

New Jersey Court of Errors and Appeals

Between

CARL ROTH AND CHRISTINA

ROTH, HIS WIFE,

Appellants,

and

HEINRICH FRETZ,

Respondent.

*On Appeal from
the Court of
Chancery.*

***Brief of Michael Dunn and William M.
Rysdyk,***

Solicitors and of Counsel With Respondent.

The primary object of the bill of complaint filed by the complainant, Heinrich Fretz, against Carl Roth and Christina Roth, his wife, in this cause, was to secure an injunction against Carl Roth enjoining him from proceeding with an action of ejectment brought by him against the complainant in the Circuit Court of the county of Passaic. The further purpose was to have it decreed that the lands and premises known as No. 128 Lyon street, in the city of Paterson, belong to the said Heinrich Fretz, and the deeds from Heinrich Fretz and wife to Herman Sonntag, and from Herman Sonntag to Louisa Fretz, respectively, be declared and decreed to be void

and that Carl Roth and his wife be decreed to convey the title thereto to Heinrich Fretz.

STATEMENT OF FACTS.

Heinrich Fretz was born in Klotan, Switzerland, on February 27, 1848, and was married to Louisa Roth on September 14, 1882, at Zurich, Switzerland. They were natives of Switzerland. At the time of the marriage of the respondent, Louisa Roth was the mother of an illegitimate boy; this boy was Carl Róth, and is not the child of Heinrich Fretz. The respondent and his wife lived in Zurich, Switzerland, for about four years after their marriage, and in 1886 came to Paterson, N. J. Carl Roth did not come with them. They commenced housekeeping in three rooms in Fulton street, in said city, and paid five dollars rent per month. All the money Fretz and his wife had between them when they reached this country was \$20. The first employment Fretz obtained was as a box maker in Levy's shirt factory in March, 1887. He received \$6 a week for the first six months, and \$7 a week the remainder of the first year and the first half of the next, and then received \$8 a week for another year. He delivered all these earnings to his wife, excepting sometimes a quarter or half dollar which he retained from his weekly wages (p. 39, beginning at line 6). His wife took this money and deposited the same in a savings bank. When Fretz left Levy's employment he purchased a horse and wagon and started peddling coal and vegetables. He continued this

business for about one year, from which, at times, he made as much as \$20 per week, and never less than \$10 per week; all these earnings he delivered to his wife, and, as he supposed, she deposited the same in the bank (pages 40 and 41). He sold his horse and wagon for \$40, and delivered the proceeds of the sale to his wife (p. 42, top). He then worked in a sewer-pipe factory, in Paterson, for six months and received \$9 per week. These moneys he likewise delivered to his wife (p. 42, top). Fretz then started to work in Weidmann's dye-house, in Paterson, where he was employed for three years as a dyer's helper and earned \$9 a week. He worked steady and delivered his earnings to his wife. He testifies that he believed that she was putting the money in the bank during all this time, yet he was not positive of the fact and she never told him. He and Carl Roth agree in their testimony that she never told them anything about the financial affairs (p. 42, bottom, and 43, top). Fretz then left Weidmann's and went to work in Bolton's dye-house, in Paterson, where he earned \$9 a week. He worked there for six months. He received an injury to his leg while working there and blood poison developed. This was in 1894, and for about four years he was unable to do much hard work. He assisted with the house work and carried on a saloon business (p. 43, bottom, and 44, top). At the time of his injury, Fretz belonged to the Germania Schuetzenbund, a benevolent order. He received a sick benefit of \$6 a week for eighty weeks. His wife collected this money

and kept it and deposited it in the bank as he supposed (p. 44, bottom, and 45). Fretz testified that the expense of maintaining the house amounted to about \$4 a week during the aforesaid time (p. 46, line 13 et seq.). On page 47, Fretz testifies that in 1893, which was about a year before he left Bolton's dye-house, he was engaged in carrying on the saloon business, which was of small proportions. His wife looked after the business while he was at work and he cared for the same after working hours. After his injury he generally looked after the saloon business altogether, and also assisted his wife in the kitchen at times. They kept a few boarders, each of whom paid \$4 per week. There were sometimes three and again five boarders at a time. The gross receipts from the saloon business reached from \$10 to \$50 per week (pages 48, 49, 50 and 51). When Fretz required money for clothing and personal expenses, he got it from his wife. All the money received from the boarders and the bar of the saloon business were turned over to his wife and kept by her.

In 1890 he decided to purchase a lot of land in the city of Paterson, and the wife gave to the husband the bank book and he went to the bank and obtained \$500, the purchase price, and paid it in consideration of the conveyance to him of the lot of land in question. The deed to him was dated May 14, 1890. There was some talk between Fretz and his wife about this time that he should go to Switzerland to see an old friend (p. 58, bottom). Before the arrangements for going were made, he changed his mind, as he

learned this friend had died ; so then his wife determined she would go to the old country to visit her people (p. 68). Louisa Fretz went to Switzerland about May, 1890. While she was away, her husband determined to purchase a horse and wagon and engage in the business of peddling produce and coal (p. 67, bottom, and 68, top). For this purpose he borrowed \$150 on the lot, which, at this time, stood in his name and pledged the same for the payment of the debt (p. 59, bottom, and 60). Fretz' wife returned in September, 1890, and learned what he had done, whereupon she became very angry with her husband, and as she expressed it, "she felt insulted," and requested him to transfer the title to her so that he could not take up any more money on the lot (p. 59, bottom, and 60), and she would hold it for him.

Mrs. Fretz consulted Thomas W. Randall, a lawyer, and instructed him to prepare deeds which would convey the lands from Fretz to her. She attended to the whole transaction.

All Fretz did was to go to the office and execute the deeds. Mr. Randall testifies : "I gave them both to understand what the papers were" (p. 104, lines 14 and 15). Fretz understood but little of what was said in English. The deeds from Heinrich Fretz and wife to Herman Sonntag, and from Herman Sonntag to Louisa Fretz, respectively, were dated April 15, 1891. These conveyances were voluntary and without any consideration.

I.

We contend that this land in question was the property of Heinrich Fretz.

In support of this we refer to the facts stated above. In addition the following facts are shown by the evidence :

Heinrich Fretz testifies that his wife told him at the time the above deeds were executed, she would convey the property back to him or that she would will it to him at her death (p. 62, 63 and 64). It is clear from his testimony that there was no gift of this property by the husband to the wife, and that the husband did not understand that he was stripping himself of his interest in the property. The title to this property remained in the wife at the time of her death, namely, September 29, 1901. On March 5, 1892, Fretz and his wife borrowed \$1,100 upon this lot and erected a building, in part of which they lived, in another part of which they operated a saloon. The license for the saloon was taken out in the name of the husband, and the business was carried on both by him and his wife, although she, here as elsewhere, handled all the money. At the time she came back from Switzerland, in 1890, she brought her son with her who lived with them off and on until his mother's death. Sometime before her death, she quarreled with her son and dismissed him from the house, but shortly before her demise she became reconciled to him and

he returned to live at the house and was there at the time of her death. She was taken ill five or six weeks before her death, and spent some time in a hospital ; she was removed to her home about two weeks before her death, and during that time, or on September 21, 1901, she executed a will (p. 69 and 70). After the death of his wife, her will was read in English by the executor to Fretz and Carl Roth and the contents explained in German to the respondent, Heinrich Fretz (p. 71). Respondent testifies that the executor, Deiser, told him that under the will, he (Fretz) had the real estate and the boy (Carl Roth) had whatever money there was (p. 72 and 73, top). It turns out to be the fact that there was on deposit in the Savings bank more than \$3,600 ; \$500 of this money she willed to her sister, and the balance under the residuary clause was given to her son, Carl Roth.

While the testimony of Deiser, the executor, differs in statement with Fretz's, it is consistent with the testimony of the latter. Deiser says that he explained to the respondent the contents of the will, and that it would not operate upon the real estate if he, the respondent, owned it ; the respondent believed he owned it. After the death of the respondent's wife, the will was read to him and Roth in English, but Fretz, the complainant, did not understand English, so the contents were explained to him in German by Deiser, the executor ; Roth was there at the time, but it was fully a year after the will was read before Roth understood that the real estate was devised to him (p. 139, bottom, 140, 141 and

142), although he understood and spoke the English language well.

After the death of his wife, respondent continued to occupy the premises, and to carry on the business and pay all bills. The property has always been assessed in his name; he has paid the taxes and also the interest upon the \$1,100 mortgage (p. 73 and 74.)

There is no evidence in the case to show that the money which paid for the real estate at the time the respondent took title thereto belonged to his wife. While there is some testimony that for a time the wife did occasional washing for neighbors, there is nothing to show the amount she earned or what she did with it. From the proof, no part of the \$580 purchase money for the real estate was earned by the wife, and the same must be considered as the earnings of the respondent accumulated in the hands of the wife. He always worked and earned money. It cannot be said or inferred in this case that a person of complainant's class would make a gift to his wife of his wages, which week by week he handed over to her on pay night. This practice of permitting the earnings of the husband to accumulate in the hands of the wife is common among people of their class. It was undoubtedly the intention of both the respondent and his wife that these earnings, which was their all, were their joint property; if it is essential to determine in law who is the owner of such moneys, the weight of the authorities favor the right of the husband. It became the duty of the wife to exercise with good judgment the handling of the

moneys entrusted to her by her husband and to use care in expending the same for their living and clothing. In this case, however, it is clear from the proof that the earnings accumulated in the hands of the wife belonged to Fretz and she was holding the same as agent for him; and the proof shows that the \$580 was money representing the earnings of the respondent and paid by him for the lot and cannot be considered the wife's money in such a way as to make her an equitable owner of the real estate. This was the contention of the appellants. There are no facts or proofs to support it.

II.

This is not a case of a resulting trust.

The appellants invoked this theory to aid them in their defence. The facts proved and the law prohibits the Court from deciding the case on this theory.

In *Duvale vs. Duvale*, 56 N. J. Eq., 375, it was held that an agreement by a wife to devise lands to her husband which induced him to pay for them, and have them conveyed to her and expend money in their improvement, is an enforceable contract; and when the wife in her time repudiates the agreement and makes other testamentary disposition of such lands, the husband is entitled to the intervention of a court of equity to prevent such violation of the agreement.

In this case there was a direct conveyance to

the husband through an intermediary, and the evidence in any event is insufficient to show there was a resulting trust.

The deed in this case being upon an expressed consideration, and the uses being declared therein for the grantee, there can be no resulting trust in favor of the grantor. *Coffey vs. Sullivan*, 63 N. J. Eq., 296.

This conveyance by the husband to the wife being a voluntary one and containing no power of revocation, it was incumbent upon Roth to show that the respondent was properly advised when he executed it, and that he thoroughly understood the effect of omitting the power, and that he intended it to be excluded. This doctrine is cited with approval in *Garnsey vs. Mundy*, 24 N. J. Eq., at page 247. Fretz is a foreigner and ignorant of our language. The deed conveyed all he had and was unconditional and absolute, containing no provision for revocation or reversion. He had no advice from any one of the true nature and full effect of this form of conveyance (p. 104), and he had no understanding in the proper sense of the word; and without a thorough knowledge and understanding of its true nature and effect, and in the absence of evidence showing an intention on his part to make a gift and absolute conveyance, a deed thus executed is void.

The following cases support the law as hereinabove stated: *White vs. White*, 60 N. J. Eq., 104, at page 115; *Anderson vs. Ellsworth*, 3 Gif., 154, s. c.; *Story's Equity Juris.*, § 1374; *Garnsey vs. Mundy*, 24 N. J. Eq., 243; *Mullock vs. Mullock*, 31 N. J. Eq., 594, at page 602; *Van*

Houten vs. Van Winkle, 46 N. J. Eq., 380 ; Doughty vs. Miller, 50 N. J. Eq., 529 ; Grant vs. Baird, 61 N. J. Eq., 389 ; Thorpe vs. Smith, 63 N. J. Eq., 70 ; Hall vs. Otterson, 55 N. J. Eq., 522, at page 531 ; Martling vs. Martling, 47 N. J. Eq., 122, at page 132 ; Warlick vs. White, 86 N. C., 139 ; Beard vs. Beard, 3 Atl., 72.

In *White vs. White*, 60 N. J. Eq., 104, Vice Chancellor Pitney says, "A voluntary conveyance by an illiterate man, unaccustomed to business transactions, of substantially all his property, in making which he did not have the benefit of independent, competent and disinterested counsel, to make him fully understand, realize and appreciate the full practical effect and consequence of the deed during his life time, though he was told generally that it conveyed the property, and which contains no provisions to affect the understanding of the parties that he was to retain the use and benefit of the property during his life, will be set aside."

The testimony of Heinrich Fretz, and the manner in which it was given, indicate that he was telling the truth, and in no particular did he, as Vice-Chancellor Garrison in his opinion stated, seek to color any statement or to give any evidence which would favor him at the expense of truth (p. 159). It was evidently his sole object in transferring the land from his own name to his wife's, to respect her desire to keep the land free from further pledge by him to pay debts. He cannot speak our language and understands but very little of what is said to him

in English ; he is a man of very low order of intellect. When spoken to in his own language (German) he understands only the simplest statements, and is likewise limited in making himself understood (p. 158 and 159).

In *Coutts vs. Acworth*, 1869, L. R., 8 Eq., 558, it was held that where the circumstances are such that the donor in a voluntary settlement of gift ought to be advised to retain a power of revocation, it is the duty of the solicitor to insist on the insertion of such power, and the want of it will, in general, be fatal to the deed.

We, therefore, contend that the respondent is entitled to relief as prayed for. The doctrine established in this state in the case of *Garnsey vs. Mundy*, 24 N. J. Eq., 243, and which has since been frequently recognized in the Court of Errors and Appeals, rules this case.

This court is deprived of the opportunity of observing the demeanor and conduct of the witness while giving testimony. In this respect the trial judge has a great advantage over this court in determining the degree of credibility to be accorded to the witnesses produced. Statements of the trial judge in regard to impressions thus obtained should be accorded great consideration by the court of review. The Vice-Chancellor in his opinion has made a very careful, able and exhaustive review of all the cases in our state bearing on the questions involved. His logic is good and his reasoning sound ; and

after a most careful examination of the evidence and authorities we do not see how a court of conscience could reach a different conclusion.

The existence of a court with power to stretch out its arm and protect from harm and wrong the ignorant, illiterate and feeble minded, and the courage that the officers of that court have always had to administer that relief where conscience dictated it was right to give relief, has and will continue to be one of the proudest features of the jurisprudence of our state.

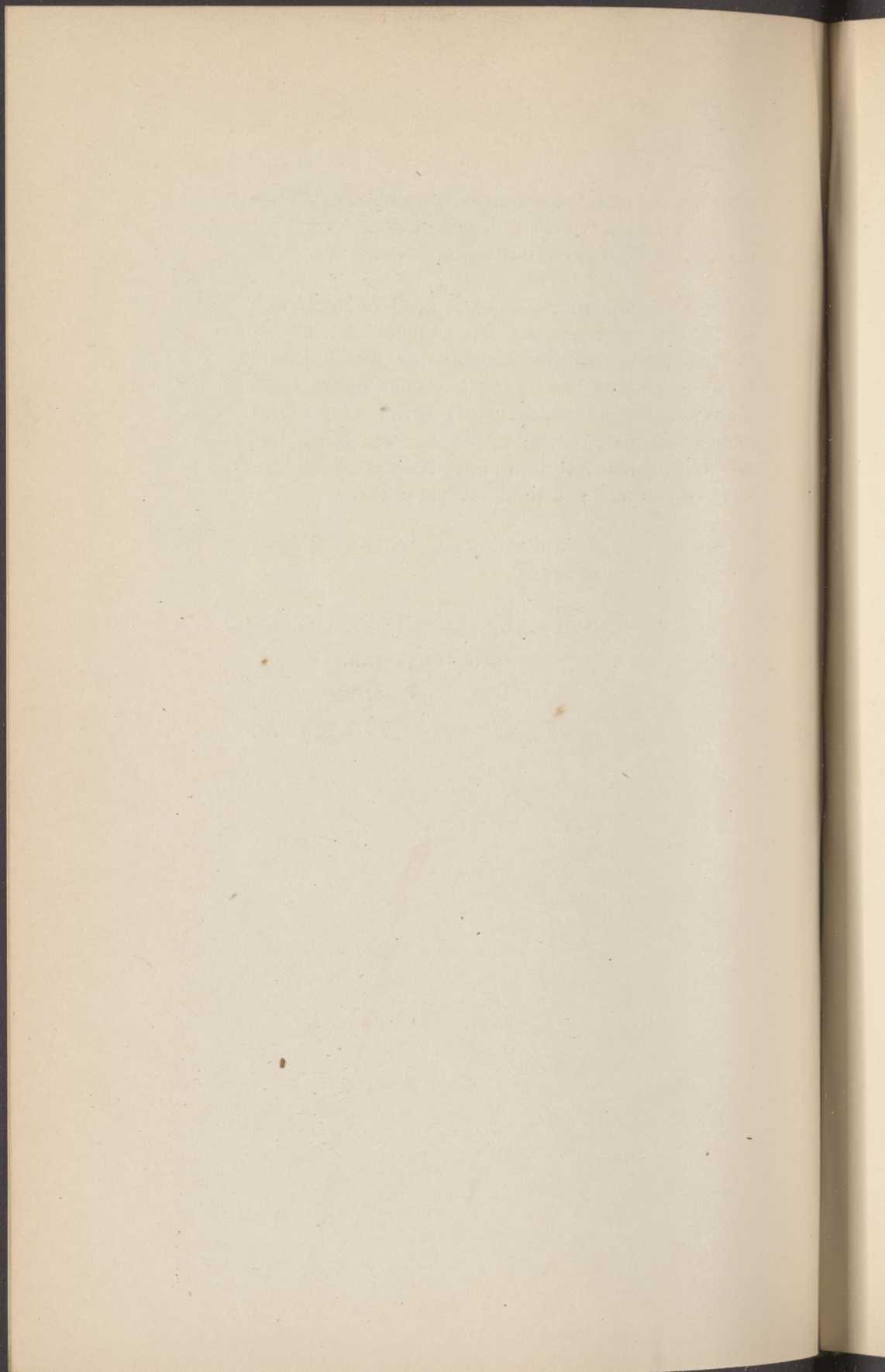
This decree is equitable, righteous and just, and should be affirmed.

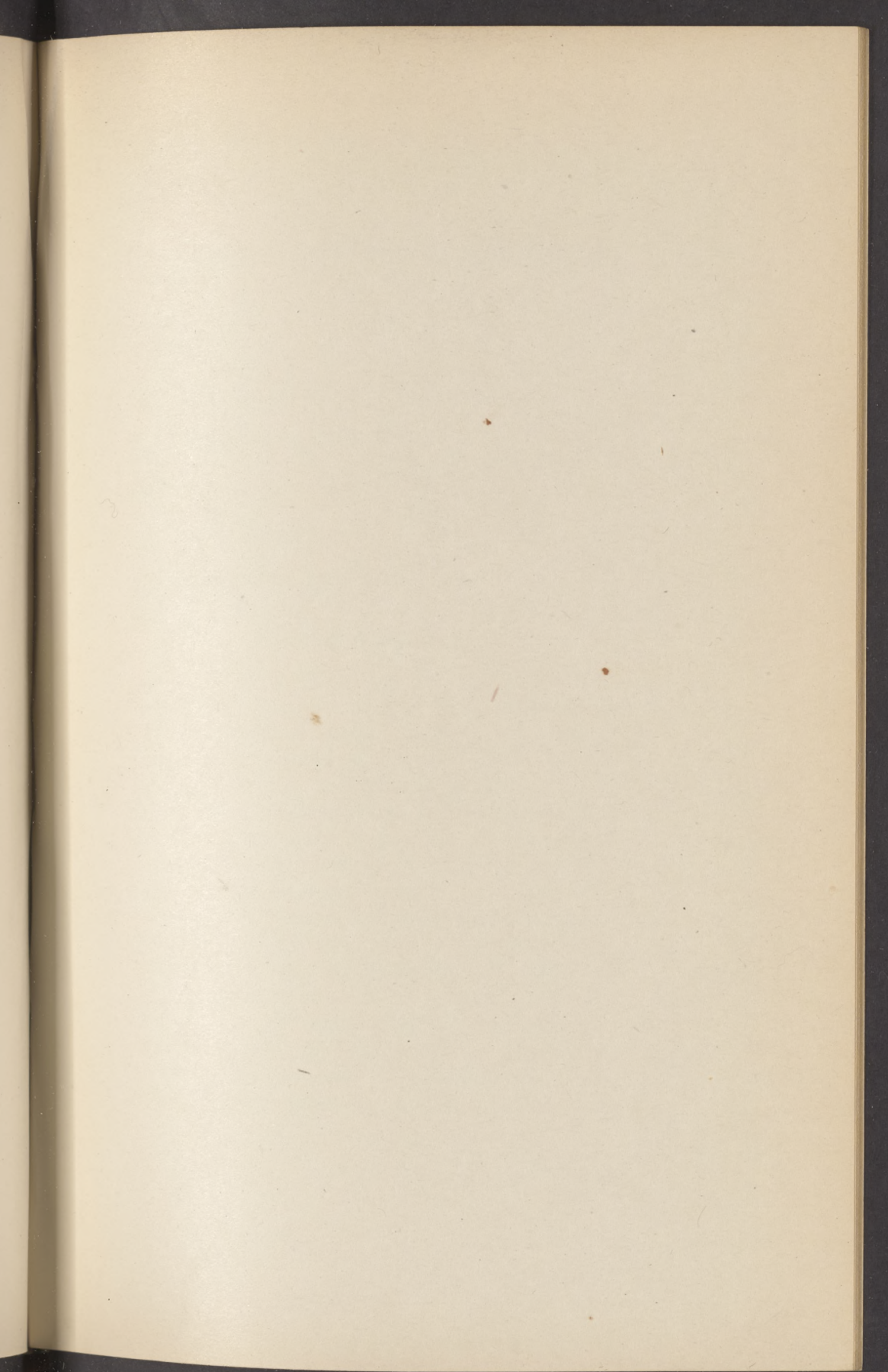
Respectfully submitted,

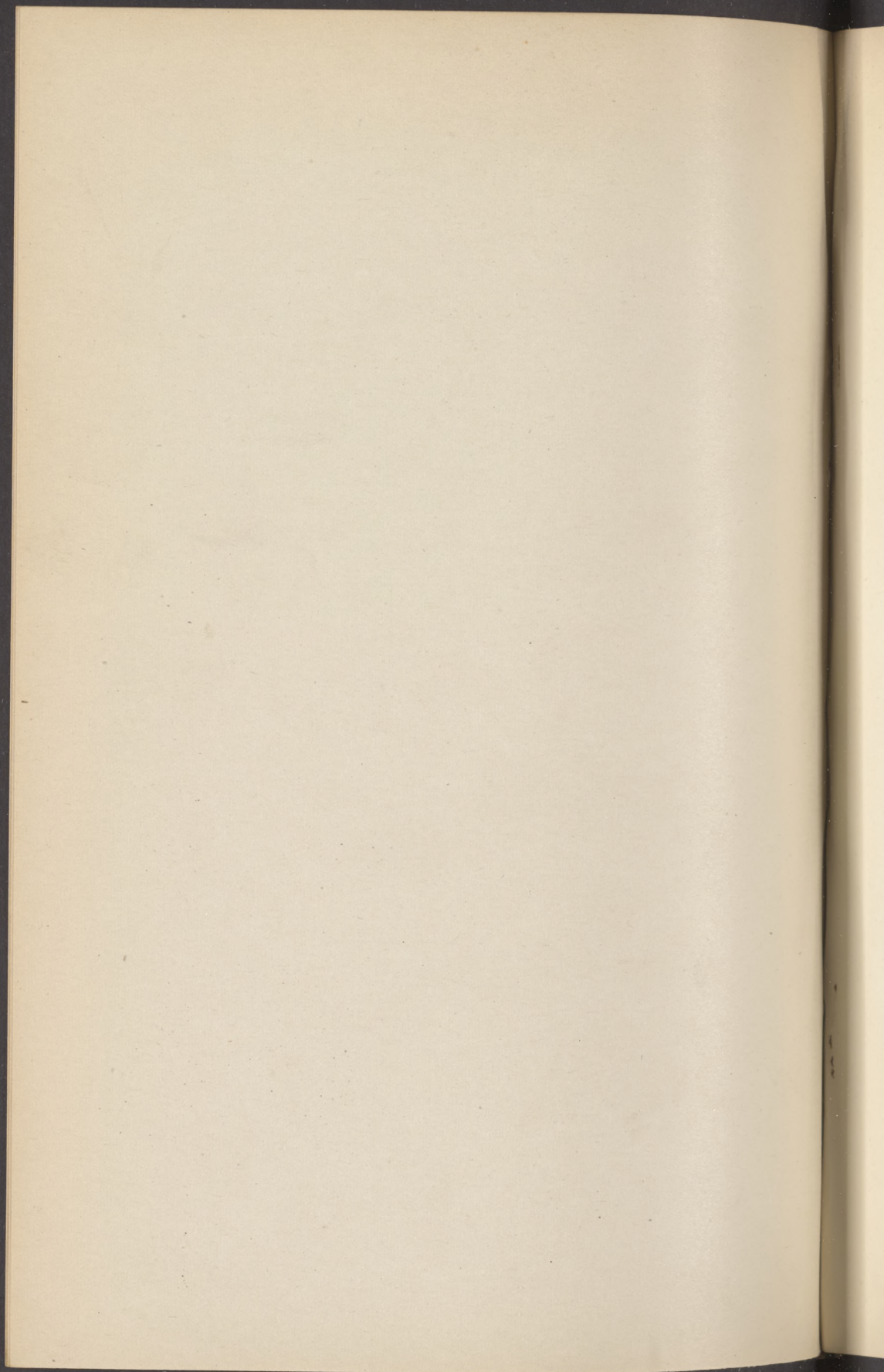
MICHAEL DUNN,

WM. M. RYSDYK,

Solicitors and of Counsel with Respondent.







New Jersey Court of Errors and Appeals

Between

HEINRICH FRETZ,

Complainant and Appellee,

vs.

CARL ROTH et al.,

Defendants and Appellants.

On Bill, &c.

Brief of Appellant.

Heinrich Fretz files the bill in this cause against Carl Roth and wife. The purpose of it is to have declared in the complainant the title in certain real estate of which his wife, Louisa Fretz, died seized, and also to get the sum of \$3,600, which she left in her will to her natural son, Carl Roth, born before her marriage to complainant; she left everything to her son, nothing to complainant by will.

Fretz and wife came to Paterson from Switzerland in 1886; when they arrived they had \$20.

She made a will on September 21, 1901, and filed September 29, 1901. In the residuary clause of her will she leaves the real estate in question to her son, Carl Roth. Complainant got title to the property in question May 14th, 1890. \$580 was paid for the lot 25x100. This

money was in the bank in her name at this time. He afterwards conveyed the property to her through an intermediary. The Court below set aside these deeds, but affords no relief to complainant for the cash his wife left, for the reasons stated in the opinion. The Court below erred in declaring that the money, which bought the property, was the husband's and that he was the real owner of the property.

The property was hers when it was bought in 1890, although the title was in his name; she afterwards obtained title, and then title was where it belonged. The mistake was made by the Court below in supposing the money was his. He never earned it, and what he gave was not enough to support the household. He was obliged to do this to support the family, as the husband and head of the house. The money that bought the property was earned by her, and kept by her in her own name in the bank. The burden is upon the complainant to show, at least, that he had earned the money. The proof fails signally in this respect.

They arrived in Paterson in the Fall of 1886, with \$20, and complainant did not get work until March, 1887, Book 38. For six months he got \$6 a week, and two years he got \$7 a week. If he worked all the time this would be at the outside \$150 for the first six months and \$350 one year; \$400 for the second year; or \$900 in all. Rent and clothes and support had to come out of this. (Page 38.)

