of the amount of the indebtedness, while Thompson would remain liable for the other half. Approving of the

proposition, John S. Carpenter proceeded to get his brother's endorsement, and on the twentieth of March, 1869, went with his wife for that purpose to the house of the latter in Orange County, in the State of New York; and there, by dint of persuasion, obtained the desired accommodation and induced the complainant to make a joint note with him for $3500, payable at six months, to the order of Thompson, to whom John S. Carpenter delivered it. This note was not paid by John S. Carpenter at its maturity. Thompson sued the complainant upon it, and recovered judgment, which the latter was compelled to pay. He then brought suit against John S. Carpenter for the amount of the 10 note and interest, and recovered the judgment above stated.

The conveyances by which John S. Carpenter conveyed his farm to his wife were wholly voluntary.

Although he alleges in his testimony that these was a consideration, that he got $6000 for the property, yet it appears that there was in fact none. His explanation of his testimony on this point is, that the $6000 were paid by the assumption by his wife of the mortgage for that amount, which was on the property when the conveyance to her was made. The wife of John S. Carpenter in the answer states, that no money was paid by her to her husband, on the conveyance, and that it 20 was not agreed or intended that there should be any. The answer indeed states, that the property was principally the result of the joint industry and toil of the defendants, during a great many years, in the farming business, and that, when they commenced their married life, the husband had only about $3,000, and that the wife had about $1000, which she had received from her father's estate, and which she placed in her husband's hands; and that that was all the capital on which they commenced business, and all they ever had, except what they made by their farming operations, but it does not set up this money and her services as the consideration of the conveyance. And if they 30 had been set up, they would not have availed the defendants to sustain the deed as against the complainant.

It appears by her husband's testimony, that, of the money she re-

ceived from her father's estate, about $300 or $400 were received very soon after they were married, and were expended in furniture and fixtures for the house on the farm, when they first built and moved into it, which was about forty-two years ago. Of the remainder about two hundred dollars were got about two years thereafter. This money was used to pay for buildings put on the farm—a cow-house, grain-house, &c., and the residue, six hundred dollars, was received afterwards, and was used in paying indebtedness on the farm, the title of which was then in the husband's name. Her services were rendered in the course of the discharge of her duty as a wife. Neither they, nor the money she brought to her husband, would have constituted a valid consideration as against her husband's creditors. *Skillman v. Skillman*, 2 *Beas.* 403. *Belford v. Crane*, 1 *C. E. G.*, 265. *Cramer v. Reford*, 2 *C. E. G.*, 367. *Annin v. Annin*, 9 *C. E. G.*, 184. The husband in his testimony states that the object of the transfer of the farm to his wife was, that it was better for him to have the money than the farm; that he got $6000 for the transfer of the farm; that he got the money from Carpenter Howell, that is, that his wife was to pay the $6000 mortgage he had given to Howell on the farm; that she took the title subject to the payment of that mortgage; that he was not urged by his wife to transfer the farm to her before he did it; that he consulted her about it before he did it; that she wanted the farm and he was satisfied to take the $6000 for it. He adds, that he does not remember that anything was said about saving the farm for his wife and children; that his wife was dissatisfied about his engaging in the metal business; he supposes she thought he might lose money in it; that she supposed farming was good enough. He further says, that he transferred the stock and farming fixtures to her; that it was all in the same contract, and for the stock he had the proceeds of the farm, (meaning, he says, the proceeds of the farm after it was conveyed to his wife,) and got the money out of them. The answer treats the conveyance as wholly voluntary. The wife answering for herself says, that she was not at the time of the conveyance informed by her husband of the exact nature of the purchase he had made of Baker, or the amount he had agreed to pay

therefor, but that she understood and believed at the time, that he had purchased some interest in a patent right, out of which, he claimed, he would make a large sum of money, and that she ascertained that he was using large sums of money to pay for that interest, and she and her children became alarmed on account of his transactions and feared that he would be drawn into other speculations by which the property which he then owned would be wasted; that she had no confidence in in the value of the purchase which he had made so far as she knew the nature of it, though he was apparently well satisfied with it and seemed to think he would realize large profits from it; that she and her children 10 and friends consulted together about the matter and concluded that they would, if possible, get him to convey the property to her, so that he would not make any further investment of the kind that she supposed and believed he had made.

