

In Chancery of New Jersey.

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In Chancery of New Jersey:

To his HONOR, ABRAHAM O. ZABRISKIE, Chancellor of
the State of New Jersey.

Humbly complaining, showeth unto your Honor,
your Orator, Hugo Sutro, of the City of Newark, County
of Essex and State of New Jersey, that on or about
the eighth day of April, in the year of our Lord one
thousand eight hundred and seventy-two, your orator
agreed with one Gustave Wagner, of the City of Newark
aforesaid, a manufacturer of braided trimmings, the
defendant hereinafter named, to become a partner with
him in his said trade and business, and thereupon a
certain indenture of two parts bearing date on the
same day and year last aforesaid, was made and executed
by and between your orator and the said Gustave
Wagner, in the words and figures following, that is to
say:

Articles of Agreement of Copartnership between
Gustave Wagner, of Newark, N. J., and Hugo Sutro, of
Hartford, Conn.

This is to certify that Gustave Wagner and Hugo
Sutro have this day formed a copartnership for the
purpose of manufacturing braided trimmings in the
City of Newark, under the firm name of Wagner &
Sutro.

It is agreed that :

ARTICLE 1. The partnership is to commence on this, the 8th day of April, 1872, and continue for two (2) years, that is up to April 8th, 1874.

4 ART. 2. And the stock, raw and wrought machinery, tools and fixtures owned by G. Wagner will be assessed by the firm and credited to the account of G. Wagner in the sum of twenty thousand dollars (\$20,000). The liabilities and outstanding of the business of G. Wagner running unsettled on this the 8th day of April, 1872, shall belong to G. Wagner individually, and the new firm will in no wise be responsible for them.

ART. 3. Hugo Sutro contributes the sum of ten thousand dollars in cash, which amount will be credited to his account.

5 ART. 4. Profit and losses are to be divided, share and share alike, and neither party shall be credited or charged with any interest on their respective capital.

ART. 5. The signature of the firm shall not be used by either party for other purposes than those necessary for the interest of the business, and in no case shall either of them use the same for endorsements in favor of outside parties.

ART. 6. The whole time and energy of the partners is to be exclusively devoted to the interest of the business. Neither partner shall draw from the business a sum exceeding three thousand dollars annually.

6 ART. 7. Unless notice of withdrawal be given by either partner three (3) months before the expiration of this contract it will again remain in force for the same period as set forth in Art. 1. The contract to renew itself continually unless the above notice be given.

ART. 8. Should the partnership be dissolved, then the business shall be disposed of to the highest bidder, outside parties excluded.

ART. 9. In case of death of either partner the business shall be continued by the surviving partner in the same manner as previous to that event, and the interest of the deceased in the profit and losses, as set forth in Art. 4, shall pass over to his heirs for twelve months after his decease, after which his interest in the business shall cease.

ART. 10. Should this contract however terminate before the twelve months following the decease shall have elapsed, the same shall be considered in force until the twelve months are completed.

ART. 11. The capital of the deceased shall be turned over to his heirs or administrators within two years after his death, meanwhile his heirs or administrators shall have the right to draw from the business, in monthly instalments, the same proportion of money, to be appropriated to their benefit, as the deceased himself might have drawn if still alive, unless there is not as much to his credit on the books of the firm.

Signed, sealed, and one copy to each partner }
 delivered, at Newark, State of New Jersey, }
 this 8th day of April, 1872.

Witness,

P. W. CRATER.

GUSTAVE WAGNER, (L. S.)

HUGO SUTRO, (L. S.)

As, in and by the said article of agreement, duly sealed and executed by the said parties therein named, and one copy thereof duly delivered to your orator and

ready to be produced, as this honorable court may direct, will appear, and to which said article of agreement then executed and delivered your orator for greater certainty begs leave to refer.

And your orator further showeth that the said partnership trade and business was accordingly entered upon and carried on by the said Gustave Wagner and your
 10 orator pursuant to the provisions of the said indenture, and the same hath ever since continued and now continues. And your orator has paid into the common fund of said co-partners the sum of ten thousand dollars in money of the United States, and has also from time to time in all things duly conformed to the stipulations and agreements in the said indenture contained, and on his part and behalf as therein and thereby provided for him to perform.

And your orator further showeth, that the said Gustave Wagner previous to the making of said indenture
 11 and articles of agreement with your orator, was and for a long space of time previous to that time, had been engaged in the same trade and business above mentioned, and had a practical knowledge of the secrets of said trade, business, and manufacture, whereas your orator has no knowledge respecting said trade or business, excepting what he has since the making of said indenture, and the entry by him as a copartner as aforesaid, has acquired. And that the said Gustave Wagner previous to the making and executing said
 12 articles of agreement, was fully aware of your orator's total ignorance of, and concerning the said trade and business, and of the manufacture, thus to be carried on under and by the terms and conditions of said indenture, and did state that he desired your orator to invest his said money and means in said business, and to give his time in the conducting of the mercantile part of said business, to enable them as such partners to increase the facilities of said business, and extend and enlarge the same, and thereby insure a large and remu-

nerative return to both of the parties to said indenture; and that the said statements thus made to your orator by the said Gustave Wagner your orator relied upon as 13
 being made to him in good faith by the said Gustave Wagner, and by means thereof your orator was induced to make and enter into said indenture, and into copartnership with the said Gustave Wagner.

And your orator further showeth that shortly after the making of said indenture as aforesaid, and after your orator had paid into and contributed the said sum of ten thousand dollars towards the said copartnership funds, the said Gustave Wagner suggested to your orator the expediency of purchasing additional machinery, to be used by them in their said business, to which your orator 14
 duly consented, and thereupon the said Gustave Wagner proceeded to Europe to make the necessary selection and purchase of such machinery, and did expend in and about the purchase of such machinery about four thousand dollars in money of the United States; that said machinery arrived at their place of business, in said city of Newark, sometime during the month of June, in the year eighteen hundred and seventy-two. And your orator supposed the said Gustave Wagner would forthwith put said machinery to use in and about their said business, but on the contrary, he the said Wagner, with- 15
 out assigning any reason for his neglect to make use thereof, has from the time of its arrival as aforesaid, hitherto neglected and refused to use or operate with said machinery; that the same is very intricate, and portions of the same are very delicate; and that said machinery for want of proper care, use, and attendance is becoming daily of less value, and going to destruction; that your orator has frequently since the arrival of said machinery, urged the said Gustave Wagner to put the same to use in and about their said business, and requested him to use his energies to the advancement of 16
 their joint interest in their said business, to all which requests and appeals of your orator the said Gustave

Wagner has not paid the slightest attention, nor has assigned any reason for neglecting to make use of said machinery or any part thereof; and has allowed and permitted, and still doth allow and permit the said machinery to remain idle, unused, and go to ruin and destruction, without taking any care of the same, nor of any part or portion thereof.

And your orator further showeth that the said Gustave Wagner has since the commencement of said partnership, been in the habit of making large purchases of silks and other materials, goods, wares, and merchandise used in the manufacture of braided goods, and other articles made and manufactured by them in their said business, upon the credit of said copartnership, and has manufactured large quantities of such goods, and received the proceeds and value of the same without rendering any statement thereof to your orator, or making any charges or entries of the same, or any part thereof, upon the books of said copartners, and has during all that time exercised sole and exclusive control over the stock in trade belonging to said copartners, and has refused, and still doth refuse to account for the same to your orator; that your orator has frequently expressed his dissatisfaction to the said Gustave Wagner about his action, behavior, and dealings in that behalf with your orator, and hath requested him to act openly and frankly in all their said business transactions with your orator, and of all matter in respect of or concerning their said business. And your orator charges that the said Gustave Wagner has in answer of your orator's said several request, when he at all deemed it proper to make any answer thereto, given to your orator more evasive answers concerning said several matters. That your orator being anxious to promote and enlarge their trade business and interest, has often since the commencement of said partnership requested the said Gustave Wagner to give to your orator samples of the goods manufactured by said copartners, to enable him to seek and obtain

customers, and by means thereof enlarge their said business; or to take and establish an office in the City of New York, for the purpose of more extensively introducing and exhibiting their manufactures in their pro- 20
 per market for the same, and thereby endeavoring to enlarge their said business, and to increase their trade and sales, and consequent gains and profits reasonably to be derived from such increase of trade and sales. Your orator also offering to pay either the whole or the largest portion of the increased rent and attending expense of such office or depot, or place of business; but your orator further charges that in that respect the said Gustave Wagner has also refused to listen to, or comply with your orator's reasonable suggestions in that behalf, and has positively denied to make, deliver, 21
 or furnish to your orator any samples of their manufactured goods, and informed your orator if he desired to make sales to obtain samples of and from other parties. That in consequence of such refusal to comply with your orator's said reasonable requests, and to avail himself of your orator's services in that behalf, your orator being well and extensively known among business people dealing largely in the same articles manufactured by said partners, and which by said indenture it was intended and contemplated should be made and manufactured by said partners, the said copartners have lost great 22
 gains and profits, and a large and valuable trade, which they otherwise would have enjoyed, and received through the influence of your orator.

And your orator further showeth, that the said Gustave Wagner has since the commencement of the said partnership been in the habit of receiving and collecting large sums of money, and of drawing checks and promissory notes on the partnership account, but the said Gustave Wagner has not duly and regularly entered all such transactions on the partnership books of account, but has entered therein only a small part of such 23
 transactions, and has kept your orator in ignorance there-

to ; and the said Gustave Wagner has drawn many checks and given many notes in the name of the partnership firm, not in respect of the said partnership concern, but for his own private purpose.

And your orator further showeth, that after the formation of said partnership the said Gustave Wagner has manufactured goods, and conducted and carried on and allowed said business only to be carried on to such extent as suited his own pleasure and convenience, for his own
24 use and purpose, and not to the extent of the means and capacities of said partners, and without consulting or communicating with your orator, and has sent off and delivered to divers parties and places in the City of New York and other places, large and valuable quantities of manufactured goods and property of said partners, without consulting or communicating with your orator in respect thereof, or in anywise informing your orator where such goods and property has been sent to, and for what purpose ; nor has the said Gustave Wagner made any entry or entries thereof upon the books of said partners, nor in anywise accounted therefor to your orator. And
25 your orator having lately ascertained where, in several places in the City of New York, the said Gustave Wagner had deposited, consigned, and placed goods and property of said copartners, your orator on inquiring about such goods and property, was thus informed by the parties thus having such goods and property in custody, that they had received the same from said Gustave Wagner, for the purpose of selling and disposing of the same for the said Wagner ; and with instructions, in the event of your orator making inquiry respecting the same, or demanding the return or possession of them, or attempting to collect the
26 proceeds arising from the sale or sales, and disposition thereof, to prevent your orator from having or obtaining such goods, property, or proceeds arising therefrom, and to keep and retain the same for him, the said Gustave Wagner who would indemnify and release the said custodian of,

and from all liability or difficulties arising therefrom ; in consequence whereof said parties having such goods and property in charge have not only refused to deliver 27 the same or any part of such goods and property of said copartners to your orator on demand for the same, but have also positively refused to pay for the same or any part thereof, or in anywise to account to your orator for the same, or the articles and goods by them thus received from said Gustave Wagner, and already sold, and by them disposed of, referring your orator to said Wagner.