He started then as a peddler, and a horse and wagon were bought for \$65 (page 40). This would leave a balance of \$835. \$835 plus \$20

brought to this country make \$855, upon which they had to live for three years, or at the rate of \$278 a year. This would bring them up to the Fall of 1889. He peddled for a year (page 40), and made, so he says, from \$10 to \$20 a week. This would bring them to the Fall of 1890. The property was bought on May 14, 1890, for \$580. How \$580 could have been saved out of *his* money by May, 1890, is more than we can understand. If he made from \$18 to \$20 a week in 1890, at \$15 this would make about \$750 for the year. After peddling he worked for six months, to the Spring of 1891, in a sewer pipe factory. At about this time he received \$70 for the horse and wagon. He got \$9 a week at the pipe factory for six months. This would amount to about \$216. He then went to Weidmann's dye house and worked for three years (page 42), at \$9 a week. This would bring him to the Spring of 1894, and his wages would amount to about \$450 a year or \$1,350 for three years. He then worked six months at Bolton's for \$9 a week. This would bring him to the Fall of 1894, and his wages for this half year would be \$225. At this time he hurt his leg and had to stop work. All the money he turned in to his wife from the Fall of 1886 to the Fall of 1894, eight years, is \$3,466, as shown by the following :

Brought over.....	\$	20	her money
1st job 2½ years		900	
Peddling for 1 year.....		750	
Next job, 6 mos.....		216	
Next job, 3 years.....		1,350	
Next job, 6 mos.....		225	
Profit in horse and wagon.....		5	her money
Benefit Society.....		480	

\$3,946

\$6.00 a week for 80 weeks from a sick benefit society. (Page 44.) \$3,946 for eight years is at the rate of \$493 a year.

On page 46 he says family expenses were \$4 a week. Saloon license was in his name, but she ran it, took in the money and paid the bills. Quite natural for her to get the license in his name, besides city authorities don't grant married women licenses. The saloon was kept from about 1893, while he was working at Weidman's (page 47). He stopped work in the Fall of 1894, so that the saloon was run for almost two years (1 year and 9 months) before he stopped work. During these two years he could have had nothing of any account to do with the saloon.

The fact that this saloon was started one year and nine months before he stopped work has a tendency to show that it was her saloon. She bossed it and ran it. He did not have either the time, money or brains to run it, and all the profit got was hers, obtained in her separate business. According to his statement the profit in this business was his. Whatever was made out of boarders was hers. Averaging the profit in the saloon at \$10 for 1893 to his death it would approximate \$3,500. The money made from boarders for 2 years (p. 51) would be about \$1,664; the money received from his wages being \$3,946, total for 15 years, \$9,110. The statement of all the money he could have received from all possible sources, is as follows :

Wages, etc.....	\$3,946
Profit on saloon.....	3,500
Income from boarders.....	1,664
	<hr/>
Total.....	\$9,110

If all of this money, \$9,110, were used for family expenses for these fifteen years, it would be about \$607 a year. If the family expenses were only \$300 a year, all that could have been saved was \$4,580, which is nowhere near the cost of the lot, house, and plus the \$3,174, left in the bank at her death. Of course, this statement of receipts from all possible sources, is greatly exaggerated, and allows to complainant all possible profit, from boarders and the saloon, both of which, were her business. This statement is thus presented to show that under no possible view could this property or money in the bank have been his.

She died September 31, 1901. Her son Carl Roth, lived with them 5 years (page 53), and in his testimony he says he gave his mother all his wages. Page 63 complainant says she promised to will him the property. She could do this and still own it. There was no consideration for this promise.

All this evidence of the complainant should have been objected to, and having been admitted, should be looked at with rigid scrutiny. He says (page 72) that Mr. Deiser, who read the will, said to him, he ought to be satisfied as he got the house and half of the lot. Absurd, as the house is on the whole lot, and it is only 25x 100. Deiser afterwards states that he read the will to complainant and explained to him in German. Complainant said he was satisfied. Page 72, complainant did nothing for a year, and only began suit when an action of ejectment was begun against him,

Page 76. When they first came to this country

his wife had \$500 and gave it to her father. This shows she was a saver, and what she saved she claimed for herself, without his objection.

Page 80. He says the profit of the saloon was \$10 a week and that her son and she worked in the saloon. The testimony of Charles R. Secker (p. 81) etc., simply shows that she thought of giving him the property by will. She could have done it, but she was not obliged to do it. Robert Kinner (page 89) shows that she did intend to leave the complainant the property by will (page 93, page 94). This witness says Mrs. Fretz gave her boy, Charley Roth, \$500, which he lost. This shows she regarded the money as hers. She did not ask complainant's permission or his consent to give the money.

Peter Worfler (page 98) testifies for complainant on page 99, he says she told him about her money, and what she was going to do with it. There was talk about complainant having an interest in the property, and further he says she was the boss and had charge of the saloon. (page 101.) Lawyer Randall on page 102 says Mrs. Fretz was their laundress for several years and she got \$1.50 a day. He also says she worked for several other people, page 103. She was always anxious to accumulate money.

Charles Roth was twelve years old when he came to this country, and was here for sixteen years, page 106. He says Mr. Fretz gave up peddling, because he could not make it go (page 106). Whatever Charles Roth made, he gave to his mother. He worked eight years and four months at one place and got as much as \$9 a week. If he got \$8 a week for eight

years it would amount to over \$3,200, which he gave to his mother, page 108. His mother worked outside and started a saloon, because Mr. Fretz could not keep her (page 111). She owned the saloon. She kept boarders and had as many as nine, page 112. George Haeberle, page 135, says she ran the saloon.

Charles Smith boarded with Mrs. Fretz (page 137). He says she ran the boarding house. Herman Deiser was the executor in Mrs. Fretz will (page 139). He says Mrs. Fretz ran the saloon (page 140). He made the will clear to Mr. Fretz and Charley Roth (page 141).

There was \$3,174 in the bank in her name, (page 143). Reckoning up all the money Mr. Fretz could possibly have earned it amounted to about \$9,000 for over 15 years. This must be accepted as the utmost, as a matter of fact. He was sick a great part of this time. He was idle for a good part of this time. If he is regarded as the head of the family his money must have gone for the support of the family. Out of it all it must be reckoned \$580 for the lot, \$150 as a mortgage which he lost, and \$500 for Charles Roth, lost in the chicken business, besides whatever the house cost, which, unfortunately, is not mentioned in the testimony. Taking out these sums and what it cost to build the house and cash in bank of over \$3,000, would easily have exhausted all he ever earned, even if not one dollar of his was spent for household expenses; or if his money had alone been appropriated for household expenses, clothes, doctors and other bills, not a dollar would have been left. She was the boss, the manager and the

brains of the family. It is quite plain that without her, he would not have a dollar, or a roof over his head.

The trouble with the view of the Court below is that it regarded all the money earned by her and her son, as the money of Mr. Fretz. This is not so, and yet it allows him the property and permits the boy to keep the cash. It was all Mrs. Fretz's or none of it. It is perfectly plain she was in business for herself and all the money she got was hers. She thought so and so did he. There is no way of judging how much she earned and how much her son gave her, but from the results it must have been a large amount. It was her property and she had a right to will it as she saw fit.

This decision doesn't take into account the earnings of the wife, or at least presumes that her earnings belonged to her husband. The aggregate of his earnings doesn't compare with the property left, real and personal, in her possession and in her name. Taking out a reasonable allowance for support and expenses of family, all her earnings are distinctly her separate property, and any money given to her husband by her is presumed to be for her use.

Adour vs. Spencer, 50 L. R. A., page 825 n. As to whatever money he gave her it was given for the support of himself and family. His conduct all the way through shows he had no expectation from it. The only reason why he appears to have expected some of the real estate was because she may have promised to give it to him, not because he ever claimed to have owned it.

“Personal savings and profits made by the wife, in domestic management, which her husband allows her to apply to her own separate use, will be held to rest in her against the claim of her husband.”

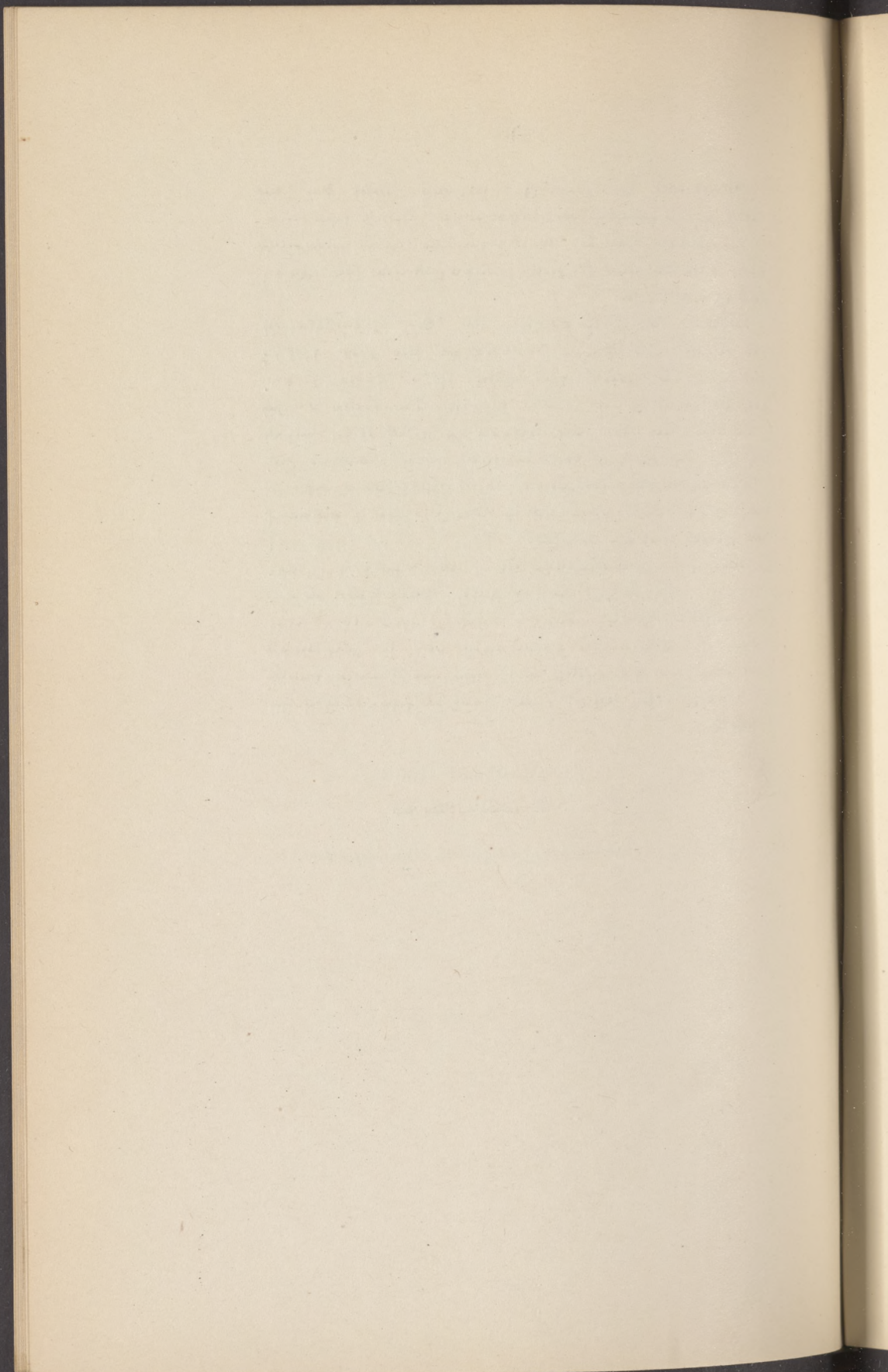
Gentry vs. McReynolds, R. Mo., 533; Welch vs. Welch, 63 Mo., 135; 2 Story, Eq. Jur., 1375; 2 Roper, husband and wife, 137; Mangey vs. Hungerford, 2 Eq., 156. During the time Fretz held title to this real estate he held it in trust for her, because it was bought with her savings.

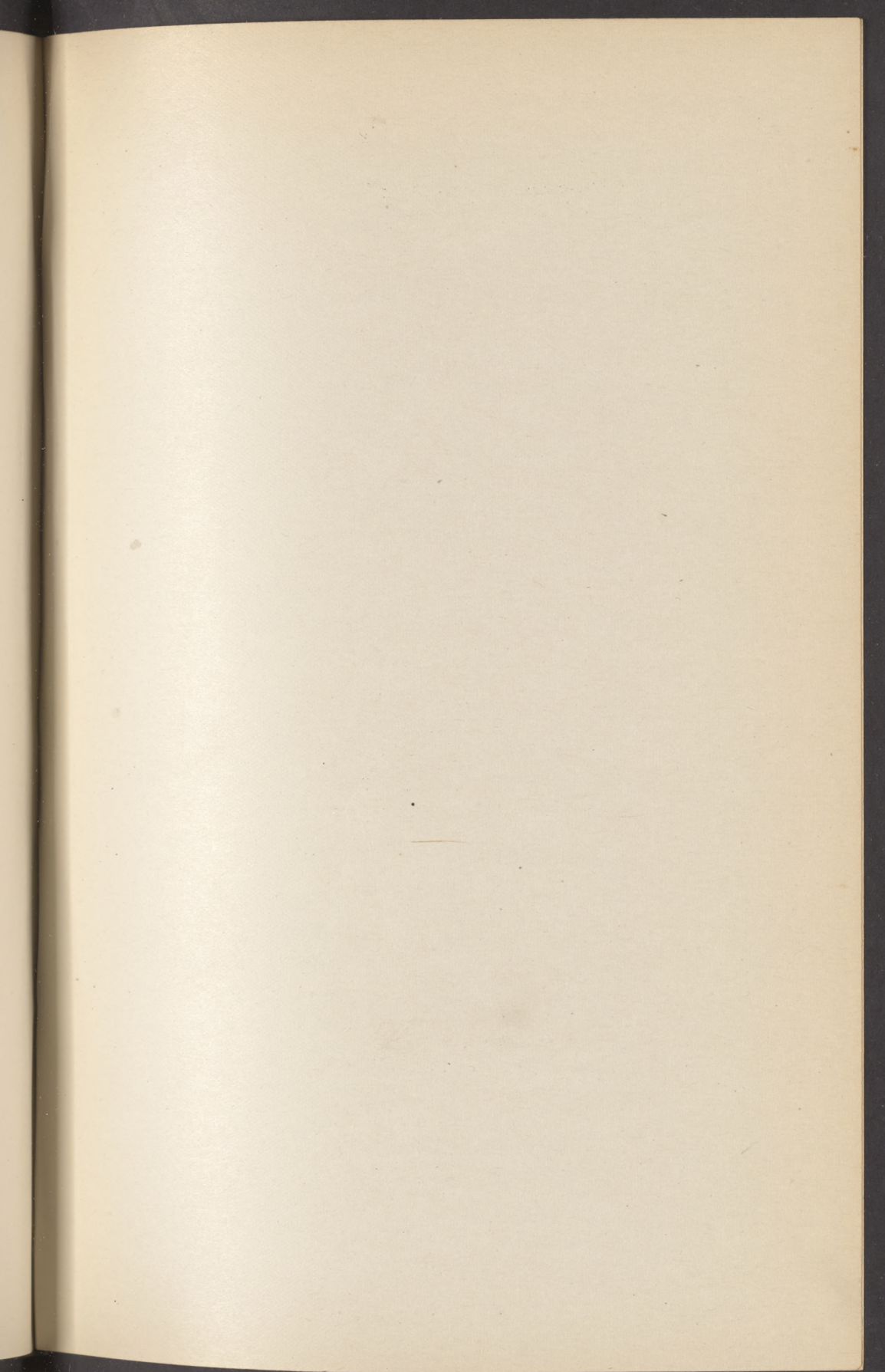
The elaborate reasoning and discussion of the learned Vice Chancellor is based upon a view of the facts, not supported. The basis of this suit is founded upon disappointed expectation in receiving nothing under her will. This hardworking and masterful woman worked and saved and slaved for what she accumulated. It was hers and she had the right to dispose of it as she saw fit, and the decree of the Court below should be reversed.

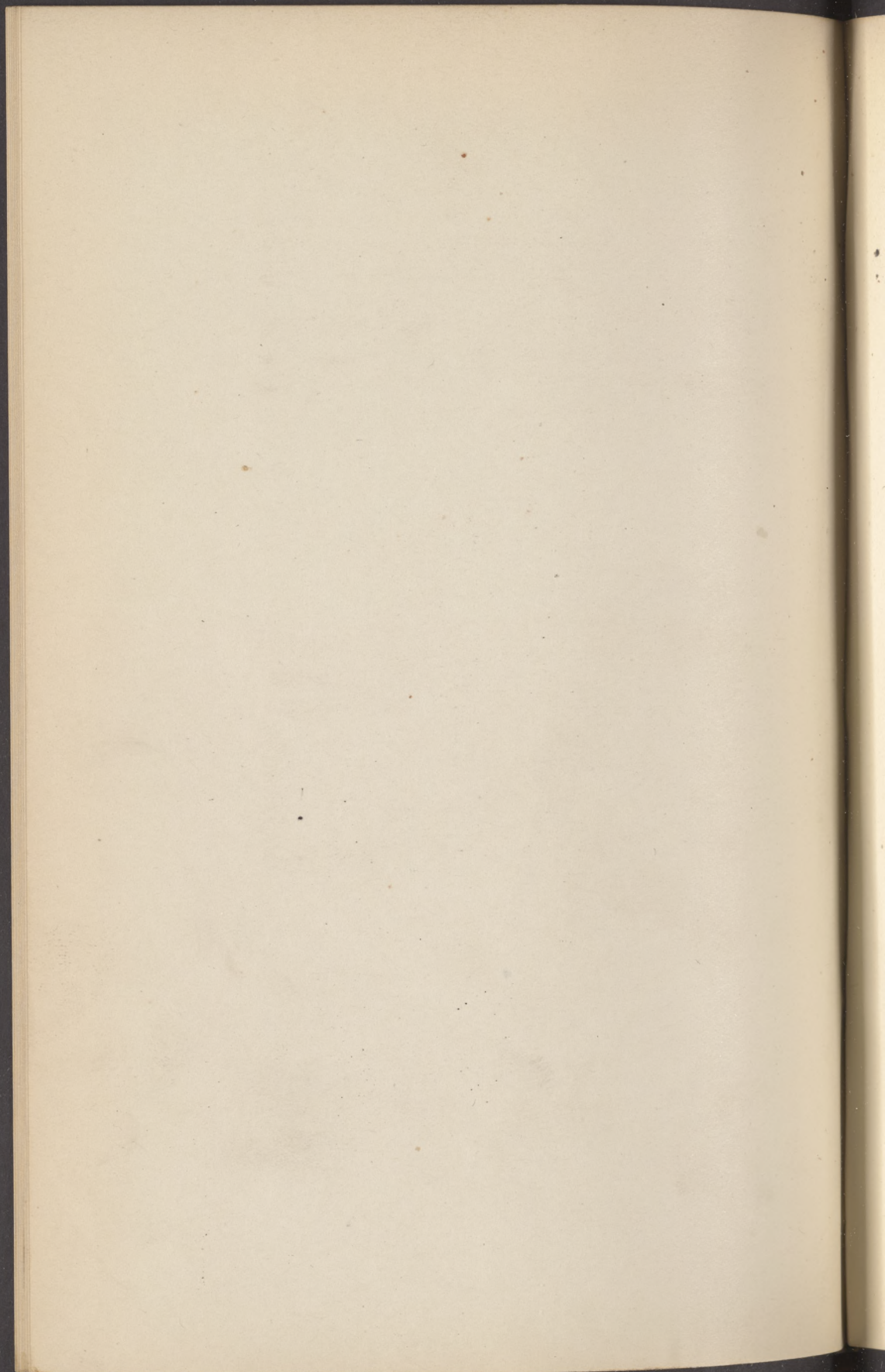
FREDERIC BEGGS,

FRANCIS SCOTT,

Of Counsel with Complainant and Appellee.







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cross	138
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cross	141

The first part of the paper is devoted to a general
 discussion of the problem. It is shown that the
 problem is equivalent to the problem of finding
 the minimum of a certain function. This function
 is defined by the following expression:

$$F(x) = \int_0^x f(t) dt + \frac{1}{2} x^2$$
 where $f(x)$ is a given function. The minimum of
 this function is attained at $x = -f(x)$. This
 result is used to solve the problem of finding
 the minimum of a certain function. It is shown
 that the minimum is attained at $x = -f(x)$.
 This result is used to solve the problem of
 finding the minimum of a certain function. It
 is shown that the minimum is attained at
 $x = -f(x)$. This result is used to solve
 the problem of finding the minimum of a
 certain function. It is shown that the
 minimum is attained at $x = -f(x)$. This
 result is used to solve the problem of
 finding the minimum of a certain function.

New Jersey Court of Errors and Appeals.

CARL ROTH and CHRISTINA

ROTH, HIS WIFE,

Appellants,

and

HEINRICH FRETZ,

Respondent.

On Bill.

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Petition of Appeal.

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

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The petition of Carl Roth and Christina Roth, 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, William J. Magie, Chancellor of New Jersey, bearing date the 13th day of March, 1905, wherein the said Heinrich Fretz was complainant and the said Carl Roth and Christina Roth, his wife, were defendants in this respect, to wit: that the said decree adjudges that the injunction heretofore granted in said cause be made perpetual against the ejection suit instituted in the Circuit Court of the county of Passaic, wherein

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Carl Roth is plaintiff and Heinrich Fretz is defendant, and that the deed from the complainant and Louisa Fretz, his wife, to Herman Sontag, Jr., and from Herman Sontag, Jr., to said Louisa Fretz, bearing date April 15, 1891, and recorded in the clerk's office, in the county of Passaic, April 20th, 1891, in Book I-10, pages 452 and 453, respectively, be declared and decreed to be void, and also that the said decree adjudges that the defendants, Carl Roth, and Christina Roth, his wife, shall within ten days from the service of a copy of said decree upon them, convey to the complainant, Heinrich Fretz, by good and sufficient deed of conveyance, the title to the premises described in the bill of complaint filed in this cause.

And your petitioners humbly appeal from the said decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous.

Your petitioners therefore pray that the said decree of the said chancellor may be, in the particulars aforesaid, 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.

FREDERICK BEGGS,

FRANCIS SCOTT,

Solicitors and of Counsel with Appellants.

Dated May 15th, 1905.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

<p style="text-align: center;">Betweeu</p> <p>CARL ROTH AND CHRISTINA, ROTH, HIS WIFE,</p> <p style="text-align: right;"><i>Appellants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>HEINRICH FRETZ,</p> <p style="text-align: right;"><i>Respondent.</i></p>	}	10
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Answer to Petition of Appeal.

The answer of the above-named respondent to the Petition of Appeal of Carl Roth, and Christina Roth, the above-named appellants. 20

This respondent, not acknowledging all or any of the matters which in said Petition of Appeal are contained, to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the thirteenth day of March last past, made and entered in the Court of Chancery, by his Honor, William J. Magie, Chancellor of the State of New Jersey, in the cause for that purpose mentioned in the said petition, as is therein stated ; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, and he prays that the 30

same may be affirmed, with costs to be adjudged to this respondent.

WM. M. RYSDYK,
Solicitor of Respondent.

CHARLES B. DUNN,
Counsel with Respondent.

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IN CHANCERY OF NEW JERSEY.

TO HIS HONOR, WILLIAM J. MAGIE,

Chancellor of the State of New Jersey.

Humbly complaining shows unto your honor, your orator, Heinrich Fretz of the city of Paterson, in the county of Passaic and state of New Jersey, that your orator was born the twenty-seventh day of February, A. D., eighteen hundred and forty-eight, at Zurich, Switzerland. That your orator was married to Louisa Roth at Zurich as aforesaid, on the fourteenth day of September. A. D., eighteen hundred and eighty-two. That at the time of their marriage the said Louis Roth had an illegitimate child who was known as Carl Roth, and who was then about five years of age. That your orator was not the father of said child, although before said marriage the said Louisa Roth had told your orator the circumstances of the birth of her illegitimate son, and who his father was.

And your orator further shows, that he and his said wife continued to live at Zurich, Switzerland, as aforesaid, until on or about the month of November, A. D., eighteen hundred and eighty-six, when your orator and his said wife, Louisa Fretz, migrated to the United States and located in the city of Paterson, in the county of Passaic and state of New Jersey; that upon locating in the city of Paterson as aforesaid, they started house-keeping and your orator procured employment in Levy's shirt factory, in said

city, in the month of March following his coming to Paterson as aforesaid. That your orator continued in this employment for a period of about three years, during which time he had worked steady, and by careful management had been able to save a large portion of his earnings, which he entrusted in the care and keeping of his said wife, and whenever he was in need of any money would obtain the same from her.

And your orator further shows that after he had been thus employed for the aforesaid period, and after talking the matter over with his wife, Louisa Fretz, he decided to purchase from Charles M. Earle, as trustee of the estate of Mrs. Jane Winans under the last will of Henry W. Ryerson, a certain tract of land and premises in the city of Paterson aforesaid, and that on the fourteenth day of May, A. D., eighteen hundred and ninety, the said Charles M. Earle, trustee as aforesaid, and the said Jane Winans, in consideration of the sum of five hundred and eighty dollars, conveyed to your orator all that tract or parcel of land and premises hereinafter particularly described situate, lying and being in the city of Paterson, in the county of Passaic and state of New Jersey :

Beginning at a point formed by the intersection of the westerly side of Graham avenue with the southerly side of Lyon street in said city, and running thence westerly along the southerly side of Lyon street one hundred feet ; thence southerly and parallel with Graham avenue twenty-five feet ; thence easterly and paral-

lel with Lyon street one hundred feet to the westerly side of Graham avenue; and thence northerly along the same twenty-five feet to the place of beginning, which said deed, after being duly acknowledged, was recorded in the clerk's office of the county of Passaic in Book A-10 of Deeds, page 199, &c., to which your orator begs leave to refer at such time and place that this honorable court may direct.

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And your orator further shows that he furnished the purchase price necessary to be paid to procure a deed for the above described premises, namely, the sum of five hundred and eighty dollars, which was moneys that he had saved from his earnings while employed in the shirt factory in Paterson as aforesaid; that his said wife had no moneys or estate of her own and at the time of her marriage with your orator she was solely dependent on her own exertions for a livelihood, and had never acquired any separate estate between said marriage and the time of the purchase of the above described premises.

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And you orator further shows, that after purchasing the foregoing property and taking the title thereto in his own name, he decided to purchase a horse and wagon and engaged in the business of peddling vegetables and garden truck, believing that he could derive a livelihood from the said business for his wife and himself, and after talking the matter over with his said wife, purchased a horse and wagon and followed the business of peddling as aforesaid, in which he was very successful and made and saved considerable money, which he entrusted

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to the care and keeping of his said wife, in whose honesty and judgment he had implicit faith and confidence, and as a result of this business, which he continued and carried on for a period of three or four years, your orator had accumulated enough money to insure him a substantial bank account, which your orator had allowed his wife to take charge of for him, depending and relying on her honesty and care in handling his earnings and moneys, which he had always entrusted to her.

