

N. H. Court of Errors and Appeals.

In the Last Resort in all Causes, &c.

BETWEEN

CORNELIUS VREELAND,
EXECUTOR, &C., OF SARAH C. RYNO,
DECEASED,

Appellant,

—AND—

ADDIS E. RYNO,
ADMINISTRATOR, &C., OF SARAH C.
RYNO, DECEASED,

Appellee.

*On Appeal
from
Chancery.*

BRIEF OF APPELLANT.

FIRST.

This case depends upon the construction which shall be given by the Court to the Act of April 12, 1864, (Nix. Dig., p. 549,) viz.: "Any will or testament by any married female above the age of twenty-one years hereafter made of any real or personal property, shall be held

and taken to be as valid and effectual in law as if she were at the time of the making of such will or testament a *feme sole* and unmarried; *provided*, always, that nothing herein contained shall be so construed as to authorize any married female to dispose of by will or testament any interest to which her husband is now or would be at her death entitled by law in her real or personal property, but such interest shall remain in and survive to the husband in the same manner as if such will had not been made."

The fund in dispute is the share of the decedent, as one of several residuary legatees, in the residuum of an estate unsettled at her death. It is governed by the same rules that apply to a wife's *choses in action* not reduced to possession in her lifetime (2 Kent's Com. p. 135, and cases cited).

The inquiry then is, what interest had this Appellee in his wife's *choses in action* not reduced to possession, which at her death remained in and survived to him, and was therefore saved to him by the proviso of the Act? The Appellant claims that he had no interest whatever.

1. The only right at common law of the husband as to the wife's *choses in action*, was a right to acquire an interest by reducing them to possession.

Exec. of Henry ads Dille, 1 Dutch, 302.

If the wife died, the husband not having reduced them into possession during her life, then he would have had no interest which the proviso to the Act of 1864 would have protected. The wife could have disposed of the *choses* by will, as if she were a *feme sole* under that Act.

2. But a husband's right to acquire an interest in his wife's *choses in action*, by reducing them into possession, is destroyed by the "Married Women's Act" of 1852. A husband has now no such right.

Vreeland *v.* Vreeland's Exec., 1 C. E. Gr., 512.
Exec. of Henry *ads* Dilley, 1 Dutch., 302.

The proviso to the Act of 1864 saves only such interest as may remain in and survive to the husband. No interest can remain in and survive to him unless it existed before, i. e., before the wife's death. It must remain after, outlive, her life; not come into existence when her life ends. If, then, the husband had no right to acquire ownership over this legacy by reducing it into possession during her life, no such right can be said to be remaining in and surviving to him at her death.

3. Even if the interest saved by the proviso of the Act of 1864 should be held to include an interest arising *after* or *by reason of* the wife's death, the case is not altered, for a husband *as such* has not and never had any interest in or right to his deceased wife's *choses in action* not reduced to possession in her lifetime.

(a) There is no reason why he should have an interest in them. The law gave him her personal property reduced to possession in her lifetime, because it compelled him to pay her debts, (*Earl of Thomand v. Earl of Suffolk*, 1 P. Wms., 469,) but his liability to pay her debts ceased at her death.

2 Kent's Com., 143.

(b) The fact that if the wife survive her husband the unreduced *choses in action* survive to her and do not pass to his representatives (2 Bl. Com., 434, 2 Kent's Com., 135) is inconsistent with any theory of an inherent right therein in him as husband.

(c) The fact that he has always been obliged to administer in order to recover them, and has

always recovered them only as administrator, shows that he has no right therein *as husband*.

(d) When he does recover them as administrator they are liable as assets in his hands for the wife's debts *dum sola* (2 Kent's Com., 135,) whereas neither he personally, nor the property which came to his possession in her lifetime is so liable after her death (2 Kent's Com., 143).

(e) The authorities all agree that he has no claim on them *as husband*, but only as administrator, having, however, the exclusive right of administration.

2 Bl. Com., 435.

2 Kent's Com., 135.

Wms. on Exec., 357, *et seq.*

Bishop on Married Women, p. 172.

Barnes *v.* Underwood, 47 N. Y., 351.

Exec. of Henry ads Dilley, 1 Dutch., 302, 305.

4. The right of a husband to administer on his deceased wife's estate rests on the statute of 31 Edw., iii chap., 2, which directed administration to be granted to the "next and most lawful friend" of the person dying intestate, (Humphrey *v.* Buller, 1 Atkyns, 458; Sir George Sand's case, 3 Salkeld, 22,) confirmed by the statute of 29 Car., ii, chap. 3, section 25, which was passed to settle doubts raised by intervening statutes, and which is in effect the 15th section of our Act concerning executors, &c., (Nix. Dig., 305,) and the only statute we have on the subject.

True there is some conflict of authority on this point, some cases holding that such administration is *jure mariti* at common law; but that view is not in accord with the history of administration. At common law the King as *parens patriae* took

the goods of *all* intestates, sometimes conferring the right to grant administration as a franchise, on lords of manors; afterwards he invested the prelates with the exclusive right to administer, and the subsequent history of the subject is found in the various statutes directing and restricting the ordinaries, who still retain jurisdiction.

2 Bl. Com., 404.

2 Kent's Com., 408.

Wms. on Exec., 350.

5. However the right of a husband to so administer may be derived, his right to retain the surplus to his own use is not *jure mariti*, as the Chancellor holds in his opinion in this case, but rests solely on the fact that the statutes of distributions do not extend to him, and he is left just where *all* administrators stood at common law (2 Bl. Com., 515; Wms. on Exec., 778-782; Barnes v. Underwood, 47 N. Y., 351, and cases cited). In this last case the subject is exhaustively discussed by Chief Justice Church. On page 355, he says: "Instead of having the right to administer because he was entitled to the estate, he was entitled to the estate because he had a right to administer, no statute having deprived him of the residue of the estate, which all administrators enjoyed before the statute of distributions."

6. A right of administration is not an *interest in real or personal property*, which is all that is secured to a husband by the proviso of the act of 1864. No interest attaches until letters of administration are granted, and then it is not strictly an interest in the *property*.

7. A husband's right to administer on his deceased wife's estate is only in case she die *intestate* (Sect. 15 of the Act concerning executors, &c., Nix. Dig., p. 305).

SECOND.

A husband's right to administer on his deceased wife's estate may be forfeited by desertion or misconduct.

If the husband have deserted his wife, administration of her effects will be granted to her next of kin, limited to what she had acquired after the desertion.

In re Wurman, 1 Swabey *v.* Tristram, 513.

If husband have departed from all interest in his wife's fortune, he shall not have administration.

Rex *v.* Bettesworth, 12 G., 2 Str. 1111.

Rex *v.* Bettesworth, 13 G., 2 Str. 1118.

In this case the husband, as the testimony shows, deserted his wife and lived in adultery with a mistress, and although he contributed to her support, yet he did so only after compulsory proceedings under the law were taken against him.

CHAPTER

A husband's duty to his wife is to provide for her support and to protect her from all harm.

If the husband neglects his wife, she may be entitled to a divorce.

The husband is bound to support his wife and children.

The wife is bound to obey her husband in all things that do not contravene the law.