She further says, her sole purpose was to prevent her husband from going further into speculation, and to save the property to herself and children by preventing him from making any further purchases of that character; that she got her brother, James A. Thompson, who had been the principal endorser for her husband to speak to him about making the transfer, and that her husband at once expressed his 20 willingness to do so, and very soon afterwards they went to Newton and the transfer was made. The husband answering for himself on this subject says, that he transferred the title to his wife to quiet her fears and satisfy her and his children, and not with any intention or purpose to cheat or defraud any person, and with no intention or expectation of creating any future indebtedness, or contracting any future liability. In his testimony, it will have been observed, he takes different grounds, alleging that he sold the farm to his wife; that she did not urge him to convey it to her, that she wanted the farm and he was satisfied to take $6000 for it; and he adds, that he does not remember 30 that there was anything said about saving the property for his wife and children. The daughter to whom the conveyance was made for the purpose of conveying the property to her mother testifies, that her

uncle, James A. Thompson, was the first one, and she believes the only one, who suggested to her father the transfer of the farm to her and from her to her mother, and she says she does not believe he gave any reason for it, that she never heard of any. She further says, that her mother and the children never, to her knowledge, asked her father to make the transfer, nor did her mother to her knowledge; that the witness was spoken to about the transfer by her father not over a month before it took place, and that he then said that her mother was so dissatisfied he was going to do it to satisfy her mind because she found a
10 great deal of fault with him because he had expended the six thousand dollars. Her father, she says, had at the time other speculations in anticipation, to all of which her mother was opposed. She says, that the object of the transfer (which was of the farm and all his personal property there—the latter valued by him at $3000,) was, as she understood it, to prevent her father from making any more purchases of patent rights, lands or anything else; that she understood that this transfer would prevent her father from making any more purchases, because they thought he would not use the profits of the farm when he did not have control of it; that he would not listen to them before, and
20 they thought after that he could be compelled; that her mother said she did not know anything about these speculations, and did not want to know anything about them. She says her mother took a dislike to Baker and said, not a cent of her property should go to Jersey City; that her husband could take his part and do what he had a mind to with it, hers she was going to keep on the farm. John S. Carpenter testifies, that he first talked about transferring the farm about a month before he did it, and that Thompson first suggested it to him. It is evident from the testimony that the object of the conveyance was to protect the property of John S. Carpenter against his creditors, to put
30 it beyond the reach of the creditors with whom it was contemplated he would probably contract debts in the hazardous business in which he was engaged, or in those on which he would probably enter. He says in his testimony that he commenced the business with Baker in 1866

and continued in it from May of that year until the latter part of the Winter of 1867, and that in the latter part of April or first of May of that year he engaged in the business in Jersey City; that before that the business had been carried on in Williamsburgh, and it was a mere removal from the latter place to Jersey City; that he and Baker had got the business themselves and removed it to Jersey City, and that it was an enlargement of the business. So that when he made the conveyance to his wife, he was carrying on the business in Williamsburgh and he continued in it from thence up to the latter part of April, 1869, about a month after he obtained the complainant's signature to the note. 10

The transfer, as before remarked, included not only the farm, but all his personal property there valued by him at three thousand dollars. So that he conveyed to his wife all his personal and real property, except that which he had invested in the hazardous enterprise in which he was engaged. The evidence leads to the conclusion that this transfer was made with a view to his future indebtedness and to protect his property against it.

But there is another important consideration in the case. When the note was signed by the complainant, he was unaware of the fact of this conveyance. John S. Carpenter and his wife, went together from 20 the farm in Sussex, to the house of the complainant in the State of New York. The object of this visit was to obtain the signature of the latter to a note for one-half of the indebtedness for which Thompson was alone bound as surety for John S. Carpenter.

The proposition that this should be done came from Thompson. By this means he proposed to devolve half of the burden he had assumed on the complainant.

The condition of John S. Carpenter's affairs had become desperate. The bank was urging payment, and in fact, according to John S. Car- 30 penter's testimony, he abandoned the business in about a month from the time he obtained his brother's signature to the note. It proved a total failure. It is not probable that his wife was not fully aware of

the object of her husband in this visit to his brother. Nor is it probable that she was not aware of the fact that the complainant made and signed the note. Her husband says she was present when the note was drawn and signed. The complainant and his wife both swear that she was there and in a position to hear the conversation which took place in regard to it. There was no secrecy in the matter. Her husband was urging the complainant to make the note, and he was reluctant to do so and declined, but finally appealed to his wife and she, with reluctance, gave her consent that he should sign it.

10 The wife of John S. Carpenter must have heard the representations made by her husband to the complainant in regard to his pecuniary ability. Among these was the statement that his property at home, meaning the farm in question, was worth twice as much as the amount of all his debts. Both, the complainant and his wife, swear that this was said by John S. Carpenter to the complainant, in the presence of the wife of the former. It is clear that the complainant had no actual knowledge at that time, nor until long afterwards, of the conveyance which had been made, nor had he any suspicion when he signed the note, that John S. Carpenter was not still the owner of the farm. Had 20 he known of, or suspected the conveyance, he would not have signed the note.

John S. Carpenter, after the conveyance to his wife, remained in possession of the farm and personal property, just as before that transaction, continuing to exercise the same acts of absolute ownership over them, as before.