And your orator further shows, that in the spring of the year eighteen hundred and ninety-one, your orator's wife, Louisa Fretz, received a letter from her cousin in Zurich, Switzerland, expressing her intentions of migrating to the United States, and as your orator was desirous of visiting his native country, he and his wife talked the matter over and arrangements were made whereby your orator was to visit his birthplace in Switzerland, and when he returned to this country the said Louisa Fretz's cousin would accompany him and visit at their home in said city of Paterson. That it was further arranged between your orator and his wife, Louisa Fretz, that before departing from the United States on his proposed visit, and in the event of anything happening him while absent, he would transfer the premises hereinabove described to his wife in trust for him, upon the express understanding and arrangement that when he returned home, and at his request, the said Louisa Fretz would reconvey said premises to your orator, or that she would make her will

leaving the said property to him, so that your orator would be protected in case anything happened to his said wife, which was then and there agreed upon; and in pursuance of this agreement your orator and his wife, in consideration of one dollar, conveyed to Herman Sonntag, Jr., by deed of warranty, bearing date the fifteenth day of April, A. D., eighteen hundred and ninety-one, the premises hereinabove described, and purchased by your orator of Charles M. Earle, trustee as aforesaid, which said deed was duly recorded in the clerk's office of the county of Passaic in Book I-10 of Deeds, page 453, &c., and that on the same day the said Hermann Sonntag, Jr., in consideration of one dollar, by deed of warranty as aforesaid, conveyed the same premises as above to Louisa Fretz, wife of Henry Fretz, your orator, which said deed is likewise recorded in the clerk's office of the county of Passaic in Book I-10 of Deeds, page 454, &c., both of which deeds were recorded on the twentieth day of April, A. D., eighteen hundred and ninety-one, at the same hour, and to which your orator begs leave to refer at such time as this honorable court may direct.

And your orator further shows, that after the aforesaid premises had been transferred and conveyed to the said Louisa Fretz and talking over the matter of your orator's visit to Switzerland, and the fact that his absence from business would necessarily be for a period of three or four months, and to come as it would in the busiest season in his line of business, and as his wife was anxious to visit her native home,

which your orator was willing that she should do, believing that such a trip would be a pleasant one, your orator decided that he would remain home and attend to his business, and allow his wife to go to their former home instead. That this plan and arrangement was agreed upon and the said Louisa Fretz took passage on a steamer to visit your orator's and her relatives and friends in the old country, about 10 the middle of June, A. D. eighteen hundred and ninety-one. That she embarked on the voyage without conveying the aforesaid premises back to your orator, and as the time between the decision that she was to go instead of your orator, and the time of her departure was so short and taken up with preparations for the voyage, your orator did not insist that his said wife turn over the property to him before departing, as he had 20 full faith and confidence in her honesty, and likewise believed that everything would be all right, and that when she returned the title to the property would be changed so that the same would be in your orator.

And your orator further shows, that his said wife remained away on this visit for about three months, during which time your orator devoted his entire time and attention to the said business, and was very frugal in his expenses, so 30 that he might be able to accumulate as much money as possible toward reimbursing him for the expenses of his wife's journey, as he had furnished her, before starting away, with sufficient moneys to defray the bills incurred on her trip. That while she was absent your orator

entered into negotiations for a loan to be secured by a mortgage upon the aforesaid premises, the proceeds of which were to be used in the erection of a house upon the premises as aforesaid. That on the fifth day of March, A. D. nineteen hundred and ninety-two, your orator and his said wife executed and delivered to Eliza Ann Van Riper a mortgage upon said premises, to secure the sum of eleven hundred dollars, payable in one year from date at the rate of six per centum per annum, which said mortgage is recorded in the Clerk's office of the county of Passaic, in Book D-4 of Mortgages, page 57, &c., which is a lien upon the above described premises, to which your orator begs leave to refer at such time as this honorable court may direct. That your orator has paid out of his own money the interest on said sum of eleven hundred dollars, from the date of the execution thereof until the present time, and likewise has paid out of his own money the tax assessments of the city of Paterson on said premises from the time he purchased the same in May, eighteen hundred and ninety, up to and including the assessment for the year nineteen hundred and two, and during that entire time said premises have been assessed in the name of your orator, and never assessed in the name of Louisa Fretz.

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And your orator further shows, that his said wife, Louisa Fretz, returned from her visit to Switzerland, about the month of September, eighteen hundred and ninety-one, bringing with her her illegitimate son, Carl Roth, who was then about fourteen years of age, and who has

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since resided in the city of Paterson aforesaid. That within a few days after his wife's return as aforesaid your orator requested his said wife to reconvey to him the aforesaid premises, as he desired to have the same in his own name, and in accordance with the plans and arrangements entered into between them that she would convey the property to your orator at such time as he requested, and the said Louisa Fretz then and there agreed with your orator to do so, admitting she was simply holding the title of the same in trust for him, but that she put the matter off through some pretext or excuse at that time, maintaining to your orator that every thing would be all right, and she would convey the property to him so that the title would be in his name, or make her will whereby she would devise and leave the said property to him, and there had always been a mutual understanding between your orator and his said wife, independent of the above mentioned plans and arrangements, that whatever property might be accumulated by your orator from the earnings of his work and business, would go to the survivor of them. That from that time up to her last illness, which began about nine weeks before her death, which occurred on the twenty-ninth day of September, A. D., nineteen hundred and one, at her house in said city of Paterson, your orator had repeatedly requested his said wife to convey back to him the property which he purchased and paid for, according to their agreement and understanding at the time he turned it over to her, but at all those times when said requests were made she would put

your orator off, giving some reason or excuse, and repeatedly telling him that everything would be all right and that it was her intention to convey it back to him, or that she would make a will and devise and leave the same to your orator, as the property was really his and he was the proper one to hold the title thereto.

And your orator further shows, that after she returned from Switzerland with her illegitimate son she never acted in such a friendly manner toward your orator, and did not show such love and affection for him as she had shown prior to the said Carl Roth taking up his residence in the said city of Paterson. That she displayed strong affection for this child from the time she returned until her death, and your orator expressly charges it to be true, that her illegitimate son, the said Carl Roth, exercised strong and powerful influence with his mother against your orator, and that this fact was the cause of her loss of love and affection for your orator, although your orator still maintained strong regard for his said wife and had no reason to doubt her promises and agreement to reconvey the said property to him, or make her will whereby she would devise the same to your orator.

And your orator further shows, that after the execution of the aforesaid mortgage, he built a two and one-half story frame house on the aforesaid property, which was constructed for two families with a store on the first floor, to be used for a saloon or retail liquor business. That after this house was built he and his wife lived on the top floor, the store was rented for saloon

purposes and the second floor rented, from
 which your orator received a fair rental. That
 in the year eighteen hundred and ninety-four
 your orator took possession of the store in said
 building and engaged in the saloon business,
 which was conducted in his name, goods
 purchased and bills paid by him, and at
 the same time he was working in a dye
 house in said city, which work he began in
 10 eighteen hundred and ninety-three, and contin-
 ued until eighteen hundred and ninety-six, when
 he was obliged to give up the work on account
 of an injury to his left leg, in which blood poison
 set in, and from which injuries he is still suffer-
 ing and unable to do any hard or laborious
 work. That his earnings while working in the
 dye house were regularly turned over by him to
 his wife, in whom he still had and maintained
 implicit confidence and faith in regard to her
 20 honesty and integrity, and likewise the profits
 from the saloon business, which was quite suc-
 cessfully carried on, and all these moneys were
 handed by him to his wife for safe keeping and
 to be deposited in the bank, the ambition of
 your orator being to accumulate enough money
 wherewith to keep himself and wife when he
 would become unable to work, and toward this
 end had been very saving and careful in his
 habits. That after your orator was obliged to
 30 leave the dye house on account of his leg as
 aforesaid, he devoted his entire time to the sa-
 loon business, but for the past few years the
 same has been unprofitable and on account of
 the conditions of his leg and advancing years, he
 now being fifty-five years of age, is barely able

to make a living out of the same. That in the year eighteen hundred and ninety-five, he was laid up on account of his injured leg for a great many weeks, a portion of which time he was confined in a hospital in said city of Paterson, and it was a long time after his discharge from that institution before he was able to do any work at all in his business. That he belonged, at that time, to a German aid society, from which he was entitled to receive weekly sick benefits during such time as he was or might be unable to work ; that your orator drew from said society about five hundred dollars in sick benefits, as he now remembers, which amount of money he delivered to his wife and was informed by her that she had deposited the same in the bank. That from that time on he and his said wife continued to live in the premises as aforesaid, and your orator conducted the saloon, but did not succeed as well therein as he had done before he received his aforesaid injuries, but during said time whatever profits he derived in his business were turned over to his wife to be deposited by her, and as he supposed, she was doing so in both of their names, so that if anything happened to either of them the survivor would benefit thereby, as he had no reason to doubt his wife's honesty in the premises.

And your orator further shows, that on or about the fifteenth day of July, A. D., nineteen hundred and one, his said wife, Louisa Fretz, became ill so that she was compelled to take to her bed, having been a sufferer of dropsy for some time previous, in which she remained for about

three weeks, when it became necessary to remove her to St. Joseph's hospital, where she continued to grow worse, but continued there for about three weeks when she was removed to her house where she continued until her death, which occurred on the twenty-ninth day of September, A. D., nineteen hundred and one. That after she was first taken sick your orator talked with her concerning the condition of their affairs, and that as she had not reconveyed the property to him something should be done by her so that your orator would be safe in the event of anything happening to his said wife, and then requested her to deed the above premises to your orator in accordance with the promises and understanding had between them at the time he conveyed the property to her, and that on one or two of those occasions, when such requests were made, one Charles R. Secker was present, who was a mutual friend of both your orator and his said wife, and in his presence the said Louisa Fretz told your orator that she was going to make a will and fix things all right so that the above property would be devised and bequeathed to him, and that there was no occasion for him to worry, as the property was his, the title thereto being only in her name in trust, and that he was the one to have the same. That during the time of her sickness in their home, one Herman Deiser, who was a friend of his wife's, was in the habit of calling at their house almost every day before she was taken to the hospital, and engaged in conversations with her while your orator was absent

from the sick-room attending to his business ; that after she was taken to the hospital your orator charges and verily believes it to be true, that the said Deiser visited her and talked with her concerning the affairs between your orator and his wife. That according to the date of her last will and testament, the same must have been executed after she returned from the hospital, and about eight days before her death. That during the time she was in the aforesaid place she told your orator and the said Charles R. Secker that she had made a will and fixed everything right for her husband, and that after her death the property would be his. 10

And your orator further shows, that after his said wife was dead and buried, the said Herman Deiser, whom she had made executor of her last will and testament, read the same to your orator, and from the way the said Deiser read the same your orator understood that the property had been left to him, and that the moneys in the bank had been left to her illegitimate son, Carl Roth. That said will bears date the twenty-first day of September, A. D. nineteen hundred and one, and admitted to probate on the eleventh day of October, in the same year, and recorded in the Surrogate's office of the county of Passaic, in Book X of Wills, page 630, a copy of which will is hereunto annexed, and to the record of which your orator begs leave to refer at such time as this honorable court may direct. That your orator was greatly surprised when he learned that the moneys in the bank, which according to the inventory filed in the Surrogate's 20 30

office, amounted to over thirty-five hundred dollars, had been bequeathed to his wife's illegitimate son, and he having been told by the said Deiser, when he read the will, that the real estate had been devised to your orator, he decided to avoid any litigation over the estate, and contented himself with the fact that the house and property was his, although he had supposed during all the years he had been working and in
10 business, that the moneys he had given his wife had been deposited in their joint names, so that he would benefit thereby in the event of his wife's death. That your orator continued the saloon business and lived in the premises aforesaid, paid the taxes and assessments on the same and the interest on the mortgage above mentioned, the last payment thereon having been the sum of thirty-three dollars, from Sep-
20 tember, nineteen hundred and two, to March fifth, nineteen hundred and three, out of his own moneys, and had no reason to believe that there was any question as to the title of said property being in him, inasmuch as his wife had willed him the same, and that he was the owner thereof. That the first knowledge your orator had of the devise and bequest of said premises to the said Carl Roth, was on or about the first day of January, A. D., nineteen hundred and three, and that on or about the twenty-fifth day
30 of February, A. D., nineteen hundred and three, a summons and declaration was issued out of and filed in the office of the clerk of the Passaic Circuit Court, in an action in ejectment, wherein Carl Roth is plaintiff, and your orator, Heinrich Fretz, is defendant, who is impleaded in the said

suit as Henry Fritz, a copy of which was served upon your orator, which is hereunto annexed and made a part hereof. That your orator thereupon joined issue in the said cause on the sixteenth day of March, A. D., nineteen hundred and three, by filing a plea of general issue through his attorney, Michael Dunn, Esquire, and that afterwards, to wit: on the sixteenth day of April, A. D., nineteen hundred and three, notice of trial of said issue was filed in the office of the clerk of said court, noticing said cause for trial at the April term of said court, which began on the twenty-eight day of April last. That said cause was placed upon the printed list of causes at the opening day of the term in the Passaic county courts and was marked to go to the bottom of the list of causes to be tried. That said Circuit Court is now in session and the above entitled cause may be placed on the calendar for trial at almost any time in the near future, and your orator insists that if the said Carl Roth is permitted to proceed with the trial thereof such proceeding will cause great injustice to your orator, as said Carl Roth may attempt to prove that he is entitled to the possession of said premises by reason of his claim under said last will and testament of said Louisa Fretz, in consequence of which he would be entirely deprived at law of proving his claim to title therein, and in consequence judgment of possession would be rendered against him, all of which would be to his great injury, damage and financial loss.

And your orator charges and insists that the said Carl Roth has no right, title, interest or es-

tate in said property, and that the whole purchase price for it was paid with your orator's money; the interest, taxes and assessments paid by him, and that his said wife, Louisa Fretz, at the time of her death, held title to the said land and premises under an agreement with your orator which she failed to perform in that she was to have conveyed said premises to your orator at such time as he might request, or that she would make a will leaving the same to him absolutely; that although she died without executing and delivering the said deed to your orator, or without making said will as aforesaid, your orator is in equity entitled to have such agreement enforced by the decree of this court, and to have it decreed that the said Louisa Fretz, his wife, held title to the same in trust for him and to be deeded or willed to him in case he survived her, for his said wife never pretended to hold the title to the said property upon any other condition, and never pretended to exercise ownership or dominion over the same.

And your orator further shows, that after the death of the said Louisa Fretz the said Carl Roth, did, on the third day of January, A. D., nineteen hundred and two, marry one Christina Mahler, who is now living with her husband, and that the said Christina Roth claims by virtue of her marriage as aforesaid, to have an inchoate right of dower in the said lands and premises, of which the said Louisa Fretz died seized, and to which the said Carl Roth claims title by her said last will and testament; but your

orator charges and insists that the said Carl Roth, and his wife, Christina Roth, have no rights whatever in the said lands.

And your orator further shows, that he has in a friendly manner remonstrated with the said Carl Roth in regard to the course that he has pursued to eject your orator from the above premises, and in regard to the claim he makes to the title thereto, and has requested him to make, execute and deliver a deed or other paper necessary to carry out the agreement which your orator had with the said Louisa Fretz, so that the title to said premises may be vested in your orator, but this he has wholly refused and neglected to do. 10

But now it is, may it please your Honor, that the said defendant, contriving to injure your orator in the premises, absolutely refuses to comply with such reasonable request, all of which actions and doings of the defendant, Carl Roth, are contrary to equity and good conscience and tend to the manifest injury and oppression of your orator. 20

In tender consideration whereof and forasmuch as your orator is without adequate remedy in the premises at and by the strict rules of the common law, and can only obtain relief in this honorable court where matters of this nature are properly cognizable and relievable. 30

To the end therefore, that the said defendants, Carl Roth, and Christina Roth, his wife, may without oath, which is hereby waived, to the best of their knowledge and belief, answer the

premises ; and that it may be decreed that the said Louisa Fretz held title to the said land and premises in trust for your orator, the said Heinrich Fretz, under the agreement that she would convey said property to him by a good and sufficient deed of conveyance, or make her last will and testament and devise the same to him and she having died without performing the said agreement, that it be decreed that the said

10 Carl Roth and Christina Roth, his wife, have no right, title or interest in said land and premises, and that they may be directed to make, execute and deliver to your orator a good and sufficient conveyance for the same in fee simple; and that the said Carl Roth be decreed to pay to your orator the sum of three thousand six hundred seventy-four dollars and forty-one

20 cents, being the amount of moneys representing your orator's earnings and savings, which had been deposited in the bank by the said Louisa Fretz, and which amount was in the Paterson Savings Institution at the time of her decease; and that the said defendants be restrained by the order and decree of this honorable court, from taking possession of the said premises, or in any manner interfering with the rights of your orator in the possession thereof, and that the said defendant, Carl Roth, and his attorneys or agents, be restrained from further proceeding

30 with the suit now pending in the Passaic County Circuit Court, wherein he is plaintiff and your orator is defendant, in an action in ejectment, as hereinabove mentioned, during the pendency of this suit, and until the further order of this court; and that it also be decreed that the said

defendants be restrained from conveying, mortgaging or otherwise encumbering the said lands and premises, and from taking any proceedings at law or otherwise pending the termination of this suit; and from annoying and disturbing your orator in the occupancy of the same, or any tenant or tenants that may be in or occupying said premises, or with the rents that may be due, or become due to your orator, from such occupancy; and that your orator may have such other and further relief in the premises according to equity and good conscience and as the nature of the case may require. 10

May it please your Honor the premises considered, to grant unto your orator, not only the state's writ of injunction issued out of and under the seal of this honorable court directed to the said Carl Roth and Christina Roth, his wife, and their attorneys, servants or agents, restraining and enjoining them as herein directed, but also the state's writ of subpoena under its seal addressed to the said defendants and each of them, commanding them and each of them to appear by a certain day and under a certain penalty before your Honor in this honorable court, to then and there answer all and singular the premises, and stand to and abide by and perform such order and decree as shall to your Honor seem meet and be agreeable to equity and good conscience. 20 30

And your orator as in duty bound will ever pray, &c.

WILLIAM M. RYSDYK,
Solicitor of Complainant.

CHARLES B. DUNN,
Counsel with Complainant.

IN CHANCERY OF NEW JERSEY.

	Between	}	<i>On Bill, etc.</i>
	HEINRICH FRETZ,		
	Complainant,		
	and		
10	CARL ROTH AND CHRISTINA	}	
	ROTH, HIS WIFE,		
	Defendants.		

Answer of Both Defendants.

The joint and several answers of Carl Roth and Christina Roth, his wife, to the bill of complaint of Heinrich Fretz, complainant.

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

30 That they have been informed and believe it to be true, that the complainant was born at the time and place, and that he was married to the said Louisa Roth at the time and place stated in the said bill of complaint. They believe it to be true, that at the time of the said marriage the said Louisa Roth had an illegitimate child, who was known as Carl Roth, and who was then about five years of age.

These defendants further say that they believe the said complainant and his said wife migrated to the United States and located in the city of Paterson, as set forth in said bill of complaint ; and that the said complainant secured employment in Levy's shirt factory, in said city, about the month of March following ; but they deny that he continued his employment there steadily for three years, and they say that the said complainant was always of a shiftless and lazy disposition, that he did not work steadily, and that he earned very small wages, not enough to support himself properly ; that during all that time the said Louisa Fretz, his wife, was compelled to support herself by her own labor ; that she took in washing and ironing to do at her home and went to the homes of different residents of the said city of Paterson to perform household work, and was after a few years able to save a few hundred dollars, all of which was earned through her own labor, and not one cent of the same having been contributed by the complainant.

10

20

And these defendants further answering say, that they believe it to be true, that the premises set forth and described in the bill of complaint were purchased at the time and from the person therein named, and for the price therein stated, and that the title thereto was taken in the name of the complainant ; but they say the purchase price thereof was wholly furnished by complainant's said wife from her savings and earnings as aforesaid, and that no part thereof was contributed or furnished by the complainant, and that

30

the complainant merely took title thereto as a trustee for his said wife.

10 These defendants have been informed, and they believe it to be true, that subsequently to the purchase of the said property, the complainant embarked in the peddling business, as set forth in the bill of complaint, but they say that the necessary capital therefor was furnished by his said wife ; they further say, that the complainant was not very successful in this venture, and that he scarcely made his expenses, and that during all this time his wife was obliged to work as theretofore ; that he neither saved or accumulated any money and therefore did not entrust anything to the care and keeping of his said wife, as is alleged in said bill of complaint.

20 These defendants neither affirm or deny, but ask for proof thereof, that the complainant's wife received a letter from her sister in the Spring of 1891, as set forth in the said bill ; they deny that the complainants made arrangements at this time to visit his birthplace in Switzerland, and they deny, that said premises, at this time, or at any other time, were deeded to complainant's wife in trust, as is set forth in said bill, or in any other manner as is therein set forth, but they say, that the said premises were deeded to the complainant's wife solely because
30 she was the true and rightful owner thereof, and by law was entitled to have a deed thereof in her own name and right, and they believe it to be true that the deeds were given at the time, to the persons, and recorded as is set forth in the said bill of complaint.

These defendants further say, that they believe it to be true, that the complainant's wife visited her native home about the time stated in said bill ; but they deny that this was done after the complainant found that he could not go, and they deny that the complainant ever thought of visiting his native country at this time.

They further answering say, that they believe it to be true, as stated in the said bill of complaint, that the complainant's wife remained abroad about three months ; but they deny that the complainant furnished one cent towards his wife's expenses, but say, that she paid them wholly and solely from her own earnings and accumulations. 10

These defendants neither affirm or deny, that the complainant entered into negotiations for a loan on the said premises during his wife's absence, as set forth in said bill, and they ask for the proof thereof ; they do believe, however, that a mortgage loan was secured on the said premises, as set forth in the said bill, for the amount, and at the time, and from the party therein set forth, and that said mortgage is recorded as is therein set forth. 20

They deny, that the complainant has paid interest on the said mortgage, and the taxes assessed against the said property, up to the time of the filing said bill, and they say, that complainant's wife, up to the time of her death, paid all interest and taxes thereon, and that they do not know by whom the interest and taxes have been paid since that time, if paid at all. They say, 30

that they do not know to whom said property has been assessed by the City of Paterson, and do not know whether or not it was ever assessed to the said Louisa Fretz ; but, they say, that if it be true, as stated in said bill, that it was, and has always been assessed to the complainant, that this has been done through an error of the person making such assessment, for the said Louisa Fretz was always the true and rightful
10 owner thereof up to the time of her death.

They also say, that they believe it to be true, that complainant's wife returned from Switzerland about September, 1891, bringing her son Carl Roth, then about fourteen years of age, and who has since resided in the said City of Paterson. They deny, that within a few days after her return, the complainant asked his said wife to re-convey the said premises to him, and they say,
20 that neither at this time, nor at any other time, did the complainant ask his wife to re-convey the said premises to him, for he well knew that they did not belong to him ; and they deny, that she, at this time, or at any other time, admitted holding the said property in trust for her husband ; and they deny, that she ever maintained to complainant that everything would be all right, and that she would convey the property to him so that the title would be in his name, or
30 that she would make her will whereby she would devise the said property to him ; and they deny, that there had always been a mutual understanding between the complainant and his said wife, independent of any plans and arrangements, as alleged in the said bill, that whatever

property might be accumulated by complainant from the earnings of his work and business, would go to the survivor of them.

These defendants further answering, deny that any different attitude was maintained by complainant's wife towards him after his wife's return with her son, Carl Roth, as aforesaid, than she had shown prior thereto ; but they say, that the complainant showed utter disregard of the feelings of his wife, that he seldom worked ; contributed nothing to his wife's support ; was frequently intoxicated ; and showed a slovenly and lazy disposition. 10

They also say, that it is true, that a house was built on these said premises, as set forth in the said bill, and they say that the said house was built entirely under the control and supervision of complainant's wife, and that the complainant had nothing to do therewith ; that the complainant never himself entered the saloon business, but that the said saloon alleged to have been conducted by him, in said bill of complaint, was maintained and entirely conducted by the complainant's wife, and with capital furnished by her ; and they say, that they have no knowledge of any goods having been purchased by complainant and bills paid by him, and ask for proof of the same, and they further say, that if this were so, he acted as the agent of his wife, and used his wife's money ; they also say, that they have no knowledge of the license for said saloon having been in complainant's name, and ask for proof thereof, but they say, that if this were so, the 20 30

said license was paid for by complainant's wife, and that complainant merely acted as agent of his wife in procuring the same.

10 These defendants also say, that they believe it to be true, that the complainant, at this time, was working in a dye house in the city of Pater- son, but when he obtained this employment, and when he quit, they do not exactly know, but believe the time set forth in the said bill to be true, and they say, that he worked in the said dye house as a laborer, and that his pay was very small and his work very unsteady, and that he did not make enough to support him- self.

20 They also say, that they believe it to be true, that complainant was obliged to give up his work by reason of an injured leg, but they deny that his earnings, while working in the said dye house were contributed to his said wife; but they say, that what little money he paid his said wife during this time, if any, was paid to his said wife for part compensation for his board.

30 They also say, that in addition to conduct- ing the saloon business, said plaintiff's wife kept a number of boarders, and the profits from this, in addition to the profits from the saloon busi- ness, were used by her in supporting herself, and husband, and family, and the surplus placed in the bank.

These defendants further say, that while the complainant, after leaving his employment in the dye house as aforesaid, did, they believe, do some work in the said saloon as aforesaid, yet

they say, that this was done as a contribution to his wife, under whom he worked, for his-board.

They further say, that they knew nothing of complainant having been confined in a hospital in the said city of Paterson, or of his receiving any sick benefits as alleged in said bill, and they ask for proof thereof.

These defendants further answering say, that when the said Carl Roth first came to this country as aforesaid, he found his mother and said complainant in very poor circumstances; that said complainant contributed absolutely nothing towards the family's support, and until the said Carl Roth secured employment, which was a long time after his arrival, he was compelled to go out and beg to help support complainant and his wife. That during this time and up to the time of his marriage the said Carl Roth lived with his mother and complainant, he turned over all his earnings to his mother, the complainant's wife. 10
20

These defendants deny, that the complainant's wife ever talked with one Charles Secker about her property, or the disposition thereof, or that she ever had any conversations in relation thereto, either with him or in his presence, as alleged in the said bill.

These defendants deny, that any visits were made to the complainant's wife by one Herman Deiser, as alleged in said bill, during her last sickness, except such as were those of a friendly nature; they say, that they believe it to be true, that complainant's wife did ask the said Deiser 30

to do something for her at this time, but just what they cannot answer.

They believe it to be true, as stated in the said bill, that the said Herman Deiser, who was named as executor in the said will, read complainant's wife's will to the complainant; and they say that said will was read exactly as it was, and deny that any misrepresentations were made by said Deiser; they believe said will bears date and was probated and recorded as set forth in the said bill; that they believe it to be true, that the moneys left by complainant's wife are as stated in said bill, and were deposited as therein set forth; but they deny, that complainant had been led to believe and understood his wife to say that the said moneys were deposited in the bank in both their names, so that in the event of the death of either of them, the survivor of them would receive the same.

These defendants say, that it is true, that the complainant has lived in the said premises since the death of his said wife, and they believe, that since his wife's death he has conducted the said saloon; they do not know, however, whether or not he has paid the interest on said mortgage, and the taxes on said property, since that time, nor do they know whether he has paid for repairs and alterations to the same.

They deny, that complainant first learned, that the said premises had not been devised to him until on or about January 1st, 1903, but

say, that he knew this when the will was read to him as aforesaid, if not before.

They say, that it is true, that a suit was started in the Passaic Circuit Court and such proceedings had thereon, as set forth in the said bill of complaint; and they say, that said suit was rightfully instituted and that they should be allowed to proceed with the same, because the said Heinrich Fretz wrongfully occupies the said premises and has refused and does refuse to vacate the same to the great damage of the complainants, who are the rightful owners, and these defendants say, that they should not be restrained from proceeding with the said suit. 10

These defendants further say, that it is true, that the said Carl Roth was married January 3, 1902, to his present wife, Christina Roth.