The husband is bound to provide for the support of his wife and children.

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COURT OF ERRORS AND APPEALS.

IN THE LAST RESORT IN ALL CAUSES, &C.

Between

*Cornelius Vreeland, Executor,
&c., of Sarah C. Ryno, deceased,
Appellant,*

and

*Addis E. Ryno, Administra-
tor, &c., of Sarah C. Ryno, de-
ceased, Appellee.*

On Appeal

from

Chancery.

Bill of Complaint.

[Filed November 18, 1873.]

*To His Honor, Theodore Runyon, Chancellor of the State of
New Jersey:*

Humbly complaining, show unto your Honor, your orators, Hartman Vreeland, Cornelius D. Van Wagenen and Nicholas H. Joralemon, that on or about the first day of February, eighteen hundred and sixty-eight, Hartman Vreeland, of Bayonne, in the county of Hudson, in this state, died, leaving his last will and testament duly executed, and which was admitted to pro- 10
bate in said county, on the seventeenth day of the same month and year; in and by which the testator appointed your orators

his executors, to whom letters testamentary were duly issued on said day last mentioned, and who have taken upon themselves the burden of his estate under the same.

That in and by the said will, the testator directed, amongst other things, that after the payment of certain legacies, and after certain devises therein set forth, the rest, residue and remainder of his estate, both real and personal, should be sold by his executors, and the proceeds thereof, after paying the costs and charges incident thereto, should be divided and distributed
10 among all his nephews and nieces in equal portions, share and share alike, as by reference to the said will, when produced and proved, will fully appear.

That Sarah C. Ryno, wife of Addis E. Ryno, of Jersey City, was one of the testator's nieces, living at his decease; that her marriage to said Addis E. Ryno, took place in the year eighteen hundred and sixty; that they lived together till about the year eighteen hundred and sixty-five, when they separated; that the said Sarah C. Ryno died on or about the first day of
20 May, eighteen hundred and sixty-nine, leaving a last will and testament, dated the thirtieth day of December, eighteen hundred and sixty-eight, leaving her said husband her surviving.

That the said will was admitted to probate on the twenty-ninth day of May, eighteen hundred and sixty-nine, in the said county of Hudson; that, thereby, the testatrix appointed Cornelius Vreeland her executor, and did, amongst other things, direct as follows: "I give and bequeath unto my mother, Lucinda Vreeland, during her lifetime, all my goods and chattels of every kind and description, and after her decease, to my two
30 sisters, Jane and Elizabeth; and in case of the death of either of my said sisters Jane and Elizabeth, then I give the same to the survivor of them; also, in case of the death of my said mother, Lucinda, before my decease, then I give the same (all my personal property,) to my said sisters, share and share alike."

That, on or about the thirty-first day of May, eighteen hundred and sixty-nine, letters testamentary were issued to the said Cornelius Vreeland, who took upon himself the burden of said estate.

That, on the sixth day of June, eighteen hundred and seventy-one, letters of administration upon the estate of said Sarah C.

Ryno, deceased, were issued by the surrogate of said county, to the said Addis E. Ryno.

That your orators are about to settle said estate of Hartman Vreeland, deceased, and have paid certain sums on account of said residuary bequest, to sundry of the nephews and nieces of their said testator, but have not paid anything to the said Sarah C. Ryno, or to either her executor or administrator.

That the said Cornelius Vreeland, her executor, claims that he is entitled, as such executor, to receive from your orators, the share of said bequest to which the said Sarah C. Ryno was entitled; and the said Addis E. Ryno claims that he is entitled to receive the same as administrator, or as husband of said Sarah C. Ryno, as aforesaid; that they have both of them, demanded from your orators, payment of the same, and have threatened legal proceedings against your orators for the recovery thereof.

That your orators have no interest in the said matter in controversy, but are advised that they cannot safely proceed therein without the direction of this court.

To the end, therefore, that the several defendants hereinafter named, may answer the premises and be decreed to interplead together and state their several claims upon your orators in their said duty as executors; and that it may be ascertained by a decree of this court, whether the said Cornelius Vreeland, as executor of said Sarah C. Ryno, or the said Addis E. Ryno, as her administrator or husband, is entitled to have and receive her share of the aforesaid residuary bequest in the said will of Hartman Vreeland, deceased; and that your orators may have such other relief as the case may require.

May it please your Honor to grant unto your orators, the state's writ of subpoena, directed to the said Cornelius Vreeland, executor of Sarah C. Ryno, deceased, and Addis E. Ryno, administrator of Sarah C. Ryno, deceased, and in his own right, commanding them to appear, on a certain day, and under a certain penalty therein to be expressed, before your Honor in this honorable court, then and there to answer the premises and to stand to, abide and perform such decree therein, as to your Honor shall seem meet and agreeable to equity.

WASHINGTON B. WILLIAMS,

Sol. and of counsel for complainants. 40

Answer of C. Vreeland.

[Filed January 3, 1874.]

The answer of Cornelius Vreeland, executor of the last will and testament of Sarah C. Ryno, deceased, to the bill of complaint of the complainants herein.

This defendant, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the said bill of complaint contained, for answer thereto or unto such
10 parts as this defendant is advised it is material for him to make answer unto, he answers and says, that he admits the allegations of said bill; and he further avers that Addis E. Ryno, the husband of said Sarah C. Ryno, in or about the month of April, in the year eighteen hundred and sixty-seven, abandoned and deserted his said wife, and wilfully and obstinately continued such abandonment and desertion up to the time of her death; that he did not even attend her funeral, and this defendant is informed and believes, and therefore avers, that after the said
20 Addis E. Ryno left his wife as aforesaid, and especially during the months of April, May, June and July, A. D. 1867, he lived in adultery with a woman whose name is unknown to this defendant, in Monmouth street, Jersey City.

This defendant further avers, that no part of the residuary legacy bequeathed by the said will of Hartman Vreeland, deceased, was ever paid to the said Sarah C. Ryno, in her lifetime, nor did the same become due in her lifetime, nor was its amount ascertained even until long after her death, and this defendant insists before this honorable court that the said
30 Addis E. Ryno never acquired or had, nor has he now any interest in, or right or claim to the said legacy, or any part thereof.

And this defendant further answering insists, that the said so called letters of administration, said to have been issued by the surrogate of Hudson county to the said Addis E. Ryno, are

void, and should be by this honorable court declared to be of no effect, both because the said surrogate having, at the time of issuing such letters, already granted the letters testamentary to this defendant, had no power to grant such letters of administration, and because the said Addis E. Ryno had not only been debarred of any right which he might otherwise have had to such letters, by the will of said Sarah, but had also forfeited all right to such administration by his abandonment and desertion of her, and his adultery as aforesaid.