And your orator further showeth that finding that the books of said copartners by reason of the said action of said Gustave Wagner were in a very sad and bad condition, and kept by said Wagner in such manner as to create confusion and tend to mislead, your orator proposed to said Wagner that a competent person should take charge of the same, to examine and correct the same, and having found one H. H. Papendick, a man of experience in book-keeping, and otherwise a proper person to undertake that task, your orator first introduced him to the said Gustave Wagner, informing the latter of the purpose for which the said Papendick had been brought by your orator to the said partnership premises, that the said Gustave Wagner at first expressed 28 his satisfaction, and acquiesced in your orator's views in that respect, but shortly afterwards objected to any investigation of said books, and did actually by force expel the said Papendick, against the wish and protest of your orator, from the said partnership premises, and did absolutely decline and refuse any inquiry or investigation into the said books and of and concerning the vouchers concerning the said copartnership property and transactions, and the said Gustave Wagner had also within about one month previous to the exhibiting of this bill sent off and discharged a large number of the 29 persons previously employed by said partners in and about their said factory without assigning any reason

therefor, to and against the express wish and protest of your orator, and has refused to further manufacture goods in such quantities as the said partners had been in the habit of manufacturing and selling, although their customers were desirous and anxious to obtain and purchase such goods and has also neglected and refused to fill and satisfy large and valuable orders received by said partners from their customers for such
31 goods, although such orders might have been easily filled, and said partners have derived large gains and profits therefrom. And your orator has thereupon remonstrated with said Gustave Wagner and has requested and desired him to retain and employ such operatives as had for a long time previously been in their employ in and about their said manufacturing business, and to make up goods, and thereby satisfy the demands of their customers, and fill the orders thus received by said partners for such goods, to all which requests and appeal of your orator the said Gustave Wagner replied that he
32 would act and do as he thought proper in the premises that he intended to manufacture what and in quantities to suit his convenience, and that your orator had nothing to say about it, that if your orator did not like that it was quite immaterial to him, the said Wagner, as he should employ only whom and as few or as many persons as he pleased, and that none of such employees should do anything your orator might direct them to do.

And your orator further showeth, that previous to, and at the time of, the formation of said partnership, and afterwards and until some time in the month of November, in the same year last aforesaid, the said Gustave
33 Wagner was and had been the owner in fee simple of a large and valuable tract of improved real estate, situate on Catharine and Shipman Streets, in the City of Newark aforesaid, and of which said land and real estate he had held the title since the month of January, in the year of our Lord one thousand eight hundred and sixty-six, as in and by a deed of conveyance, a copy of which

is hereunto annexed and hereinafter referred to, will more fully and at large appear, and which said land and real estate—as your orator had been informed by the said Gustave Wagner and other persons competent to judge the value of real estate in the location where said land and premises are located—are of the value of at least the sum of thirty thousand dollars, that on or about the fourth day of November, in the year eighteen hundred and seventy-two, your orator received information, through a notice which the said Gustave Wagner had given as hereinafter mentioned, that he, the said Wagner, had sold and conveyed the said land and real estate, being the entire real property held by him, that thereupon your orator has caused the records of deeds for said County of Essex to be searched, and has discovered that on or about the twenty-sixth day of November, in the same year last aforesaid, a deed of conveyance was filed in the office of the Register of deeds of said County of Essex, bearing date the first day of October, in the year last mentioned, made and executed by said Gustave Wagner and Virginia R. his wife, therein and thereby conveying all of the same land, premises and real estate above mentioned and referred to, unto one Gustave Wagner, junior, the son of said Gustave Wagner, in and for the consideration of one dollar, subject to the effect of two mortgages thereon, upon which, as in said deed of conveyance is stated, there remains unpaid of the principal money in the aggregate the sum of forty-nine hundred and fifty dollars, that said deed of conveyance for said land and premises, a copy of which is, as before mentioned, hereto annexed and marked Schedule A, was acknowledged by the grantors thereof as aforesaid, on the said twenty-six day of November, in the year last aforesaid, and now remains on file in said register's office, to be recorded, and your orator, for greater certainty, begs leave to refer to the record of said deed when completed, or to a duly certified copy of the same if it be necessary so to do.

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And your orator further showeth, that on or about the said fourth day of December, in the year last aforesaid, your orator received the information above alluded to, that the said Gustave Wagner had made a statement in writing, concerning the said partnership and its affairs and had delivered the same to Dun, Barlow & Co., proprietors of a Commercial Agency, in the City of New York, to be entered and recorded upon the books and records of said agency for the use, benefit and information of merchants and others having access to such entries and records, and by their subscriptions entitled to copies and abstracts from such books, records, and entries of, and concerning the, pecuniary abilities, positions and other matters tending to disclose the responsibilities of persons engaged in business in general throughout the United States, and upon which statements thus made, recorded and published for the purposes aforesaid, men of business place great reliance, and govern their actions, and extend a contract credit, according to the time and advice of, and furnished by such reports, that your orator, having reason to believe that said Wagner had as aforesaid made and delivered some statement for the purpose and object aforesaid, your orator requested his brother Ludwig Sutro, who had access to the books, records and entries at the aforesaid Commercial Agency, to make search and inquiry respecting the truth and correctness of your orator's said information, that the said Ludwig Sutro thereupon, on the day and year last aforesaid, found an entry and record of a statement of and concerning said partnership business, and of the relative position of the said partners, and did take and obtain a copy of the entry of said statement, and of the record thereof, from the books of said commercial agents, and delivered the same to your orator, and which statement thus obtained is in the words and figures following, to wit:

December 2, 1872.

WAGNER & SUTRO.

Newark, N. J.

“There seems to be a serious disagreement between Wagner and Sutro, mainly in regard to business policy, and Wagner has conveyed to his son all his real estate, about \$30,000, and informed us of the fact, that houses they buy of, and those who may be asked to sell them, 41 may be fully aware of a change in their responsibility. The step seems to be, on the part of Wagner, one of self protection against possible contingencies. Sutro has \$10,000 invested in the business, and Wagner, we think, near the same amount.”

As in and by the written copy of said entry and record, made and taken from the books of said Commercial Agency, and delivered to your orator, and now in his possession, will fully and at large appear, and of the correctness of which said copy, as taken from said books, your orator is ready to make proof, and to which said 42 copy, when properly proven as having been correctly taken from said books of said Agency, your orator begs leave to refer if it be necessary so to do.

And your orator further showeth, that after the receipt of the said copy of said entry on said books of the aforesaid Agency, your orator at once spoke to the said Gustave Wagner about said report and statement, exhibiting to him said copy, and reading the contents thereof to said Gustave Wagner, in the presence and hearing of one Oscar Wisner, and charging the said Gustave Wagner with being the author and publisher of the said statement, and de- 43 manding an explanation from said Gustave Wagner why he had taken the step and alleged precaution alluded to in said statement, and had pursued that method to injure the said copartnership firm, and to destroy its credit and good standing among merchants and business people in general, to which last-mentioned charges and injuries of your orator respecting said statement, the said Gustave Wagner, after attentively listening to the reading by your

orator of the contents of said copy of said statement, and to the said inquiries thus thereupon made and explanation demanded by your orator, without assigning any reason for doing so, simply replied, that it was your orator's own fault that he had made, delivered, and caused the said statement to be recorded and published as charged against him by your orator, and that the same was satisfactory to him. And your orator denies that he has in anywise or in any manner whatsoever been guilty of any act, matter, or thing by reason whereof the said Gustave Wagner either directly or indirectly could, or might have had reasonable cause to suspect your orator for acting contrary to the terms and conditions contained in said indenture of said partners, or in anywise acting in bad faith with said Gustave Wagner, or tending to undermine and destroy the good fame, reputation, and credit of said partners, or of their said business, but on the contrary your orator expressly charges that he has in all his acts, actions, and deeds honorably and faithfully, to the best of his skill and understanding, endeavored to promote the interest of said partners, and of their said business, and has in every way sought to comply with the views of said Gustave Wagner, so far as the same tended to the promotion of their joint interest and benefit in their said business, consistent with their said agreement in that behalf, and has also diligently sought to elevate the position of said copartnership firm and business. And your orator further expressly charges that the said Gustave Wagner has not since the formation of said copartnership in any manner or in anywise acted in good faith with your orator in that behalf; that for some time past the said Gustave Wagner has secretly and clandestinely removed large and valuable quantities of the stock in trade and property of said partners, without giving or rendering any account of the same or any part thereof; that by reason thereof the said stock in trade and visible assets of said partners have been very seriously diminished in

quantity, and great losses have been sought to be inflicted by said Gustave Wagner upon the said copartnership firm, in not only refusing to manufacture goods and satisfy the reasonable demands of their customers, but also in other respects as hereinbefore expressed, and having so largely reduced the said copartnership property he, the said Wagner has, by his express order, as hereinbefore also expressed, prevented your orator from reclaiming such goods and property, and from receiving any of the proceeds arising from the same or any part thereof. And 48 your orator further expressly charges that the statement thus as aforesaid made and delivered by the said Gustave Wagner to said commercial agents, and by said Gustave Wagner thus admitted to have been made by him, as therein expressed and set forth is a cruel and unjust act of the said Gustave Wagner, and made for the purpose of injuring the said copartnership credit and good standing, and your orator also further charges that by reason of the said statement having been made and published, several of the merchants and people with whom said copartners were in the habit of dealing, have since said publication has come 49 to their notice or knowledge, refused to extend the credit to said copartnership firm which it had previously enjoyed. That the firm of Hamil & Booth, silk dealers, in the city of New York, with whom the said copartners had previously been dealing, have since said notice was given, notified the said partners of their unwillingness to further trust or credit them, and have demanded of said partners payment of the amount due to said firm of Hamil & Booth, and threaten in case of neglect to make such payment, to sue the said partners for the purpose of collecting their claim. And your orator further charges that his capital 50 and means were provided and promptly paid by your orator into the funds of said partners, immediately after the formation thereof, and still remains wholly therein invested; that your orator is without means to pay and satisfy the debts of said partners, by reason of said Gus-

tave Wagner's action, and he having for the purpose of injuring your orator in the premises, cut off all sources and means of obtaining or collecting moneys to pay such debts; that the said Gustave Wagner has the control of all of the said partnership property, to the exclusion of your
 51 orator; and has, as your orator been credibly informed and believes it true, written a letter to one of the customers of said partners in Boston, Massachusetts, of which a copy has been transmitted to your orator, in the words and figures following, that is to say:

NEWARK, N. J., December 10, 1872.

MESSRS. C. E. KING & Co.,

Boston, Mass.

GENTLEMEN:

Send all checks or money matters to the firm by mail, nothing personally to or with Mr. Sutro, by order of.

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Yours truly,

GUSTAVE WAGNER,
 per Son.

Therein and thereby, as your orator further charges, seeking to obtain all moneys due and to become due to said partners, and to apply the proceeds thereof solely to the use, and for the benefit or evil practices of said Gustave Wagner. Your orator here expressly further charging that many other letters and directions, similar in contents with the above, have been sent by said Gustave
 53 Wagner to the customers of said partners, in order to obtain the exclusive control of the moneys belonging to said partners, and thereby oppress and injure your orator. That the said Gustave Wagner has after acting and directing as herein charged, and having possessed himself of the largest portion of said copartnership property, in reply to a request of your orator that the said copartnership might be dissolved by mutual consent, and your orator being willing to have a

fair and thorough investigation made of and concerning the said partnership transaction, and to pay his share of any losses which might be ascertained to have been incurred, and was willing and ready to dissolve said firm; that he the said Gustave Wagner sometimes alleges that after the first day of January next, he will take an account of the stock, and, perhaps, close up their said copartnership, and also proposes that your orator shall take and accept the sum of five thousand dollars, as and for his entire interest and capital in their said firm. And your orator expressly further charges, that the said actings and doings of of the said Gustave Wagner, since the formation of the said copartnership, tend to the manifest wrong and injury of your orator, that the said Gustave Wagner has from 54 time to time sought to possess himself of the property of said partners, and still doth possess himself of the same, and of every part in his power to reach and obtain, and has inflicted a lasting injury upon the credit of said firm, which he seeks to destroy for the purpose of oppressing your orator in the premises, and to enable him to acquire said property, and through his acting as aforesaid, induce your orator to take and be satisfied with the receipt of a small portion of his capital, and the losses of all the profits derived from said business during the existence of the same, and thereby to benefit himself and increase his property, 55 at the expense of and loss to your orator.