They deny, that the said Carl Roth has no right, title, interest or estate in said property, and that the purchase price was paid by complainants, but say, that the said Carl Roth is the absolute owner thereof, in fee simple, by virtue of the devise made to him as aforesaid. 20

And these defendants deny all unlawful combination in said bill charged, without that any other matter or thing material for them to make answer to and not herein sufficiently answered, avoided, or denied, is true to the knowledge or belief of these defendants. 30

All which matters and things these defendants are ready to aver and prove, as this court

shall direct, and pray to be hence dismissed with their reasonable costs and charges, in this behalf most wrongfully sustained.

FREDERIC BEGGS,

Solicitor and of Counsel with Defendants.

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IN CHANCERY OF NEW JERSEY.

 Between

 HEINRICH FRETZ,
Complainant,

and

CARL ROTH AND CHRISTINA,

ROTH, HIS WIFE,

Defendants.

On Bill, etc.,

10

THE CASE FOR THE COMPLAINANT.

(Otto Studor, sworn as interpreter.)

HEINRICH FRETZ, sworn.

20

By Mr. Rysdyk :

Q. You are the complainant in this cause ?

A. Yes.

Q. Where do you live ?

A. 128 Lyon street.

Q. Paterson ?

A. Paterson.

Q. Where were you born ?

A. In Switzerland.

Q. What place in Switzerland ?

A. Klotan.

Q. When were you born ?

A. 1848.

Q. What month and what day ?

A. 27th of February.

30

Q. Louisa Fretz was your wife, was she not ?

A. Yes, sir.

Q. When were you married to her ?

A. (Witness refers to a paper now produced by him.)

Q. What have you got there, a marriage certificate ?

A. Yes. (Examining certificate) 14th of September, 1882.

10

(The marriage certificate produced by the witness is offered in evidence, admitted without objection, and is marked Exhibit C 1.)

Q. What was your wife's maiden name ?

A. Louisa Roth.

Q. Had she been married before the time she was married to you ?

A. No ; she was not married before.

20

Q. At the time of the marriage did you know a person by the name of Carl Roth ?

A. No.

Q. After the marriage to her did you learn of such a person ?

A. No.

Q. Do you know Carl Roth ?

A. Yes.

Q. Who is he ?

A. He is here.

30

Q. Whose son is he ?

A. The son of Louisa Roth.

Q. Was he born to her before your marriage to her ?

A. Yes.

Q. And do you know who his father is ?

A. No.

Q. You are not his father?

A. No.

The Vice Chancellor;—It is admitted in the answer that Carl Roth is not the legitimate child of Louisa Roth.

Q. Where did you go to live after you were married? 10

A. In Zurich.

Q. Switzerland?

A. Yes.

Q. How long did you continue to live there?

A. Ten years.

Q. Did you live in Zurich ten years after you were married?

A. After the marriage, only four years.

Q. How old was Carl Roth at the time of your marriage to Louisa Roth? 20

A. I ain't sure of it—between eight and nine years.

Q. At the time you were married to her was he as old as that?

A. Yes.

Q. Well, when did you come to this country?

A. 1886.

Q. Who came with you?

A. My wife.

Q. Where did you go to live? 30

A. In Fulton Street.

Q. What city, Paterson?

A. Paterson; yes.

Q. How did you live there?

A. We had three rooms for five dollars.

Q. Did you have any money, or did your wife have any money when you came to this country?

A. We had twenty dollars, yet.

Q. Was that your total capital, or all the money you had; all the property you had when you came here?

A. Yes; that was all that we had.

10 Q. What did you do, did you go to work?

A. We came to this country in the Fall, and I didn't go to work until March, in a shirt factory.

The Vice Chancellor:—March of 1887, that would be?

Mr. Rysdyk:—Yes, sir:

Q. That was March, 1887?

A. Yes.

20 Q. Whose shirt factory?

A. Levy's.

Q. In Paterson?

A. In Paterson; yes, sir.

Q. What did you do there?

A. I was a box maker. I was making the boxes to put the shirts in.

Q. What did you earn?

A. The first half year, six dollars.

Q. How often, six dollars—six dollars a week?

A. Six dollars a week.

30 Q. After that what did you receive, a week?

A. I received seven dollars a week.

Q. How long did you continue to work there?

A. Two years and half.

Q. Did you ever receive any more than seven

dollars per week during the time you were there ?

A. I received eight.

Q. How long did you receive eight ?

A. One year.

Q. What did you do with the money that you earned ?

A. I gave it to my wife.

Q. Do you know what became of it after that ? 10

A. No.

Q. What part of your wages, if any, did you keep ?

A. Sometimes a quarter, and sometimes a half a dollar.

By the Vice Chancellor :

Q. How often ?

A. Every week, every pay-day. 20

By Mr. Rysdyk :

Q. Did you get paid every week, or every two weeks ?

A. Every week.

Q. Where did your wife keep the moneys that you gave her, do you know ?

A. She put it in the bank.

Q. Do you know what bank ?

A. The Savings Bank. 30

Q. What Savings Bank ?

A. On the corner of Market street and Main street.

Q. Paterson ?

A. Yes.

Q. After two years and a half you left Levy's shirt factory, did you ?

A. Yes.

Q. Where did you go to work then ?

A. I bought a wagon, and went into the peddling business.

Q. Did you buy a horse, too ?

A. A horse also.

10 Q. How much did you pay for the horse and wagon ?

A. Sixty-five dollars.

Q. For both the horse and wagon ?

A. Yes.

Q. What kind of peddling business do you mean you went into ?

A. Green stuff, and coal in the winter time.

Q. Whereabouts did you peddle ?

A. Paterson.

Q. Every day ?

20 A. Yes ; every day.

Q. Except Sunday, I suppose, of course ?

A. Yes, sure.

Q. What kind of business did you do ?

The Vice Chancellor :—Well, now he said he did peddling.

Q. What would you make, per week, out of your peddling business ?

30 A. Sometimes fifteen dollars ; sometimes twenty dollars.

Q. How long did you continue in that business ?

A. One year.

Q. Would you make that much every week— I mean as much as fifteen or twenty dollars ?

A. No, not every week.

Q. What was the least that you remember you made for a week ?

A. Ten dollars.

Q. This money that you received, what did you do with it ?

A. I gave it to my wife.

Q. Did you give it all to her ?

A. Yes.

Q. Do you know what she did with it ? 10

A. I think she put it in a bank.

Q. After you quit the peddling business what did you do, if anything ?

A. I worked in a pipe factory where they make sewer pipe.

Q. Whereabouts ?

A. Vreeland avenue.

Q. Paterson ?

A. Paterson.

Q. How long did you continue there ? 20

A. Six months, a half a year.

Q. Why did you give up the peddling business ?

A. After the first license expired I didn't renew the license.

Q. Why ?

A. I had a good chance to sell the horse and wagon.

Q. Did you sell the horse and wagon ?

A. Yes. 30

Q. How much did you get for it ?

A. Seventy dollars.

Q. Seventy dollars ?

A. Yes.

Q. What did you do with the seventy dollars you received for the horse and wagon?

A. Gave it to my wife.

Q. Do you know what she did with it?

A. She put it in a bank.

Q. What did you earn while working in the pipe factory?

A. Nine dollars a week.

Q. Every week?

10

A. Yes, every week.

Q. And the wages that you received there, what did you do with them?

A. Gave it to my wife.

Q. After you quit the employment at the pipe factory what did you next engage in?

A. I worked in a dye house.

Q. Whose dye house?

A. In Weidman's.

Q. Paterson?

20

A. Yes.

Q. How long did you continue to work there?

A. Three years.

Q. In what capacity were you employed there?

A. I worked on silk.

Q. Well, were you a boss dyer, or a dyer's helper?

A. Dyer's helper.

30

Q. What wages did you receive while working there?

A. Nine dollars a week.

Q. Were you working steady during that time, the three years that you were employed there?

A. Yes.

- Q. What did you do with your wages ?
 A. Gave everything to my wife.
 Q. Do you know what she did with it—the money ?
 A. I think she put it in a bank.
 Q. Did she tell you ?
 A. No.
 Q. What happened at the end of three years, when you left the dye house ?
 A. I worked a half a year in another dye house. 10
 Q. Whose dye house ?
 A. Bolton's.
 Q. Where was that ?
 A. In Paterson.
 Q. Did you go there directly from Weidmann's place.
 A. Yes.
 Q. What wages did you receive there ?
 A. Nine dollars. 20
 Q. You said you were there half a year, did I understand you to say ?
 A. Six months, yes.
 Q. During that time were you steadily employed ?
 A. I had to stop once in a while, but not long, a day or two.
 Q. Were you still at that time giving your wages to your wife ?
 A. Yes. 30
 Q. Well, after you left there, what did you continue to do ?
 A. I got a sore leg in there and I had to stay home.

- Q. Is that why you stopped working there?
 A. Yes.
- Q. What caused your sore leg?
 A. I ran against a box and get blood poison.
- Q. You received an injury and blood poisoning set in?
 A. Yes.
- Q. When was that, do you remember?
 A. In 1894.
- 10 Q. How long were you laid up with that leg?
 A. Well, four years.
- Q. During that time were you able to do anything?
 A. Yes, I did housework.
- Q. Where were you living then?
 A. 128 Lyon street.
- Q. And did you belong at that time to any benevolent order or society?
 A. Yes.
- 20 Q. What was the name of it?
 A. The Germania Schuetzenbund.
- Q. What is the object of that society or order?
 A. Sick benefits.
- Q. How much?
 A. Six dollars a week.
- Q. Did you receive any sick benefits from it?
 A. No, I didn't receive any.
- Q. Did you receive any sick benefits from that Schuetzenbund?
 A. Oh, yes.
- 30 Q. How much a week?
 A. Six dollars.
- Q. For how long?
 A. Eighty weeks.

Q. Did you receive that at various times, or all in one sum ?

A. No, every week.

Q. What became of those payments of six dollars a week ?

A. I never seen anything of it. My wife had it. My wife went and got it.

Q. Did she keep it ?

A. Yes.

Q. What did she do with it ?

10

A. I think she put it in a bank.

Q. Do you know that your wife had an account in the Savings Bank ?

A. No.

Q. Did you and she never have any conversation about the bank, or moneys in the bank ?

A. No ; I never asked her.

Q. Then you don't know that she had any bank account during this time ?

A. No.

20

Q. Well, at any time before her death did you know of her having an account in the Paterson Savings Bank ?

A. No.

Q. What did you think she was doing with the money ?

A. She always said she wasn't making anything ; she didn't earn anything.

The Vice Chancellor :—No, he don't understand that. 30

Q. What did you think she was doing with this money you gave her during all this time ?

A. I thought that she had it in a bank.

Q. Didn't she tell you that she had it in a bank ?

A. No.

Q. Do you know what your entire household and family expenses were, a week, from the time you and your wife came to this country up to 1894 ?

A. I cannot figure it up.

10 Q. Did it take all the money you earned to keep the house going ?

A. Yes.

Q. I ask you that question again: Did it take all the money you earned to keep the house going ?

A. I don't think so.

Q. Do you know ?

A. It didn't take all the money.

20 Q. Cannot you tell about what the entire expense of running the house amounted to, a week ?

A. Yes. What do you mean, from the time I came to the country until 1894 ?

Q. Yes ; each week.

A. Four dollars.

Q. That is, for the household, for the family ?

A. For the family, for the household.

Q. Did that include the rent, too ?

A. Yes.

30 Q. After you left the dye house, Bolton's Dye house, you have stated that you were sick with a sore leg for a long time—did you ever engage in any other business after that ?

A. No.

Q. Haven't you been in the saloon business ?

A. Yes, sir.

Q. Your own business ?

A. In my own saloon ; yes.

Q. You never worked for anybody else after you were sick with your leg ?

A. No.

Q. How long after you left the dye house, Bolton's dye house, before you went in the saloon business for yourself ?

A. Well, we had a saloon at the time.

Q. Oh, at the time ?

10

A. Yes.

Q. At the time you left Bolton's ?

A. Yes, sure.

Q. How long had you had it before you left Bolton's ?

A. One year.

Q. Then you had it before you left Weidmann's—you had the saloon before you left Weidmann's ?

A. Yes.

20

Q. Where was the saloon conducted ?

A. In the same house, on Lyon street.

Q. Well, while you were working who looked after the saloon ?

A. My wife.

Q. Was it a big place ?

A. No, small place.

Q. What did you do, if anything, about the saloon ?

30

The Vice Chancellor :—I think you will confuse the witness as to whether you mean before he left Bolton's or after he left Bolton's.

Q. I mean during the time that you were

working in the dye shops, that you have spoken about, did you take any part in the care of the saloon, the running of the saloon?

A. Yes.

Q. What?

A. I was tending bar.

Q. When would tend bar?

A. After I got through with my work from six, to sometimes ten, eleven or twelve.

10 Q. You attended to it at nights, did you?

A. Yes.

Q. Were you running that saloon at the time of your wife's death?

A. Yes.

Q. At that time you were not working in the dye shops?

The Vice Chancellor :—When, at the time of his wife's death?

20

Mr. Rysdyk :—Yes.

A. No.

Q. Were you then running the saloon yourself; that is, attending to it yourself?

A. Yes.

Q. Day and night?

A. Day and night.

Q. What part did your wife take in looking after the saloon after you had quit the dye shops?

30

A. She was washing.

Q. (Question repeated.)

A. She was attending to the business the same as she did before.

Q. You were both attending to it, I understand, then?

Q. Did you receive that at various times, or all in one sum ?

A. No, every week.

Q. What became of those payments of six dollars a week ?

A. I never seen anything of it. My wife had it. My wife went and got it.

Q. Did she keep it ?

A. Yes.

Q. What did she do with it ?

10

A. I think she put it in a bank.

Q. Do you know that your wife had an account in the Savings Bank ?

A. No.

Q. Did you and she never have any conversation about the bank, or moneys in the bank ?

A. No ; I never asked her.

Q. Then you don't know that she had any bank account during this time ?

A. No.

20

Q. Well, at any time before her death did you know of her having an account in the Paterson Savings Bank ?

A. No.

Q. What did you think she was doing with the money ?

A. She always said she wasn't making anything ; she didn't earn anything.

The Vice Chancellor :—No, he don't understand that. 30

Q. What did you think she was doing with this money you gave her during all this time ?

A. I thought that she had it in a bank.

Q. Didn't she tell you that she had it in a bank ?

A. No.

Q. Do you know what your entire household and family expenses were, a week, from the time you and your wife came to this country up to 1894 ?

A. I cannot figure it up.

10 Q. Did it take all the money you earned to keep the house going ?

A. Yes.

Q. I ask you that question again: Did it take all the money you earned to keep the house going ?

A. I don't think so.

Q. Do you know ?

A. It didn't take all the money.

20 Q. Cannot you tell about what the entire expense of running the house amounted to, a week ?

A. Yes. What do you mean, from the time I came to the country until 1894 ?

Q. Yes ; each week.

A. Four dollars.

Q. That is, for the household, for the family ?

A. For the family, for the household.

Q. Did that include the rent, too ?

A. Yes.

30 Q. After you left the dye house, Bolton's Dye house, you have stated that you were sick with a sore leg for a long time—did you ever engage in any other business after that ?

A. No.

Q. Haven't you been in the saloon business ?

A. Yes, sir.

Q. Your own business ?

A. In my own saloon ; yes.

Q. You never worked for anybody else after you were sick with your leg ?

A. No.

Q. How long after you left the dye house, Bolton's dye house, before you went in the saloon business for yourself ?

A. Well, we had a saloon at the time.

Q. Oh, at the time ?

10

A. Yes.

Q. At the time you left Bolton's ?

A. Yes, sure.

Q. How long had you had it before you left Bolton's ?

A. One year.

Q. Then you had it before you left Weidmann's—you had the saloon before you left Weidmann's ?

A. Yes.

20

Q. Where was the saloon conducted ?

A. In the same house, on Lyon street.

Q. Well, while you were working who looked after the saloon ?

A. My wife.

Q. Was it a big place ?

A. No, small place.

Q. What did you do, if anything, about the saloon ?

30

The Vice Chancellor :—I think you will confuse the witness as to whether you mean before he left Bolton's or after he left Bolton's.

Q. I mean during the time that you were

working in the dye shops, that you have spoken about, did you take any part in the care of the saloon, the running of the saloon?

A. Yes.

Q. What?

A. I was tending bar.

Q. When would tend bar?

A. After I got through with my work from six, to sometimes ten, eleven or twelve.

10 Q. You attended to it at nights, did you?

A. Yes.

Q. Were you running that saloon at the time of your wife's death?

A. Yes,

Q. At that time you were not working in the dye shops?

The Vice Chancellor :—When, at the time of his wife's death?

20

Mr. Rysdyk :—Yes.

A. No.

Q. Were you then running the saloon yourself; that is, attending to it yourself?

A. Yes.

Q. Day and night?

A. Day and night.

Q. What part did your wife take in looking after the saloon after you had quit the dye shops?

30 A. She was washing.

Q. (Question repeated.)

A. She was attending to the business the same as she did before.

Q. You were both attending to it, I understand, then?

A. I am not sure of the date, but when he first landed in this country.

Q. That is, when Carl Roth first came to this country, he lived with you ?

A. Yes.

Q. Did he come to this country alone ?

A. No ; my wife brought him with her.

Q. And he took up his residence with you and your wife, did he, then ?

A. Yes. 10

Q. How long had he lived with you ?

A. Five years.

Q. Do you know how old he was when he came to this country ?

A. I am not quite sure of it, I think about thirteen years.

Q. Is five years, then, as long as he lived with you and your wife ?

A. Sometimes he was out boarding, and then he would come home again. 20

Q. Then he lived with you from time to time, at different times, as I understand it ?

A. Yes.

Q. Do you know when he got married, Carl Roth ?

A. No.

Q. Was it before your wife's death ?

A. Afterwards.

Q. Afterwards ?

A. Yes, sir. 30

Q. When did you buy some property in Paterson ?

A. 1890.

Q. What property did you buy ?

A. Corner of Graham avenue and Lyon Street.

Q. What did it consist of?

A. It was one lot, 25x100.

Q. A vacant lot, no building on it?

A. No, a vacant lot.

Q. What did you pay for it?

A. \$580.

10 Q. Where did you get the money with which to pay for the lot?

A. My wife gave me the bank book, and I went to the bank and got it.

Q. Gave who the bank book?

A. She gave it to me.

Q. Did she go with you?

A. No.

Q. In whose name was the deed for that lot taken, your's or your wife's name?

A. It was in my name, the deed.

20 Q. Did you afterwards sell that property to anyone?

A. Yes.

Q. To whom?

A. To Mr. Sonntag.

Q. What consideration, what money did you receive from him when you conveyed that property to him?

A. No money at all.

30 Q. Do you know what Mr. Sonntag did with the property?

A. As far as I know, Mr. Sonntag sold the property to my wife.

Q. Don't you know that Mr. Sonntag sold the property to your wife the same day?

A. No, I don't know that.

Q. How did you come to sell the property to Sonntag when you got nothing for it?

A. My wife got that off him.

The Vice Chancellor :—Is not there a misunderstanding here about the word “sold”?

Mr. Rysdyk :—Yes; I think there is.

10

Q. Why did you turn this property over to Sonntag?

A. I took up \$150 on the lot. My wife paid it afterwards.

Q. Paid what afterwards?

A. She paid up the mortgage.

The Vice Chancellor :—Ask him why he conveyed the lot to Sonntag. Let us get that straight.

20

Q. Why did you convey this lot to Sonntag?

A. My wife done it.

Q. Well, did Sonntag convey it to your wife then?

A. Yes.

Q. The same day?

A. No.

Q. Where did you go to have the transaction done, or the deed made to Sonntag?

A. Mr. Randall made out the deed.

30

Q. This gentleman here (referring to a gentleman present in the hearing room)?

A. Yes, sir.

Q. No money passed hands that day, did there?

A. I didn't see any.

Q. Who was Sonntag—what was his first name?

A. No. I don't know him at all.

Q. Is that the first you saw him, the day you turned the property over to him?

10 *Mr. Beggs* :—We will admit that Mr. Sonntag was used for the purpose of conveying the property to his (the witness's) wife, and that there was no consideration.

The Vice Chancellor :—All right. That does away with the necessity of any further proof in that matter.

20 (It is stipulated by counsel for the defendant that Sonntag was a mere conduit pipe to get the title to this property from the husband to the wife.)

Q. Did you and your wife, or your wife and you, rather, afterwards execute a mortgage on this property?

Mr. Beggs :—We admit that.

30 (It is stipulated by counsel that on the 5th day of March, 1892, a mortgage for \$1100 was given by the husband and wife, Heinrich and Louisa Roth, to one Van Ripen.)

Mr. Rysdyk :—I might state at this time that the original deed in this transaction, and the mortgage as well,

were destroyed by fire. They were at Mr. Randall's office, I believe, at the time of the big fire in Paterson, and I did not know of the whereabouts of these deeds until it was too late to get certified copies to use today. I have copies, however, and saw Mr. Beggs yesterday and arranged with him that I could have them certified later.

10

Mr. Beggs:—I haven't looked at them. I presume they are all right.

(Counsel for complainant now offers in evidence the following papers :

(Certified copy of deed, dated May 15, 1890, from Charles M. Earl as trustee of Mrs. Jane Winans, to Heinrich Fretz, and recorded in Book A-10 of Deeds, page 199, May 27, 1890. This deed conveys the property at the corner of Graham avenue and Lyon streets, Paterson, N. J. Said certified copy is marked Exhibit C 2).

20

(Certified copy of deed from Heinrich Fretz and Louisa Fretz, his wife, to Herman Sonntag, Jr., widower; dated April 15, 1891; recorded in Book I-10 of Deeds, page 452, on the 20th day of April, 1891; which deed conveys the same property. Said certified copy is marked Exhibit C 3.)

30

(Certified copy of deed from Herman Sonntag, Jr., widower, to Louisa

Fretz, wife of Heinrich Fretz, dated April 15, 1891; recorded April 20, 1891, in Book I-10 of Deeds, page 453, and conveys the same property. Said certified copy is marked Exhibit C 4.)

10

(Certified copy of mortgage, dated March 5, 1892, made by Louisa Fretz and Heinrich Fretz, her husband, to Eliza Van Ripen, bearing date the 5th day of March, 1892; which mortgage is for \$1,100, in one year from date; recorded May 7, 1892. Said certified copy is marked Exhibit C 5.)

Q. Have you returned to Switzerland since you came to this country—have you ever been back there?

20

A. No.

Q. Did you, at any time, make arrangements to go?

A. Yes.

Q. When was that, in connection with the transfer of this property to Sonntag, or to your wife, rather?

A. It was in 1891.

30

Q. Oh, no; how long before you turned this property over to your wife had you been talking about going to Switzerland?

A. Oh, for a few weeks; three weeks.

Q. At the time that you talked about going was anything said about turning the property over to your wife?

A. No.

Q. Was there anything said about turning the property over to your wife before you went to Switzerland?

The Vice Chancellor :—He said he did not know.

Q. Well, at the time you were talking about going was there anything said about turning the property over to your wife?

A. Yes.

10

Q. Well, now, what was said?

A. Well, she said to me that I should sign the property over to her, in case there was anything happened on the water that she would have the property.

Q. Do you mean in case anything happened to you on the water? What do you mean—that you were drowned, or what?

A. I think so.

Q. Oh, well, do you know, now?

20

A. Yes, she said so; "if anything happens."

Q. Was that the reason why you turned this property over to her, or not?

A. There was another reason.

Q. Did that have anything to do with your turning the property over to her, the fact that you were going across the sea?

A. I signed it over on account of the \$150 I took up. She felt insulted; she got mad on account of my taking up the \$150; and I signed it over to her.

30

The Vice Chancellor :—I do not understand that in the least.

Mr. Rysdyk :—Neither do I.

Q. You have been speaking here now of \$150,— what is that about?

A. I bought a horse and wagon with that for the purpose of going into the peddling business.

Q. Did you buy two horses and wagons when you went in the peddling business?

A. No.

10 Q. Well, you have testified here a little while ago that you paid \$65.00 for a horse and wagon when you started in the peddling business; is that true, or not?

A. Yes.

Q. What do you mean, then, by saying you “paid \$150.00 for a horse and wagon”?

A. I didn't pay it for the horse and wagon. I took it up on the lot.

Q. Do you mean that at the time you bought the horse and wagon you borrowed \$150.00 on a lot?

20 A. Yes.

By the Vice Chancellor:—

Q. And \$65.00 of that you paid for the horse and wagon—is that what you mean?

A. Yes.

Q. Did that \$65.00 come out of the \$150 that you borrowed on the lot?

A. Yes.

30 *By Mr. Rysdyk:*

Q. How did you borrow that \$150.00? On a mortgage?

A. Yes.

Q. And when was it?

A. 1890.

Q. Right after you had bought this lot?

A. Yes.

Q. And why was it that you turned this property over to your wife on account of that \$150.00 mortgage?

The Vice Chancellor:—I think the proper question to ask the witness is, what the \$150.00 had to do with his turning this property over to his wife. 10

Q. What had this \$150.00 mortgage to do with your turning the property over to your wife?

A. She told Mr. Randall to transfer the property so I could'nt take no more money up on the lot.

Q. Did you want to borrow more money on the lot at that time? 20

A. No.

Q. Why, was she afraid, then, that you were going to borrow more money on it?

A. I don't know.

Q. Was that mortgage afterward paid, the \$150.00 mortgage?

A. Yes.

Q. Out of whose moneys was that paid, yours or your wife's?

A. I didn't have no money ; my wife paid it. 30

Q. Out of the money that you had given her?

A. Yes.

The Vice Chancellor:—I think you had better get a full disclosure, Mr. Rysdyk, of what happened at the

time he made the deed to his wife through Sonntag, what she said to him, and what induced him to make it.

Q. Did you and your wife go to Mr. Randall's office together ?

A. Yes.

10 Q. What was said, if anything, by your wife just before going to his office for the purpose of turning this property over to her ?

A. She said that I should sign it over to her, and if she died I would get it back again.

Q. Was it upon that statement or understanding, then, with her, that you did so ?

A. No ; not on account of that.

Q. What was it on account of, then, that you did so, that you turned it over to her ?

20 A. The reason why was on account of the \$150.00 mortgage.

Q. Well, when you turned the property over to her did you think that she was going to keep it forever ?

A. No.

Q. The property was in your wife's name at the time of her death, wasn't it ?

A. It was in her name.

30 Q. Between the time that you made this deed to Sonntag, and Sonntag to your wife, did you and your wife ever have any conversation about this property ?

A. Oh, yes.

Q. What was said, if anything, about it ?

A. I asked my wife if I would get the prop-

erty back again, and she answered me, "If I die you will get the property back."

Q. Did she say how you were to get the property back?

A. Yes.

Q. How? What did she say?

A. She said she would make a will.

Q. Was anything ever said about a deed of the property to you?

A. No.

10

Q. Did you ever ask her to deed the property back to you?

A. Yes.

Q. When?

A. A couple of hundred times.

Q. Well, when was the last time that you talked with your wife about deeding this property back to you?

A. Before she went to the hospital.

Q. What was said then between you?

20

A. She said that I should have patience, that she would make it all right.

Q. Did she say how she would make it all right?

A. No.

Q. Did you talk with her after she came from the hospital about it?

A. No.

Q. During the last year, before her death, how many times did you and your wife have any conversation about turning this property back to you?

30

A. Often.

Q. And what reason did she give for not doing it at those times, if any?

A. No reason at all.

Q. Why did you give your wife all of your wages and moneys that you earned ?

A. I trusted her.

Q. When you gave these moneys to her did she ask you for them, or did you of your own wish, give it to her ?

A. I gave it to her of my own free will.

10 Q. And what did you tell her to do with it, if anything ?

A. I didn't say anything.

Q. Was there ever any understanding between you and your wife as to your savings, that is, the money and property that you accumulated ?