And this defendant further answering says, that since the death of said Sarah C. Ryno, this defendant, as her executor, has paid sundry debts and funeral expenses of said Sarah C. Ryno, amounting to several hundred dollars, and that he has relied, and does still rely, on the share of the residuum of said estate of said Hartman Vreeland,* bequeathed to said Sarah C. Ryno, to reimburse himself for the debts so paid by him as her executor. 10

All which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays that by the decree of this honorable court he may be adjudged to be entitled to said share of said estate, as executor of said Sarah C. Ryno, deceased, notwithstanding any claim of the said Addis E. Ryno, to the end that this defendant may reimburse himself out of the same for any debts so paid by him as aforesaid, and may dispose of the remainder of the same according to his duty as executor aforesaid, and that the said Addis E. Ryno may be adjudged to have no estate or interest in or right to the same, or any part thereof, either as administrator or husband, or otherwise, and that this defendant may have his reasonable costs and charges in this behalf sustained. 20 30

DIXON & COLLINS, *Solicitors.*

JONATHAN DIXON,

Of counsel with said Defts.

State of New Jersey, county of Hudson, ss.—Cornelius Vreeland being duly sworn, on his oath says—that the matters and things set forth in the foregoing answer, so far as they relate to his own acts, are true, and so far as they relate to the acts of others, he believes them to be true.

CORNELIUS H. VREELAND.

Subscribed and sworn to, this January 3d, A. D. 1874, before me.

JAMES D. MANNING, M. C.

Answer of Addis E. Ryno.

[Filed January 15, 1874.]

The answer of Addis E. Ryno, in his own right and as the administrator of Sarah C. Ryno, deceased, one of the defendants to the bill of complaint of Hartman Vreeland, Cornelius D. Van Wagenen, and Nicholas H. Jaroleman, executors of Hartman Vreeland, deceased, complainants.

10 This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereto or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says—that he admits that on or about the first day of February, in the year A. D. eighteen hundred and sixty-eight, Hartman Vreeland, of Bayonne, in the county of Hudson and state of New Jersey, died, leaving his last will and testament duly executed, in and by which the said Hartman Vreeland, deceased, appointed the said Hartman Vreeland, Cornelius D. Van Wagenen, and Nicholas H. Jaroleman, the complainants in this cause, his executors; that the said last will and testament of the said Hartman Vreeland was duly probated, and letters testamentary granted to the said complainants in due form of law, who have taken upon themselves the burden of the administration of the estate of the said Hartman Vreeland, deceased, as in their said bill alleged.

30 And this defendant further admits, that the said last will and testament of Hartman Vreeland, deceased, directed that, after the payment of certain legacies and costs, and after certain

devises therein set forth, the rest and residue and remainder of his estate, both real and personal, should be distributed amongst all his nephews and nieces alike, as the complainants have set forth.

And this defendant, further answering, admits that in the year A. D. eighteen hundred and sixty, he married Sarah C. Vreeland, one of the nieces of the said Hartman Vreeland, deceased; that he and his said wife lived together until the year A. D. eighteen hundred and sixty-five, when they mutually separated; that the said Sarah C. Ryno, this defendant's wife, departed this life on or about the first day of May, A. D. eighteen hundred and sixty-nine, leaving a last will and testament, dated the thirtieth day of December, A. D. eighteen hundred and sixty-eight, and leaving her husband, this defendant, her surviving; but said will was made without the knowledge or consent of this defendant. 10

And this defendant, further answering, admits that the will of his said deceased wife, Sarah C. Ryno, was admitted to probate on or about the twenty-ninth day of May, A. D. eighteen hundred and sixty-nine; that in and by said will, Cornelius Vreeland was appointed her executor, and that the said Sarah C. Ryno did, in her said last will and testament, among other things, direct as follows: "I give and bequeath unto my mother, Lucinda Vreeland, during her lifetime, all my goods and chattels of every kind and description; and after her decease, to my two sisters, Jane and Elizabeth. And in case of the death of either of my said sisters, Jane and Elizabeth, then I give the same to the survivor of them. Also, in case of the death of my said mother, Lucinda, before my decease, then I give the same (all my personal property) to my said sisters, share and share alike." That letters testamentary were granted to the said Cornelius Vreeland on or about the thirty-first day of May, A. D. eighteen hundred and sixty-nine, as is set out in complainant's said bill; but this defendant says that said letters testamentary were granted without due notice to him and without his knowledge. 20 30

And this defendant, further answering, shows that on the sixth day of June, A. D. eighteen hundred and seventy-one, the surrogate of the county of Hudson granted letters of administration upon the estate of the said Sarah C. Ryno, deceased, to this defendant, Addis E. Ryno, and which letters of admin- 40

istration this defendant is ready to produce when and where this honorable court may direct.

And this defendant further answering shows, that the said last will and testament of the said Sarah C. Ryno, deceased, was made without the knowledge and consent of this defendant; that the said will was admitted to probate without notice to this defendant, and that this defendant had no notice or knowledge of the existence of the said last will and testament of his said deceased wife, nor that letters testamentary had been granted to the said Cornelius Vreeland, until after this defendant had himself taken out letters of administration upon her estate.

And this defendant admits, that no portion of the legacy bequeathed to the said Sarah C. Ryno, by her uncle, Hartman Vreeland, deceased, was ever paid to her in her lifetime, nor to this defendant since her death, and he believes that none has ever been paid to the said Cornelius Vreeland, the executor named in her said will.

And this defendant further answering says, that the portion of the estate of the said Hartman Vreeland, deceased, bequeathed to the said Sarah C. Ryno, as one of his nieces, still remains in the hands of the executors of the said Hartman Vreeland, deceased, the complainants in this cause; and this defendant charges and insists, that he is entitled, as husband and administrator of his said deceased wife, Sarah C. Ryno, to the moneys, legacy, and estate bequeathed to the said Sarah C. Ryno, as aforesaid, by the said Hartman Vreeland, deceased, by his last will and testament; and that the will of the said Sarah C. Ryno, deceased, is void as against this defendant, and that the letters testamentary granted to the said Cornelius Vreeland, under said will, are void, and gives no authority or power to the said Cornelius Vreeland, as executor, or otherwise, to receive, or in any manner control the said legacy or estate of the said Sarah C. Ryno, deceased.

All which matters and things this defendant is ready to aver and maintain and prove, as this honorable court shall direct, and humbly prays that a decree may be made ordering the payment of the said legacy bequeathed by the said Hartman Vreeland, deceased, to the said Sarah C. Ryno, to this defendant, Addis E. Ryno, as the husband and administrator of his said deceased wife; that the letters testamentary granted to the

said Cornelius Vreeland under the will of said Sarah C. Ryno, deceased, be revoked and set aside; or, if the same be not revoked, that then the said Cornelius Vreeland, executor of the said Sarah C. Ryno, deceased, shall be decreed to receive the said legacy as the trustee, and in trust for this defendant, and that, as such trustee, he be decreed to pay over the same to this defendant, with his costs and charges in this behalf sustained.

JOHN A. BLAIR,

Sol. and of counsel with Addis E. Ryno, defendant.

New Jersey, ss.—Addis E. Ryno, the above named defendant, being duly sworn, on his oath saith—that the matters and things set forth in the foregoing answer, so far as they relate to his own acts and doings, are true; and, so far as relates to the acts and doings of others, he believes them to be true.

A. E. RYNO.

Sworn to and subscribed before me, this 13th day of January, A. D. 1874.

HENRY TRAPHAGEN, M. C.

Decree and Reference.

[Filed May 5, 1874.]