All which actings and doings of the said Gustave Wagner are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator, in tender consideration whereof, and for as much as your orator is without adequate remedy in the premises, except in this Honorable Court, and to the end that the said Gustave Wagner and his confederates, when discovered, may upon their several and respective corporal oaths, to the best and utmost of their respective knowledge, remembrance, information 56 and belief, full, true, direct and perfect answer make to

all and singular the matters aforesaid, paragraph by paragraph, and line by line, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto, and more especially that they may in manner aforesaid answer and set forth whether the said copartnership was not formed at the time and in the manner and for the purpose mentioned and described in the indenture made and entered into for that purpose, as hereinbefore
57 set forth, and whether the said Gustave Wagner and the complainant did not thereupon, immediately after the formation of said partnership enter upon the same, and the complainant forthwith, after the formation aforesaid, did not pay and advance unto and towards the fund of said partners the sum of ten thousand dollars in money of the United States, and whether the said Gustave Wagner did not proceed to Europe to make purchase of machinery for the said partners, and to state the nature of such machinery, and at what price he purchased such machinery, and every part thereof, and
58 from whom and whether the price thereof has been paid to the persons thus furnishing the same, and whether the said machinery was not received by the said partners during the month of June, eighteen hundred and seventy-two, and whether the same or any part or portion thereof, and what part, if any, has been put to use or employed for the use and benefit of the said partners in and about their said copartnership business, and whether the said Wagner has not discharged the employees of said partners at the time and times in said bill charged, and whether the said partners, during the
59 month of November and December, in the year last aforesaid, did not receive numerous orders for goods to be furnished by said partners, and whether such order was accordingly filled and the name and names of the persons sending the same, and also what goods and property the said Gustave Wagner, of the property of said copartners, has taken, sent off and disposed of during

and since the time of the formation of said partnership, and the respective quantities and qualities thereof, and to whom sent, the time and date when sent, and the place and places where such goods have been sent to and also the moneys or returns received therefor and 60 therefrom by said Gustave Wagner, and also whethr he, the said Gustave Wagner, had not, previous to the twenty-sixth day of November, eighteen hundred and seventy-two, been the owner in fee simple of the land and premises above referred to and described iu the deed, a copy of which is hereto annexed, and whether he did not convey the same by deed and for the consideration, and upon the terms and to the grantee, as in said deed is stated, and whether he, the said Gustave Wagner, did not furnish the report and statement, as alleged and charged by the complainant to have been made 61 and furnished by said Gustave Wagner, to the above mentioned commercial agents, or, if not to them, to whom he has furnished such report and notice, and whether before making and publishing such report and notice he consulted and communicated with the complainant thereon, and whether he, the said Wagner did not write or direct the letter addressed to C. E. King & Co., at Boston, Massachusetts, to be written and directed and whether the copy herein above set forth is not a true and correct copy of said letter, and whether he, the said Wagner has not sent a number of 62 other letters and circulars to the customers and consignees of said partners, of similar contents and purport as the letter last above mentioned, and whether he has not collected and received large sums of money belonging to said partners, and from whom he received any such moneys, and the time and place when and under what circumstances and statements he received such moneys, and the respective sums then received by him and for what goods he received such moneys, and the qualities and quantities of goods sold and for which 63 such moneys were paid to and secured by him, the said

Gustave Wagner, and that the said copartnership may be declared void and at an end, and that an account may be taken of all and every the said partnership dealings and transactions, from the time of the commencement thereof, and also an account of the moneys received and paid by the complainant and the said defendant respectively in regard thereto, and that the said defendant may be decreed by this Honorable Court to pay to the complainant, your orator, what, if anything, shall, upon the taking of the said accounts, 64 appear to be due to him, your orator being ready and willing, and hereby offering to pay to the said Gustave Wagner what, if anything, shall upon the taking of the said account appear to be due to him from your orator, and that in the mean time, the said Gustave Wagner may be restrained by the order and injunction of this Honorable Court from in anywise interfering with the said copartnership property, or any part or portion of the same, and from selling or disposing any of the goods and property, machinery, and chattels belonging to or held by said copartners, and also from collecting or 65 receiving any of the partnership debts or other moneys, and from endorsing, accepting, or in anywise transferring, assigning or pledging any bill of exchange, promissory note, draft, check, or order for the payment of money due to or coming to and belonging to said copartnership firm, and from making, drawing, or endorsing any bill of exchange, promissory note, bank check, or order for the payment of money, in the name of said copartnership firm, and from in anywise altering or changing any of the stock-in-trade, goods and chattels, wares and merchandise now held by 66 said copartners, and also from purchasing any stock, goods or merchandise in the name, and for and on account of said partners, and from incurring any debt or debts, liability or liabilities, in the name of said copartners, or for their account, and that some proper person may be appointed to collect and receive

all the goods, chattels, property, moneys and effects of said copartners, and to settle up the affairs of said copartners, and that upon a final closing of said business and affairs each of said partners may receive so much of the net surplus after satisfying and paying all just claims and demands against said partners as may be according to equity and good conscience, and that your orator may have such other and further relief in the premises as to your Honor may seem meet and be agreeable to equity and good conscience. 67

May it please your Honor the premises considered to grant unto your orator not only the most gracious writ of subpoena of the State of New Jersey, to be directed to the said Gustave Wagner and his confederates, when discovered therein, and thereby commanding him and them, and every of them, at a certain day, and under a certain penalty therein to be specified, personally to be and appear before your Honor, in this Honorable Court, then and there to answer all and singular the premises, and to stand to and abide such order and decree therein, as to your Honor shall seem meet, and shall be agreeable to equity and good conscience, but also the writ of injunction issuing out of, and under the seal of this Honorable Court, to be directed to the said Gustave Wagner, his counsellors, attorneys, solicitors, officers, servants, employees, or agents, thereby restraining him, them, and each of them, from in anywise or manner interfering with, selling, disposing, pledging, or conveying any of the goods, wares, merchandise, chattles, and property of said copartners, and also from in anywise or mauner collecting and receiving any or all of the debts due or to become due to said copartners, and from endorsing, accepting, or in any manner transferring, assigning, or pledging any bill of exchange, promissory note, draft, check, or order for the payment of money due or to become due and receivable by, for, or on account of said copartners; and from making, drawing, signing, or endorsing any bill of exchange, promissory note, bank 68 69

70 check, or order for the payment of money in the name of said copartnership; and from in anywise and in any manner altering or changing any of the stock in trade, goods, chattles, wares, and merchandise now held by said copartners; and also from purchasing or contracting for any stock, goods, merchandise, or any other property or chattles in the name of said copartnership; and from contracting and incurring any indebtedness or liabilities in the name of said copartners, in any manner and for any purpose whatsoever; and from destroying or in any manner wasting any of the property of said copartners until the further order of this Court to the contrary, and your orator,

71 as in duty bound, will ever pray, &c.

CHARLES BORCHERLING, JR.,
Solicitor and of Counsel with
the Complainant.

New Jersey, Essex County, ss.:

72 LUDWIG SUTRO, of full age, being duly sworn, on his oath deposes and says: That he is a brother of Hugo Sutro, the complainant in the foregoing bill named, that the said complainant during the first week of the present month of December applied to deponent, and informed deponent that he the said complainant had received information that his partner, Gustave Wagner, of the City of Newark, in said county, had made a written statement respecting the position and affairs of the firm of Wagner & Sutro, and had delivered or furnished such statement to Messrs. Dun, Barlow & Co., the proprietors of a Commercial Agency in the City of New York, to have the same entered upon the books of said Agency, and to be made known and reported through said

73 Agency to the mercantile community, and requested deponent to ascertain the truth of such information, and to produce a copy of such statement and report from said

Agency. That deponent forthwith applied to said Agency for said desired information, and copy of any such report alleged to have been made by said Wagner, whereupon this deponent received a copy of a report made by said Gustave Wagner, of and concerning the affairs of said firm of Wagner & Sutro, at Newark, N. J., which said report bears date the second day of December, instant, and was furnished by said Agency to this deponent in the words and figures, as in said bill of complaint in that behalf set forth. And 74
deponent further says, that he is thirty-three years of age, and engaged in mercantile pursuits in the City of New York; that the aforesaid Agency is a place wherein books and records of the reports concerning the pecuniary position and other matters of, and concerning the affairs of business men in general throughout the United States are kept, for the use and informatian of merchants, to enable them to be governed in their dealings with each other; that said agents furnish not only such reports to their subscribers, but do likewise publish a printed sheet, which they circulate among their said subscribers, and in and by which 75
printed sheet any change in the position of any business firm or business mens' affairs respecting his or their responsibility or otherwise, are so noted; that merchants, on perusing such printed sheet, and finding any notice of any change in respect to their customors, and persons with whom they are accustomed to deal and have business relations forthwith, obtain copies of such reports from said Agency, and govern themselves in accordance with the report thus obtained. That deponent a few days after obtaining the said copy of said report, received a copy of the printed sheet from said Commercial Agents, and there- 76
in found a notice that the affairs of said firm of Wagner & Sutro had undergone a change, and directing business men's attention to such fact; and deponent further says, that in consequence of said report, the said firm of Wagner & Sutro in, and until a different report for the better is made, will be seriously injured and damaged in the credit

and good standing of said firm among business men, and that said report tends to destroy the credit of said firm.

L. SUTRO.

77 Sworn and subscribed this 23d day of }
December, A.D. 1872, before me. }

J. O. FORD,
Master in Chancery, N. J.

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New Jersey, Essex County, ss:

OSCAR WIESSNER, of the City of Newark, in said county, being duly sworn, upon his oath deposes and says: That he is acquainted with Gustave Wagner and Hugo Sutro, who are partners in trade in said City of Newark, under the name and firm of Wagner & Sutro. That deponent was present at an interview and discussion between the said Wagner and Sutro of, and respecting a report by said Sutro, charged to have been made and furnished by said Wagner to a Commercial Agency in the City of New York, of and respecting the position, condition, and affairs of said firm; that said discussion was thus had, held, and took place either on Monday, the ninth, or Tuesday, the tenth day of December, instant, that at the time of said discussion, the said Sutro presented a paper to said Wagner which was in the words and figures as stated in the foregoing bill of complaint, and bears date the second day of December, instant. That he deponent 78 has heard the allegations of the said Sutro, as set forth in said bill in that behalf read to him, and says, that those statements then made are correct, that said Sutro did charge the said Wagner with being the author of said report and statement, and that he had without just cause or justification furnished said report to said Commercial Agents, and inquired why he the said Wagner sought to 79

undermine and destroy the credit and good standing of their said firm; that said Wagner listened to the said charges and inquiries of said Sutro, and to the reading of the contents of said paper, and also took the same into his own hands, and read and perused the contents thereof, and thereupon in the presence of deponent informed the said Sutro that he the said Wagner was the author of said report and statement, and had given and delivered the same to said Commercial Agents, as charged by said Sutro, that it was the said Sutro's own fault, and satisfactory to him the said Wagner; that he the said Wagner did not care a damn. 80

OSCAR WIESSNER.

Sworn and subscribed this 23d day of }
December, A.D. 1872, before me. }

J. O. FORD,

Master in Chancery, N. J.

81

New Jersey, Essex County, ss. :

HUGO SUTRO, the complainant in the foregoing bill of complaint named, being duly sworn, on his oath saith: That the matters and things therein set forth so far as they relate to his own acts and deeds are true, and so far as they relat to the acts and deeds of other person or persons, he believes them to be true. And that he entered upon the copartnership with Gustave Wagner, as in said bill is stated, and has paid into the common fund of said partners the sum of ten thousand dollars in money, which amount of deponent's said capital still remains wholly in said partnership business; that since the formation of said partnership the said Gustave Wagner has secretly and without the knowledge of deponont, sent off and disposed of large quantities of the most valuable portion of the 82

stock in trade and goods and property of said partners, and has refused, and still refuses to account for the same. That the machinery in said bill, mentioned as purchased by and with the moneys of said partners, has been left unattended and unemployed, and is going to destruction ;

83 that said partners have received large and valuable orders from their customers, for goods manufactured by said firm and partners, but which said Wagner has refused to fill, and has, so far as deponent has been able to ascertain, neglected to fill and satisfy, although no reason existed why such demands should not be complied with, and the said partners have received and enjoyed the profits arising therefrom. That about the eighth or ninth day of December, instant, after deponent had received a copy of the report and statement made by said Wagner to the Commercial Agent, in said bill mentioned, and as herein alleged, applied to the said Wagner to know why he had sold his

84 property and had made the said statement, whereupon the said Wagner took and perused the said copy which deponent then held, and had read the contents thereof to said Wagner, and replied to deponent in the language in which his said answer in said bill is set forth, adding, that he did not care a damn about it, that it was deponent's own fault ; that he, the said Wagner, had given said notice, and published said report. And deponent says that the visible assets and stock in trade of said partners, through and by the acts of said Wagner, are greatly diminished, and the said manufacturing business has nearly come to a stand

85 still, the said Wagner refusing to manufacture, and refusing to allow deponent in any manner, or for any purpose to act for said partners, or to promote the interest of said partnership, but excludes deponent from all knowledge of the position of said partners in respect to their affairs or property. And deponent further says, that by reason of said report having been made and given and published, the credit of said partners has been destroyed ; that some of the creditors of said partners have

in consequence of the said report, refused to give further credit to said partners, and have threatened to prosecute said partners unless their demands are forthwith paid and satisfied. That said Wagner has possessed himself of most of the assets of said partners, and now refuses to account or to close up the affairs of said partners, excepting upon his own terms, he proposing to pay to deponent for his interest in said partnership firm five thousand dollars, as soon as convenient to him ; and deponent further says, that in consequence of the mismanagement of said Wagner of said partnership business, the same is of very little value and ruined.