There must be a decree for the complainant.

The conveyance from John S. Carpenter and his wife to his daughter, Susan Carpenter, and the deed from her to her mother, Mary Ann Carpenter, will be declared fraudulent and void as against the com- 30 plainant's judgment.

IN CHANCERY OF NEW JERSEY.

Between CATHERINE A. CARPENTER, MARY ANNA CARPENTER, AND ALANSON SLAUGHLER, EXECUTORS OF GEORGE CARPENTER, DECEASED, *Complainants,* *and* JOHN S. CARPENTER, AND MARY A. CARPENTER, *Defendants.*	*On Bill, &c.* *Final Decree.*

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This cause coming on to be heard in the presence of Socrates Tuttle, of counsel with the complainants, and of Coult, Van Blarcom & Cochran, of counsel with the defendants, in the Term of February, in the year of our Lord one thousand eight hundred and seventy-four, before his Honor, the Chancellor, whereupon and upon reading the pleadings and proofs in this cause, and the Chancellor having taken time to advise thereon until this day, and now due examination of the said pleadings and proofs being given, and due deliberation being thereupon had; it is thereupon on this twenty-sixth day of September in the 20 year of our Lord one thousand eight hundred and seventy-four, by his Honor, Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged, decreed and declared, and the said Chancellor, by virtue of the power and authority of this Court, doth order, adjudge, decree and declare that the deed made by the said John S. Carpenter and Mary A. Carpenter, his wife, to Susan Carpenter, mentioned in the bill and answer in this cause, and bearing date the eighth day of November, eighteen hundred and sixty-six, for three certain tracts or parcels of land lying in the township of Vernon in the County of Sussex and State of New Jersey, and in the said bill of complaint in this cause 30 particularly described, and also the conveyance in the said bill and answer mentioned, made by the said Susan Carpenter to the defandant, Mary A. Carpenter, bearing date the eighth day November, eighteen

hundred and sixty-six, for the same lands and premises above mentioned, were made by the said John S. Carpenter and Mary A. Carpenter, his wife, and said Susan Carpenter respectively, with the intent to hinder, delay and defraud the creditors of the defendants, John S. Carpenter, and particularly the said George Carpenter and his heirs, and executors, the complainants, and are, therefore, as to the complainants, and as against the lien and operation of the said judgment in said bill and answer mentioned, obtained by the said George Carpenter, in his lifetime, against the defendant, John S. Carpenter, utterly null and void.

10 And it is further declared and decreed that the complainants have a right to be paid the amount of the aforesaid judgment with interest up to the date of this decree, and that said judgment ought to be, as is decreed to be, a lien on said lands and premises, and that the same ought to be sold to satisfy and pay unto the complainants the amount of said judgment, debt and interest; and it is accordingly further ordered, adjudged and decreed, that so much of the said lands and premises in said bill of complaint and in the above mentioned deeds of conveyance mentioned and described, as will be sufficient to pay and satisfy the said judgment debt and interest and the complainants costs in this
20 suit, be sold; and that a writ of fieri facias do issue for that purpose out of this Court, directed to the Sheriff of the County of Sussex, commanding him to make sale according to law of so much of said lands and premises as will be sufficient to satisfy the amount of said judgment, interest and costs, and that he pay the same to the complainants or their solicitor; and that in case more money should be raised by the sale than shall be sufficient to answer such payment, such surplus money be brought into this Court and deposited with the Clerk, to abide the further order of the Court, unless otherwise disposed of by the order of the Court; and that the said Sheriff make return to this
30 Court of his proceedings by virtue of the said writ.

THEODORE RUNYON, C.

A true copy,

H. S. LITTLE, Clerk.

COURT OF APPEALS IN THE LAST RESORT, &c.

Between JOHN S. CARPENTER AND MARY ANN CARPENTER, HIS WIFE, *Appellants,* *and* GEORGE CARPENTER'S EXECUTORS. *Appellees.*	*On Bill, &c.* *Petition of Appeal.*

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To the Honorable, the Court of Appeals in the last resort in all causes of law:

The humble petition of John S. Carpenter and Mary Ann Carpenter, his wife, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by his Honor, Theodore Runyon, Chancellor of the State of New Jersey, bearing date the twenty-sixth day of September, in the year eighteen hundred and seventy-four, wherein the said George Carpenter's Executors, were complainants, and the said John S. Carpenter and Mary Ann Carpenter, his wife, were defendants, in this respect, to wit: That the said decree adjudges that the said complainants have and had the right to have the sum of four thousand three hundred and two dollars and thirty-three cents, with interest thereon, from the twentieth day of February, eighteen hundred and seventy-two, the amount of a certain judgment recovered against the said defendant, John S. Carpenter, by the said George Carpenter, in his life-time, in the Supreme Court of the State of New Jersey, on the day last aforesaid, together with the costs of said suit, in Chancery raised and paid out of the land and premises mentioned and described in the complainants bill of complaint.