It appearing to the court, on opening this cause by Wash- 20
ton B. Williams, esq., of counsel for the complainants, that they have filed their bill herein in the nature of a bill of interpleader, setting up that the said Sarah C. Ryno was entitled as a residuary legatee of Hartman Vreeland, deceased, and that the defendants set up conflicting claims to receive such bequest from the complainants, and praying that the defendants may be required to interplead and state their several claims, to the end that it may be determined by this court which of them is entitled, and the defendants having answered the said bill, admitting the allegations thereof, and setting up, as is alleged, some new 30

matter, and consent being given to the making of this decree without setting the cause down for hearing—

It is, on this fifth day of May, in the year eighteen hundred and seventy-four, ordered, adjudged, and decreed, by the Chancellor, that the complainants are entitled to the relief prayed, and that it be referred to Thomas W. James, esq., one of the masters of this court, to ascertain and report which of the defendants is entitled to the said residuary legacy, to the end that such final decree may be made thereon as shall be equitable,
 10 and that either defendant may carry the cause before the said master, and bring in the report, and that the complainants are entitled to their costs of suit up to and inclusive of this decree to be taxed, and may retain the same out of said residuary legacy, and further directions are reserved.

THEODORE RUNYON, C.

We consent to the making of the above decree.

JOHN A. BLAIR,

Sol. for Addis E. Ryno, Adm. of Sarah C. Ryno, dec'd.

DIXON & COLLINS,

20 *Sols. for Cornelius Vreeland, Ex'r, &c., of Sarah C. Ryno, dec'd.*

Master's Report.

[Filed October 5, 1874.]

In pursuance of an order made in the above entitled cause, and bearing date the fifth day of May, in the year eighteen hundred and seventy-four, whereby it was ordered that it be referred to the undersigned, one of the masters of this court, to ascertain and report which of the defendants is entitled to the residuary legacy therein above mentioned, to the end that such final decree may be made thereon as shall be equitable—I,
 30 Thomas W. James, the master therein named, do hereby respectfully report to his Honor, the Chancellor, that I have been attended by the solicitors and counsel of the said defendant, respectively, and in their presence have taken the depositions

hereunto annexed and returned, and have seen, inspected and marked the five several *Exhibits*, numbered from 1 to 5 respectively, in this cause, and have heard the arguments of counsel, and considered the same; and do find and report, that it appears from the pleadings and proofs in this case that, on or about the first day of February, 1868, Hartman Vreeland, late of the county of Hudson, died, leaving his last will and testament duly executed, and which was admitted to probate in the office of the surrogate of said county, on the 17th day of the same month and year—in and by which the testator appointed 20 the complainants his executors thereof, and to whom letters testamentary were duly issued on said last mentioned day, and who have taken upon themselves the burden of said estate under the same; that in and by his said last will, the testator directed, amongst other things that, after the payment of certain legacies, and after certain devises therein set forth, the rest, residue and remainder of his estate, both real and personal, should be sold by his executors, and the proceeds thereof, after paying the costs and charges incident thereto, should be divided and distributed among all his nephews and nieces, in equal portions, share and 20 share alike; that Sarah C. Ryno, the wife of Addis E. Ryno, was one of the testator's nieces, and living at the time of his decease, and was married to the said Addis E. Ryno in the year 1860; and that she died on or about the first day of May, 1869, without receiving any part of her said legacy, and leaving a last will and testament, dated the 30th day of December, 1868, and leaving her said husband her surviving; that her said will was admitted to probate on the 29th day of May, 1869, in the surrogate's office of Hudson county, and by which 30 will she appointed the defendant, Cornelius Vreeland, her executor thereof, and did therein, amongst other things, bequeath as follows, viz.: "I give and bequeath unto my mother, Lucinda Vreeland, during her lifetime, all my goods and chattels of every kind and description, and after her decease, to my two sisters, Jane and Elizabeth, and in case of the death of either of my said sisters Jane and Elizabeth, then I give the same to the survivor of them; also, in case of the death of my mother Lucinda before my decease, then I give the same (all my personal property) to my said sisters, share and share alike;" that, on or about the 31st day of May, 1869, letters testamentary 40

were issued to the said Cornelius Vreeland, who took upon himself the burden of said estate.

That, on the 6th day of June, 1871, letters of administration upon the estate of the said Sarah C. Ryno, deceased, were also issued by the surrogate of Hudson county to the said defendant, Addis E. Ryno, who claims the right to administer upon the same.

That the said Cornelius Vreeland, as executor, and the said Addis E. Ryno as administrator of the said Sarah C. Ryno, 10 both claim of the complainants herein, who are the executors of said Hartman Vreeland, deceased, the distributive share in his estate, which he devised and bequeathed to the said Sarah C. Ryno as one of his nieces; and thereupon the said executors of Hartman Vreeland filed their bill of interpleader in this case against the said defendants, to obtain the decree of this court as to which of the said defendants the said executors of Hartman Vreeland should pay the said distributive share.

Being required by the said order of reference to report which of the defendants is entitled to the said residuary legacy, I do 20 hereby respectfully report to his Honor, the Chancellor, that, in my opinion, the said residuary legacy (or distributive share) should be paid to the said Cornelius Vreeland, executor of the said Sarah C. Ryno.

Respectfully submitted this third day of October, A. D. eighteen hundred and seventy-four.

THOS. W. JAMES, *Master*.

Depositions.

30 Depositions of witnesses, &c., taken before me, Thomas W. James, the master in chancery of New Jersey, to whom the above matter was referred, at my office in Jersey City, commencing this first day of September, A. D. eighteen hundred and seventy-four, in the presence of Gilbert Collins, esquire, of counsel for Cornelius Vreeland, executor of Sarah C. Ryno deceased; and of John A. Blair, esquire, of counsel with

Addis E. Ryno, administrator of Sarah C. Ryno, deceased, and of the said parties in person.

THOS. W. JAMES, *M. C.*

September 1st, 1874.

The counsel for Cornelius Vreeland, executor of Sarah C. Ryno, deceased, submitted in evidence a copy of her last will and testament, dated the thirtieth day of December, eighteen hundred and sixty-eight, duly certified by the surrogate of Hudson county, and marked *Exhibit No. 7* in this matter.

Letters Testamentary annexed
Cornelius Vreeland, being duly sworn according to law, on his 10
oath saith—

I reside at Bayonne, in Hudson county; I had a sister named Sarah C. Vreeland, who married Addis E. Ryno, about the year 1860; directly after their marriage they lived at my house for a while—a little while; they then kept house at Bergen for a while, and then came back to Bayonne and boarded with Mrs. Hichman, and after a while she and her husband lived at my father's house, in Bayonne; my father's name was Henry Vreeland, a brother of Hartman Vreeland, deceased.