HUGO SUTRO.

Sworn and subscribed this 24th day of }
December, A.D. 1872, before me. } 87

FREDERICK ADAMS,
Master in Chancery, of N. J.

SCHEDULE A.

Referred to in the within Bill.

THIS INDENTURE, made the first day of October, in the year of our Lord one thousand eight hundred and seventy-two, between Gustave Wagner and Virginia R. his wife, of the city of Newark, in the county of Essex and state of New Jersey, of the first part, and Gustave Wagner, Jr., of the city of Newark, in the county of Essex and state of New Jersey, of the second part: 88

Witnesseth, that the said party of the first part, for and in consideration of one dollar, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or

before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by
 89 these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns forever, all those tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the city of Newark, in the county of Essex and state of New Jersey.

The same premises conveyed to Gustave Wagner by deed of January 6th, 1866, from Ebenezer Howard Hyde and wife, and recorded in Essex county Register's Office in Book T, 12 of Deeds, page 406, 407 and 408, and the
 90 same conveyed to said Hyde by Elisha B. Poinier and wife by deed of August 24, 1864, and recorded in Book I, 12 of Deeds, Essex county Register's Office, page 298, 299 and 300, and the same conveyed to said Poinier by Jacob D. Vermilye and wife by deed recorded in Book U, 10 of Deeds, page 96, &c., the said premises being described as follows :

The first lot, beginning in the westerly line of Catherine street, at the northeast corner of a lot sold by Aaren Nicols and wife to Oliver S. Halstead ; thence running north twenty-four degrees and ten minutes, east along
 91 the westerly line of Catherine street sixty-five feet ; thence north sixty-seven degrees and ten minutes, west two hundred and twenty-eight feet to the easterly line of Shipman street ; thence along said line of Shipman street south nineteen degrees and fifteen minutes, west sixty-five feet ; thence south sixty-seven degrees and ten minutes, east two hundred and twenty-eight feet to the place of beginning.

The second lot, beginning on the easterly side of Shipman street, at the southwest corner of lands now or late of Isaac Nichols ; thence running south

sixty-seven degrees and ten minutes, east one hundred ⁹²
 and nineteen feet along said Nichols' line to the west
 line of a lot sold to Jonathan Fairchild, as recorded in
 Book 204 of Deeds, page 282; thence along said Fair-
 child's line parallel with Catherine street thirty-five
 feet more or less to the line of lot now or late belonging
 to the heirs of Henry Parkhurst deceased; thence along
 that line north sixty-seven degrees and ten minutes,
 west one hundred and sixteen feet more or less to the
 easterly line of Shipman street aforesaid; thence along
 said line of Shipman street north nineteen degrees, east
 thirty-five feet to the place of beginning. The above ⁹³
 described premises are hereby conveyed, subject to the
 incumbrance of a certain mortgage dated August 24,
 1864, made by Ebenezer Howard Hyde and wife to
 Elisha B. Poinier, for six thousand and five hundred
 dollars, upon which has been paid thirty-two hundred
 and fifty dollars; also another mortgage made by
 Gustave Wagner and wife to P. H. Porter, executor of
 Elisha B. Poinier, deceased, for seventeen hundred and
 fifty dollars, which mortgage the said party of the
 second part hereby assumes to pay, as part of the con-
 sideration of this conveyance, and the covenants herein- ⁹⁴
 after contained are not to *extend* to or include said
 mortgages, together with all and singular the houses,
 buildings, trees, ways, waters, profits, privileges, and
 advantages, with the appurtenances to the same belong-
 ing or in anywise appertaining; also, all the estate
 right, title, interest, property, claim, and demand
 whatsoever, of the said party of the first part, of, in and
 to the same, and of, in and to every part and parcel
 thereof; to have and to hold all and singular the above
 described land and premises, with the appurtenances, ⁹⁵
 unto the said party of the second part, his heirs and
 assigns, to the only proper use, benefit, and behoof of
 the said party of the second part, his heirs and assigns
 forever; and the said Gustave Wagner, party of the first
 part, doth for himself, his heirs, executors and adminis-

trators, covenant and grant to and with the said party of the second part, his heirs and assigns, that he, the said Gustave Wagner, is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said
 96 land and premises, or any part thereof, at the time of sealing and delivery of these presents, are not encumbered by any mortgage, judgment or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever, except the two mortgages herein before mentioned; and also, that the said party of the
 97 first part now have good right, full power, and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid. And also, that he, the said Gustave Wagner, will warrant, secure, and forever defend the said land and premises unto the said Gustave Wagner, Jr., party of the second part, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

In witness whereof, the said party of the first part
 98 have hereunto set their hands and seals the day and year first above written.

[L.S.] GUSTAVE WAGNER,
 [L.S.] VIRGINIA R. WAGNER.

Signed, and delivered)
 in the presence of)

LOUIS GREINER.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss :

Be it remembered, that on this twenty-sixth day of November, in the year of our Lord one thousand eight 99 hundred and seventy-two, before me, Louis Greiner, Master in Chancery of New Jersey, personally appeared Gustave Wagner and Virginia R. his wife, who, I am satisfied, are the grantors in the within deed of conveyance named, and I having first made known to them the contents thereof, they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed. And the said Virginia R. Wagner, being by me privately examined, separate and apart from her 100 said husband, did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

LOUIS GREINER,

Master in Chancery.

IN CHANCERY OF NEW JERSEY.

101	<p style="text-align: center;">Between</p> <p style="text-align: center;">HUGO SUTRO, <i>Complainant,</i></p> <p style="text-align: center;">and</p> <p style="text-align: center;">GUSTAVE WAGNER, <i>Defendant.</i></p>	} <i>On Bill for Relief and Account.</i>
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Upon filing the within bill and affidavits and a bond from the complainant to the defendant in the penal sum of ten thousand dollars in the conditions mentioned in the forty-sixth section of the rule of this court, let an injunction issued according to the prayer of this bill.

102 December 26, 1872.

A. O. ZABRISKIE,

A true copy.

H. S. LITTLE, Clerk.

IN CHANCERY OF NEW JERSEY.

Between :

HUGO SUTRO,
Complainant,
 and
 GUSTAVE WAGNER,
Defendant.

*On Bill, Answer,
 etc.*

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

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This defendant now and at all times hereafter saving to himself, all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering saith :

That it is true, as in said bill alleged, that on or about the eighth day of April, eighteen hundred and seventy-two, the said Hugo Sutro, the said complainant in said bill, agreed with this defendant to become a partner with this defendant in the trade and business then carried on by defendant, in the city of Newark, New Jersey.

And this defendant further admits that a certain 104 indenture of two parts, bearing date the day and year last aforesaid, was made and executed between the said complainant and this defendant, which was in the words and figures set forth in said bill.

And this defendant, further answering, admits that the said copartnership business was entered upon and carried on in said city of Newark by the complainant and this defendant up to the period alleged in said bill,

and that the said complainant paid unto the said co-
 105 partnership the sum of ten thousand dollars, the sum
 agreed to be paid by him, and that it is equally true
 that this defendant contributed, as his share in stock,
~~raw~~ ^{raw} material, wrought machinery, tools and fixtures
 valued at twenty thousand dollars. But this defendant
 denies that the said complainant has, as in said bill
 alleged, from time to time in all things duly conformed
 to the stipulations and agreements in the said indenture
 contained by him agreed therein to be performed, in
 that he has frequently, knowingly and intentionally
 106 violated that portion of the Sixth Article thereof, which,
 among other things, provides that, "The whole time
 and energy of the partners is to be exclusively devoted
 to the interests of the business," which violation upon
 the part of the said complainant will be more fully here-
 inafter mentioned.

And this defendant, further answering, admits that it
 it is true, as alleged in said bill, that at the time of the
 making of said indenture, this defendant was engaged,
 and for a long time previous thereto had been engaged,
 107 in the business of manufacturing braided trimmings.
 That this defendant had learned the trade and been
 engaged in the business for some thirty-two years, both
 in this country and in Europe, and for about sixteen
 years of that period had successfully conducted the
 business on his own account, and is thoroughly ac-
 quainted with the said business in all of its depart-
 ments.

And this defendant further answering saith that he
 admits that the said complainant has no knowledge re-
 108 specting said trade or business, excepting that which he
 may have acquired since the formation of said copart-
 nership. But this defendant denies that previous to the
 making of said indenture ~~the~~ defendant was fully
 aware of the complainant's total ignorance of and con-
 cerning the said trade and business and manufacture to
 be carried on under said indenture, but upon the con-

trary this defendant supposed the complainant had considerable knowledge of the said business, complainant before said copartnership was made having told defendant that he, complainant, was pretty well informed in reference to the business proposed to be carried on, having been engaged in a similar business in Hartford, Ct., for five years. 109

And defendant saith that soon after the commencement of said co-partnership business he was fully satisfied of the entire ignorance of complainant respecting said business or the proper mode of conducting the same; and that the first difference that arose between defendant and said complainant was as to the proper method of conducting the different branches of the said business. And this defendant further answering denies that, previous to the making and executing said articles of agreement he desired the complainant to invest his said money and said means in said business, and to give his time in the conducting the mercantile part of said business, so as to enable them, as such partners, to increase the facilities of said business, and extend and enlarge the same. But this defendant alleges the fact to be that the said complainant applied to this defendant for an interest in said business, saying that he had a certain amount of money which he desired to invest in some established and profitable business, which he was satisfied was the character of the business which defendant was then conducting. 110 111

That after several interviews said complainant and this defendant concluded to engage together in business and the only agreement in regard to the same was made and entered into on the eighth day of April eighteen hundred and seventy-two, a copy of which is in said bill set forth.

And this defendant further answering saith, that upon consultation between this defendant and the said complainant it was concluded between them to be advisable that this defendant should proceed to Europe and pro- 112

cure additional machinery for their business.

And this defendant did go to Europe for that purpose, and did take with him the sum of thirty-nine hundred dollars of the copartnership funds. That the said com-
 113 plainant had at that time paid into said firm the sum of five thousand dollars as part of the capital agreed by him to be paid.

That this defendant returned from his said mission to Europe on the sixteenth day of July, eighteen hundred and seventy-two. That a part of the machinery purchased arrived in the City of Newark, at the factory of the firm, on the twenty-seventh day of July of the same year, and another portion of it in August and November
 114 of said last mentioned year.

That the said sum of thirty-nine hundred dollars so taken as aforesaid by defendant to Europe, was used by said defendant as follows: In the purchase of said machinery, in the defraying the expenses of defendant to and from Europe, and his expenses whilst there, and in defraying the expense of bringing a machinist from Europe to put up said machinery, and the sum of eight hundred and ten dollars which was the balance left after the above expenditures were disposed of by defendant by depositing to the firm's credit in the bank the sum of
 115 seven hundred dollars, and the sum of one hundred and ten dollars which defendant expended in wages due to hands employed by said firm.

That before said machinery could be put up or worked, tables and castings of considerable magnitude had to be made. That no delay whatever was permitted in having such tables and castings made, and that in addition to the machinist that defendant had brought from Europe, another machinist was at once employed, both of whom were constantly employed in getting said machines in working order. That as soon as the machines were ready to work, the same were worked.

That all of said machines, twenty-two in number, that arrived in July and August of said last mentioned year,
 116 with the exception of one (for which there was no room

on the tables), were worked as long as there was any work for them to do.

And this defendant further answering denies that he ever neglected to make use of or refused to use or operate said machinery ~~unless~~ ^{when} there was any work for said machines to do.