A. No.

Q. Did you and your wife ever talk together about what you would do with your money or property ?

A. No.

20 Q. Was there ever any arrangement made between you and your wife as to what was to become of your property ?

A. She told me that she would give it back to me.

Q. When did she tell you that ?

A. She said that to me three weeks before she went to the hospital.

Q. Is that the only time she ever said it to you ?

30 A. No, no ; often before.

Q. Many times before ?

A. Oh, a hundred times.

Q. At the time that you made this deed to her, or turned this property over to her, rather,

what did she say about turning it back to you, if anything ?

A. She said she would give it back to me again, that is all.

Q. That is, at the time when you turned it over to her ?

A. Yes.

Q. Now, during the entire time that you were employed after landing in this country up until your wife's death, what were your habits as to spending or saving your money ? 10

A. My habits were to save money.

Q. How often would you buy a suit of clothes ?

A. One each year.

Q. One suit of clothes a year.

A. Yes.

Q. How much would your clothes, or how much did your clothes and shoes, cost you a year ? 20

A. \$50.00.

Q. What did that include, the \$50.00 ?

A. Clothes and shoes.

Q. It cost you \$50.00 a year for clothes and shoes. You say you only bought one suit of clothes a year ?

A. Yes.

Q. How much were you in the habit of paying for your suits of clothes ?

A. Well, \$15.00 and \$20.00. 30

Q. And how many pairs of shoes did you have a year ?

A. Three or four a year.

Q. Three or four pairs of shoes a year—how much did you pay for them ?

A. Two dollars, two dollars and a half.

Q. Your shoes, then, cost you about eight to ten dollars a year ; is that right ?

A. Yes.

Q. Well, that is \$30.00 for your suit of clothes and your shoes ; now, what else, what other expenses did you have for clothing ?

A. An overcoat in the winter.

10 Q. Did you buy a new overcoat every year ?

A. No, sir ; not every year.

Q. How long would an overcoat last you ?

A. Two to three years.

Q. After Carl Roth came to this country did you notice any change in your wife's conduct towards you ?

A. Yes.

Q. What was that change ?

A. Well, she didn't treat me as good no more.

20

The Vice Chahcellor :—This witness has testified that Carl Roth did not come with them when they came, but he came with his wife subsequently, and it has not been testified that his wife ever left the country. I think you had better clear that up.

Q. After you first came to this country did your wife return to Switzerland ; did she go back there ?

30

A. Yes.

Q. When was that ?

A. 1889.

Q. Are you sure of that ?

A. 1889.

Q. You are positive about that, are you ?

A. Yes.

By the Vice Chancellor :

Q. Where were you working at the time your wife went to Switzerland ?

A. I was in the peddling business.

By Mr. Rysdyk :

Q. What time of the year was it in 1889 she went to Switzerland ? 10

A. In the summer, in June or July, I don't know which.

Q. Are you sure that it was not in 1890 that she went to Switzerland? Have you got a memorandum to show there ?

A. (Producing paper from his pocket) She went out in 1890.

By the Vice Chancellor :

20

Q. What are you looking at now ; what is that paper ?

A. That is the bill where I bought the horse and wagon, the bill for the horse and wagon.

By Mr. Rysdyk :

Q. Is it in German ?

A. In German ; yes.

By the Vice Chancellor :

30

Q. What has that got to do with the time your wife went to Switzerland? How does that tell you when your wife went to Switzerland ?

A. I bought that while she was away.

By Mr. Rysdyk :

Q. How long was she away ?

A. About two months.

Q. Then you bought the horse and wagon after she had gone away ?

A. Yes.

10 *By the Vice Chancellor :*

Q. When do you now say that she went away ? When do you now say that your wife went to Switzerland, what month and year ?

A. I think it was in May, 1890.

Q. Your wife went to Switzerland in May, 1890 ?

A. Yes.

20 *By Mr. Rysdyk :*

Q. You have testified that you made some arrangements about going to Switzerland, but you did not go, that your wife went instead; why was that ? Why was it that you did not go ?

A. I heard that a certain person died in the old country that I wanted to see very bad, and as soon as I heard that that person had passed away I changed my mind and did not go.

30 Q. Was that why you did not go, because your friend in the old country had died ?

A. Yes.

Q. And then your wife went instead, is that it ?

A. Yes.

Q. Do you know whether or not your wife made a will before she died ?

Mr. Beggs :—We will admit that. The statements contained in the bill are true as to that.

(It is stipulated by counsel for defendants that the wife made a will dated September 21, 1901, and that the same was admitted to probate in the County of Passaic on the 11th day of October, 1901; and counsel for complainant now offers in evidence certified copy of the said will, and counsel for the defendants having no objection thereto, the same is admitted in evidence, and is marked Exhibit C 6.) 10

Q. Do you remember the date that she made her will ? 20

A. I don't know the date, but it was three days before her death.

Q. Are you sure about that ?

A. Yes.

Q. It was while she was confined to her bed at your house ?

A. Yes.

Q. Do you know who was there that day ?

A. Yes. 30

Q. Who ?

A. Herman Deiser and Mr. Herman.

Q. What is his first name ?

A. I don't know his first name.

Q. Anybody else ?

A. Mrs. Tischer.

Q. Anybody else?

A. No.

Q. Were you present when she made the will?

A. I was not there.

Q. Did you know that she was making a will that day?

A. Yes.

10 Q. Had she told you just before that that she was going to make a will that day?

A. No.

Q. How did you know she was making a will, then?

A. She sent for Lawyer Weiss.

Q. Was Lawyer Weiss there too, at that time?

A. Yes.

Q. At the same time when Mr. Deiser and Mr. Herman and Mrs. Tischler were there?

20 A. Yes, sir.

Q. Where were you?

A. In the kitchen.

Q. What were you doing?

A. Why, I couldn't walk; I was sitting in a chair.

Q. Suffering from your leg, your limb?

A. Yes.

Q. How did you know she was going to make a will that day?

30 A. I thought so because I saw the lawyer there.

Q. How long after that before she died?

A. About three days.

Q. Are you sure about that?

A. Yes.

Q. What makes you sure that it was three days after ?

A. Well, I seen her dead three days afterwards.

Q. Are sure it was not eight days after she made the will when she died ?

A. I ain't sure.

Q. Well, was Carl Roth there at the time ?

A. Yes, sir.

Q. At the time the will was made ?

10

A. Carl Roth was in the kitchen at the time.

Q. After your wife was dead and buried did you hear her will read, or a will read that was supposed to have been made by her ?

A. Yes.

Q. Where was it ?

A. In the same room where she died.

Q. Who were there at the time ?

A. I, Herman Deiser, Carl Roth, and Sophie, my wife's sister.

20

Q. Where is she now ?

A. I don't know.

Q. Did she go back to the old country ?

A. She was out there, but she is here again.

Q. Is she living in this country now ?

A. Yes.

Q. In Paterson ?

A. I ain't sure where she is, but I think she is in Passaic.

Q. Who read the will on this day that you have spoken of ?

30

A. Herman Deiser.

Q. How did he read it, in English or German ?

A. In English.

Q. And did you understand it when he read it to you ?

A. No.

Q. Was anything said there in German ?

A. No.

Q. Did you ask any questions about it ?

A. No.

10 Q. Were any explanations made there by Mr. Deiser as to what the disposition of the property was, as to how the property was given ?

A. Mr. Deiser told me afterwards, in German.

Q. This same day ?

A. This same day.

Q. What did Mr. Deiser tell you in German ?

A. Mr. Deiser said that I ought to be satisfied, that I had the house and half of the lot.

Q. Who did he mean had the house and half of the lot ?

A. I.

20 Q. What else was said by Mr. Deiser, anything ?

A. There wasn't anything else said.

Q. Wasn't there anything said about the money in the bank ?

A. I was told the boy had the money, and I myself had the house and half of the lot.

Q. Is that what Mr. Deiser told you at that time, that the boy had the money and you had the house and half of the lot ?

30 A. Yes.

Q. What did you do then, if anything, after you heard this ?

A. I said that I was satisfied.

Q. And is that the way you thought the will read when Mr. Deiser told you that ?

A. Yes.

Q. Mr. Deiser had the will there, of course ?

A. Yes.

Q. Do you know whether that was written in English or German ?

A. In English.

The Vice Chancellor :—The will itself will show that.

10

Q. Do you read any English ?

A. No.

Q. Not at all ?

A. A little bit.

By the Vice Chancellor :

Q. Can you read handwriting in English ?

A. No.

Q. Only print ?

A. Yes.

20

By Mr. Rysdyk :

Q. When did you first learn that the will of your wife had devised or given the property to Carl Roth—the land, the house and lot ?

A. About a year after, a year later.

Q. About a year after her death ?

A. Yes.

Q. In the meantime, had you been living in this house and property ?

30

A. Yes.

Q. Been running the business there yourself ?

A. Yes.

Q. The saloon ?

A. Yes.

Q. Who had been paying the bills for this property ?

A. I.

Q. And for the business too, the saloon business ?

A. Yes.

Q. Who paid the taxes ?

A. I paid them.

Q. Who paid the interest on the mortgage ?

10 A, I paid it.

Q. Do you know in whose name this property has been taxed, I mean assessed, since the time that you turned it over to your wife ?

A. No.

Q. I will ask the question again : Do you know whose name this property was assessed in ?

20 *The Vice Chancellor:*—Maybe he does not know what "assessed" means.

Q. Well, "taxed," then, in whose name were the tax bills made out ?

A. Oh, in my name.

Q. And I show you these (handing to witness a number of papers); are those tax bills and receipts for the property ?

A. Yes.

30

Recess until 2 o'clock, p. m.

Hearing of the cause resumed at 2 o'clock,
p. m.

HEINRICH FRETZ, recalled.

By Mr. Rysdyk :

(Counsel for complainant offers in evidence the ten tax bills and receipts for the property in question identified by the witness before the recess, which receipts and bills are admitted in evidence and are marked as one exhibit, Exhibit C 7.) 10

Q. What was the last tax bill that you paid, or for what year, I mean, on this property, Mr. Fretz ?

A. 1902. 20

Q. The interest on this \$1,100 mortgage that is on the property, have you paid that regularly ?

A. It is all paid.

Q. Up to date ?

A. Yes, sir.

Q. When did you first have any conversation with Carl Roth about this property, after the death of your wife ?

A. We never talked about that.

Q. Have you not talked with him at all about this property since your wife died ? 30

A. No.

Q. And the first that you learned that the property belonged to him, or had been given to

him by the will, was about a year after her death ; is that right ?

A. Yes.

Q. Did your wife ever hand you any money whatever except what you have stated you got from her for clothing and wearing apparel ?

A. No.

Q. She never loaned you any money ?

A. No.

10 Q. Did you find out how much money there was in the bank after her death ?

A. No.

Q. You don't know, then, how much money there was in the bank at the time of her death ?

A. No.

Cross Examination by Mr. Begys :

20 Q. What did your wife do, when you married her, in the way of working ?

A. She was a servant, a cook.

Q. Did she have any money at that time ?

A. No.

Q. Did she do any work when you lived in Zurich, after the marriage and up to the time you came to this country ?

A. We were in the saloon business.

Q. How much money did your wife have when you came to this country ?

30 A. We had \$520 ; \$500 my wife gave to her father, and \$20.00 we brought to this country.

Q. \$500 your wife gave to her father ?

A. Yes, sir.

Q. And you brought \$20.00 to this country ?

A. Yes.

Q. Now, after you got to this country did your wife do any work outside of the regular housework?

A. She went out washing once in a while.

Q. Do you know any place where she worked in Paterson?

A. Yes.

Q. Where did she work in Paterson?

A. Sergeant Hargreaves' and Lawyer Randall's. 10

Q. Do you know what she did with the money she got from these people?

A. I don't know it.

Q. Who paid the grocery bills for the house?

A. Mrs. Fretz.

Q. Who paid the butcher and baker?

A. She paid it, because I did not have any money.

Q. Well, did she pay all the expenses to maintain your home? 20

A. Yes.

Q. About how much a week do you think it cost to maintain your house?

A. Four dollars.

Q. That was enough to pay the rent and support you and your wife?

A. We didn't pay no rent.

Q. Well, before you moved to Graham avenue did she pay the rent?

A. Yes. 30

Q. Now, was four dollars enough to pay the rent and the living expenses before you moved to Graham avenue?

A. No.

Q. How much did it cost, a week, to pay the

living expenses and the rent, before you moved to Graham avenue ?

A. Six dollars.

Q. Did you work continuously, from the time that you arrived in this country, until you went to live in Graham avenue ?

A. Not steady.

Q. Well, about how much of the time were you at work ?

10 A. I didn't have any work for about three or four weeks.

Q. Do you mean that you were only out of work three or four weeks during all the time from the time you arrived in the country until you moved to Graham avenue ?

A. The first winter we landed here I didn't have no work from November until March.

Q. Who paid for the bar fixtures in the saloon in the house on Graham avenue ?

20 A. We paid it together.

Q. Where did you get the money to pay it ?

A. She gave me some money and I bought the stuff.

Q. Who paid the beer bills ?

A. My wife paid it.

Q. Who collected the money from the boarders ?

A. My wife.

30 Q. Did your wife pay all the house bills on Graham avenue ?

A. Yes.

Q. Whom did you borrow the \$150 from that you spoke about this morning ?

A. Peter Fritz.

Q. Where was your wife at the time you borrowed this money ?

A. She was in Germany.

Q. When did your wife first know that you borrowed this money ?

A. When she came back.

Q. What did she say when she heard you had borrowed the money ?

A. She said it wasn't right that I done that.

Q. Did she say anything else ? 10

A. No.

Q. Did Mr. Fritz at that time come to you and ask for the money on the mortgage ?

A. No.

Q. When was the mortgage paid ?

A. A year after.

Q. Was the mortgage paid after or before you deeded the property to your wife through Mr. Sonntag ?

A. Yes. 20

Q. Well, which, before or after ?

A. Before.

Q. How much was due upon the mortgage at the time it was paid ?

A. \$150.

Q. Had the interest been paid ?

A. Yes.

Q. Who furnished the money to pay it ?

A. My wife.

Q. Was it on account of your wife furnishing this money that the property was deeded to her through Sonntag ? 30

A. Yes.

Q. Were you and your wife on very friendly

terms after that, and up to the time of her death?

A. Not always.

Q. Did you have a number of quarrels?

A. Yes.

Q. Going back to the saloon again—who paid the license fee?

A. My wife.

Q. How much was it, a year?

10 A. \$275.

Q. How much did you average, a week, in profits from the saloon?

A. \$20, \$30, \$40.

Q. How much profit, I say—how much did you make a week, profit?

A. About \$10 per week.

Q. Did Charley Roth work in the saloon?

A. Yes.

20 Q. Who attended bar in the saloon most of the time?

A. After her death Charley was tending bar most of the time.

Q. Well, before her death who attended bar most of the time?

A. My wife. At the time my wife was sick I was tending bar.

Q. That is, during her last sickness?

A. Yes.

30 Q. Do you know any places that Charley Roth worked besides the saloon?

A. I knew that Charley Roth has been working, but I cannot say where he has been working.

Q. Do you know what he did with his pay?

A. I don't know it.

Re-direct Examination by Mr. Rysdyk :

Q. Are you sure that this \$150 mortgage was paid before you turned the property over to your wife ?

A. Yes.

Q. Don't you know it was not until July, 1891, that the mortgage was paid, and you turned the property over on April 20, 1891 ?

A. I ain't sure now. 10

Q. Now, the money you say she furnished, the \$150, to pay that mortgage off; where did she get that money, do you know ?

A. Got it out of the bank.

Q. How long did she wash for Mr. Randall and Mr. Hargreaves ?

A. About a year.

CHARLES R. SECKER, sworn.

20

By Mr. Rysdyk :

Q. Where do you live ?

A. Corner Mercer and Lyon Streets, Paterson, N. J.

Q. Do you know the complainant, Fretz ?

A. I do.

Q. How long have you know him ?

A. About going on four years.

Q. Did you know his wife, Louisa Fretz ? 30

A. I did; yes, sir.

Q. What is your business ?

A. Tailoring.

Q. And how far is your place of business from Mr. Fretz's saloon ?

A. A good half a block.

Q. And during the time that you knew both him and his wife were you in the habit of going to their residence, their house ?

A. I was, sir.

Q. And their store, as well ?

A. I was.

Q. And what were your relations with them ?

A. Oh, they were friendly on both sides.

10 Q. Did you ever hear any conversation between Mrs. Fretz and her husband in regard to this property, 128 Lyon street ?

Mr. Beggs :—I object to this line of testimony. While I made no objections to them asking Mr. Fretz about conversations after the transaction, it seems to me it is entirely irrelevant as to what occurred afterwards, as having nothing at all to do with the case. They are trying to prove a trust agreement, and it seems to me that they must confine themselves to the time the agreement was made, or before that time.

20

The Vice Chancellor :—How does it appear to me now that the conversation does not disclose what the contract was before the deed was passed ? How can I say that the conversation may not do that ?

30

Mr. Beggs :—Well, that may be so.

The Vice Chancellor :—The question may be answered, and if it turns out

that the conversation does not relate to any matter which would alter the legal situation of the parties, then it would have no weight ; but I cannot say in advance that it would not disclose competent testimony as of a time when it would have legal weight.

(Question repeated).

A. I did, sir.

10

Q. What was it ?

A. It was a conversation that in time she would make it all right with him—transfer the property back to him.

Q. Transfer what property ?

A. As I understood, that was held in trust for him.

Q. How often did you hear this conversation or conversations of that character between her and her husband ?

20

A. Well, that I couldn't say exactly, but several times.

Q. What was said about this trust that you have spoken of ?

A. It was spoken of, that he gave the property to her, and it was no more than right that she will give it to him back again, but she will take her time about it ; that she would do it when she found the proper time was here.

Q. When was the last time you heard any conversation in regard to turning the property back ?

30

A. The last time was in the hospital.

Q. How long before her death ?

A. About five or six weeks before her death,

or even less than that—excuse me, even less than that; I don't exactly remember; the time she was taken to the hospital.

Q. And what did she say there?

10 A. Charley and I met each other on Main street, and we went in the hospital and he asked me to speak for him to Mrs. Fretz, what she was going to do about the property. So during the meantime he had a chance to slip out of the sick room, and I asked Mrs. Fretz, and she told me she wouldn't give the boy a thing because he didn't do right; and I told her I didn't think that was altogether proper; and then she says "Well, the old man I must give the property; but about the boy I don't know what I will do."

Q. Did she say how she was going to give it him?

20 *The Vice Chancellor* :—That "him" don't mean anything.

Q. What did she say in reference to giving it to him?

The Vice Chancellor :—You don't say what "him."

30 Q. What did she say about giving the property to Mr. Fretz?

A. She says she was going to sign it back to him.

Q. Was that all she said?

A. That is all, to my knowledge.

Q. Are you able to state, at all, how many

times you heard her say she was going to turn the property back to Mr. Fretz ?

A. Why, a number of times.

Q. Well, about how many ?

A. About, say, a half a dozen times.

Q. Within what period of time before her death ?

A. I didn't know her very long ; I only knew her about a year before she died.

Q. Well, was it about the time of your acquaintance with her you heard her first say this ? 10

A. About three or four months after I got acquainted with her.

Q. Did you know Mr. Fretz before he engaged in the saloon business ?

A. No, sir.

Q. Since the time as he has been following that business what have you known about his being industrious and attentive to work ? 20

A. Well, what I knew of him he was sick.

Q. What is that ?

A. Well, the time I knew him he was generally sick and troubled with his leg, but he done work around the house, cleaning potatoes and onions and attending to general work in the house.

Q. Did you ever see him attending bar ?

A. I did.

Q. How often would he do that ? 30

A. Well, that I ain't quite sure ; I couldn't exactly say the number of times.

Q. Did they have a regular bartender ?

A. No, sir.

Q. The business was looked after, then, by Mrs. Fretz and her husband, is that it?

A. Yes, sir.

Cross Examination by Mr. Beggs :

Q. How near did you live to Mr. Fretz's place?

A. A good half a block, sir.

10 Q. And are you a customer of his?

A. Well, I went there just the same as I go to any other place.

Q. When were you there last?

A. This morning.

Q. When were you there before that?

A. Before that?

Q. Yes.

A. Yesterday noon.

Q. Before that?

20 A. Saturday.

Q. You go there pretty nearly every day, don't you?

A. Occasionally, when I go out. I live right near.

Q. That is a sort of a hanging-out place for you, is it not?

A. No, it is not a hanging-out place; I haven't the time for that; I go to work every day, and at night until ten o'clock; I can't
30 "hang out."

Q. When you are not working you are generally there, are you not?

A. Oh, no; I have got several places to attend to; there are several saloons where I do business; I have got to go.

Q. You have talked this matter over considerably with Mr. Fretz, haven't you, recently?

A. Well, when he asked me the question what I knew I says, "Yes," and he asked me to be a witness for him.

Q. Did he tell you what to say?

A. Well, I generally had to tell him what to say.

Q. What did you tell him to say?

A. Well, I may have told him that he should answer the questions rightly and there wouldn't be any trouble. 10

Q. That is what you meant when you said you told him what to say?

A. Yes.

Q. Have you urged him to bring this suit?

A. I did not, sir; I never knew anything about it until he sent for me and wanted me to go to a lawyer with him.

Q. He wanted you to go to a lawyer with him? 20

A. Yes.

Q. Did you select a lawyer, or did he select a lawyer?

A. He was to the lawyer before he told me about it. Of course I understood this property was all fixed, as Charley Roth told me himself.

Q. You what?

A. Charley Roth told me himself the property was all fixed all right, and that he had the property, and Charley Roth had the money. 30

Q. When did Charley Roth tell you that?

A. Oh, he told me that the time we went to the hospital—excuse me, not the time we went to the hospital—that was when he bought some

clothes to be repaired, maybe ten days, a week or ten days afterwards, after Mrs. Fretz died.

Q. And just tell us again what happened at the hospital?

10 A. I met Charley on Main street as I came out of the car and I told him I went to see his mother in the hospital, and so he says, "There will be a good chance now to bring the matter out and see what she will do with the property." And so I asked her about it, and she said she wouldn't give him nothing, but the house she couldn't do anything with because it belongs to Mr. Fretz.

Q. Who was present besides you and Mrs. Fretz?

A. I don't know his name. There was one man present, but he went out the same time as Charley Roth did; so I had a chance to speak to Mrs. Fretz while she was lying in bed sick.

20 Q. Then you and Mrs. Fretz were alone when this conversation took place?

A. Yes.

Q. Was she very ill at that time?

A. Well, she wasn't so very ill; no. She suffered, but she was in good disposition that morning.

Q. How did the conversation come up?

A. Well, at Charley's request I asked that.

Q. At Charley's request?

30 A. Yes.

Q. And she told you that she was not going to leave Charley anything?

A. Yes, sir.

Q. Were Charley and she on friendly relations?

A. Not at all. She wouldn't hardly speak to him.

Q. To her son ?

A. Yes, sir.

Q. Well, what relations did her husband and she bear to each other ?

A. Well, they was sometimes on friendly terms, and other times they were not.

Q. And Charley and his mother were not on friendly terms ? 10

A. Not at that time, because Charley wasn't living home at all at that time. He was only notified by other people that his mother was in the hospital, so that is how he came to go up there.

ROBERT KINNER, sworn.

By Mr. Rysdyk : 20

Q. Where do you live, Mr. Kinner ?

A. I live corner of Lyon and Highland streets, 140 Highland.

Q. What is your first name, Robert ?

A. Robert ; yes, sir.

Q. And you are acquainted with Mr. Fretz ?

A. Sixteen years.

Q. Were you acquainted with his wife, as well ? Did you know his wife, too ?

A. Yes ; sixteen years together. 30

Q. You then became acquainted with them shortly after they came to this country, did you ?

A. Yes ; he was about two years in this country before I knew him.

Q. When you first got acquainted with Mr.

Fretz what was he doing, what business was he in ?

A. Why, the first time he was in the dyers, and then he peddled coal and peddled vegetables, green stuff.

Q. What was the nature of your acquaintance with him ? Did you see him often ?

A. Oh, my, I saw him every day.

Q. Did you ever go to his house ?

10

A. Sure.

Q. And talk with him and his wife ?

A. Sure, and talked with the woman and talked with him.

Q. Now, while he worked in the dye house do you know what he earned ? Did you work in the dye house ?

A. Yes, twelve years, too.

Q. You worked with him, did you not ?

A. No, not together.

20

Q. What kind of work did he do there ?

A. Why, he was helper.

Q. Dyer's helper ?

A. Yes.

Q. Do you know what he earned, how much he made ?

A. Oh, the wages, is only eight or nine dollars, all over, in the dye house.

Q. Well, at that time ?

A. Yes.

30

Q. At that time was it eight or nine dollars ?

A. Yes.

Q. What were you making at that time ?

A. Well, I was a regular dyer ; I got a couple of dollars more, you know.

Q. Well, do you know whether he worked steady, or not?

A. No; dyers has not steady work; sometimes in the winter time at five o'clock you have to go home.

Q. Well, I mean would you be out of work for any great length of time?

A. Oh, be out of work sometimes three days in a week.

Q. Well, when there was work do you know whether or not he worked? 10

A. Sure, I know he worked.

Q. Do you know when he worked in the pipe shop?

A. No, at that time I didn't know them, when he worked in the pipe shop.

Q. You knew him when he peddled green groceries and coal?

A. I knew him when he peddled, and I knew him at his house; I know when he peddled coal; I knew him then. 20

Q. Do you know, of your own knowledge, what he made out of the business of peddling, a week?

A. You see there is a difference; sometimes \$5.00, sometimes \$10.00; you couldn't expect not every day ten dollars.

Q. Well, some weeks it would be five dollars; what would be a fair week. what would be a good week? 30

A. In a week you make, in a good week. wages ten dollars.

Q. What were his habits as to temperance and saving his money, do you know?

A. Yes, sure.

Q. Well, what were they ?

A. He saved his money, he is temperance.

Q. Did he save his money, or spend it, I mean ?

A. No, he spent not a cent.

Q. Did you ever see him have any money ?

A. No.

Q. Do you know what he did with his money ?

A. I know he gave that up.

10 Q. Gave it up to whom ?

A. Gave it to his woman.

Q. To his wife ?

A. Yes.

Q. Do you remember when he was in Bolton's dye shop ?

A. Yes.

Q. Do you belong to the same society that he does ?

20 A. I belonged to the same lodge at that time, yes, the Germania Schuetzenbund.

Q. Do you know whether or not he received any money from this society after he was hired and while he was sick ?

A. Well, he must have had anyhow about five hundred dollars from the lodge.

Q. Now, after he got the saloon do you remember when he got the saloon ?

A. Yes.

Q. What did you see him doing around there ?

30 A. Well, I know at the time he built the house and got the saloon and then he tended the bar ; sometimes the woman and sometimes he would be tending the bar.

Q. Who would be tending the bar at night ?

A. Oh, lots a times they would do it together, you know.

Q. Were you in the habit of seeing him there nights, or was he in the habit of being there at nights?

A. Sure, I saw him.

Q. Did you ever hear any conversation between him and his wife regarding this property?

A. Yes, sir; I heard it sometimes, yes.

Q. How many times? 10

A. Oh, I don't know, a couple or three times.

Q. What was it? What did you hear?

A. Well, for that property?

Q. Yes.

A. Well, she said all the time, "Well, we will wait a little; I don't die anyhow;" she said, "I will settle it up, anyhow; when I die I will settle it up with Mr. Fretz; I will make it square when I have to die."