In the year 1866 they ceased living together; Addis E. 20
Ryno, the husband, left my father's house and went away from his wife; she still continued to live there; he never came back to her so far as I know, except once; he came to the house and took away with him a picture of the late Sheriff Merseles, of Hudson county; she died, I think, in the month of March, 1869, at my father's house, in Bayonne, and was buried from that house; I attended her funeral, but her husband, Ryno, did not; I did not see him there, and if he had been there, I would have seen him; his mother and brother were at the funeral; notice of the funeral was published in a New York news- 30
paper; the executors of Hartman Vreeland were not ready to pay over any part of the residuary estate, until after the death of my sister, Sarah C. Ryno; the amount of the residuary estate is not yet ascertained; I am the executor named in my sister's will (*Exhibit No. 1*); I proved that will before the surrogate of Hudson county, and took upon myself the duties of that office; I am the acting executor of her will; I have paid

her funeral expenses and the expenses of proving her will ; the funeral expenses consisted of the three bills now introduced by me in evidence, for \$7 and \$79 and \$212.70 respectively, marked *Exhibits No. 2, No. 3, No. 4.*

Witness being cross-examined on the part of Addis E. Ryno, further saith—

I 1865 I lived home, at my father's house ; my business is oystering and fishing.

10 I cannot tell exactly when Mr. Ryno and my sister separated ; I do not know the cause of their separation, except from hearsay ; she lived at my father's house at the time of her death ; she had continued to live there all the time, from the separation until her death.

I do not know where he lived after the separation, only by hearsay ; I do not know that his wife ever went to see him after the separation ; the only time that he ever came back to my father's house, that I know of, was the time he came for the sheriff's picture ; my father died in my sister's lifetime ; he has been
20 dead now about twenty years ; when I say my sister died at my father's house, I mean the house my father lived in, while alive, and which I have owned and lived in since his death ; it was at my house my sister died.

Ryno contributed towards his wife's support after their separation ; he was sued by the poor-master, and was ordered to pay \$8 per week for her support ; he paid it all up to about four weeks and a half before her decease ; he commenced paying the \$8 per week from the 3d of July, 1867.

I think they separated in the winter of 1866 and 1867, and
30 the proceedings for her support were commenced in the June following ; I do not know that he ever contributed anything else to her support.

Witness being further examined in chief, says—

My sister left no property of any kind, except the rights she had under her uncle Hartman Vreeland's will.

When Ryno came to get Sheriff Merseles' picture he merely came in, and my wife gave him the picture ; he took it and immediately left with it ; he did not stay there any length of
40 time ; I was home at the time.

CORNELIUS VREELAND.

Subscribed and sworn to before me, this 1st day of September, 1874, in Jersey City.

THOS. W. JAMES, *M. C.*

Adjourned by consent of both parties, till Wednesday, the 9th inst., at half-past nine o'clock A. M., at the same place.

Wednesday, September 9th, 1874.

Parties met and examination resumed.

Mary Overend, a witness produced on the part of Cornelius Vreeland, executor, being first duly sworn according to law, on her oath saith—

I live at No. 380 in Fourth street, in Jersey City; I am married to Edward Overend, of this city; I have been married for over fourteen years. 10

I know Addis E. Ryno, now here present, he was an inmate of our family; he did not eat his meals with us, except once in a while; at that time I lived at the old number, 50 Monmouth street, in Jersey City, where I then kept house with my husband; the number is now changed.

About nine or ten years ago, a woman came there and asked me if I would take her to board, with her husband; I told her yes, I would take them; he was not to eat his meals there, no one but her; she came about a week or so after we made the agreement, and she brought a man there and introduced him to me as her husband; that man she called Mr. Addis, and told me that was his name; he was the same man now here present and whose name is Addis E. Ryno; they had a sleeping-room in our house, and both occupied the same room; there was only one bed in that room; so far as I can remember, this continued for twelve or thirteen months; during all that time, they passed as man and wife in our family, and to our guests, to whom they were introduced as such; I believed them to be such, and never knew otherwise until six months after they left our house, about which time, I attended proceedings held before Justice Miller, at Bayonne, to compel Ryno to support his wife; Ryno was there; another woman who claimed to be his wife was also there; that woman who claimed to be his wife in those proceedings, was the sister of Cornelius Vreeland; I cannot tell 20 30

her name; she was not the same woman who lived with Ryno as his wife, in our house; she, the woman who lived at my house, was not there.

Witness being cross-examined on the part of Addis E. Ryno, further saith—

I do not know the woman who boarded with us, as Ryno's wife, other than I have spoken of above; her sister and her sister's husband had boarded with us some time before them.

The one who passed as the wife of Ryno told me her
10 maiden name was Reynolds; I cannot remember her christian name; I did not know her before she came to our house; I heard her sister speak about her; her name was Mrs. Grammer; she had lived with us for about six months before Miss Reynolds and Ryno came there, but she had removed two or three years before that; she was a respectable woman; she was entirely cognizant of all that was going on there, and came to visit her sister, Miss Reynolds, while she lived with us as Mrs. Addis; nothing was ever said by her about the manner in which her sister was living there; I never said anything to
20 Mrs. Grammer about Addis and Miss Reynolds living there as man and wife; she knew they were living there as man and wife; Mrs. Grammer never intimated to me that they were not man and wife; I never suspected that they were not married; I don't remember that Mrs. Grammer ever met Ryno or Addis there; but I believe she did meet him there.

Ryno was at that time employed on the ferry; I can't tell how often he took his meals at our house, it might be three or four times; I can't remember whether it was lunch or tea, I can't say; I know that he stayed all night; I have seen him go
30 out in the morning; sometimes he would go out very early in the morning, and sometimes about 8, or 9, or 10 o'clock; nothing in his conduct struck me as peculiar; not even his staying there till 9 or 10 o'clock, and going away without his breakfast; he was absent for two or three or nights in each week, and Miss Reynolds told me he was employed at the ferry; she paid the board for both of them; the only time I ever saw Mrs. Ryno was at the proceedings before Justice Miller, at Bayonne; she paid \$7.00 a week for the two; I mean Miss Reynolds did; we had no other boarders at the time; I cannot remember
40 exactly, but it was nine or ten years ago when they lived with

us, and I think they left our house in June or July, 1866; I do not know that Miss Reynolds was not his wife, except by what I have been informed by Cornelius Vreeland.

Direct examination being resumed, witness further saith—

When I agreed to take Miss Reynolds and Addis to board, it was understood that he was not to take his meals with us; that his employment at the ferry would not permit his taking his meals at such hours as would suit my family; I was also informed that his duty at the ferry required his being absent from the house for two or three nights in each week; it was a distinct understanding that he was not to take his meals with us.

MARY OVEREND.

Subscribed and sworn to before me, in Jersey City, this 9th day of September, A. D. 1874.

THOS. W. JAMES, M. C.

Catharine Randles, a witness produced on the part of Cornelius Vreeland, executor, being first duly sworn according to law, on her oath saith—

I live at No. 293, (former No. 51,) in Monmouth street, Jersey City; I have lived there eight years last May; I am the wife of John Randles, and have been married to him about seventeen years past; I know Addis E. Ryno, now here present; I became acquainted with him in July, 1866, at which time he rented rooms in our house and came there to live; I knew him by sight before that time; a woman, who said his name was Addison Addis, rented the rooms in his name; and she said she was his wife; they came there a day or two after the 4th of July; they brought new furniture and occupied the rooms; they kept house there till, I think, about the 1st of November of the same year; they passed as man and wife; they had three rooms, but furnished two only—a bed-room and kitchen; I was in their apartment occasionally while they lived there; there was only one bed in their room; I was present at proceedings had before Justice Miller, at Bayonne, brought by a woman claiming to be Ryno's wife, to compel him to support her; I was subpoenaed there as a witness with Mrs. Overend; we did not give testimony; proceedings were settled without our giving

testimony ; I understood he agreed to pay \$8 per week for her support ; I saw the woman there who claimed in those proceedings, to be his wife ; I was introduced to her by her brother, Cornelius Vreeland, now here present ; she was not the same woman who had lived with Ryno, as his wife, at our house ; that woman was not present ; I do not recollect what time those proceedings took place, but it was in the summer time of the year 1867 or 1868.