And this defendant further answering admits that 117 certain portions of said machinery are very intricate and delicate, ~~and~~ ^{but} denies that the same or any portion of the same, for want of proper care, use, and attendance, is becoming of less value, and is going to destruction; but upon the contrary, that the very best care of the same has been taken, and the same is as valuable now as when first received.

And this defendant further answering denies that he did at any time after the arrival of said machinery refuse to manufacture goods in reasonable quantities. But this defendant admits that the said complainant, 118 upon one or more occasions, urged this defendant to manufacture goods in large quantities, which this defendant declined to do. That he gave to said complainant as his reasons for such declination, that there was a large quantity of manufactured goods already on hand, for which there was no demand. That the goods which were manufactured by said firm were of silk, and costly to manufacture. That the style of goods manufactured by said firm were constantly changing.

That a want of home demand and large foreign importations of the same style of goods had ruined several manufacturers engaged in the same business, at the same time 119 naming two establishments in the City of Paterson engaged in the same business that had recently failed. And that this defendant was very certain that to manufacture large quantities of their goods without orders for them, would prove financially disastrous.

And this defendant further answering denies that he has at any time since the commencement of said copartnership been in the habit of making large purchases of silks, and ther materials, goods, wares, and merchandise used in the

- 120 manufacture of braided goods, and other articles manufactured by them in their said business, upon the credit of said copartnership; or that he has manufactured large quantities of such goods, and received the proceeds and value for the same, without rendering any statement thereof to the complainant, or making any charges or entries of the same, or any part thereof upon the books of said copartners; or that he has during all that time exercised sole and exclusive control over the stock in trade belonging to said copartnership; or that he has refused, and still
- 121 doth refuse to account for the same to complainant; or that the complainant has frequently expressed his dissatisfaction to this defendant about this defendant's action, behavior, and dealings in that behalf with the complainant, or that he has requested this defendant to act openly and frankly in all their said business transactions with the complainant. But this defendant upon the contrary saith, that while it is true that he has made from time to time such purchases of silks, and other materials, goods, wares, and merchandise, as was necessary to be made in the conducting of said business upon the credit of said firm, and has manufactured large quantities of such goods, and has received some of the proceeds in value for the same, yet
- 122 every such purchase, sale, and receipt has been duly entered upon the regular books of said firm at the time thereof.

And this defendant further answering, denies that he has at any time given evasive answers to inquiries made by complainant to him concerning the business of said firm. But upon the contrary, has always answered him as fully as defendant was able to do.

- 123 And this defendant further answering, denies that the said complainant hath at anytime, since the commencement of said copartnership, requested this defendant to give to complainant samples of the goods manufactured by said copartnership. And this defendant saith, that since the formation of said copartnership, there has been in the office of said firm at all times a sufficient quantity of

samples of all goods manufactured by said firm, to which the complainant had free access at all times, and which he was at liberty to take as he might see proper.

And this defendant further answering saith, that the 124 said complainant did, upon one or more occasions, endeavor to obtain defendant's consent to the opening of an office in the City of New York, for the purpose of ~~this~~ *their* business, which consent this defendant admits he declined to give, at the same time assigning to said complainant as his reason for said declination, that in the judgment of defendant such additional expense was entirely unnecessary, and that it would not pay the expense of the undertaking.

That this defendant at the same time stated to said 125 complainant, that he defendant had himself, upon two different occasions whilst engaged for himself in business, tried that experiment and had found it to be a losing one. That the mode which the said firm was then using of disposing their goods, which was by consigning for sale their goods to leading houses in the City of New York engaged in selling that class of goods, and by selling through a traveling salesman, by samples, was all that defendant had for a long time adopted, and found to be most profitable.

And this defendant denies that the said complainant at 126 any time offered to pay either the whole or the largest portion of the increased rent and attending expenses of such proposed office in the City of New York, and saith, that nothing whatever was ever said between complainant and defendant as to who should pay the expenses of such proposed enterprise.

And this defendant further answering, denies that he ever declined to make, deliver, or furnish to complainant any samples of any of their manufactured goods; or that he ever informed complainant that if he desired to make sales to 127 obtain samples of and from other parties; or that said copartners have lost great gains and profits, and a large and valuable trade, which they would otherwise have en-

joyed and received through the influence of complainant.

And this defendant denies that any gains, profits, or valuable trade have been at any time lost to said firm by reason of any inability on the part of said complainant to obtain from the office of said firm samples of goods manufactured by them. And this defendant further answering, 128 denies that since the commencement of the said copartnership he has been in the habit of collecting large sums of money, and drawing checks and promissory notes on the partnership account; or that he has not duly and regularly entered all transactions on the copartnership books of account, but only a small portion thereof; or that he has kept complainant in ignorance thereto; or that he has drawn many checks and given many notes in the name of the copartnership, or in respect of the partnership concerns, but for defendant's own private purpose. But defendant saith, that he himself collected but little money for 129 the firm, and only drew from time to time such checks as were necessary to pay small debts of said firm, and the hands, who were in the habit of looking to defendant for their pay, defendant having exclusive charge of the manufacturing department and employing the hands, all of which transactions were fully entered at the time in the proper books of said firm. And defendant saith, that he never at any time drew or caused to be drawn any check or checks in the firm's name for his own private 130 purpose, which he did not at once enter or cause to be entered upon the proper books of said firm.

And defendant further saith that he never at any time drew or gave any note or notes in the said firm's name for his own private purpose, or for the purpose of the said firm, or for any other purpose.

And this defendant further answering denies that since the formation of said partnership he has manufactured goods, and conducted and carried on and allows said business only to be carried on to such extent as suited his own pleasure and convenience, for his own use and purpose,

and without consulting or communicating with complainant, or that he has sent off and delivered to divers parties and places in the City of New York and other places, large and valuable quantities of manufactured goods, and property of said partners, without consulting or communicating with complainant in respect thereof, or in anywise informing complainant where such goods and property had been sent to, and for what purpose, or that this defendant has failed to cause the proper entries to be made upon the books of said partners, or that he has refused to account therefore to complainant. 131

And this defendant further answering denies that he hath at any time since the formation of said partnership deposited, conveyed, or placed any goods or property of said copartnership in the City of New York, or in any other place whatever; that in reference to the allegations of said complainant in said bill as to his said complainant having made inquiries about such consigned goods and property, and as to the information which it is alleged in said bill, complainant received, this defendant has no other or further knowledge excepting that contained in said bill, and therefore cannot answer in regard to it. That, in point of fact, the said parties had not received any goods of said firm from this defendant for the purpose of selling and disposing the same. 132

And this defendant, further answering, admits that after he learned (as hereinafter more fully set forth) the fact that said complainant was removing the consigned goods of said firm, and collecting and appropriating the funds of said firm, this defendant *did not* notify the different parties in the city of New York, to whom the said firm had consigned their goods, not to deliver the same to the said complainant or any other person for the purpose of removing the same, but to hold and sell the same as they had been in the habit of doing, and not to pay either this defendant or the complainant the money received upon sales for the same, but to send checks for such 133

sales payable to the order of said firm to said city of Newark.

135 And this defendant, further answering, saith that since the formation of said copartnership he has manufactured such goods and quantities thereof as were at all likely to be sold, and that in the matter of the manufacture of goods, he has at all times been governed by a desire to do that which was in the interests of said firm.

136 And this defendant, further answering, denies that there was at any time after the commencement of said partnership business up to the time of the filing by complainant of the said bill when the manufacturing of goods was not carried on to the extent of the means, capacities and demands of said firm. That so far as the knowledge and belief of this defendant extends, there has never been any goods whatever sent from the factory of said firm, which were not entered by the book-keeper or some other person in the proper books of the firm.

That defendant's business being that of conducting the manufacturing department he never interfered with anything outside of that, and according to the best of his recollection he never made any entry of any character whatever in the books of said firm, or had anything whatever to do with them, having from the formation of said partnership left that entirely to complainant and the book-keeper of said firm.

137 And this defendant, further answering, saith that when the business of said copartnership commenced, it was understood and agreed between complainant and the defendant, that the mode of disposing of their manufactured goods should be the same as that which this defendant had successfully adopted for many years in his own business, which was that of selling goods by sample through salesmen, and also by consigning the goods to several leading houses in the City of New York engaged in that line of business, which goods consigned, were at the time of said consignment charged to

said houses at the regular manufacturers selling prices, and bills therefor made out on the regular bill-heads of Wagner & Sutro, were sent with said goods. That said houses from time to time made payments to said Wagner & Sutro on account of such goods sold by them, that final settlements were made with such houses every six months, said houses having the privilege of returning to Wagner & Sutro such goods consigned to them as remained unsold. That, in accordance with such understanding, the said goods were from time to time consigned by said firm of Wagner & Sutro to such leading houses in said City of New York as E. S. Jaffery & Co., H. B. Claffin & Co., and others of like character, that so far as defendant had heard the transactions of the said consignees were perfectly satisfactorily to both this defendant and complainant. 138

That the said complainant never made any objection whatever to him said defendant in regard to said consignees, nor did defendant know that said complainant had any such objections until on or about the ninth day of December, eighteen hundred and seventy-two, when the defendant received from one of their consignees, in New York, a letter by which this defendant was informed that the said complainant had been transferring the goods so consigned as aforesaid. That upon such information this defendant went at once to the city of New York, and upon inquiry learned that the said complainant had, without the knowledge or consent of this defendant, or without saying a word to him upon the subject, made an arrangement with a firm known as Arnold & Benning in the City of New York, the members of which this defendant learned were personal friends of this complainant, but who were a firm with whom neither this defendant nor the firm composed of this defendant and complainant had ever had any dealings, and who were not known to be engaged in the trimming business, by which arrangement so made by complainant all of the goods which were in the City of New York belonging to the said firm of Wagner 140

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- 142 & Sutro, were to be taken to the house of Arnold & Benning, which said firm were to have the exclusive privilege of selling the goods of the firm of Wagner & Sutro. That this defendant at that time learned that another part of the arrangement made by said complainant with the said Arnold and Benning was that all of the goods of said Wagner & Sutro sold by said Arnold & Benning were to be filled on the regular bill-heads of said firm of Arnold and Benning, so that the names of the manufacturers of such goods would not be known to the purchaser. And this defendant saith that at that time said firm of Wagner & Sutro had on consignment at said different houses in the said City of New York—several thousand dollars worth of manufactured goods. That this defendant then learned that said complainant had caused to be removed from several of said consignees, the goods which had been consigned to them by said firm of Wagner & Sutro, and had the said goods removed to the said house of Arnold & Benning.
- 143 That this said defendant further learned that the said complainant had called upon all of the consignees of goods belonging to Wagner & Sutro, and had ordered them to send all of the goods which they then had belonging to Wagner & Sutro to said firm of Arnold & Benning, and had so arranged it that the said firm of Arnold & Benning should have the exclusive privilege of selling the goods of Wagner & Sutro upon a commission of ten per cent upon all goods sold by them; and this defendant
- 144 there further learned that the said complainant had taken up the invoices of goods consigned to said different consignees and replaced them with invoices showing that the goods had come from the firm of Arnold & Benning, so that said firm of Wagner & Sutro could look only for payment for their goods to said firm of Arnold & Benning; that some of said consignees suspecting that the said complainant had some unfair design in such removal of goods, declined to deliver the goods in their possession to the said complainant without the

consent of this defendant. That this defendant at the same time learned that the said complainant, prior to the said ninth day of December, eighteen hundred and seventy-two, had collected, in the City of New York, from different persons who were indebted to the firm of Wagner & Sutro, the sum of seventeen hundred and twenty-one dollars and eighty cents; and, as this defendant was informed, made strenuous efforts to collect everything that was then due to the said firm of Wagner & Sutro. That the said complainant had not informed this defendant of any of his said collections, neither had he entered or caused them to be entered upon the proper books of said firm. That the only direction that this defendant gave to said consignees was that they should continue to hold and sell the goods so consigned to them as aforesaid, and to send the money received by them upon sales for such goods to the firm of Wagner & Sutro, at Newark, New Jersey, and that was all that this defendant did or said.

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And this defendant, further answering, saith that he did not himself remove or cause to be removed any goods whatever from the consignees to where the said goods had been consigned by the firm of Wagner and Sutro. That so far as defendant knows, all of the goods which were ever sent from their manufactory were not only duly entered in the proper books of said firm, at the time they were so sent, but the name or names of the persons to whom they were sent, was at the same time duly entered upon said books.