Q. How were these conversations that they would have, were they in English or German? 20

A. Oh, in German.

Q. And she would say she would make it right with Mr. Fretz?

A. Yes, that is what she said.

Q. Did she say what she would make right with Mr. Fretz?

A. Yes.

Q. What?

A. She said she didn't believe she would die; she said, "If I have to die, I make it right with Mr. Fretz." 30

Q. Make what right?

A. Make it right, settle up mit the property.

Q. For the property?

A. Yes.

Q. This property where they lived ?

A. Yes.

Q. You don't know how many times you heard her say that ?

A. Three or four times. I was up there every day ; I lived across the street ; sometimes I feel dry—

10 Q. (Interrnpting). Did you use to see Carl Roth around that house ?

A. Yes.

Q. Did you see what he was doing, if anything, around there ?

A. Oh, yes ; his mother gave him one time five hundred dollars, and he started the chicken business.

Q. Gave him five hundred dollars ?

20 A. Yes ; and he go over to New York and buy chickens, and there was in half a year, five hundred dollars gone, and his mother was mad at him and said "I won't see him any more, get out."

Q. How long was that before she died ?

A. Oh, this was four or five years before.

Q. Now, Mr. Kinner, just one question ; I think you have possibly answered it ; during the time that there was work in the dye shops, when you knew Mr. Fretz, what were his habits as to being industrious and anxious to work ?

30

The Vice Chancellor :—Did he work whenever there was work in the dye shop for him—that is what counsel wants to know.

A. He worked, yes.

Cross Examination by Mr. Beggs :

Q. There wasn't always work, though ?

A. Why, there was plenty of work ; I worked twelve years steady up there.

Q. How about Fretz ?

A. I don't know any more ; I don't bother about other people, how long they worked ; I worked for myself.

Q. You are a customer of Fretz now ? 10

A. Yes ; a good one.

Q. You are there every day, are you not ?

A. Most times.

Q. Before Mrs. Fretz died who ran that place ?

A. Who ran that place ?

Q. Yes.

A. Why, Mr. Fretz ; he ran it.

Q. Who was the boss around there ?

A. The boss ? Mrs. Fretz and Fretz was boss ; nobody else. 20

Q. When anybody made inquiries there about the business who did they go to see ? When anybody came there on business whom would they ask for ? I don't mean customers like you, I mean people with bills to collect, or anything like that.

A. Well, sometimes he was there ; some things he would pay ; some things they didn't pay.

Q. Did you ever see him pay bills ? 30

A. Yes ; I seen him pay bills.

Q. Did you ever see Mrs. Fretz—

A. (Interrupting) Yes ; I seen him pay some cigar bills.

Q. How about Mrs. Fretz—did you ever see her paying bills?

A. Sure.

Q. Were you ever there when Mr. and Mrs. Fretz had quarrels? Did they ever quarrel?

The Vice Chancellor :—(To the witness) Did the husband and wife ever quarrel? Did Mr. and Mrs. Fretz have fights?

10

A. Yes, lots of times; when they was slow, not quick enough, he would say "Go, hurry up." He would make them work anyhow.

Q. When these different talks you say you heard came up about the property, wasn't it when they were having quarrels?

A. Oh, it was as in every household; sometimes I get a little fight with my woman, too.

20

By the Vice Chancellor :

Q. What he asks you is this: Whether, when you heard Mrs. Fretz say this about the property, was it while they were having words together, while they were angry at each other?

A. Oh, no; I seen no fight at those times.

By Mr. Beggs :

30

Q. Were they having any words together, any fight, when she made this remark about the property that you told us about?

A. No, they got no fight over the property, not with Mr. Fretz; he got no fight. She said the last time she wouldn't believe it till she

died; she wouldn't believe it. At one time she kicked Charley Roth outside; she said "he would have to come no mere in and bother me: he bother me all the time." He said, "Mrs. Fretz, there is your boy; let him go home; he is anyhow your boy, let him go home"; and she kicked him out after he spent a whole lot of money.

Q. Now, I don't quite catch that; do you mean that Fretz wanted Roth to get out of the house? 10

A. The mother kicked Charley Roth out of the house.

Q. Mr. Fretz and Mr. Roth, then, were not on good terms?

The Vice Chancellor:—The mother kicked him out, he said.

Q. This was five years, though, before her death? 20

A. On, it was more than that.

Q. Well, within a short time prior to Mrs. Fretz' death was she on good terms with Charley Roth?

A. Well, Charlie Roth comes in before Mrs. Fretz died, about a quarter of a year—comes in the house.

By the Vice Chancellor: 30

Q. Now, just before she died, were Mrs. Fretz and Charley Roth on good terms?

A. Yes, before he died; yes.

By Mr. Rysdyk :

Q. They were friendly before she died ?

A. Friendly before she died, yes ; and not before that.

Q. Where was he living when she died ? He was not living home.

A. No ; he was boarding around some place.

10

PETER WORFLER, sworn.

By Mr. Rysdyk :

Q. Where do you live, Mr. Worfler ?

A. I live at 33 Sixth street, Paterson.

Q. And do you know Mr. Fretz—are you acquainted with Mr. Fretz ?

A. Yes, sir.

Q. Did you know his wife ?

20

A. Yes, sir.

Q. How long have you known them ?

A. Known them about thirteen or fourteen years.

Q. And during that time have you ever visited their house ?

A. Yes, sir ; I done business with them, too, at a little store on Straight street ; that is where I got acquainted with them.

30

Q. Did you know Mr. Fretz when he worked in the dye shop ?

A. Yes, I knew the man, too, but I didn't know where he worked.

Q. Did you know him when he was engaged in the peddling business ?

A. Yes, I knowed him then.

Q. Did you ever have any dealings with him then ?

A. I had dealings with him then.

Q. Do you know what he made, a week, out of his peddling business ?

A. No, sir.

Q. Did you know him when he worked in Weidman's and Bolton's dye houses ?

A. I don't know what dye house he worked in, but I know he worked in a dye house ; I could tell by his hands when he came home. 10

Q. Do you know what he earned there ?

A. No, sir ; I do not.

Q. Do you know what his habits were as to being industrious and attentive to business ?

A. Well, I know I go around to a good many saloons, because I sell a good many things, and I never saw the man in any saloon only his own.

Q. Did you ever see him spending money ?

A. No, sir. 20

Q. Do you know what he did with his money, his earnings ?

A. No, sir ; I do not.

Q. Did you ever hear any conversation between Mr. Fretz and his wife in regard to this property ?

A. Well, I was surprised when Mrs. Fretz talked to me once about the property, and about her boy, and about the money she had ; I never thought she had as much money as that when she told me. She told me different things ; she told me she wanted to buy that lot next door, and she would give \$650 for it ; and that is why I got talking in conversation with her ; and at last she says this, she 30

says, "I don't think I will buy it; my boy don't help me any at all; here is my man, sick all the time, and I think I had better keep the money, and see how it goes."

Q. What did she say about the property she had at 128 Lyon street, where the saloon is?

A. She didn't seem to give me much satisfaction about that at all, about how she was going to rig it out.

10 Q. How was that?

A. How she was going to plan it out between her boy and her husband, divide it up.

Q. Mr. Fretz was laid up some time with his leg, wasn't he?

A. Yes, sir.

Q. And unable to work?

A. Oh, my, he was bad, sure.

Q. Do you know whether or not he received any benefits from this lodge?

20 A. Well, I don't know about that, but I heard he got benefits.

The Vice Chancellor :—Is there any dispute about whether he received money from this Germania Schuetzen bund?

Mr. Beggs :—Well, no, I don't suppose there will be. The only thing is that we know he did receive something, but we don't know how much.

30

Q. When Mr. Fretz was working around the saloon what would he appear to be doing there?

A. Oh, I seen him wash dishes, peel potatoes, and so forth.

Q. Did you ever see him tending bar ?

A. Yes ; he has been back of the bar.

Q. When would you see him tend bar—night or day time ?

A. Of course I only generally went there in the day time, and I would see him in the day time.

Q. Were you ever there at night ?

A. No, sir ; not at nights, only maybe once a year.

10

Cross Examination by Mr. Beggs :

Q. How long did you say you had known these people ?

A. About thirteen or fourteen years.

Q. You have known them all the time they have kept that saloon ?

A. Yes, sir.

Q. Who had charge of the saloon ?

A. Well, sometimes I have seen him back of the bar, and sometimes seen his wife.

20

Q. Who did you see there most of the time ?

A. Well, his wife would be there the most.

Q. Who seemed to have charge of the place ?

A. Well, she seemed to be boss.

Q. She seemed to be boss ?

A. Yes.

Q. When he was behind the bar where would she be ?

A. She would be in the kitchen, doing some work.

30

By Mr. Rysdyk :

Q. As a matter of fact, they were both there

together, were they not, attending to the business?

A. Yes, sir.

COMPLAINANT RESTS.

10 THE CASE FOR THE DEFENDANTS.

THOMAS W. RANDALL, Esq., sworn.

By Mr. Beggs :

Q. Mr. Randall, you are a practicing attorney of the city of Paterson?

A. Yes, sir.

Q. Are you acquainted with Mr. Fretz?

20 A. No.

Q. You were acquainted with his wife, during her life?

A. Very well; yes.

Q. Tell us how you became acquainted with her?

A. Well, she first worked in my family quite frequently, never regularly as a steady domestic, but as a sort of an extra help occasionally, and as a laundress; she used to do our laundry work considerably, on and off for several years.

30 Q. What sort of a woman did she appear to be?

A. I might say right here that I knew her first from about the year, I should say, 1888; I think that is about when I first became ac-

quainted with her. Why, she was an exceedingly hardworking and industrious woman.

Q. About how much money did she earn from you; have you got any idea, about how much she would average a week?

A. I have no idea at all; we used not to pay her by the week, we used to pay her by the day; if she worked two or three days in succession she was paid for the two or three days; I think we used to pay her a dollar and a half a day when she worked. 10

Q. Do you know why she was obliged to work for you?

A. She used to work for other people, several other people.

Q. Do you know why she was obliged to work outside, why she, herself, was obliged to have to work?

A. Why, she was always very anxious to accumulate money, and she always used to say— 20

The Vice Chancellor:—How can what she said to Mr. Randall be evidence?

Mr. Beggs:—I don't want that, I merely want to know if he knows why she went out to work.

Q. Do you know anything about her home? 30

A. Nothing about her home life, no, excepting what she has told me herself, from time to time, that is all; not from any personal knowledge.

Q. You were the gentleman, I believe, who drew the papers by which the title to this prop-

erty was put into Mrs. Fretz' name, were you not?

A. Yes, sir.

Q. And were Mr. and Mrs. Fretz together in your office at the time that transaction took place?

10 A. I don't know how many times Mrs. Fretz saw me about the matter, but Mr. Fretz came there when the papers were signed and he signed the papers with her.

Q. Did you have any talk with her at that time?

A. I gave them both to understand what the papers were.

Q. You explained fully the nature of the papers?

20 A. Oh, they understood that thoroughly. There was no conversation between them in my presence as to why the transfer was being made. I knew why. I had been previously informed by Mrs. Fretz.

Q. Did you have anything to do with the cancelling of a \$150 mortgage on this property?

A. No, I had nothing to do with that; it was not done through my office.

Q. Was anything said to you by Mr. Fretz at the time the deed was signed by him about giving the property in trust?

A. Nothing.

30 Q. Nothing said then?

A. No.

Cross Examination by Mr. Rysdyk :

Q. You say you were in the habit of paying Mrs. Fretz a dollar and a half a day?

A. That is what we were in the habit of paying.

Q. What did she do, what service did she render you ?

A. Laundry work, generally ; cleaning and laundry work about the house.

Q. And that you paid a dollar and a half a day for ?

A. Yes.

Q. Is that the usual price for that ? 10

A. About, I should think ; somewhere about. She was a sort of a char-woman, you know.

Q. How often would she come to your house ?

A. Well, just as we would happen to want her ; sometimes she would come there a couple of days a week, or something like that.

Q. Sometimes more and sometimes less ?

A. I imagine so ; sometimes we were out of servants, or short-handed, and she would come in for two or three days a week ; something of that sort. 20

Q. And sometimes she would not come at all in a week, would she ?

A. I think that is quite possible.

CHARLES ROTH, sworn.

By Mr. Beggs :—

Q. Mr. Roth, where do you reside ? 30

A. I live at 138 Highland street, Paterson.

Q. Louisa Fretz was your mother ?

A. Yes, sir.

Q. Where were you born ?

A. In Switzerland.

Q. And when did you come to this country?

A. I couldn't exactly tell you whether I was born in Switzerland—

Q. Well, I don't care. It is not material. When did you come to this country?

A. I am sixteen years here ; I was twelve years old when I came here.

By the Vice Chancellor :

10 Q. You have been sixteen years in this country?

A. No ; I am twenty-six years old, and I am fourteen years now in Paterson.

By Mr. Beggs :

Q. Where did you go to live when you came to this country?

A. On Fulton street.

Q. With whom?

A. With Henry Fretz and my mother.

20 Q. What sort of a house did you live in?

A. Well, we had a garret room. If a big tall man would try to go in there he couldn't go in there.

Q. How many rooms were in that place?

A. Three rooms.

Q. What did Mr. Fretz work at when he came to this country?

A. He was in the peddling business.

30 Q. How long did he keep in that business after that?

A. Not very long, because he couldn't afford to keep the horse any more, and my mother says she is going to sell the horse.

Q. Why did he give up that business?

A. Because he couldn't make out.

Q. What were you doing at that time, if anything ?

A. I had to go around three years begging.

Q. Did you do any work ?

A. Yes.

Q. Where did you work ?

A. I worked at Meisterman's when I first went to work.

Q. What is it, a silk mill ?

A. No ; a box factory. 10

Q. How long did you work there ?

A. I can say about two years, something like that.

Q. About what did you make, what were your wages ?

A. Not much ; I was green yet.

Q. Well, about how much ?

A. I made two and a half a week sometimes, sometimes three.

Q. What did you do with that money ? 20

A. Gave it to my mother.

Q. Where did you work after that ?

A. After that I worked three weeks on Broadway at another box factory.

Q. How much did you make there ?

A. I didn't make much there at all ; because he busted up.

Q. How long did you work there ?

A. About three weeks I worked there.

Q. Did you give your money to your mother ? 30

A. Yes.

Q. Where did you work after that ?

A. Augusta Silk works, Paterson.

Q. What did you do there ?

A. I was learning to be a loom fixer.

Q. How much did you make a week?

A. Well, I made there, sometimes, when I worked overtime, you know, sometimes I had nine dollars a week, sometimes less than that.

Q. How long did you work there, did you say?

A. Eight years and four months.

Q. What did you do with your money while you were working there?

10 A. Gave it to my mother, all.

Q. Where did you work after that?

A. Then I started to work in a dye house.

Q. How much did you make there?

A. Nine dollars a week.

Q. How long did you work there?

A. I didn't work there long because I changed to another shop.

Q. Well, did you give that money to your mother?

20 A. Yes.

Q. Where did you work next?

A. The last place, now?

Q. Yes, the next place?

A. Ash & Bailey's.

Q. What did you do there?

A. Loom fixer.

Q. How much did you make, a week?

A. I made there the same what I made at the other, nine dollars; sometimes I made more at
30 Ash's than I did at the others.

Q. How long did you work there?

A. A year and a half, about that.

Q. What did you do with your money?

A. Well, this time I was away. Me and my mother had a little argument, because I was out

of work at that time, and I wanted more money out of my pay, you know, and we had an argument together, and she put me out at twelve o'clock at night; and when I gave her the pay me and her had a racket together, and she put me out at twelve o'clock at night, and of course I had to find a place where I could go.

Q. How many years ago was that?

A. That is before she died.

Q. How long before she died?

100

A. I think it was about a month.

Q. About a month?

A. Yes.

Q. Did you go back to live with her before she died?

A. Yes, sir; of course I went up to the hospital first. She says to me for me to go home, "otherwise," she says, "the whole business will go on down."

Q. What were you doing at home that month? 200

A. I was tending bar.

Q. Tending bar?

A. Yes, sir.

Q. Now, when you first came to the country where did your stepfather, Mr. Fretz, work?

A. He was peddling.

Q. Now, you say he continued that for a short time?

A. Yes.

Q. Where did he work after that? 300

A. I think down at Weidmann's; I am not sure.

Q. How long was he out of work between the time he stopped peddling and the time he went to work at Weidman's?

A. I couldn't exactly tell you that any more.

Q. Did he go to work at Weidman's right after he quit peddling?

A. No, not quite; not right away.

Q. Do you know how much he got a week in Weidmann's?

A. I could not say.

Q. Did he work steadily?

10 A. Not always; sometimes he worked, sometimes he did not.

Q. How long did he keep up his work there?

The Vice Chancellor :—Do you mean how long was he at Weidmann's?

Q. Yes; how long did he work at Weidmann's?

A. Well, I couldn't exactly tell you that.

20 Q. Where did he go to work after he left Weidmann's?

A. I don't know; I think down at Bolton's.

Q. Was he out of work before he went to Bolton's?

A. He was working down at Weidmann's first, I think.

Q. I know; but I asked you this—was he out of work when he went to work at Bolton's?

A. Yes; he was out of work then.

Q. How long had he been out of work?

30 A. That is something I cannot just think of, them things, you know; sometimes he stayed out long, and sometimes not.

Q. Do you think he had been out over a month?

A. Well, I don't know ; he might have been ;
I cannot just think of them things.

Q. Did your mother do anything besides
household work ?

A. Yes, sir.

Q. What ?

A. She had to cook.

Q. She had to cook ?

A. Yes.

Q. I mean outside of the house ? 10

The Vice Chancellor :—(To the witness)
Outside of your own house
did she do any work ?

A. Yes, sir.

Q. What did she do ?

A. Not while she had the saloon.

Q. But before she had the saloon ?

A. Well, she was washing. 20

Q. Where did she do washing ?

A. She was washing up at Mr. Hargreaves ;
she was at Mr. Bishop's a few times, and at
Hartmeier's.

Q. Any other places ?

A. Well, she had some other places, but she
didn't keep them steady, you know.

Q. Why did she go out to work, outside of
your house ?

A. Because Fretz couldn't keep her. 30

Q. Who ran the saloon ?

A. My mother ran it.

Q. Who paid the bills ?

A. My mother.

Q. Who paid the license ?

A. Well, the license, my mother laid the money out on it, and sometimes they would leave the license go out on the interest by the brewery.

Q. What work, if any, did Mr. Fretz do around the place ?

A. Well, he couldn't do much.

Q. Why not ?

A. Because he was always sick.

10 Q. What was the matter with him ?

A. On account of his leg.

Q. In addition to running the saloon did your mother do anything else to earn money ?

A. Not what I know of.

Q. Were there any boarders ?

A. Why, she had boarders.

Q. How many boarders did she keep ?

A. Well, we had as high as nine boarders in the house already.

20 Q. What help did your mother have ?

A. She didn't have no help at all except us; we had to help her a little bit.

Q. Did you help, too ?

A. I had to wash dishes every night.

Q. Who got the money from the boarders ?

A. My mother.

Q. Who paid the grocery bills and the meat bills ?

A. My mother.

30 Q. Were there any doctor's bills paid while Fretz was sick ?

A. Yes, sir.

Q. Do you know of any that were paid ?

A. Yes, sir ; Dr. Bowden.

Q. Dr. who ?

A. Bowden, she paid a hundred dollar bill to.

Q. Were there any other doctors' bills paid ?

A. Yes.

Q. Whom to ?

A. Well, my mother she paid them right away, you know ; as soon as they came and went away again she paid them, right away, so I have no bills here excepting that one doctor's ; because we were fighting with the Lodge to get the benefits out of it for him ; of course the Lodge wasn't ready to pay him because he was working tending bar. Some men came there once and treated him once, and they said, "We seen him tending the bar," and they wouldn't pay anything. 10

Q. How much would your mother get from the boarders ?

A. Well, four dollars a week, and sometimes she was washing for them yet. In the first off she did washing for them. 20

By the Vice Chancellor :

Q. Then she would get something extra for washing the clothes ?

A. Yes ; she got fifty cents extra.

By Mr. Beggs :

Q. For some time prior to your mother's death what relations did Fretz and your mother have --were they friendly ? 30

A. No, sir.

Q. Just tell us about that.

A. What do you mean, when she was sick ?

Q. Yes, and before that.

A. Well, they was always fighting ; she went to work and took anything she could get hold of and hit him ; it was about this \$150 mortgage what he put up ; and then she started to raise up the deuce there ; and after that he went away, and when he came back again then she was quiet again ; and they didn't speak for a good while again.

10 Q. You say they had a quarrel over the \$150 mortgage ?

A. Yes.

Q. Do you know why they put that property in her name ?

A. Yes, sir.

Q. Why ?

A. They put the property in her name because he could not—

Q. How do you know this that you are going to tell ? Where did you get the information ?

20 A. I heard it from my mother when they was fighting about it.

Q. You heard conversations between the two of them ?

A. Yes.

Q. What did you hear ?

A. I heard he had got to suffer on account of the \$150, and of course my mother put in ; she—

30 *The Vice Chancellor* :—No ; you are not to tell here anything except what you heard her say.

The Witness :—Well, they had quite a lot of quarrels about it.

The Vice Chancellor:—You are asked what they said.

The Witness:—Well, they said on account of the \$150 ; that is all what I heard, always.

Q. And what was done after this quarrel, do you know, about transferring the property ?

The Vice Chancellor :—No ; he could not state what somebody else told him.

10

A. Well, I didn't hear nothing about that, you know.

Q. Did your father, or your step-father, in your presence, ever ask your mother to convey that property back to him ?

A. I never heard nothing about it.

20

Q. Did you ever hear him speak about it ?

A. No, sir.

Q. You were home to nearly every meal, weren't you ?

A. Every meal.

Q. And he would be there ?

A. Yes, sir.

Q. And she would be there ?

A. Yes, sir.

30

Cross Examination by Mr. Rysdyk :

Q. Now, at the times you have spoken of, when your mother and Mr. Fretz would have some quarrels, wasn't it on account of this property ?

A. No, sir ; it was on account of the \$150.

Q. Wasn't it because Mr. Fretz asked her to turn the property back to him ?

A. I never heard nothing about that at all.

Q. Nothing about it ?

A. No, sir.

Q. And you were living home all the time ?

A. Well, I was away ; I can say I was away
10 four months ; I was working at one place, Mid-
land Park.

Q. You always gave the money to your mother that you earned ?

A. Yes, sir.

Q. Every penny of it ?

A. At Midland Park she came out and got the money.

Q. And you gave it all to her ?

A. Yes, sir.

Q. How much was it ?

A. I couldn't exactly tell you.

20 Q. Didn't you ever figure it up ?

A. No, sir.

Q. You got some five hundred dollars from her a little while before she died, didn't you ?

A. No, sir ; I got no money at all ; all she did was to buy a horse and wagon.

Q. Didn't you get five hundred dollars of her money that she had been keeping for you ?

A. No, sir.

30 Q. You went in the chicken business, didn't you ?

A. Yes, sir.

Q. How much money did you invest in the chicken business ?

A. Well, she paid for the horse and wagon.

Q. How much money did you put in the chicken business?

A. Well, she always gave me the money—

Q. You understand the question.

By the Vice Chancellor :—

Q. How much money was put in the chicken business, is what you are asked?

A. Oh, I can say it was around five hundred dollars. 10

By Mr. Rysdyk :—

Q. Where did you get that money from?

A. She laid it out. It was in her name, the business; it was not mine.

Q. The chicken business was?

A. Yes, sir.

Q. She put that money in, didn't she, by your request? 20

A. She put the money in.

Q. You asked her for that money, didn't you?

A. No, sir.

Q. Now, wasn't she keeping that money you got, the five hundred dollars for the chicken business, wasn't she keeping that for you?

A. No.

Q. And you told her you wanted to go in the chicken business and you wanted to take your money? 30

A. No, sir.

Q. And then you lost all the business—it was a failure?

A. No, sir.

Q. And your mother and you had some quarrel over it, didn't you?

A. No, not me.

Q. You and your mother did not have a misunderstanding after you lost your money in the chicken business?

A. No, sir.

Q. Didn't your mother quarrel with you about it?

10 A. She didn't quarrel with me. I didn't want to go over there any more.

Q. Why was it she put you out of the house at twelve o'clock at night?

A. Because I was working at that time, and—

Q. Why did she do it?

A. Because I wanted more money out of my wages.

20 *By the Vice Chancellor :*

Q. Well, had that anything to do with this chicken business ; at the time you were put out of the house at midnight, did that have anything to do at all with this chicken business?

A. No, sir.

Q. How many years apart were they ; when was it that you were in the chicken business, how long ago?

30 A. I can say about three years, over three years, when my mother died ; it might be a little longer.

Q. And when was it that she put you out of the house at midnight?

A. It was on Saturday evening.

Q. I mean how long before she died?

A. Well, I can say about four years. I was working in one place then four years, about.

By Mr. Rysdyk :

Q. How long before she died was it, she put you out of the house ?

A. It was about a month and a half.

Q. It must have been just before she went to the hospital, wasn't it ?

10

A. No, sir ; I was away longer than that.

Q. How long before she went to the hospital was it that she put you out of the house ?

A. I don't know just exactly how long.

Q. And you say it was three years before her death that you was in the chicken business ?

A. Yes, sir.

Q. Now, at that time was she taking in washing ?

A. No, sir.

20

Q. Going out washing, I mean ?

A. No, sir.

Q. She was not ?

A. No, sir.

Q. How long before that was it that she had been out washing to these places you have mentioned ?

A. Since she started the saloon up ; since my mother started up the saloon.

30

By the Vice Chancellor :

Q. After she started the saloon she never went out washing ?

A. No, sir.

By Mr. Rysdyk :

Q. After the saloon business was started she didn't go out washing? Is that what you mean?

A. Yes.

Q. Now, this \$500, that was money she took out of the bank, wasn't it?

A. I couldn't say. She had told us she borrowed that money.

10 Q. Well, she had \$500, didn't she? She put in \$500 in cash?

A. She gave me \$250 in one day to buy the horse and wagon, and we got a horse and then the horse wasn't no good; we got it in New York, and it got sick before we got home. And then we bought another horse; and that's all I can tell you. At first the business went pretty good, it went good, and of course I always took the money and every night I had to give the

20

By the Vice Chancellor :

Q. To her?

A. Yes, sir.

Q. How long were you in the chicken business?

A. I could say not quite half a year.

Q. What did you do with the horse and wagon when you quit?

30

A. My mother sold it.

Q. Did she take the money?

A. Yes, sir; I only was working for her.

By Mr. Rysdyk :

Q. How much did she get back for it?

A. I think \$70 for the horse ; she got \$70 for the horse, and for the wagon she got \$18.00.

By the Vice Chancellor :

Q. What did the second horse cost you ?

A. That was an old cheap one ; that was \$60.

Q. The second horse cost \$60 ?

A. Yes ; then she sold the other one again.

Q. The second one ?

10

A. Yes, sir.

Q. What did she get for the second one ?

A. \$35.

By Mr. Rysdyk :

Q. How much money did she get back all together out of the \$5,000 ?

A. That is something I could not tell you. She never told me about it.

Q. Well, the business wasn't a success, was it ?

20

A. No, the business didn't go ; of course I wouldn't bother with it any more.

Q. And she got angry with you about it ?

A. Sir ?

Q. Did she get angry with you because you wouldn't bother with this business any more ?

A. No, sir ; all I said was I wouldn't go any more.

Q. Did she get angry about it ?

30

A. No, sir ; but I said I wouldn't ever work in the mill again.

Q. Did you ever see Mr. Fretz before you came to this country ?

A. Yes, sir.

Q. When you first came here you found him peddling ?

A. Yes, sir.

Q. And he was living then on Fulton street ?

A. Yes, sir.

Q. Had three rooms there ?

A. Yes, sir.

Q. He was working every day, wasn't he ?

A. Yes, sir.

10 Q. And how long did he keep up the peddling ?

A. Not so very long ; I think it was about a year, something like that.

Q. Then, after he gave up the peddling business he went to work in the dye shop ?

A. Yes, sir.

Q. Right away, didn't he ?

A. No, not right away.

Q. Well, how long was it ?

20 A. Well, I couldn't tell ; I was quite young at that time, you know, yet.

Q. How old were you when you came here ?

A. Twelve years.

Q. Now, you say you went to work right away ?

A. I went to work right away, yes, sir ; when I landed ; I was home two weeks.

Q. What did you get a week ?

A. Two dollars and a half.

30 Q. Did you work steady ?

A. Yes, sir.

Q. How long did you work in Meisterman's ?

A. I worked there about a year and a half.

Q. And your father was working all that time, Mr. Fretz, I mean ?

A. I couldn't exactly tell you ; I think he was, but I ain't sure.

Q. Now, after you left Meisterman's you went to work in another box factory ?

A. Yes, sir.

Q. And worked there only two or three weeks ?

A. Yes.

Q. And what did you earn there ?

A. I got there four dollars all together. 10

Q. Four dollars ?

A. Yes. I wanted to learn the trade there.

Q. Then you went to work for the Augusta silk mills ?

A. Yes, sir.

Q. Well, while you were working for the Augusta silk mills as a loom fixer, where was Mr. Fretz working ?

A. I think he was working down at Bolton's then. 20

Q. Do you remember when it was that you went there to the Augusta Mills ?

A. Yes, sir.

Q. When ?

A. I couldn't exactly remember any more.

Q. What year was it ?

A. I couldn't tell you.

Q. Was it before Mr. Fretz had got the saloon ?

A. Yes, sir. 30

Q. How long before ?

A. Well, it is, I can say, a little over a year.

Q. About a year before that ?

A. Yes.

Q. You were making how much then ?

A. Eight or nine dollars, sometimes I had ten when I worked overtime.

Q. Do you know how much Mr. Fretz was getting?

A. Nine dollars a week.

Q. And he was working steady, wasn't he?

A. Not always.

Q. How much time did he ever lose there—in Weidmann's I am speaking of now?

10 A. Well, I couldn't exactly tell you now, you know, on that.

Q. Do you recall any time when he lost more than two days at once?

A. As long as he worked there?

Q. As long as he worked there, do you remember when he was out of that place for more than two days at a time?

A. I couldn't think about that any more.

20 Q. Sometimes they would be slack there for a day or so, wouldn't they?

A. Yes, I suppose so.

Q. When he was working at Mr. Bolton's he received his injury to the leg?

A. Yes, sir.

Q. And suffered with that a great deal?

A. Well, he couldn't go to work any more then.

Q. Do you remember when that was?

30 A. I don't remember; couldn't tell you that exactly any more.

Q. He had the saloon at that time?

A. Yes. I think he got that when he was done on Straight street.

Q. What.

A. That sore leg.

Q. At Straight street ?

A. Yes, sir.

Q. He hurt his leg there ?

The Vice Chancellor :—No, he says when they were living at Straight street was the time he hurt his leg. (To the witness.) Is not that what you mean ?