Witness being cross-examined on the part of Addis E. Ryno,
10 further saith—

I do not know who that woman was who came to rent the rooms ; I knew her as Mrs. Addis, who had lived across the street with Mrs. Overend ; while they occupied those rooms, I lived in the same house with them ; I never had any reason to believe that they were not man and wife ; and never heard that they were not, until the winter after they left our house ; she may have paid the rent ; she did, I know that, but the receipts were made out in his name ; the rent was \$12 per month ; I have seen Ryno around there, and have spoken to him ; I know
20 he stayed there over night ; I have heard him there when we went to bed, in the rooms, often ; they stayed there about four months ; from July till November ; there was no particular reason why they went away ; they went very suddenly.

CATHARINE RANGLES.

Subscribed and sworn to before me, in Jersey City, this 9th day of September, A. D. 1874.

THOS. W. JAMES, M. C.

Cornelius Vreeland, a witness previously sworn, being recalled, on his oath further saith—

30 Before Ryno left my sister, in the winter of 1866 and '67, and while his residence was at my house, and his wife living there with me, he was absent almost all the time, and only occasionally at home ; he would come home about once a week, and sometimes less often, and would stay only over night, and then go away again ; that continued for about a year, or more, before the final separation between them ; I was present at the time they separated ; she then, at the time they separated, told him

that she had heard he had been living with another woman ; I told my sister that ; I gave her the information ; I went up to Mrs. Overend and Mrs. Randles' houses, and made investigation, and from facts or information learned from them, I told my sister ; when Ryno came home, she charged him with it. [All the testimony of this witness relating to information conveyed by him to his sister objected to on the part of Addis E. Ryno.]

Ryno got angry when he was told that by my sister, and went away the same night, and never came back except to get the picture ; I made a mistake when I gave my testimony the other day, when I said it was a picture of Sheriff Merseles ; I wish to correct that mistake now, it was not Sheriff Merseles' picture, but another picture ; proceedings were had before Justice Miller, at Bayonne, to compel Ryno to support his wife only once ; they occupied only part of a day ; I was present at these proceedings ; my sister, Sarah C. Ryno, the wife of Addis E. Ryno, was present also ; Mrs. Overend and Mrs. Randles were also present ; there were no other women there except my wife and those above named ; I am one of the residuary legatees of Hartman Vreeland, deceased, as well as my sister, who was also a legatee. 10 20

Witness being further cross-examined, saith—

Previous to the time of the separation, Ryno was engaged at the ferry, so he said, at the Pavonia ferry ; his wife, during that time, lived with me at Bayonne ; up to the time of the separation, he was in the habit of spending a night at my house once in every week, or every two weeks.

CORNELIUS VREELAND.

Subscribed before me in Jersey City, this 9th day of September, 1874.

30

THOS. W. JAMES, *M. C.*

Adjournment to Monday, September 14th, 1874, at 10 o'clock A. M., by consent.

Monday, September 14th, 1874, parties met, and taking of depositions resumed.

Addis E. Ryno, a witness produced on his own behalf, being first duly sworn according to law, on his oath saith—

I am one of the defendants in this suit ; I was married in the year 1860, to Sarah C. Vreeland ; we continued living together until the early part of 1867 ; we then ceased living together ; my wife was very sick, mostly all the time, and was attended by Dr. Avery, and advised by him to be taken to New York to Dr. Emmett ; she went there, and remained there under Dr. Emmett's care, and returned home feeling a great deal better ;

10 we were keeping house then, at Bergen ; when she came home from New York, she proposed going down to Bayonne to live ; we went from Bergen to her sister's, at Bayonne, and there she got to feeling worse again, and left her sister's and went to her mother's to board, and broke up keeping house entirely ; then my business on the ferry changed, that is, my time for being away, and I wanted her to go back to Bergen to live ; I told her that I could not get home only once in nine days, living at Bayonne, and that things there where she was stopping were very unpleasant for me ; and I told her that unless she went up

20 there to Bergen to live, I could not come home to her, that I had not any way of getting down to Bayonne, and back again in the morning in time for my business, and that I could not walk six or seven miles and back again every day, and attend to my duties on the ferry ; she replied that she would ask the consent of her mother, or see what her mother had to say about it ; the next day I asked her if she had talked with her mother about it, and she said she had, and that her mother had advised her to stay there with her, and I told her then to stay ; I then left, and went to my mother's, in Bergen to live ; after that, I

30 returned to my wife three or four times, and I asked her twice to come up there to Bergen and live with me, and that I thought she would have a great deal more care, and better doctoring, at Bergen, than where she was ; she refused to go with me, and remained where she was ; after that I did not visit her again, and I was summoned to Justice Miller's office, in Bayonne, to give security for her support ; I gave the security required, and paid the poor master eight dollars per week for her support ; I continued to pay it until three or four weeks before she died ; after her refusal to live with me at my mother's, I continued to

40 live at my mother's, in Bergen, and to do business at the Pa-

voniam ferry, in Jersey City; my wife died in March, 1869, I think it was, while we were thus living separate; she left a will; the paper now shown to me, and marked *Exhibit No. 7* in this cause, is a copy of her will; the first I knew of that will was some time after her death, when I was notified to attend at Mr. Olmstead's office, in Jersey City, and receive some money left to her as a legacy by her uncle, Hartman Vreeland; Mr. Olmstead was at that time counsel for the executors of Hartman Vreeland, deceased; at Mr. Olmstead's suggestion, I went to the surrogate of Hudson county and got out letters of administration on my wife's estate, and after that I came back to Mr. Olmstead's office with the letters, to get the legacy, but then was informed by him that Mr. Cornelius Vreeland had been there and claimed the legacy as executor of my wife's will, and he asked me if I knew there was a will, and I told him no, I did not, that was the first I heard of the will; the will was made without my knowledge or consent, and was probated at the surrogate's office without my knowledge; I never had notice of it, and I never had any knowledge or intimation of the existence of that will until after I had taken out letters of administration on my wife's estate; I am the administrator of my wife's estate under these letters now produced in evidence by me. [Letters produced, and marked *Exhibit No. 5* in this cause.] The letters were issued to me on the 6th day of June, 1871; I was at that time living in the city of New York; I lived there for about two months; I live now again in that part of Jersey City which was formerly called Bergen; I know Mrs. Overend; I never lived in her house; I never had rooms in her house; I never paid for any rooms in her house for any other person to occupy; I never lived there with any woman under the name of Mr. Addis; I do not know Catharine Randle, the witness who was sworn in this cause; I never lived in Monmouth street, or hired rooms at No. 273, or the old No. 51, in Monmouth street; I never lived there with any woman, and go by the name of Addison Addis; I never hired any rooms in that house for any one else to occupy; in the years 1865 and 1866, I lived part of the time in Bayonne, and part of the time in Bergen; prior to my separation from my wife, I was home with her in Bayonne as often as my business would permit, which was some three or four times a week, until my time at the ferry was changed, and

then I could go only once in about nine days ; if I went oftener than that, I would have to get up at three o'clock in the morning, and walk all the way from Bayonne to the Pavonia ferry, about seven miles, as near as I can judge, and be at my business at five o'clock in the morning, there was no car running ; I continued those visits, as I have said, up to the time we separated.