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And this defendant, further answering, denies that the books of said firm were, by reason of the action of this defendant, in a very sad and bad condition, or that they were ever kept by him, or that he over objected to any investigation of said books, or did by force expel H. H. Papendick, the book-keeper, or that he did at any time decline or refuse any inquiry or investigation into the said books, or of, or concerning the vouchers relating to said co-partnership, property and

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transactions. But, upon the contrary, this defendant saith that from the commencement of said copartnership, he had nothing whatever to do with the books of said firm, nor did he make any entries therein.

149 That when the said firm commenced business, they had in their employ a competent book-keeper, who had been employed by the mutual consent of the members of said firm, and with whose conduct the said complainant never made any objection to this defendant, but who was afterwards, without the knowledge or consent of this defendant, discharged by said complainant.

150 That the said complainant, without consultation with or the knowledge of this defendant, employed said Papendick as a bookkeeper for the said firm. That the defendant, within a few hours afterwards, became satisfied with the incompetency of said Papendick to act in that capacity, and so informed the said complainant. That this defendant stated to said Papendick that his services were no longer needed by said firm; whereupon he, the said Papendick, at once quietly withdrew. That this defendant then told the said complainant that he was willing and desirous that a competent book-keeper should be employed, and a book-keeper was subsequently employed by said complainant.

151 And this defendant, further answering denies that about one month prior to the exhibiting of said bill, he discharge from the employ of said firm some of the work hands; but this defendant saith that about twelve days prior to the exhibiting of said bill, he did discharged from the employ of said firm some of the work hands, for the reason that there was not employment for them, and the said complainant had drawn from the bank all of the deposits of said firm, and had refused to either himself pay the said hands their wages, or to give defendant the money so to do. That, in fact, the last week that the hands were paid, which was on or about the fourteenth day of December, eighteen hundred and seventy-two, this defend-

ant paid the hands their wages then due with money 152
 belonging to himself individually. That prior to the
 said discharge of the hands by this defendant as
 aforesaid, defendant told the said complainant that he
 intended to discharge some of the hands, and then
 told complainant why this defendant proposed so to
 do, to which the said complainant made no objection
 whatever.

And this defendant, further answering, saith that
 there has been at all times and there is now belonging
 to said firm a large quantity of manufactured and un- 153
 sold goods, upon consignment as hereinbefore set forth,
 of all such goods as were manufactured by said firm.
 But that defendant, further answering, denies that the
 customers of said firm were desirous and anxious to ob-
 tain and purchase goods in any greater quantity than
 said firm then had on hand.

And this defendant, further answering, denies that he
 ever neglected or refused to fill and satisfy large and
 valuable orders from their customers, or that he ever
 refused to fill and satisfy any order whatever for such
 goods, excepting upon one occasion when the complain-
 ant brought to this defendant an order from New York 154
 amounting to twenty dollars.

That this defendant told said complainant that the
 materials to fill said order would of itself cost twenty-
 four dollars without any labor put upon it, and for that
 reason this defendant refused to fill it.

And this defendant, further answering, denies that he
 ever told the said complainant that he would do as he,
 defendant, thought proper in the matter of the manufac-
 turing of goods, or that he intended to manufacture
 what, and in quantities to suit his convenience, or that
 the said complainant had nothing to say about it, or 155
 that if the said complainant did not like that, that it
 was quite immaterial to this defendant, or that this de-
 fendant ^{should} employ only whom and as few or as
 many persons as he pleased, and that none of such

employees should do anything that the said complainant might direct them to do.

156 And this ~~deponent~~ ^{defendant} further answering saith, that it is true, as alleged in said bill, that at the time of the formation of said copartnership, and until some time in the month of November, eighteen hundred and seventy-two, the defendant was, and had been the owner in fee simple of the house and lot where he resided, on Catharine and Shipman Streets, in the said City of Newark.

157 That he had held the title thereof since the month of January, eighteen hundred and sixty-six. And this defendant further admits, that Schedule "A" referred to in said bill, and attached thereto, is as this defendant believes, a true copy of the deed of conveyance in the said bill, alleged to have been made by this defendant and his wife to Gustave Wagner, Jr., who is a son of this defendant. That this defendant does not know, so as to speak with certainty, as to the value of said property. But supposes the same to be of the value of the sum of fifteen thousand dollars. That at the time of the conveyance by this defendant and his wife to the said Gustave Wagner, Jr., there was upon said property, and had for a long time prior thereto, been upon the same two several mortgages, amounting in the aggregate to the sum of five thousand dollars, subject to which said conveyance by this defendant and wife were made.

158 And this defendant further answering, saith, that prior to the first day of October, eighteen hundred and seventy-two, the said complainant insisted that in order that the said firm should have the appearance of doing a large business, that they should sell their goods even if they had to sell the same below the cost thereof. That to this, this defendant strongly objected, saying to said complainant that he had never done so, and should not until he was compelled. That the said complainant replied that other houses were doing the same thing and they ought to do what other houses were doing.

That the said complainant, prior to the first day of

October, eighteen hundred and seventy-two, also frequently insisted that the said firm should rent a place of business in the City of New York, to which their goods should be sent for sale. That said complainant was also urging that the said firm should open branch offices for the purpose of their business, both in the City of Boston and Baltimore, in each of which branch offices the said complainant proposed to put his brothers. That the said complainant notwithstanding this defendant told him that he defendant was as much interested in the success of their business as he complainant was, and had as much if not more experience than any man in America in manufacturing and selling the class of goods in which said firm dealt, and that this defendant was positive that such an undertaking would prove financially ruinous, yet the said complainant kept constantly insisting that the experiment should be tried. That about the same time the said complainant was strongly urging that this defendant should take a trip West, for the purpose of selling goods, which this defendant declined to do, for the reason that it was understood between complainant and this defendant from the beginning of said co-partnership, that the business of this defendant was to be that of attending to the manufacturing department.

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That on the second day of December, eighteen hundred and seventy-two, the said complainant, without any consultation with, or saying anything to this defendant, discharged the book-keeper who had been employed by consent of the members of said firm, about the time of defendant's return from Europe, and who had proven himself to be a competent and trusty person; and said complainant employed, without the knowledge or consent of this defendant, a friend of complainant's, by the name of Papendick (an old man, over sixty years of age), to act as book-keeper for said firm, who being entirely incompetent this defendant discharged, as hereinbefore set forth. And this defendant from what he had before then seen and heard, believed

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that the said complainant had as aforesaid discharged the first book-keeper, and put in his place said Papendick, in order that the said complainant might control him in the interests of himself.

163 And this defendant further answering, saith, that well knowing that the said complainant had no knowledge of the proper or profitable mode of conducting the business in which the said firm was engaged, and having no confidence in the judgment of complainant, and seeing his determination to have his own way in the management of said business, and being somewhat mistrustful as to his honesty of purpose to this defendant, and this defendant being well assured that the plans and purposes of said complainant, if carried out, could not but end in the financial ruin of said firm; and feeling that it was his duty, and believing it was his right so far as he could to protect a home for his family, he made the
164 conveyance herein before referred to.

That the property so conveyed by this defendant was no part of this defendant's capital invested in said business, and had nothing whatever to do with it; and so far as this defendant then knew or has since learned, had nothing whatever to do with giving credit to said firm. That on the twenty-sixth day of November, eighteen hundred and seventy-two, the day upon which said deed was executed and acknowledged, this defendant with his wife called upon Louis Greiner, a practising lawyer in said City of Newark, who took the acknowledgment of said deed. That this defendant stated the
165 circumstances which induced defendant to make said conveyance, and that said Greiner then told this defendant that the date of the deed was unimportant; that this defendant had no object whatever in dating said deed upon a different date from that upon which said deed was executed and acknowledged.

And this defendant, further answering, saith that some months prior to the formation of said copartnership, and whilst he was conducting business for him-

self, he gave to the agent of Dun, Barlow & Co., a statement of the real estate at that time owned by him in the said city of Newark, which was the same real estate so as aforesaid conveyed by this defendant and his wife to his said son. 166

That after the said conveyance was made it occurred to this defendant that he ought to notify the said agency of his disposition of said real estate, which this defendant did by writing to such agency and in no other way; that in giving such information this defendant merely wrote to said agency that he had on such a day conveyed his real estate in said city of Newark to his son, Gustave Wagner, Jr., that according to the best of defendant's recollection and belief, that that was all that was written. 167

That this defendant at no time, either by writing or otherwise, informed said agency, or any agent thereof, of any trouble between this defendant and the said complainant, or said or did anything whatever by which the credit or interests of said firm could in any way be impaired.

And this defendant, further answering, denies that in the statement made by him as aforesaid to said agency he had any purpose or desire to injure the credit and good standing of said copartnership, or in any way to affect them disasterously. 168

And this defendant, further answering, saith that he has never seen the books, records and entries belonging to the said Commercial Agency, and, therefore, doth not know whether or not there is such an entry therein made as is set forth in the said bill.

And this defendant, further answering, saith that he remembers that the said complainant did speak to this defendant concerning said entry and statement in said Commercial Agency, but that this defendant doth not remember of said complainant reading to him the contents of any copy thereof. That this defendant then and there told the said complainant exactly what he 169

had done and what he had written, and why he had written it.

That, in fact, the very day that this defendant conveyed his property to his son as aforesaid, this defendant told the said complainant what he had done.

170 That this defendant at that time further told complainant that he, defendant, was satisfied that the complainant's views of conducting the business of said firm if carried out would ruin the business. That this defendant thought it was enough for him (this defendant) to run the risk of *losing* his twenty thousand dollars capital invested in said business, and that he did not want to lose his real estate if he could avoid it, to all of which the said complainant made no reply.

And this defendant, further answering, denies that the said complainant has, in all his acts, actions, and deeds, honorably and faithfully, to the best of his skill and understanding, endeavored to promote the interest of said partners and their business, or that he has in every way sought to comply with the views of this defendant, as far as the same tended to the promotion of their joint interests and benefit in their said business, consistent with their said agreement, or that he has dilligently sought to elevate the position of said copartnership, firm and business.

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And this defendant, further answering denies that he has at any time since the formation of said copartnership in any manner or in any way acted with said complainant except in good faith. And this defendant denies that he hath at any time since the formation of said copartnership secretly and clandestinely removed large and valuable quantities of the stock-in-trade and property of said partners without giving and rendering an account for the same, or that he hath at any time removed any stock-in-trade and property whatsoever of said partners without giving and rendering an account thereof. That so far as this defendant hath knowledge or belief, no stock or prop-

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erty of whatever character or of whatever quantity, has been removed from the factory of said firm without the same being duly entered upon the proper books of said firm. 173

And this defendant denies that by reason of the removal of the stock and property of said firm, the stock-in-trade and visible assets of said partners have very seriously diminished in quantity or that great losses have been sought to be inflicted by this defendant upon the said copartnership-firm, by this defendant refusing to manufacture goods, and satisfy the reasonable demands of their customers, or in other respects as in said bill expressed. 174

And this defendant, further answering, saith that at the time of the filing of the said complainant's bill in this cause, there was, at least, five thousand dollars' worth of manufactured goods in the factory of the firm, and that there was at least five thousand dollars' worth of unsold manufactured goods of said firm on consignment in the city of New York. That the said firm had at that time on hand at least six thousand dollars' worth of silk, cotton and unmanufactured goods in their office and factory in said city of Newark. That the goods manufactured by said firm were costly to manufacture, and the styles of the same were constantly changing. That the character of the business was such, and always had been, as not to warrant the manufacture in advance of a very large stock. That the reliance of the said firm, and of others engaged in the same business, is more upon the filling of orders than upon the sale of large stocks on hand. 175

And this defendant, further answering, denies that by reason of the said statement to said agency having been made and published (if the same were published), of which this defendant has no knowledge, several of the merchants and people with whom said copartners were in the habit of dealing, have, since said statement was made, or publication has come to their notice and know- 176

ledge, refused to extend the credit to the said copartnership firm which it had previously enjoyed.