10

The Witness :—Yes, sir.

Q. Wasn't he hurt after your step-father had gotten the saloon ?

A. He was working in Weidmann's then.

Q. He was working in Bolton's then, wasn't he ?

A. No, down at Weidmann's ; when we were living in Straight street.

20

By the Vice Chancellor :—

Q. Where was he working when he got the injury ?

A. The sore leg ?

Q. Yes,—when he hurt his leg where was he working ?

A. I think down at Weidmann's, or Bolton's, either one, I couldn't tell.

Q. Where were you living at that time ?

30

A. I think on Straight street.

Q. You don't think you had gone to the saloon to live, yet ?

A. No.

By Mr. Rysdyk :

Q. You don't remember the year ?

A. No, sir; I do not.

Q. Do you remember when you went to live at the saloon ?

A. I do not.

Q. Don't remember that ?

A. No, sir.

10 Q. As a matter of fact, you never bothered much with the affairs of your mother and father, did you ?

A. Only I listened to what they did.

Q. You never paid much attention to it, did you ?

A. To my mother I did.

Q. Did you ever interest yourself to know what Mr. Fretz was earning, or what moneys were being taken in in the saloon ?

20 A. No, sir; my mother, she never said one word what she made in it.

Q. You saw Mr. Fretz there nights, didn't you, working ?

A. Not always.

Q. When wouldn't he be there, now ?

By the Vice Chancellor:—

Q. When would Mr. Fretz not be at the saloon at night ?

30 A. When my mother was sleeping.

Q. No, when would he not be there ?

A. When my mother was up.

By Mr. Rysdyk :

Q. I will put it the other way : When would

he be there—when was Mr. Fretz in the saloon tending bar?

A. When my mother went out was the only time he tended bar.

Q. Don't you know every night, after Mr. Fretz came from work, that he took charge of the bar?

A. No, sir.

Q. He did not?

A. No, sir.

10

Q. Were you there every night?

A. Yes, sir.

Q. What were you doing around there?

A. I was washing dishes; then I went out for one hour, and then I went to sleep around nine o'clock.

Q. You went out most every night, didn't you?

A. No, sir.

Q. And sometimes you went out and stayed more than an hour?

20

A. No, sir.

Q. And stayed out all night?

A. No, sir.

Q. You didn't have anything at all to do with the bar?

A. Well, my mother told me to go there.

By the Vice Chancellor:

30

Q. When?

A. She told me always, when she was tired, and Mr. Fretz couldn't get up, then she told me to go there.

By Mr. Rysdyk :

Q. Before Mr. Fretz hurt his leg, wasn't it his habit every night to be there behind the bar, working ?

A. No, sir.

Q. It was not ?

A. No, sir : on the first off, when they started then he was in the bar.

10 Q. Well, who did attend bar at nights ? Your mother was not there night and day ?

A. My mother was there night and day.

Q. How long would she stay there nights ?

A. Well, sometimes she would slept about one hour, then she gets up again and goes behind the bar.

Q. And what would he be doing ?

A. He went to bed early.

Q. Every night ?

20 A. Every night.

Q. That is before his leg was hurt ?

A. No ; when his leg was hurt.

Q. Well, I am talking about before his leg was hurt ?

A. Well.

Q. Now, before his leg was hurt I ask you didn't he work there every night behind that bar ?

A. No, not every night. She was the boss around there.

30 Q. She was the boss ?

A. She was the boss.

Q. That is what she told you ?

A. She told me and told him too, I suppose.

Q. You and Mr. Fretz were never very friendly, were you ?

A. Well, because he always hit my mother.

Q. What?

A. He was always hitting my mother; I was friendly always to him.

Q. Always hitting her?

A. Yes.

Q. Did you ever see him hit your mother?

A. Yes, sir.

Q. When?

A. Right often I seen him hit her.

10

Q. Give us one instance when he hit her?

A. Well, there was one time he hit my mother when she went down cellar; it was wash-day, and he went and throwed a big schooner at her, and the schooner fell down in twenty pieces.

By the Vice Chancellor :

Q. A schooner of beer, do you mean—a beer schooner?

20

A. No; a regular glass with no beer in it.

By Mr. Rysdyk :

Q. Were you there?

A. No, sir.

Q. Well, how do you know it?

A. I know it; she told the doctor.

*The Vice Chancellor :—*Strike that all out. (To the witness) You are asked whether you ever saw Mr. Fretz strike your mother. Did you ever see Mr. Fretz, with your own eyes, strike your mother? 30

The Witness :—Yes ; I seen him kicking her.

Q. When did you see him kicking her ?

A. At the same time when she got hit with the beer glass.

Q. You said you wasn't there ?

A. Well, that was in the evening, when I came home.

10 Q. That evening ?

A. Yes. As she went out of the door and he was sitting in the bar he made a kick at her.

By the Vice Chancellor :

Q. Did he reach her ?

A. Well, she hit him back.

Q. When he kicked at her did his foot reach her ?

20 A. I couldn't say ; I don't know.

Q. They had a fight ?

A. Yes.

By Mr. Rysdyk :

Q. They had a number of fights like that, hadn't they ?

A. Yes, sir.

Q. And wasn't a good deal of it due to you ?

A. No, sir.

30 Q. Sure of it ?

A. Yes, sir.

Q. Wasn't there a great deal of fault found all the time, and you were the cause of it all ?

A. No, sir.

Q. Don't you know that almost as soon as you

came to this country and got old enough that you had a dislike for this man, Mr. Fretz ?

A. Well, I always treated Mr. Fretz right when I first came over here, since I came to this country.

Q. You have always treated him right ?

A. Yes, sir.

Q. How do you mean you "treated him right ?"

A. I treated him right every which way. 10

Q. And how did he use you ? He used you the same, didn't he ?

A. He used me all right.

Q. When was it you first had any trouble, you and he ?

A. Oh, I couldn't tell you—at the time he hit her.

Q. Was that the first time ?

A. When he hit her I used to help my mother, you know. 20

Q. You mean the night he kicked out at her and she hit him ?

A. Yes, sir ; that is the only time I——

Q. (Interrupting) That is the only time you ever saw anything of that kind ?

A. No, they was fighting before that, you know.

Q. Well, you never saw anything of that kind before ?

A. I seen lots of it on Straight street. 30

Q. You saw them quarrelling and squabbling, but you never saw any blows struck ?

A. No.

Q. You said something about a Dr. Bowden

having been paid one hundred dollars—what was that for?

A. Doctor's bills, for him.

Q. After he has had his leg hurt?

A. Yes, sir.

Q. Do you know where she got the money from to pay it?

A. I couldn't say. She said she was going to borrow the money.

10 Q. She was always "going to borrow the money?"

A. Yes.

Q. You knew she had money in the bank, didn't you?

A. No, sir.

Q. Never saw her bank book?

A. No, sir; or nobody else did.

Q. But there was money in the bank, wasn't there?

20 A. No, sir; I couldn't tell you, because she didn't say nothing.

Q. At the time of your mother's death were you present—were you home at that time?

A. I went up to the hospital at that time.

Q. You weren't living home, though, when she died, were you?

A. I was home myself.

Q. Living home?

A. Yes, sir.

30 Q. You had been home a few weeks before that?

A. When I heard she was in the hospital I went up the next day, and she told me to "go home" she says, "and tend to the business, or the business busts up."

Q. Well, you went home then?

A. Yes, sir.

Q. When you got there you found Mr. Fretz taking care of it, didn't you?

A. Yes, sir.

Q. And after her death you were present when you heard of the will, didn't you?

A. After my mother's death?

Q. Yes.

A. I heard it ten days after, I think it was.

10

Q. You heard of a will having been made by her?

A. Yes, sir.

Q. And you were present, were you, when the will was read?

A. Yes, sir; I was there, too.

Q. When was the last money of your wages that you gave your mother?

A. When I left her I paid her eight dollars, in the hospital.

20

Q. In the hospital?

A. Yes, sir.

GEORGE HAEBERLE, sworn.

By Mr. Beggs:

Q. Where do you live?

A. Paterson.

Q. What is your business?

30

A. Saloon business.

Q. Do you know Mr. Fretz?

A. Yes, sir.

Q. You did know Mrs. Fretz?

A. Yes, sir.

Q. How long have you known Mr. Fretz?

A. Oh, I knowed him from the old country.

Q. Did you know Mrs. Fretz in the old country?

A. Yes, sir.

Q. Before she married this man?

A. Yes.

Q. What did she do in the old country?

10

A. She was a cook, in first-class hotels.

Q. She was doing that when he married her?

A. Yes.

Q. Do you know what she did when she was married to Mr. Fretz?

A. Well, the first time I seen her here—

Q. I mean in the old country, in Zurich?

A. Well, she was a cook there.

Q. While she was married to him?

A. No, not at that time. I knew her when she was single only.

20

Q. When did you next meet her?

A. In Paterson.

Q. Where did she live at that time?

A. I don't know. I met her the first time at a masquerade ball.

Q. Did you ever call at her house?

Q. Well, then she said she was here with her husband. She had a saloon in the old country and then she came over here.

30

By the Vice Chancellor :

Q. Counsel wants to know whether you ever went to see her in her home here in Paterson?

A. Well, at that time I guess that they had no saloon here.

(Question repeated.)

A. No, sir.

By Mr. Beggs :

Q. Did you ever go to see her at her home in Paterson ?

A. No.

Q. Did you ever call at the saloon in Paterson ?

A. Well, after he got the saloon then I stopped there. Then she told me—

10

*The Vice Chancellor :—*Never mind what she told you.

Q. Where was the saloon ?

A. Up Lyon street.

Q. And who ran it ?

A. Mrs. Fretz ran it.

Q. Did you ever have business there ?

A. Yes, sir.

20

Q. What did you do ?

A. I had a wholesale butcher business at that time, and she bought the beef of me.

Q. She bought beef of you ?

A. Yes.

Q. To whom did you make the bills ?

A. Mrs. Fretz.

Q. Who paid them ?

A. Mrs. Fretz.

Cross Examination by Mr. Rysdyk :

30

Q. You went there quite often to the saloon ?

A. Oh, about two or three times a week.

Q. And did you go there in the evening ?

A. Well, I was there, too.

Q. When did you generally go after the bill, in the day time ?

A. Oh, she just paid me every time when I went there with the meat.

Q. You generally went with your bills in the day-time, didn't you ?

A. Yes.

Q. You never went with any bills at night ?

A. No.

10 Q. It is quite customary to make out butcher's bills to the wife of the household, is it not ?

A. Yes.

Q. You generally make out the bills to the wife, don't you, when you sell meat around ?

A. No, when I sell it to somebody else I make it out to their name.

Q. Is it not the rule, generally, to make the bills out to Mrs. Jones or Mrs. Smith ?

20 A. Well, we only make it out in the name of the ones who buy.

Q. You are not particular in your dealings to make it out to the proper person, are you, generally—whether it is the man or his wife ?

A. Generally I make out no bills at all. When I bring the beef I just get the money.

Q. And you went there in the day-time and she paid you the money ?

A. Yes.

30 Q. And you have been there at night, haven't you ?

A. Sometimes.

Q. And seen Mr. Fretz there ?

A. Sure.

Q. And seen him tending bar there ?

A. No, sir ; I only saw her once or twice a year, that is all.

Q. Do you know Mr. Fretz ?

A. Yes, sir ; I only saw him once or twice, that is all.

Q. Do you know who ran the business in Lyon street ?

A. Mrs. Fretz did.

Q. Why do you say that ?

10 A. Because she told me that they belonged everything to her.

Objected to.

The Vice Chancellor :—That must be stricken out.

Q. Were you present at the time Mrs. Fretz executed her will ?

A. Yes, sir.

20 Q. How did you come to be there ?

A. Well, I didn't know she was sick in the hospital, and all at once I got a message from the hospital she wanted to see me. I says, "well, is she in the hospital?" and the lady says, "Yes, you want to come up right away, she wants to see you." I went up there. She had a private room. I says, "What is the matter, Mrs. Fretz?" She says—

30 Q. (Interrupting) You afterwards settled up Mrs. Fretz' estate as her executor ?

A. Yes ; I settled everything up in the Surrogate's office.

Q. Did you read the will to Mr. Fretz ?

A. Yes ; I read it to him and to Charley Roth, and the other heirs.

- Q. That was all ?
 A. Yes.
 Q. Were you there before he was hurt ?
 A. No ; he was hurt when I went there.
 Q. That was afterwards ?
 A. Afterwards.
 Q. How long did you live there ?
 A. Lived there about five years—four years.
 Q. Are you friendly with Mr. Fretz now ?
 A. Well, I don't owe him anything. 10
 Q. Well, didn't you have a little trouble here
 a while ago ?
 A. No ; not me.
 Q. Didn't you talk with him about this case a
 little ?
 A. No.
 Q. And didn't you get a little mad at him be-
 cause he wanted you to pay a bill a short time
 ago ?
 A. No ; he never said a word to me. 20

HERMAN DEISER, sworn.

By Mr. Beggs :

- Q. Mr. Deiser, where do you live ?
 A. 66 Temple street.
 Q. You were the executor named in the will
 of Louisa Fretz ? 30
 A. Yes, sir.
 Q. How long before Mrs. Fretz' death had
 you known her ?
 A. Oh, I knowed her several days.
 Q. Were you very friendly with her ?

Q. What were their relations just a short time prior to her death ?

A. Well, I guess she didn't want to see him any more.

Q. Why not ?

A. I don't know ; she never told me anything.

Q. What were her relations with her son ?

A. She was all right.

10 Q. Did you ever hear them quarrel over property, Mrs. and Mr. Fretz ?

A. No.

Cross Examination by Mr. Rysdyk :

Q. What was the trouble between them, -you say they were not friendly?

A. Well, she got angry at him sometimes, and they started to fight.

20 Q. And what caused her anger ?

A. Well, sometimes he didn't do his work right, and then she got mad.

Q. That was the work around the house ?

A. Yes.

Q. That was after he was hurt, wasn't it ?

A. Yes.

Q. Didn't you often hear them talking about having some trouble about this property ?

A. No.

30 Q. Didn't hear anything of that kind ?

A. No, sir.

Q. And that was not the cause of the little spats that they had ?

A. She just got mad at him when he didn't do his work right.

A. Sometimes. Well, for a long time he couldn't do anything.

Q. He had a bad leg?

A. Yes, sir.

CHARLES SMITH, sworn.

By Mr. Beggs :—

Q. Mr. Smith, where do you reside ?

10

A. 131 Lyon street.

Q. What is your business ?

A. Plush business.

Q. Do you know Mr. Fretz ?

A. Yes, sir.

Q. How long have you known him ?

A. Since 1895.

Q. Did you know his wife ?

A. Yes.

Q. How long ago was it when you met her ?

20

A. About the same time.

Q. Where did you meet them ?

A. I went to board with them on Lyon street.

Q. Who had charge of that boarding house ?

A. Mrs. Fretz.

Q. Whom did you pay your money to ?

A. Mrs. Fretz.

Q. Did you have any business to do with this gentleman (indicating the complainant) ?

30

A. No, sir.

Q. What sort of relations were there between Mr. and Mrs. Fretz ?

A. Well, sometimes they had a kick, and sometimes they were all right.

- Q. Did you read the will as it was ?
 A. Yes, sir.
 Q. In what language did you read it ?
 A. Well, I read it off just the way it was, with everything that was there.
 Q. In what language did you read it ?
 A. I read it off in English, and I explained it to them in German.
 Q. Did you explain it as it was ?
 A. Yes, sir ; correctly. 10

Cross Examination by Mr. Rysdyk :

- Q. Did you explain it to both Mr. Fretz and Mr. Roth ?
 A. To all of them.
 Q. And who else was there beside you ?
 A. Mrs. Sophie Gass, one of the other heirs.
 Q. She was a sister of Mrs. Fretz ?
 A. A sister of Mrs. Fretz. 20
 Q. Well, you explained it after you read it in English, you explained it to them in German, didn't you ?
 A. Yes, sir.
 Q. You told them exactly what the terms of the will were ?
 A. Yes, sir.
 Q. Don't you know, Mr. Deiser, that it was not until about a year after that that Mr. Roth thought the property belonged to him ?
 A. Well, I tell you, when I explained it to him, the will, I says, well, now, everything belongs to Charley Roth. If the property is in your name then it belongs to you ; if it is in the boy's name, then the property is his ; and the 30

money belongs to Charley Roth. And of course he could find out from a lawyer if he wanted to know; I wasn't sure myself there; and the lawyer searched it in the office, and he called him up and told him the way it was.

Q. How long after that was it that they found out about it?

A. Just when the whole business was settled, the executor business.

10 Q. About a year afterward, wasn't it?

A. When everything was settled up.

Q. Do you mean to say for a whole year Roth thought the property belonged to Mr. Fretz?

A. No, he knew he had it coming; he wasn't sure; but I told him that, and he said he would search and get a clear deed from the office there, from the county clerk's office.

Q. At the time of Mrs. Fretz's death she had an account in a Paterson bank, hadn't she?

20 A. Yes, sir.

Q. In which bank was it?

A. The Paterson Savings Institution.

Q. (Showing witness two bank pass books.) Will you look at these books and say whether or not they are the ones that were turned over to you? (Referring to one of the books) Is that the book that was turned over to you?

A. That is the one that was turned over to me (Referring to Book marked "74308 Q.").

30 Q. This has the name "Louisa Fretz" partially rubbed out, and, in red ink over it, the name "Herman Deiser, Ex." Does that book show the amount of moneys in bank at the time you undertook the administration of the estate?

A. Yes, sir.

Q. Tell me, from that book, please, what was the amount turned over to you as executor ?

A. It is here. \$3,174.41.

Q. What book is this (Referring to the second book shown the witness) ?

A. I don't know ; that was in the bank ; she had that before ; I got it yesterday.

(The book first identified by the witness and being marked "74308 Q," is offered in evidence, admitted without objection, and is marked "Exhibit C 8.") 10

Q. What became of the moneys in the bank ?

A. Well, I paid all the bills, and after we settled, when the time was up, I turned the money over by a lawyer in the Surrogate's office to him.

Q. To whom ?

A. To Charley Roth, because he was the owner of it. 20

Q. Were there any other bequests as to this money ?

A. Yes, five hundred dollars to the sister. I paid that out, too.

Q. To whose sister ?

A. Mrs. Fretz' sister.

Q. And that was paid ?

A. That was paid. Everything was paid.

Q. And you filed your account in the Surrogate's office ? 30

A. Yes sir; everything went on correctly and I was dismissed honorably.

DEFENDANTS REST.

COMPLAINANT'S REBUTTAL EVIDENCE.

HEINRICH FRETZ, recalled.

By Mr. Rysdyk :

Q. Did you ever kick your wife ?

10 A. I always acted in self defense. When my wife was drunk she always kicked me. She was drunk too much some times.

*Mr. Rysdyk :—*I offer in evidence certified copy of the inventory and account of Herman Deiser, executor of Louisa Roth, deceased.

(Admitted without objection;
marked Exhibit C 9).

20

BOTH SIDES CLOSE.

30

EXHIBIT C 1.

MARRIAGE CERTIFICATE.

Heinrich Fretz to Christina Roth. Dated
Sept. 14, 1882.

EXHIBIT C 2.

DEED.

10

Charles M. Earle, as trustee, etc., to Heinrich
Fretz. Dated May 15th, 1890. Conveys the
premises set forth and described in the bill of
complaint. Cons. \$580. Recorded as set forth
in said bill of complaint.

EXHIBIT C 3.

20

DEED.

Heinrich Fretz and wife to Herman Sonntag,
Jr. Dated April 15th, 1891. Conveying the
premises described in the bill of complaint.
Cons. \$1.00, and recorded as therein set forth.

EXHIBIT C 4.

30

DEED.

Between Herman Sonntag, Jr., to Louisa
Fretz. Dated April 15th, 1891. Conveys the
premises set forth in the bill of complaint.
Cons. \$1.00, and recorded as therein set forth.

EXHIBIT C 5.

MORTGAGE.

Louisa Fretz and Herman Sonntag, her husband, to Eliza Ann Van Riper. Dated March 5, 1892. Covering the premises described in the bill of complaint. \$1100, 6 per cent. Recorded as set forth in the bill of complaint.

10

EXHIBIT C 6.

Copy of the will of Christina Fretz, which bequeaths the premises set forth in the bill of complaint to the defendant, Carl Roth.

EXHIBIT C 7.

20 Received tax bills for taxes on the premises described in the bill of complaint, and which are made out in the name of Heinrich Fretz, which are for the years 1890-1892-1893-1895-1896-1897-1898-1899-1900.

EXHIBIT C 8.

Bank book of Christina Roth, deceased, showing deposits made by her in the Paterson Savings Institution.

30

EXHIBIT C 9.

Copy of the inventory filed by the executors in the will of Christina Roth, deceased.

IN CHANCERY OF NEW JERSEY.

Between

HEINRICH FRETZ,
Complainant,

and

CARL ROTH AND CHRISTINA

ROTH, HIS WIFE,

*Defendants.**On Bill, etc.,*

10

Opinion.

GARRISON, V. C.

This is a bill filed by Heinrich Fretz against Carl Roth and wife.

The primary purpose of the bill is to secure an injunction against Carl Roth enjoining him from proceeding with an action of ejectment brought by him against the complainant. Its ultimate object is to have it decreed that the lands in question belong to the complainant. 20

There is also a sum of money approximating \$3,600, received by Carl Roth from the executor of the will of Louisa Fretz, which is claimed by the complainant.

The lands which were the subject of the ejectment suit are situate in Paterson, N. J., and the title thereto was vested, at the time of her death, in Louisa Fretz, the wife of the complainant, and the mother of the defendant Carl Roth; and the latter claims title to the 30

lands under the residuary clause of the will of Louisa Fretz.

I find the facts as follows: Heinrich Fretz, now 58 years of age, was married on the 14th of September, 1882, in Switzerland, to Louisa Roth. They were natives of Switzerland.

10 Louisa Roth, at the time of her marriage to the complainant, was the mother of an illegitimate boy, of whom the complainant was not the father. That boy was Carl, the defendant in this suit, and at the time of the marriage of the complainant and Louisa Roth he was about four years of age.

Fretz and his wife lived in Zurich, Switzerland, for about four years after their marriage, and then came, in 1886, to Paterson, N. J. When they reached this country, they had between them the sum of \$20.

20 The boy Carl did not come with them. Fretz obtained employment in various places at Paterson, working in factories and dyeshops.

His wages at first were \$6 a week, and never were higher than \$9 a week.

Each week he took his wages and handed them to his wife. There was no expressed agreement between them, though I find there was a tacit understanding as hereafter described.

30 As a matter of fact, she took the money, and paid all of the expenses of every description, giving him such money as was necessary to pay for his clothing and depositing the balance in a bank account in her own name. He was ignorant of what she was doing with the money, excepting that he knew, of course, that she was paying all the expenses.

He testified that he thought she was putting the money in bank, but it is clear from all his evidence that he did not know the fact, and that she never told him. He and the defendant Carl agree that she never told them anything about financial affairs, and always spoke as if she had no money for any purpose; pretending she would be compelled to borrow for any expenditure outside of the daily routine.

In 1890 it was determined to purchase a lot of land in the city of Paterson, and the wife gave to the husband a bankbook, and he went to the bank and obtained \$580, the purchase price, and paid it in consideration of the conveyance to him of the lot of land in question. 10

The title deed to him was dated May 14, 1890.

About this time there was some talk between them that he should go back to Switzerland on a visit, but learning as he did, that an old friend of his had died (to see whom had been the main purpose of his proposed visit to Switzerland), he determined not to go, and the wife determined that she would visit her people in the old country. 20

It is set up in the bill that the conveyance which was made by the husband to the wife (through an intermediary) was made in anticipation of the proposed visit by him to Switzerland, and that the purpose of the conveyance was to vest title in her, so that she would be protected in the event of anything happening to him while traveling. 30

Since the fact is that the conveyance from the husband to the wife was not made until April, 1891, almost a year after the time when the hus-

band was to have gone, and when the wife actually did go to Switzerland, it is obvious that the statement in the bill does not agree with the facts.

10 I think that it is probably true that at the time he was contemplating his trip to Switzerland it was suggested that he should make this transfer to his wife for the purpose indicated, but it is quite evident that it was not for the purpose which finally induced the conveyance.

That which did induce the conveyance was this :

The wife went to Switzerland about May, 1890.

While the wife was away the husband determined to leave the employment in which he was then engaged in the factory, and to purchase a horse and wagon, and engage in the peddling of produce.

20 For this purpose he borrowed the sum of \$150 and pledged the property, which, as we have seen, at this time stood in his name, for the payment of the debt.

After the return of the wife to this country, which was in the month of September, 1890, she learned of this transaction. Just when she learned of it does not appear, but it does appear that the knowledge made her very angry with her husband, and, as she expressed it, "she felt insulted," and she thereupon informed him that
30 he should transfer the title to her, so that he could not, as she expressed it, "take up any more money on the lot."

She consulted a lawyer in the city of Paterson, and gave him instructions to prepare deeds

which would effect a conveyance of the land from the husband to her.

She arranged and attended to the whole matter. He did nothing excepting to go to the lawyer's office and sign the deed.

The lawyer testifies, "I gave them both to understand what the papers were."