Witness being cross-examined on the part of Cornelius Vreeland, executor, further saith—

When I speak of my wife living at her mother's house in
10 Bayonne; I mean Cornelius Vreeland's house, where she then lived ; I remember Cornelius Vreeland telling me, on the ferry, that I could either pay for my wife's board at his house, or take her elsewhere ; this was before the proceedings were had to compel me to support her ; I, after being told that by Cornelius Vreeland, went down to see my wife, and asked her to come home with me to my mother's, at Bergen, to board, and she told me she would leave it to her mother ; it was not after I had stopped going to my wife altogether that Cornelius Vreeland told me that ; I had paid my wife's board there, but not regu-
20 larly, I was behind a little ; I know Mrs. Overend through her husband, who keeps a hat store here on the avenue, I believe ; I hardly recollect how I did get acquainted with her, I think, though, I was introduced by him ; I can't tell when, but it was at his house, in Monmouth street ; I called there to see a friend of mine ; the friend was a lady ; her name was Mrs. Reynolds, I think ; she told me she was stopping there, she did not say boarding there ; I called there once or twice a week, sometimes oftener, three times a week, sometimes not at all ; I never stayed all night ; I have stayed late, along till the middle of the night ;
30 I never slept there, nor occupied a bed there. Mrs. Reynolds was called " Libbie," sometimes " Lib ;" I was introduced to Mrs. Overend, I forget by what name ; I don't know that I was known there as " Mr. Addis ;" I didn't see the people there much ; the whole time I went there, I didn't see Mrs. Overend but twice ; I don't know where Mrs. Reynolds is now ; when I called there I spent my time in the parlor ; there was a parlor with a bed-room right off of it ; I never was in the bed-room ; I do not know Mrs. Randles, the witness who gave her testimony here ; I never saw her until I saw her here ; one day

Mrs. Reynolds was crossing over the ferry and she spoke to me and said, call and see me, I have moved now; I asked her where to, and she said, right across the street from Mrs. Overend's.

I told her I would; she told me she was keeping house there; that house may have been Mrs. Randle's house for all I know; I visited her there three or four times, as near as I can remember; she lived there all alone as far as I know; I did not live there with her, or make it my home, or get my meals there; I never had a meal there; I never stayed all night there; I have never been called by her, in the presence of others, her-husband. 10

Quest. Was she a loose character? [Question objected to and overruled by the master; and decision objected to by counsel for Cornelius Vreeland.]

A. E. RYNO.

Subscribed and sworn to before me, in Jersey City, this 14th day of September, A. D. 1874:

THOS. W. JAMES, M. C.

The usual rule to confirm *nisi*, was entered.

Exceptions to Master's Report.

20

[Filed October 14, 1874.]

Exceptions taken by the defendant, Addis E. Ryno, administrator of Sarah C. Ryno, deceased, one of the defendants in this cause to the report made therein, on the fifth day of October, in the year of our Lord one thousand eight hundred and seventy-four, by Thomas W. James, esquire, one of the masters of this court, touching the matters therein referred to him.

First Exception. For that the said master has, in and by his said report, reported, that in his opinion, the said residuary legacy, or distributive share of the estate of Hartman Vreeland, 30 deceased, in the hands of the complainants in the bill of com-

plaint in this cause mentioned, should be paid to the said Cornelius Vreeland, executor of the said Sarah C. Ryno; whereas, by the law of the land, the said residuary legacy, or distributive share of the said estate of the said Hartman Vreeland, deceased, ought to be paid to the said defendant, Addis E. Ryno, and the said master ought to have so reported.

In which matters and respects, this exceptant excepts to said report, and humbly conceives that the said master hath erred, and that the said report is wrong, unjust and inequitable; and
10 therefore, prays that said report, so far as regards the particulars above specified, may be disallowed, rejected and set aside, and that it may be decreed that the said residuary legacy or distributive share of said estate, be paid to this exceptant; and this exceptant prays the judgment of this court thereupon.

J. A. BLAIR,

Sol. for and of counsel with the exceptant.

Decree.

[Filed June 8, 1875.]

This cause coming on to be heard before the Chancellor, at the
20 city of Newark, on the twenty-sixth day of December, in the year A. D. eighteen hundred and seventy-four, in the presence of John A. Blair, solicitor and of counsel for the defendant, Addis E. Ryno, and J. Dixon, solicitor and of counsel for the defendant, Cornelius Vreeland, and the pleadings, depositions, exhibits and proof being read, and the arguments of the respective counsel being heard and considered, and the Chancellor having taken time to advise thereon, and it appearing to the Chancellor that the will of the said Sarah C. Ryno was of no
30 effect whatever as against her husband, Addis E. Ryno, and that he was entitled by law to administration of his wife's estate, and that the letters testamentary created no obstacle to a decree in his favor, and that the said defendant, Addis E. Ryno, as administrator, is by law entitled to the legacy or money in

in the hands of the said complainants, bequeathed to the said Sarah C. Ryno, by the will of Hartman Vreeland, deceased. It is on this eighth day of June, A. D. eighteen hundred and seventy-five, ordered, adjudged, and decreed by the Chancellor, that the exceptions to the said master's report in this cause are sustained, and the said report vacated and set aside, and that the complainants do pay to the said defendant, Addis E. Ryno, or to his solicitor, all the money due the said Sarah C. Ryno, under and bequeathed to her by the last will and testament of Hartman Vreeland, deceased, deducting therefrom the money 20 paid by the said defendant, Cornelius Vreeland, for the funeral expenses of the said Sarah C. Ryno, and the complainant's costs of this suit to be taxed.

THEODORE RUNYON, C.

Opinion.