177 That this defendant, upon the contrary, alleges that up to the time of the removal of the said consigned goods, belonging to said firm, by the said complainant, and the attempts made by said complainant to collect as aforesaid in the said City of New York, all of the money of the said firm, the credit of the said firm was unimpaired and unlimited; and that, notwithstanding the action of said complainant, so far as this defendant ever knew or heard no credit whatever for goods or any other thing was ever denied by any one to said firm. And this defendant denies that any credit was ever refused to said firm.

178 And this defendant, further answering, denies that the firm of Hamil & Booth, in the City of New York (with whom this defendant admits the said firm of Wagner & Sutro had previously dealt) have at any time notified the said firm of Wagner & Sutro of their unwillingness to further trust or credit said firm of Wagner & Sutro, or up to the time of the filing of said bill by the complainant, demanded from said Wagner & Sutro payment of the amount due to them, or that the said firm of Hamil & Booth, at any time previous to the filing of said bill by complainant, threatened, in case of neglect, to make payment, to sue the said firm of Wagner & Sutro, for the purpose of collecting their claim.

179 And this defendant, further answering, saith that while under article six of the partnership agreement, each partner had the right to draw from said business a sum not exceeding three thousand dollars annually, and whilst the said complainant well knew that under the terms of said copartnership agreement the first year of said firm's copartnership would not expire until the eighth day of April eighteen hundred and seventy-three, yet the said complainant drew from the account of said firm, for his own purpose, at different times prior to the fourth day of December, eighteen hundred and seventy-

two, the sum of thirteen hundred dollars, and by calling himself personally upon the following named consignees of said firm in the City of New York, he, the said complainant, collected as follows: on the fourth day of December, eighteen hundred and seventy-two, from J. B. Spellman & Co., the sum of six hundred and fifty-four dollars and six cents; on the next day, which was the fifth day of December, from Secor & Coffin, the sum of one hundred and forty-one dollars and ninety-seven cents, and from Hazen, Whitney, & Co. the sum of fifty-four dollars and seventy-five cents; on the sixth day of said last mentioned month, from Bartlett, Beery, & Co. the sum of six hundred dollars; from A. T. Stewart & Co. the sum of one hundred and one dollars and fifty-two cents; from H. B. Clafflin & Co. the sum of one hundred and sixty-nine dollars and fifty cents; making in all the sum of seventeen hundred and twenty-one dollars and eighty cents, which said several amounts were due to the said firm of Wagner & Sutro, and should have been deposited to their credit. But the whole of which amount the said complainant himself kept for his own purposes, declining to appropriate any portion thereof to the payment of any of the debts of said firm then due, and refused to even give this defendant sufficient thereof to pay the wages then due to the hands employed by said firm. That the said last stated amount so appropriated by said complainant, together with the sum of thirteen hundred dollars as aforesaid, drawn by said complainant for his own purposes prior to said fourth day of December, exceeded the sum of three thousand dollars which complainant was entitled to draw from the business of said firm annually.

And this defendant, further answering, saith that after the sixth day of December, eighteen hundred and seventy-two, other moneys due said firm were received at the offices, and were deposited to the firm's credit. That on the ninth day of December, said last mentioned year, the said complainant drew from the firm's deposit

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out of the bank the further sum of two hundred and twenty-five dollars, and appropriated it to himself, reducing the firm's deposit, as the cash book of said firm then showed, to the sum of eleven dollars and eleven cents. That the next day, being the tenth day of December, one Hardham, of the firm of Jennings & Hardham, called at the office of said firm for the payment of a bill for goods furnished said firm of Wagner & Sutro of about sixty-one dollars, which was past due. That defendant referred said Hardham to said complainant for payment. That the said complainant declared that he had no money, and this defendant then said to complainant that he, complainant, had drawn all the funds and must have money, to which said complainant replied that he had none, and would pay said account when other moneys were received. That this defendant then told said complainant that the account was a small one, was past due for a long time, and must be settled, that if complainant would not pay it defendant would himself give the firm's note for the account payable upon demand, and sent out for a blank note for that purpose, but before the messenger sent for said blank note returned, the said complainant paid the account. That about the thirteenth day of December, eighteen hundred and seventy-two, an account of Wilkinson & Co., of the said City of New York, for paper furnished said firm of Wagner & Sutro, for twenty-six dollars and fifty-two cents, was presented at the office for payment, that said account was past due, that the said complainant was not then there, and this defendant then gave for said account the firm's check, which was entered on the cash book of said firm; that within a few minutes after giving said check the said complainant came in the office, and the defendant told him, the said complainant, about the check which the defendant had just given and what it had been for, and defendant saith that there was at that time money sufficient in the bank, to the credit of said firm, to pay said check. That within a day or so after, and before the said check

was presented for payment, the said complainant drew out every dollar belonging to said firm from the bank; and on the seventeenth day of December, eighteen hundred and seventy-two, said check was protested for non-payment and returned to the City of New York; that upon the receipt of such protest, the parties holding said check came over with the same and presented it to this defendant. That this defendant was surprised to see the same, and went with the holder of the check to the bank to make inquiry about it. That defendant there learned for the first time that the said complainant had drawn out from the bank all the money of said firm. That defendant returned at once to the office of said firm, saw said complainant, told him what he had learned, and asked complainant for an explanation, to which complainant replied that he had acted under the advice of his lawyer. That defendant asked him to pay the said check, which he, the said complainant, refused to do, whereupon this defendant paid it out of his own money. And this defendant, further answering, saith that at the time when the said complainant had drawn and received and appropriated to himself amounts which exceeded the sum of three thousand dollars, which under said agreement complainant was allowed to draw annually. This defendant had drawn, at different times, in all the sum of fifteen hundred dollars, as follows: before this defendant went to Europe as aforesaid in May, eighteen hundred and seventy-two, he arranged with the complainant that complainant should pay for him the sum of one hundred and seventy-five dollars, interest money on a bond and mortgage of defendant, and should charge the same to defendant's private account, which payment the said complainant made; that on the return of the defendant from Europe, on the twenty-fourth day of July, eighteen hundred and seventy-five, this defendant drew, with the knowledge and consent of said complainant, from said firm the sum of seven hundred dollars, to pay an individual account which

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191 this defendant owed to the firm of Hamil & Booth of the City of New York. That this defendant drew from said firm the further sum of about one hundred dollars to meet defendant's private expenses whilst in Europe. That this defendant, about the first day of December last, drew from said firm the sum of five hundred dollars for his defendant's household expenses.

192 And this defendant further answering, saith, that the said complainant by personal application collected all the money due said firm that he could collect. That several parties owing said firm were suspicious of said complainant, and declined to pay complainant. That this defendant after he learned that said complainant had collected all that was possible for him to collect, and that he the said complainant was appropriating the firm's money to himself, and neglecting and refusing to pay the debts owing by said firm of Wagner & Sutro, or any part thereof, this defendant did on the 10th day of December, eighteen hundred and seventy-two, write and send to C. E. King, of the City of Boston, Massachusetts, a letter, a true copy of which is set forth in said bill, and did at about the same time send other communications of about the same purport to other parties owing said firm of Wagner & Sutro, or having their goods upon consignment. That this defendant being desirous that all of the debts of said firm should be paid as they became due, did himself collect in the City of New York, 193 from different persons, in all the sum of eight hundred dollars belonging to said firm, and has received checks drawn payable to said firm's order, amounting to the sum of nine hundred dollars, amounting in all to the sum of seventeen hundred dollars, out of which this defendant at once paid to the firm of Hamil & Booth, the sum of five hundred and sixty-eight dollars, and account then due by said firm of Wagner & Sutro. And also the sum of three hundred and seventy-five dollars for rent then due, and the further sum of about seventy-five dollars for wages due the employees of said firm, which

payments paid the majority of the debts of said Wag- 194
ner & Sutro, then due.

And this defendant further answering, denies that at any time since the formation of said copartnership, this defendant hath possessed himself the largest portion of the said copartnership property, or that he has at any time possessed himself of any portion of the said copartnership property, excepting the moneys which he has lately received belonging to said copartnership, as hereinbefore stated; or that this defendant has had any greater or other control over the said copartnership property than the said complainant, or that he has endeavored in any way to exercise any exclusive control 195
over the same. That the property belonging to said copartnership at the time of the filing of said bill was in the places hereinbefore stated, and that the said complainant had the same control over the same as this defendant had. That this defendant at no time objected to the said complainant disposing of any portion of the said copartnership property; and that the only direction that this defendant at any time gave which seemed to be at all in conflict with the plans of said complainant, were in the defendant's countermanding the orders which the said complainant had given for the removal of the goods consigned to parties in the City of New York, and in regard to parties owing the said firm of Wagner & Sutro, sending moneys due to said firm by check payable to the order of said firm as hereinbefore stated. 196

And this defendant further answering, saith, that the said complainant, in addition to the attempts on his part, as hereinbefore set forth, to possess himself and control the said copartnership property. On the sixteenth day of December, eighteen hundred and seventy-two, without the knowledge or consent of this defendant, removed all of the books of said firm, from the office of said firm, but to what place complainant removed the same this defendant is not informed, and cannot state. 197

198 That this defendant upon discovering that such removal had been made spoke to said complainant about it, and complained to complainant of his action in that regard, and requested complainant to return said books to the office of said firm, to which said complainant replied that he would not do so. That this defendant since the removal of said books by complainant as aforesaid, hath not seen the same or any of them, and does not know where the said books or any of them now are.

199 And this defendant further answering, denies that he had the slightest intention of appropriating to himself any of the moneys which he himself has received as hereinbefore stated, belonging to said firm, but that he invariably as such moneys were received by him, caused the same to be entered, at the time or the receipt thereof, upon the proper books of said firm, intending to apply such moneys to the payment of debts due and owing by said firm of Wagner & Sutro. And this defendant denies that in countermanding the directions so as aforesaid given by the complainant for the removal of the goods, so as aforesaid consigned by said firm, or in the directions that this defendant gave for sending the money due to said firm of Wagner & Sutro, by checks payable to their order, or in notifying the said agency, or in causing the letter of December the tenth, eighteen hundred and seventy-two, to be written to C. E. King & Co., of Boston, Massachusetts, or other letters as hereinbefore stated, this defendant had any intention or desire to oppress or injure the said complainant, or in any way to affect the credit of said firm of Wagner & Sutro. But
200 that this defendant then believed, and believes now, that in so doing he was acting in the interests of said firm, except, perhaps, in the statement sent to the said agency, in which particular this defendant admits he was governed by what he considered to be his individual interests, outside of said firm connection.

And this defendant, further answering, denies that the said complainant at any time requested this defend-

ant to dissolve said copartnership by mutual consent, 201
 or that the said complainant expressed himself willing
 to have a fair and thorough investigation made of the
 said copartnership transactions, and pay his share of
 any losses which might have been incurred. But this
 defendant alleges the fact to be that, after he had as-
 certained that the said complainant had so as aforesaid
removed said consigned goods, and had collected the
 said amounts of money, and after his refusal to pay the
 debts of said firm, or to give this defendant money for
 that purpose, this defendant himself expressed to the
 said complainant his surprise and dissatisfaction with 202
 the course pursued and being pursued by the said
 complainant; that the said complainant replied to this
 defendant that he, the said complainant, did not want
 to remain any longer in said business, and proposed that
 this defendant should purchase complainant's interest.
 That this defendant suggested that they had better wait
 until after the first day of January, eighteen hundred
 and seventy-three, pay the debts of said firm, take an
 account of stock, and that they then perhaps could settle.
 That the said complainant then proposed to give to 203
 this defendant the sum of five thousand dollars for de-
 fendant's interest in said business, to which this de-
 fendant replied that he would do much better than that
 with complainant. That the complainant proposed to
 give defendant the sum of five thousand dollars for de-
 fendant's interest of twenty thousand dollars on said
 business, but that this defendant would give complain-
 ant five thousand dollars for his the said complain-
 ant's interest of ten thousand dollars in the said busi-
 ness, which conversation embraced everything that was
 said upon that subject.

And this defendant, further answering, denies that he 204
 has from time to time, or at any time, sought to possess
 himself of the property of said partners, or hath at
 any time possessed himself of the same or of any part
 thereof, or that he has inflicted by his action any in-

jury upon the credit of said firm, or that he has sought to destroy the credit of said firm, for the purpose of oppressing said complainant, in order to enable this defendant to acquire said property, or in order to induce said complainant to take and be satisfied with a receipt of a small portion of his capital and the loss of all of complainant's profits from said business.