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And your petitioners humbly appeal from the said decree, upon the ground that the same is erroneous, for that the said complainants have

not nor had not the right to have the amount of said judgment, with interest thereon, as aforesaid, with costs of said suit, raised and paid out of the lands and premises mentioned and described in the complainants bill of complaint.

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.

VAN BLARCOM & COCHRAN,
Solicitors of Appellants.

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LEWIS COCHRAN, *of Counsel with Appellants.*

Dated February 12th, 1875.

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EVIDENCE.

N. J. COURT OF ERRORS AND APPPEALS.

JOHN S. CARPENTER, et ux, *Appellants*, and GEORGE CARPENTER'S Executors, *Respondents*	On Appeal.

POINTS FOR RESPONDENTS.

I.

The conveyances from the Appellants to Susan Carpenter, and from Susan Carpenter to Mary Ann Carpenter, were fraudulent and void as to George Carpenter, because they were made with intent to hinder, delay and defeat the creditors of John S. Carpenter, and others.

Nixon's Digest, p. 355, sec. 2.

II.

The *fraudulent intent* of the Appellants in making said conveyances, need not be expressly or directly proved. It may be inferred from such facts as usually attend fraudulent transactions and fraudulent conduct, and from such badges of fraud as the transaction wears.

Bump on Frau. Conveyances, p. 322.

III.

Although to render a conveyance void as to subsequent creditors, it must be made with an intent to put the property out of the reach of debts, which the grantor at the time of the conveyance intends to contract, and which he does not intend to pay, or has reasonable grounds to believe that he may not be able to pay,—yet there need not be an intent to contract any particular debt or debts.

It is sufficient if there is an intent to contract debts, and a design to avoid the payment of such debts by the conveyance.

Winchester *v.* Carter, 12 Allen 606.
S. C., 97 Mass. 140.
S. C., 102 Mass. 272.

IV.

The evidence in this case discloses the following badges of fraudulent intent:

(*a*) All the property of John S. Carpenter, both real and personal, was vested in his wife at the time of this conveyance by the conveyance.

Beard *v.* Beard, 3 Atk. 72.
Belford *v.* Crane, 1 C. E. Greene 265–272.
Annin *v.* Annin, 9 do 184–192.
French *v.* French, 6 DeG., M. & G. 100.

(*b*) John S. Carpenter remained in possession and control of the whole property after the conveyance up to the time of this suit.

Ayer *v.* Bartlett, 6 Pick 71–77.
Pell *v.* Tredwell, 5 Wend. 661.

(c) The transfer was concealed.

That concealment is evidence of fraudulent intent.—vid.

Hungerford *v.* Earl, 2 Vern. 261.
Sand *v.* Hildreth, 2 Johns C. 35.

The fact that the deeds were put on record does not relieve the fraudulent intent, if the creditor had no actual notice, and was surprised.

Churchill *v.* Wells, 7 Cald. 364.
Moore *v.* Blondheim, 19 Md. 172.

(d) John S. Carpenter immediately after the transfer engaged in hazardous business.

Beekman *v.* Montgomery, 1 McC. 106.
Cramer *v.* Reford, 2 C. E. G. 367.
Carpenter *v.* Roe, 10 N. Y. 227.
Case *v.* Phelps, 39 N. Y. 164.
Belford *v.* Crane, 1 C. E. G. 265.
Cook *v.* Johnston, 1 Beas. 54.
Reade *v.* Livingston, 3 Johns. C. 500.

V.

The Respondent, John S. Carpenter, procured George Carpenter to sign the note in the bill mentioned, by fraudulent and false representations concerning this very property, which false representations and concealment were silently acquiesced in by Mary Ann Carpenter, who was present at the time.

VI.

The evidence shows that John S. Carpenter at the time of the transfer to his wife was intending to engage in hazardous business, and that he transferred his property to his wife to save it from being taken for the debts which he intended and expected to contract, one of which debts was was the compl'ts.

VII.

The Respondents' statement in their answer of their intention and motives in making the conveyance is not conclusive.

Cook *v.* Johnson, 1 Beas. 54.
Belford *v*, Crane, 1 C. E. G. 270.
Sayre *v.* Fredericks, 1 C. E. G. 205.

VIII.

The conveyance from John S. Carpenter to his wife was wholly voluntary.

IX.

Neither the wife's services or the money which she brought her husband will avail as a good consideration for the transfer, as against the creditors of John S. Carpenter.

Skillman *v.* Skillman, 2 Beas. 403.
Belford *v.* Crane, 1 C. E. G. 265.
Reford *v.* Cramer, 2 C. E. G. 367.

Chiswell & Wurts, Prs., Paterson, N. J.