THE CHANCELLOR. The bill in this cause was filed by the executors of Hartman Vreeland, deceased, to determine the question as to which of two claimants to a legacy in their hands is entitled to receive it. These claimants are the executor of the will of Sarah C. Ryno, the legatee, and her husband, who is 20 her administrator. She became entitled to the legacy while she was the wife of Addis E. Ryno, the administrator. She did not, however, receive it, nor did he reduce it to possession in her lifetime. Her husband did not consent to, nor know of the making of her will, and it was proved without his knowledge of its existence. By it she gave all her property to her mother for life, and then to her sisters. She died on or about the first of May, 1869. She and her husband had lived separate for many years before her death. On behalf of her executor, it is alleged that her husband deserted her and committed adultery, 30 and it is insisted that, by reason thereof, he had, at the time of her death, forfeited all claim to her estate, if indeed he would otherwise have had any under the acts of 1852 and 1864, the former of which is known as the "married women's act;" and

the latter confers testamentary power upon married women. Both the defendants having answered, the cause was referred, by consent, to a master upon its merits, and the master reported thereon in favor of the executor. The administrator excepted to the report, and the cause is now before me on the exceptions. It is settled that the act of 1852 gave to married women only the *jus tenendi* of their property, and not the *jus disponendi*. *Naylor v. Field*, 5 *Dutcher* 287; *Belford v. Crane*, 1 *C. E. Green* 265. By the act of 1864, it is declared that any will or

10 testament by any married female above the age of twenty-one years thereafter made, of any real or personal property, shall be held and taken to be as valid and effectual in law as if she were, at the time of the making of such will or testament, a *feme sole*, and unmarried; provided always, that nothing in the act contained shall be so construed as to authorize any married woman to dispose of by will or testament any interest to which her husband then was or would be, at her death, entitled by law in her real or personal property, but such interest shall remain in and survive to the husband, in the same manner as if such will

20 had not been made. By law, the husband then had an interest in the choses in action of the wife, and could reduce them to possession at pleasure, and when so reduced, they became his absolutely, and on his death went to his representatives. Such of them as had not been reduced to possession by him at his death, still remained hers, and on her death went to her representatives, and not to his. After her death, he might, as her administrator, reduce to possession her choses in action not reduced to possession in her lifetime; and he would hold them *jure mariti*. She could ^{not} make a will of chattels without his

30 consent. *Williams on Ex'rs* 39; *Van Winkle v. Schoonmaker*, 2 *McCarter* 384. The act of 1852, while it protects the property of the married woman during her life, does not, at her death, affect the law of succession as to her estate, real or personal. *Porch v. Fries*, 3 *C. E. Green* 205. Such has been the construction of a like statute in New York. *Ransom v. Nichols*, 22 *N. Y.* 110; *Ryder v. Hulse*, 24 *N. Y.* 372; *Barnes v. Underwood*, 47 *N. Y.* 352. The testamentary power given by the act of 1864 is partial, only, expressly saving the legal rights of the husband.

It seems to me clear, that the will of Mrs. Ryno was of no effect, whatever, as against her husband, and that he, as her administrator, might reduce her choses in action to possession. Nor do I think that his adultery, or his desertion of her, would have worked any forfeiture of his rights in the premises. He appears, however, to have supported his wife, though living apart from her, up to about the time of her death, and the arrangement into which he had entered for her support, and under which he had for years provided for her maintenance, was subsisting when she died. He was entitled, by law, to administration of his wife's estate. He holds letters accordingly. The existence of the letters testamentary creates no obstacle to a decree in favor of the husband. He is, by law, entitled to the money, and it should be paid to him, deducting therefrom, however, and paying to the executor the funeral expenses of the wife, which he has paid. The exceptions are sustained, with costs. There will be a decree in accordance with this decision. The complainants are entitled to their costs out of the fund. 10

Appeal.

[Filed August 5, 1875.]

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The defendant, Cornelius Vreeland, executor of the last will and testament of Sarah C. Ryno, deceased, hereby appeals from the whole of the final decree made in this court, in the above stated cause, sustaining the exceptions to the master's report in the said cause, by the defendant, Addis E. Ryno, administrator, &c., and vacating and setting aside the said report, and directing the complainants to pay to the said defendant, Addis E. Ryno, or to his solicitor, all the money due the said Sarah C. Ryno, and bequeathed to her by the last will and testament of Hartman Vreeland, deceased, deducting therefrom the money 30

paid by Cornelius Vreeland for the funeral expenses of the said Sarah C. Ryno, deceased, and the said complainant's costs of this suit to be taxed, to the Court of Appeals in the last resort of all causes of law.

Dated July 31, 1875.

GILBERT COLLINS,

Sol. for and of Counsel with said Def't.

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

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GILBERT COLLINS,

Of Counsel with the Defendant, Cornelius Vreeland, Executor, &c.

Petition of Appeal.

[Filed August 6, 1875.]

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

The humble petition of Cornelius Vreeland, executor of the last will and testament of Sarah C. Ryno, deceased, the appellant in the above stated cause, respectfully shows—

20 That your petitioner finds himself aggrieved by a final decree made in the Court of Chancery, by his Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the eighth day of June, in the year of our Lord one thousand eight hundred and seventy-five; wherein Hartman Vreeland and others, executors of the last will and testament of Hartman Vreeland, deceased, were complainants, and this appellant and Addis E. Ryno, administrator, &c., of Sarah C. Ryno, deceased, the appellee in the above stated cause, were defendants, on a bill of interpleader, in this respect, to wit :

30 That the said decree sustains the exceptions filed in said cause by the said appellee to the master's report made in the cause, and vacates and sets aside the said report, and orders and directs the said complainants to pay to the said appellee, or to his solicitors, all the money due to the said Sarah C. Ryno, deceased,

and bequeathed to her by the last will and testament of Hartman Vreeland, deceased, deducting therefrom the money paid by this appellant for the funeral expenses of the said Sarah C. Ryno, and the complainant's costs in that suit to be taxed.

And your petitioner humbly appeals from the whole of said decree of the Chancellor, upon the ground that the same is erroneous, for that the said exceptions to said report, should have been overruled and disallowed; and the said report should have been confirmed; and the said complainants should have been directed to pay to this appellant, or to his solicitor, all the 10 moneys bequeathed to the said Sarah C. Ryno, by the last will and testament of Hartman Vreeland, deceased, as one of his residuary legatees, deducting therefrom, the complainant's costs of that suit to be taxed.

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

Dated August 5, 1875.

GILBERT COLLINS,

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Sol. for and of counsel with said appellant.

Answer to Appeal.

The answer of Addis E. Ryno, administrator, &c., of Sarah C. Ryno, deceased, to the petition and appeal of Cornelius Vreeland, executor of the last will and testament of Sarah C. Ryno, deceased, from the decretal order of the Court of Chancery of New Jersey, dated on the eighth day of June, A. D, eighteen hundred and seventy-five, made in the above cause, sustaining the exceptions to the master's report, and vacating and setting 30 aside the said master's report in the cause made, and directing the complainants to pay to this respondent, Addis E. Ryno, or his solicitor, all the money due to the said Sarah C. Ryno and bequeathed to her by the last will and testament of Hartman Vreeland, deceased, deducting therefrom certain moneys in the said decree or order named. This respondent, not confessing or

acknowledging all or any of the matters and things in the said petition and appeal mentioned to be true, as the same are therein set forth, and reserving to himself all benefit and advantage of exception to the errors, defects and imperfections in the said appeal contained, for answer thereunto, says—he admits that the Court of Chancery did make such order as in the said petition and appeal is mentioned and complained of, but as to date and contents of such order, this respondent, for greater certainty, refers to the said order when the same shall be produced; but the respondent is advised and humbly apprehends, that the order complained of is agreeable to equity and justice, and therefore humbly hopes that the same will be confirmed and
10 the appeal dismissed, with costs.

J. A. BLAIR,

Sol. of and of Counsel with said Respondent.

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