Fretz understands but little of what is said in English.

The deeds were dated April 15, 1891, from Heinrich Fritz and wife to Herman Sontag, and from Herman Sontag to Louisa Fretz. 10

The complainant testifies that his wife told him at the time that she would convey the property back to him or that she would will it to him at her death.

There is also testimony by the complainant and by other witnesses produced by him, of conversations by the wife in which she stated that she would will the property to him, or that she would see to it that it was made all right at her death; one witness swearing that she said, "The house she couldn't do anything with, because it belongs to Mr. Fretz." 20

This oral testimony, of course, cannot be used as the basis of a contention that there was an express trust, nor do I think it is sufficient to show a resulting trust, even if this were a case to which the doctrine of a resulting trust otherwise applied. 30

I do think it relevant and of weight in arriving at the intention and understanding of the parties, and that it shows clearly that there was no gift, and confirms my belief in the rectitude of the conclusion, hereafter stated, that the husband

did not understand that he was stripping himself of his interest in the property.

The title thereafter remained in the wife, and the residuary clause of her will devised all of her real estate to her son, Carl Roth.

10 On the 5th day of March, 1892, they borrowed the sum of \$1,100, and erected upon the land in question a building, in part of which they lived, part of which was rented to lodgers or boarders, and in another part of which they operated a saloon.

The license for the saloon was taken out in the name of the complainant and the business of the saloon was carried on in his name by both the complainant and his wife, although she, here as elsewhere, handled all the money.

20 In 1894 or 1895 he was injured in the dyeshop in which he was then working, being affected with blood poisoning, and from that time on he remained at home, assisting his wife in the care of the household—there being boarders—and in the care of the saloon.

He was entitled to receive \$5 per week, for 80 weeks, from a beneficial society, and his wife each week went and got this money and kept it.

At the time she came back from Switzerland, in 1890, she brought her son with her, and he lived with the complainant and his wife, on and off, down to the time of his mother's death.

30 The son testifies that he gave his wages to his mother.

Some little time before her death she quarreled with her son, and dismissed him from the house, but shortly before her death she became reconciled to him, and he came back to live at

the house, and was there at the time of her death.

She was taken ill some five or six weeks before her death, spent some time in a hospital, was removed to her home some two weeks before her death, and during that period consulted with a lawyer about the drawing of her will, and executed the same on the 21st day of September, 1901, and died upon the 29th day of September, 1901.

10

Her husband supposed she was making a will because she sent for a lawyer, but he knew nothing about its contents.

After the death of the wife the executor named in the will, Herman Deiser, read the will in English to Carl Roth and to the complainant, and explained it in German to the complainant.

The complainant testifies that the executor told him that he (the complainant) had the real estate, and the boy got whatever money there was.

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The complainant says he knew nothing about the money, where it was or how much it was, and did not know that his wife kept a bank account; but he says that since he understood from the executor that he had the real estate he was willing that the boy should have whatever money there was.

It turns out to be the fact that she had on deposit a sum slightly over \$3,600.

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She willed \$500 to her sister, and the balance, under the residuary clause, to her son.

The testimony of Deiser, the executor, is entirely consistent with that of the complainant, although it differs in statement.

He says that he explained to the complainant the contents of the will, and that in response to a question, as I understood it, from the complainant, he stated to him that the will would not operate upon the real estate if the complainant owned it; and since, to the complainant's mind, he did own it, it will be seen that these two witnesses are in accord.

10 There is testimony to show that the complainant paid the taxes assessed against the property and paid the interest upon the \$1,100 mortgage.

After the death of his wife the complainant continued to occupy the premises and to carry on the business.

About a year after her death he learned that Carl Roth claimed to own the property, and shortly after that time he was served with a summons and declaration in ejectment.

20 He thereupon caused the bill in this suit to be filed.

The answer and proofs of the defendants are based upon the contention that the money with which the property was bought was the wife's money; that she was both the legal and equitable owner of the property and of the money deposited in the bank; and that the same passed, under her will, to the defendant Carl Roth.

30 The first question calling for consideration concerns the conditions existing at the time of the original purchase of the real estate.

If at that time the money which paid for the same was, in law, the money of the wife, then, upon familiar principles, the taking by the husband of the title in his own name would merely serve to constitute him her trustee, and she

would be considered the equitable owner, and the subsequent deed to her would be the joining of the legal and equitable estate in her.

On the other hand, if the money at that time was not the property of the wife, then other principles will be applied to the subsequent conveyance of the title from the husband to the wife.

While there is some testimony that for a time the wife did some washing for neighbors, there is nothing to show the amount thus earned, or what she did with it. 10

If she contributed it to the husband or the household, that ends the inquiry.

If she did not, there is still the open question as to the husband's assent to her retaining as her own earnings in a business not carried on separately from him.

A wife, who is the sole caretaker of her home, who withdraws her services therefrom to go into other families to perform casual services, cannot be held to have the right, as against her husband, to retain as her own the amounts received for such work. 20

But for lack of proof that any part of the \$580 purchase price was money earned by the wife, I shall treat the money in question as the earnings of the husband, accumulated in the hands of the wife.

Whatever may be held to be the law under other circumstances, I am of opinion that among people of the class to which these people belonged, there is no warrant for finding an intention on the part of the husband to make a gift 30

to the wife of his wages, which week by week he hands over to her upon pay night.

There is, in my judgment, no question that if, upon some one of these pay nights, he handed his wages to his wife, and she, turning to any one present, should give them to such one as a gift from her, the transaction as between her and the stranger could not be sustained, as
 10 against the husband, as a gift, and the husband could undoubtedly recover the money.

It must therefore be conceded that, whatever we call this very unusual arrangement among laboring people, it is not in any aspect a gift by the husband to the wife.

If it is not a gift at the time that the money, week by week, is handed to her, I do not see upon what reasonable theory the excess or surplus which remains in the hands of the wife after she has paid the current expenses can be
 20 considered a gift

Among those differently circumstanced, where the wife is largely, if not wholly, ignorant of her husband's business affairs, where he handles all the money, where what she receives from him may properly be said to be from his bounty, the rule of law is reasonable which holds that she is the owner of what she saves out of the moneys he gives her.

But in searching for the intention with respect
 30 to transactions among people circumstanced as these people were, I am entirely clear that there is no donative purpose indicated by the weekly handing over by the husband of his wages to his wife.

I am of the opinion that the intention of each

of the spouses is the same, and that such intention is that the money, which is their all, is their joint property.

This is the way that it is dealt with by such people; from it they obtain their sustenance, their shelter, their clothing, what little amusements they can afford to pay for, and everything which they are required to expend.

The husband retains no money in his own hands for any purpose, and the joint hoard is theirs for all purposes. 10

I think that the well-understood and thoroughly intended purpose of such people is to have a joint hoard, to be used for every purpose while each is alive, and to go to the survivor when the other dies. And if it be essential to determine who is the owner in law of such moneys, I incline to the opinion that in law the husband is.

I think, under such circumstances, the wife 20 is the disbursing agent of the husband, with absolute discretion, and may freely, during her lifetime, expend the moneys intrusted to her by him; that there may be cases in which, as to the moneys accumulated by their joint efforts, she acquires a right therein, so that they are owners in common, and the same should be divided equally between them; that at the death of either their intention is survivorship; but that, unless the facts otherwise indicate, the money 30 thus accumulated in the hands of the wife is the husband's, and she is holding it as agent for him.

If I am right in this conclusion, then the \$580 which was in the wife's hands at the time this property was bought, and which was by her

given to him and by him paid for the lot, was not the wife's money in any such way as to constitute her the equitable owner of the real estate.

If, then, the husband be considered as having legal and equitable title to this property at the time in 1891 when he conveyed it to the intermediary who conveyed it to his wife, the next question for consideration is may he now, upon the facts shown, obtain relief?

10

In the first place there is no testimony of a clear and distinct agreement between the parties made at the time of the conveyance, and, if there were, it could not be taken advantage of by this complainant because of the statute of frauds and of the canon of evidence which forbids the reception of oral proof to vary written instruments.

I do not think there is a resulting trust.

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It does not come within the definition by Lord Hardwicke in *Lloyd v. Spillet*, 2 Atk., 149; nor do I find that there is such a trust as arises where a husband has caused a title to be vested in his wife, and overcomes the presumption of an advancement or settlement by proving a different contract.

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I am of opinion, however, that this complainant is entitled to relief upon the doctrine established in this state in the case of *Garnsey v. Mundy*, 24 N. J. Eq., 243 (*Runyon*, Ch., 1873), and since frequently recognized both in this court and in the Court of Errors and Appeals.

This complainant is a man of the very lowest order of intellect. He cannot speak our language, and but imperfectly understands anything that is said to him in English. Even when

spoken to in his own language (German) he comprehends only the simplest statements, and is similarly limited in expressing himself.

He impresses me, while testifying, as a man entirely honest, and I am under the impression that, even when read, his testimony will carry conviction that the witness is stating the entire truth as he understands it.

In no instance did he seek to color any statement, or to give any evidence which would favor him at the expense of truth. 10

A less truthful man, with more intelligence, would undoubtedly have testified to some statements by the wife, or to some understandings between them, which would lead to favorable action in his behalf.

This complainant, however, confined his testimony to a statement of what I believe to have been the truth of the situation.

I think that his sole purpose in transferring the land from his own name to his wife's was to show acquiescence in her purpose to keep the land free from further pledge by him to pay debts. 20

I mean by this that he, having once borrowed on the strength of the title to this property, and she, being angry that what they looked upon as their joint property should be thus incumbered, prevailed upon him to transfer the title to her that this might not occur again. 30

While it is shown that she paid off the \$150 mortgage which he had placed on the lot, it is also shown that the money to do so was derived from the husband's earnings, and that which is held concerning the ownership thereof is applica-

ble to this. Furthermore, there is no pretense that she paid the money as a consideration of the conveyance to her, or that she became mortgagee for the advance of this \$150 paid to the existing mortgagee.

10 The whole case shows that she was a masterful woman ; that she ruled both her husband and her son, and in her household and in the business carried on therein she was the master spirit, and in all their money transactions from the beginning she was the treasurer.

As has already been explained, this leads me to find that the moneys in her hands, which came from her husband, were not gifts, but were part of the joint hoard ; and likewise leads me to find that in transferring to her the title to the land his purpose was not to make a gift, but to place this also for their joint benefit with her, who, in all their transactions, was the leading
20 spirit, and the conservator of what they were able to gather together for their joint benefit.

I do not think that he had any comprehension, when he signed the deed to the stranger to effect the conveyance of this land to his wife, that in so doing he was giving the land to her, or was enabling her to deprive him of his rights therein ; but, on the contrary, I find, from the whole evidence, that his purpose was merely to deprive himself of the temptation or possibility of
30 borrowing money upon the strength of the title to this land standing in his name ; and that such purpose generated with her, and was by her imposed upon him ; and that each intended that the survivor should have the land.

Under such circumstances as I find to exist in

this case our courts have frequently declared that the deed should be set aside.

With respect to the prayer in the bill that the defendant Carl Roth shall be decreed to pay to the complainant the sum of \$3,674.41, which was the money found upon deposit in the name of the wife, and which was administered by the executor of the wife's will, my conclusions are as follows :

At the time of the wife's death, this money being on deposit in a bank, there was a chose in action under her control, which passed under her will to the executor. There was no res which may be followed by the husband, who claimed it, into the hands of the legatee who obtained it. 10

Whatever may be or may have been the rights of the complainant to the moneys upon deposit in the name of the wife, I do not see how he can, by this bill, or in a proceeding of this nature, proceed against this defendant. 20

If it be conceded that at the time of the wife's death this complainant was legally the owner of the funds which were deposited by the wife in her own name in the bank, it seems to me that the complainant must have proceeded against the bank to prevent its paying out the money to the wife's representatives, or against the wife's representatives to contest their right, as against him, to collect the deposit. But I do not see upon what theory the complainant can, in this proceeding, raise the contention with this defendant. 30

In a direct proceeding against the wife's representatives or against the bank the real issue

would be tried, and defenses which might be raised against the complainant's right to this chose in action could then be raised.

Upon this branch of the complainant's bill I find against him, and will so advise.

The authorities which, in my opinion, sustain me in the conclusions reached are as follows:

10 There can be no recovery herein upon the theory of an express trust. None is proven, and the lack of a writing manifesting the same is fatal.

This is too familiar and well settled to require citation.

20 The deed in this case, being upon an expressed consideration, and the uses being declared therein for the grantee, there can be no resulting trust in favor of the grantor. *Coffey v. Sullivan*, 63 N. J. Eq., 296, at page 303, 49 Atl., 520, at page 522 (Court of Errors, 1901). To the citation on page 303, 63 N. J. Eq., page 522, 49 Atl., add *Lister v. Lister*, 35 N. J. Eq., 49 (Runyon, Ch., 1862.)

The cases which hold that the presumption of a settlement upon a wife overcomes the presumption of a resulting trust in circumstances where the husband pays for property which is conveyed to the wife, but that this presumption in favor of the wife may be overcome by proof, do not apply.

30 This was a direct conveyance from the husband through an intermediary, and the evidence in any event is insufficient to show such a trust. *Duvale v. Duvale*, 56 N. J. Eq., 375, 39 Atl., 687, 40 Atl., 440 (Court of Errors, 1897), citing the prior cases.

The transaction, however, is one which falls within the principle of the cases which hold that a voluntary deed by way of gift, settlement, or provision, containing no provision for revocation or reversion, comprising substantially all of the donor's property, will be set aside if it be found to be improvident, and to have been made by one who did not have the benefit of proper advice and instruction, and did not fully and clearly understand and appreciate the consequence of his act. 10

The grantor in the case at bar was ignorant of our language. The deed conveyed all he had, and was absolute and unconditional, and contained no provision for revocation or reversion. He had no advice from any one, and certainly had no understanding, in the proper sense of that word (*White v. White*, 60 N. J. Eq., 104, at page 115, 45 Atl., 767, at page 771, *Pitney v. C.*, 1900), as to what the effect of the conveyance was; and certainly there was no intention on his part to absolutely lose his rights in the property. 20

Under such circumstances the deed cannot stand. *Anderson v. Elsworth*, 3 Gif. 154 - s. c., 7 Jur. N. S. 1047; *Beard v. Beard*, 3 Atk. 72; *Warlick v. White*, 86 N. C. 139, 41 Am. Rep. 453; *Story's Equity Juris.* § 1374; *Garnsey v. Mundy*, 25 N. J. Eq. 243 (*Runyon Ch.*, 1873) (deed of trust); *Mulock v. Mulock*, 31 N. J. Eq. 594, at page 602 (*Van Fleet, v. C.*, 1879) (absolute deed); *Van Houten v. Van Winkle*, 46 N. J. Eq. 380, at page 385, 20 Atl. 34, at page 36 (*McGill, Ch.*, 1890); *Martling v. Martling*, 47 N. J. Eq. 122, at page 132, 20 Atl. 41, at page 45 (*Pitney, v. C.*, 1880) (absolute deed); *Doughty* 30

v. Miller, 50 N. J. Eq. 529, at pages 533, 534, 25 Atl. 153, at pages 154, 155 (Van Fleet, V. C., 1892) (absolute deed—dicta); Hall v. Otterson, 55 N. J. Eq. 522, at page 531, 28 Atl. 907, at page 910 (Grey, V. C., 1894); White v. White, 60 N. J. Eq. 104, 45 Atl. 767 (Pitney, V. C., 1900) (absolute deed); Grant v. Baird, 61 N. J. Eq. 389, 49 Atl. 150 (Pitney, V. C., 1901); Thorp v. Smith, 63 N. J. Eq. 70, at page 92, 51 Atl. 437, at page 445 (Pitney, V. C., 1902); Coffey v. Sullivan, 63 N. J. Eq. 296, at page 302, 49 Atl. 520, at page 522 (Court of Errors, 1901) (absolute deed); Collins v. Collins, 63 N. J. Eq. 662, 52 Atl. 1115 (Stevens, V. C., 1902) (absolute deed).

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With respect to the moneys earned by the husband and turned over by him weekly to the wife, and from which the consideration for the real estate was paid, the question presented is a bald one. I so term it because I do not place my findings upon conversations or spoken explanations of intention, but the sole question is what inference should be drawn from certain facts, or rather, from a certain line of conduct as between a husband and wife circumstanced as were the parties in this suit.

30
There is probably no subject which has given rise to more litigation in the course of which such confusion exists arising from the contradictory opinions of different courts, and sometimes even of the same court. At the expense of some little space I shall express my view of the law.

At common law, during the existence of a marriage the husband had the legal control of all of the property without regard to ownership.

But even at common law "there was a latent

idea of community between husband and wife, which cannot be easily surppressed." Pollock & Maitland's History of English Law (2d ed.) vol. 2, p. 407, star page 405.

In the courts of equity there grew up a principle under which it was held that there might be a separate estate in the wife in property during coverture.

This principle, however, and its application to facts, did not change the law with respect to the relations between husband and wife in respect to their dealings with each other. 10

After this principle was established, as well as before, the husband remained in control of the property without respect to its derivation, excepting such property as was settled upon the wife for her sole and separate use.

Beginning in 1839, certain of the states of the United States passed laws for the better securing to married women of their property; the statute of New Jersey being passed in 1852. 20

Since there was no model after which each of the states patterned its legislation, there arose, and has since existed, great diversity of opinion concerning the construction of these acts.

Our courts have held that the act is to be strictly construed where the rights of the husband are concerned, upon the theory, I presume, that, since it is in derogation of the common-law rights of the husband, it will only be held to extend so far as its language requires, and will not be, by construction, stretched further. 30
Eckert v. Reuter, 33 N. J. Law, 266, at page 268 (Supreme Court, 1869), citing prior cases.

Our courts hold that the design of the statute

was not to disturb the relation as established at common law between the husband and wife, but was designed to enable the wife to receive and hold property so that it should not be subject to the control of nor liable for the debts of her husband. "It was not designed to confer upon her the power of acquiring her husband's property, but to protect her own." *Dilts v. Stevenson*, 17 N. J. Eq. 407, at page 413 (Green, Ch., 1864).

10 "The acts confers no power on the wife to take real or personal property directly by gift from her husband." Page 413.

We must approach the solution of this question, then, as it would have been approached at common law in a court of equity prior to the enactment of the married women's act, holding that the purpose of that act was to secure to the married woman her property free from the control and debts of her husband; but that in an inquiry with respect to the ownership of property once in the husband's ownership the presumptions of law existing prior to the act remain as theretofore. *Winter v. Walter*, 37 Pa. 155; *Parvin v. Capewell*, 45 Pa. 89; *McDermott's Appeal*, 106 Pa. 358, 51 Am. Rep. 526; *Laing v. Day*, 8 Ill. App. 631; *Burns v. Bangert*, 16 Mo., App. 22; *McFerran v. Kinney*, 22 Mo. App., 554.

20 It is too elemental to require citation that where the question of gift is being investigated the intention controls.

30 I also think that it is elemental that as between husband and wife the very nature of the relationship requires us to pay the slightest heed to the mere fact of possession. *Parvin v. Cape-*

well, *supra*; *Rodgers v. Campbell*, 17 Pa. Co. Ct. R. 72; *Burns v. Bangert*, *supra*.

In a case in our Court of Chancery, where the fair effect of all the testimony seems to me to be that the wife was in possession of money, which money was shown to have come partly from the income of her separate estate and partly from the savings of the husband, the court disregarded the evidence as to possession, and divided the moneys so found equally between the parties. *Bergen, Adm'r, v. Van Liew et al., Adm'rs*, 36 N. J. Eq. 637 (Court of Errors, 1883). 10

To determine, therefore, as between husband and wife, the ownership of money, we must first ascertain the source whence it came.

In this case it was the earnings of the husband, week by week handed to the wife.

Second, we must determine the circumstances under which the money was transferred from the possession of the husband to the possession of the wife. 20

At page 422, § 389, of *Schouler on Husband and Wife*, he says: "But the circumstances under which the husband's transfer is made are always material. Thus, a husband might have placed his earnings or property in his wife's hands for safe-keeping, and not as a gift to her, in which case title to the fund should be respected accordingly as between them; or it might be regarded, perhaps, as bestowed for their joint benefit, or that of the family, upon due proof. *Marshall v. Cruttwell*, L. R. 20 Eq. 328; *Adlard v. Adlard*, 65 Ill. 212; *Edgerly v. Edgerly*, 112 Mass. 175; *Seibold v. Christman*, 7 Mo. App. 254." 30

And further, on page 337, § 293, he says : "The wife was formerly supposed also to gain a title to savings out of her housekeeping allowance. Paul Neal's Case, Prec. in Ch., 44,297. But see Tyrrell's Case, Freem. 204."

10 "So, where the husband allowed the wife to make a profit of butter, eggs, poultry, and other farm produce, which allowance he called her 'pin money,' it was held that she acquired a separate ownership therein. Slanning v. Style, 3 P. Williams, 337."

20 "But these cases rest upon questionable authority (see MacQ. Hus. & Wife, 320); and more recently it has been decided that where the wife of a farmer, with his knowledge and sanction, deposited the produce of the surplus butter, eggs, and poultry with a firm in her own name, and he called it 'her money,' and on his deathbed gave his executor directions to remove the money, and do the best he could with it for his wife, such evidence was insufficient to establish a gift between them, and that the husband had made neither the firm nor himself trustee for his wife. Mews v. Mews, 15 Beav. 529. See McLean v. Longlands, 5 Ves. 78, cited herein with approval. And see Rider v. Hulse, 33 Barb. 264, for a similar American decision."

30 The later English cases are in favor of the husband's title. Hayes v. Kindersley, 1 Smale & Giffards, 165 (1854) (Stuart, V. C.); Barrack v. McCullough, 3 Kay & J. 110 (1856) (Wood, V. C.); Lloyd v. Pughe, 42 L. J. Ch. (N. S.) 282 (1872); Marshall v. Cruttwell, L. R. 20 Eq. 328 (1875) (Jessel, M. R.). As are the following cases in the courts of this country. In re Estate

of Gracie, 24 Pittsb. Leg. J. 9; Rodgers v. Campbell, 17 Pa. Co. Ct. R. 72; McDermott's Appeal, 106 Pa. 358, 51 Am. Rep. 526; Aaronson v. McCauley (City Ct. N. Y.) 19 N. Y. Supp. 690; Adlard v. Adlard, 65 Ill. 212.

Since we are searching for intention, and are applying the presumptions of the law in a case between husband and wife, and, as intimated, have reached the conclusion that mere possession as between them is but slight, if any, evidence of ownership, I am inclined to the opinion that where a wife deposits in a bank in her own name money which at the time of its deposit would, as between them, be determined by the court to belong to him, the mere fact of the deposit is of little, if any, weight in determining the question of ownership.

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I think it is clear that in the receipt of these weekly sums from the husband she was his agent for the purpose of disbursing the same, and in that view what remained was his, in her hands as his agent. See cases last cited.

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The mere fact that she, for safe keeping, placed these funds in a bank in her own name, to my mind throws no light whatever upon the question of intention as between the husband and wife.

I do not wish to be understood as deciding that in a case where there is other evidence of intention or other circumstances to be considered, the fact that the wife has, with her husband's knowledge, deposited money in a bank in her own name, may not be of great weight; but I do mean that in a case presenting the bald question I am here dealing with the conclusion

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that the money remaining in the hands of the wife each week after paying all of the expenses of the family was the husband's leads us still to consider it his, notwithstanding that she, without his direction, or, as is shown in this case, without ever telling him, deposits it in a bank in her own name.

10 The following cases discuss and illustrate the principle: *Lloyd v. Pughe*, 42 L. J. Chan. 282, L. R. 8 Chan. 88, 28 L. T. 250, 21 W. R. 346; *Marshall v. Cruttwell*, 44 L. J. Chan. 504, L. R. 20 Eq. 328; *Mews v. Mews*, 15 Beav. 529; *In re Gracie's Estate*, 24 Pittsb. Leg. J. 9; *Rodgers v. Campbell*, 17 Pa. Co. Ct. R. 72; *Appeal of McDermott*, 106 Pa. 258, 51 Am. Rep. 526.

20 If objection be taken that the theory upon which the bill was framed and that upon which relief is granted vary, and it be found that such is the case, the court will still sustain the bill and grant the relief, if the relief granted be within the scope of the bill, and the evidence justifies it; even if it be found necessary to amend the bill and prayer. *Aller v. Crouter* (N. J. Ch.) 54 Atl. 426, at page 428 (*Magie*, Chan., 1903); *Archer v. American Water Works Co.*, 50 N. J. Eq. 33, at page 48, 24 Atl. 508, at page 513 (*McGill*, Ch., 1892).

30 I have determined to exercise the discretion vested in the court by not allowing either party costs as against the other. The complainant succeeds as to part of his bill and failed as to part; and, furthermore, the defendant merely sought to obtain by a suit at law that which, on the face of the record, was his, and which he therefore was entitled to proceed to obtain.

Under these circumstances I think it just that the defendant should not be visited with costs.

I will advise a decree that the injunction be made perpetual against the ejectment suit, and that the deeds from the complainant to Herman Sontag and from Herman Sontag to Louisa Fretz be declared and decreed to be void, and that the defendants be directed to convey the title to the complainant.

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IN CHANCERY OF NEW JERSEY.

	Between	}	<i>On Bill, &c.</i>
	HEINRICH FRETZ, <i>Petitioner and Appellant,</i>		
	and		
10	CARL ROTH AND CHRISTINA ROTH, his wife,	}	
	<i>Defendant and Appellee.</i>		

Final Decree.

This cause coming on regularly to be heard in the presence of William M. Rysdyk, Esq., of counsel with complainant, and Frederick Beggs, Esq., of counsel with defendants, Carl Roth and Christina Roth, his wife ;

And the pleadings having been read, and proofs having been taken by each party, and arguments of the respective counsel having been heard, and the Court having duly considered said pleadings, proofs and arguments ;

And it appearing to the court that the complainant is entitled to the relief sought and prayed for by him in his bill of complaint, with respect to the suit at law sought to be enjoined, and to the conveyance by the defendants to him of the real estate mentioned and described in said bill, but is not entitled to relief with respect to the moneys claimed from the defendant, Carl Roth :

It is, on this thirteenth day of March, A. D. nineteen hundred and five, by His Honor, William J. Magie, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the injunction heretofore granted in this cause be made perpetual against the ejectment suit instituted in the Circuit Court of the county of Passaic, wherein Carl Roth is plaintiff and Heinrich Fretz is defendant, and that the deeds from the complainant and Louisa Fretz, his wife, to Herman Sontag, Jr., and from Herman Sontag, Jr., to Louisa Fretz, bearing date April 15th, 1891, and recorded in the clerk's office of the county of Passaic, April 20th, 1891, in book I-10, pages 452 and 453, respectively, be declared and decreed to be void.

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And it is further ordered, adjudged and decreed, that the defendants, Carl Roth and Christina Roth, his wife, shall within ten days from the service of a copy of this decree upon them, convey to the complainant, Heinrich Fretz, by a good and sufficient deed of conveyance, the title to the premises described in the bill of complaint filed in this cause.

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Respectfully advised,

LINDLEY M. GARRISON,

V. C.

I consent to the above decree.

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FREDERICK BEGGS,

Solicitor of Defendants.

March 10, 1905.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It is noted that this is essential for the proper management of the organization's finances and for ensuring transparency in all operations.

In the second section, the author outlines the various methods used to collect and analyze data. This includes both qualitative and quantitative approaches, as well as the use of modern statistical techniques to interpret the results.

The third part of the document focuses on the practical application of these findings. It provides detailed recommendations for how the information gathered can be used to improve decision-making and to address the challenges faced by the organization.

Finally, the author concludes by emphasizing the need for ongoing research and evaluation. The field is constantly evolving, and it is crucial to stay up-to-date with the latest developments and to adapt strategies accordingly.