205 And this defendant denies all, and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without that, that there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of this defendant.

206 All which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

GUILD & LUM,
Solicitors for Defendant,
WM. B. GUILD, JR.,
of Counsel.

207 NEW JERSEY, ESSEX COUNTY, ss.:

GUSTAVE WAGNER, the above-named defendant, being duly sworn, on his oath saith that the matters and things set forth in the above answer, so far as relates to his own acts, are true, and so far as relates to the acts of others he believes them to be true.

GUSTAVE WAGNER.

Sworn and subscribed to, this 8th day of February, A. D. 1872, before me, at Newark, N. J.

JAMES HEWSON,
Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

208

Between

 GUSTAVE WAGNER,
Defendant,

and

HUGO SUTRO,

Complainant.

} *On Bill, &c.*

NEW JERSEY, ESSEX COUNTY, ss.:

GUSTAVE WAGNER, the defendant in said suit, being 209
 duly sworn according to law, on his oath saith that it
 is true this deponent entered into the copartnership
 with Hugo Sutro, under the firm name of Wagner &
 Sutro, as in said bill is charged, and that the respective
 interest of the said complainant and this deponent are
 as in said bill set forth; that this deponent, since the
 formation of said copartnership, has devoted his whole
 time and energy to the interests of the business of said
 copartnership until prevented from so doing by the
 conduct of said complainant, as hereinafter set forth.
 That this deponent had an experience of thirty-two 210
 years in the same business as that in which the said
 firm of Wagner & Sutro were engaged, and that said
 Sutro, at the time of the formation of said copartnership,
 had no knowledge of the said business, and did not
 know how the same ought best to be conducted to ad-
 vance the interests of said firm.

That this deponent, by agreement between the com-
 plainant and himself, soon after the formation of said co-
 partnership, went to Europe for the purpose of purchasing

machinery for the use of said firm, taking with him the
 sum of thirty-nine hundred dollars of the copartnership
 funds; that this deponent ^{deponent} used all possible despatch,
 211 arrived home himself on the sixteenth day of July, eighteen
 hundred and seventy-two, and that a part of the machinery
 so purchased by him arrived at the factory of said firm on
 the twenty-seventh day of the same month, another portion
 in August, and the remainder in November of the same
 year; that the whole of said sum of thirty-nine hundred
 dollars was expended by deponent in the purchase of said
 machinery, in the defraying of his expenses to and from
 Europe and while there, and in defraying the expenses of
 a machinist acquainted with the said machinery, in bring-
 212 ing him from Europe to put up said machinery, excepting
 the sum of eight hundred and ten dollars, seven hundred
 of which was deposited in bank to the credit of said
 firm, and the balance, being one hundred and ten dollars,
 was used in paying wages due the hands employed by said
 firm.

That tables and castings of considerable magnitude had
 to be made before said machinery could be used, and that
 this deponent used all possible despatch in getting the said
 machinery put up and ready for use, and as soon as the
 same could be used the machines were worked—and have
 ever since that time been worked—when there was any-
 213 thing for them to do. That portions of said machines are
 very intricate, but the same have ever been kept with the
 greatest care, and are now as valuable as when they were
 purchased by said firm. That this deponent has always
 caused the said business to be carried on as extensively as
 his experience and wisdom in the business taught him would
 be for the best interests of said firm, and has never refused
 to do any work which came to him to be done; excepting
 the filling of a small order brought to him by said com-
 plainant ammounting to twenty dollars, the materials for
 which would exceed that amount in costs; that this de-
 ponent had learned by his experience aforesaid, that the

said business could not be safely carried on by the manu- 214
 facturing of goods to be kept on hand without orders in
 advance for the same; and that such a course, if pursued,
 must, in the opinion of this deponent, end in the financial
 ruin of said firm. That said Sutro repeatedly urged that
 such a course should be taken, and stores for the sale of
 goods so manufactured should be established in New York
 and other cities, that this deponent refused to consent to the
 adoption of such a course, because the style of goods were
 constantly changing, large amounts of goods would be
 left on their hands and lost to them. And this deponent
 having previously tried such a plan knew the same to be 215
 a ruinous one financially; in fact, there was at that time
 already on hand a large quantity of goods belonging to
 said firm for which there was no demand. That this de-
 ponent purchased materials from time to time as the same
 became necessary, and manufactured goods as fast as a
 market could be found for them, and in making all such
 purchases promptly made or caused to be made entries of
 the same in the books of the concern. That he received
 a portion of the proceeds of sales of such goods, and in-
 variably entered an account of the same in the books of 216
 said firm at the time of the several transactions, to which
 books the said Hugo Sutro always had access. And this
 deponent when asked about the details of the business of
 said firm by said Sutro, always gave full and frank replies,
 and never gave evasive answers to such questions; that
 said Sutro could always get samples of the goods manu-
 factured by said firm without asking this deponent or any
 other person for them, and this ^{deponent} ~~defendant~~ never declined
 or delayed to furnish said Sutro with such samples. That
 this deponent attended strictly to his part of the said
 business as agreed upon, and collected but little of the
 firm's money, which collections were promptly entered by 217
 him in the books of the concern; and this deponent only
 drew checks in the firm's name as the same became neces-
 sary to pay small debts of the firm, and the employees of

the firm—who looked to this deponent for their pay. That this deponent never used the name of the concern for his own private purposes, and never drew a check for his own use without at once entering an account of the same in the books of the firm, and never drew or gave any note or notes in the said firm name for his own or the said firm's use or for any other purpose whatever. That this

218 deponent never consigned or placed any of the said firm's goods in the hands of any person or persons whatever, that all the dealings of the firm were with reputable parties, and all such dealings were well known to said Sutro; and this deponent does not know of any consignment of goods of said firm which was not entered in the proper books of the firm. That this deponent attended strictly to the manufacturing part of said business, and up to the time of the exhibiting of the bill of complaint in this cause, had manufactured goods to the full extent of the means, capacities, and demands of said firm. That

219 it was understood and agreed between said Sutro and this deponent at the time of the commencement of their said business, that the mode of disposing of goods should be the same as this deponent had successfully adopted in his own business, which was that of selling goods by samples through traveling salesmen, and by consigning goods to some of the leading houses in New York City, who should render an account from time to time, and return all goods remaining unsold. That this plan was carried out by said firm, as this deponent always supposed satisfactory to said Sutro and deponent

220 until on or about December ninth, eighteen hundred and seventy-two, when this deponent was informed that said Sutro was removing the goods of said firm from the houses in New York City to whom they had been consigned, and was placing the goods with a firm known as Arnold & Benning, in said City of New York, who were friends of said Sutro, but who were unknown to this deponent, either personally, or as being engaged in the trimming business, which said firm of Arnold & Ben-

ning by the arrangements made with said Sutro, were to have the exclusive privilege of selling the goods of the firm of Wagner & Sutro. The goods were to be sold by said Arnold & Benning in such manner that the names of the manufacturers would not be known to purchasers, and the said Arnold & Benning were to be entitled to a commission on sales of 10 per cent. That said Sutro had ordered all the said business houses in said City of New York having goods of the firm of Wagner & Sutro on consignment to pass the same over to said Arnold & Benning; at the same time this deponent learned that said Sutro had collected bills due said firm of Wagner & Sutro to the amount of one thousand seven hundred and twenty-one dollars and eighty cents, and had made efforts to collect all moneys due said firm, and had not entered or caused to be entered any account of the same in the proper books of said firm, or informed this deponent of the same. That this deponent thereupon ordered the consignees aforesaid not to deliver said goods to said firm of Arnold & Benning, which he feared to be unsafe, but to hold and sell the same, and return the proceeds and account thereof to the firm of Wagner & Sutro, at Newark, New Jersey, and this deponent made no changes in the places of consignment of said goods whatever. That this deponent never kept the books of said firm himself, and never interfered with them, or with any one keeping them, except in the discharge of an incompetent book-keeper employed by said Sutro; and that the books of the firm, so far as this deponent knows, were always kept in good condition by said Sutro, or the book-keeper of the firm. And this deponent never had anything to do with the books nor made any entries in them. That this deponent well knowing the ignorance of said Sutro as to the best manner of carrying on the said business, and his determination to experiment by the manufacture of goods for sale without orders, establishing branch offices or stores for sale, and in other ways known by this deponent to be ruinous, and fearing the conduct of

said Sutro might ruin said firm financially, this deponent, for his own protection, made the conveyance of his real estate to his son, Gustave Wagner, Jr., as set forth in said bill. And forthwith notified the firm of Dun, Barlow & Co., to whom he had previously rendered an account of his ownership of said real estate, of said transfer. But this deponent did the same for his private good, without intent to injure the credit of said firm; and this deponent believes that said transfer, and the notice thereof as aforesaid, did not injure. That this deponent was impelled to such action merely by the desire to save his individual property, in case the course of said Sutro should result in ruin to said firm. That this deponent never removed any of the stock or goods from the premises of the said firm without rendering a prompt account of the same. That there was on hand at the time of filing said bill of complaint five thousand dollars worth of unsold manufactured goods, five thousand dollars worth of such goods on consignment in New York City, and at least six thousand dollars worth of material in the office and factory of said firm; and that the visible assets of said firm had not become less than before, and the credit of the said firm was good, the same never having been refused to said firm. That said Sutro appropriated to himself more than the amount which he was entitled to by the terms of their copartnership, while this deponent had drawn from the said concern but a portion of the amount to which he was entitled, which amounts so drawn by deponent were duly entered upon the books of said firm, and said Sutro knew of the same, and was apparently satisfied therewith; and that any other moneys received by this deponent belonging to said firm, were at the time of their receipt duly entered in the proper books of the firm, and any appropriations of the same were made for the payment of debts due from said firm. All of which were duly set down in the proper books.

GUSTAVE WAGNER.

Sworn and subscribed before me this 18th day }
of February, A.D. 1873, at Newark, N. J. }

T. P. RANNEY,
Master in Chancery, of N. J.

A true copy.

228

H. S. LITTLE, *Clerk.*

IN CHANCERY OF NEW JERSEY.

BETWEEN

229

HUGO SUTRO, <i>Complainant,</i> <i>and</i> GUSTAVE WAGNER, <i>Defendant.</i>	}	<i>Injunction.</i>
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Returnable January 15th, 1873.

CHARLES BORCHERLING, JR., *Solicitor.* 230

New Jersey, to wit:

THE STATE OF NEW JERSEY

To GUSTAVE WAGNER, his Counsellors, Attorneys,
Solicitors, Officers, Servants, Employes and Agents,
and each and every of them GREETING :

Whereas, it hath been represented to us, in our Court of Chancery, on the part of HUGO SUTRO, complainant, 231 that he hath lately exhibited his bill of complaint against you, the said GUSTAVE WAGNER, defendant, to be relieved touching the matters set forth in the said bill, in which said bill it is, among other matters, set forth that you, the said defendant, are combining and confederating with others to injure the complainant touching the matters set forth in the said bill, and that the actings and doings of you, the said defendant, are contrary to equity and good conscience.

We therefore, in consideration of the premises, and of the particular matters set forth in the said bill, do 232 strictly enjoin and command you, the said Gustave Wagner, and all and every the persons before mentioned, and each and every of you, do absolutely desist and refrain from in anywise or manner interfering with, selling, disposing, pledging or conveying any of the goods, wares, merchandise, chattels and property of the firm of Wagner & Sutro. And also from in anywise or manner collecting and receiving any or all of the debts due or to become due to the said firm. And from endorsing, accepting or in any manner transferring, assigning or pledging any bill of exchange, promissory 233 note, draft, check or order for the payment of money due or to become due and receivable, by, for or in account of said copartnership firm. And from making, drawing, signing or endorsing any bill of exchange, promissory note, Bank-check or order for the payment of money in the name of the said copartnership firm. And from in anywise or any manner altering or changing any of the stock-in-trade, goods, chattels, wares and merchandise now held by said firm. And also from purchasing or contracting for any stock, goods, merchandise or any other property or chattels in the name of 234 said copartnership firm. And from contracting and incurring any indebtedness or liability in the name of said copartnership in any manner and for any purpose

whatsoever. And from destroying or in any manner wasting any of the property of said copartners, until you, the said defendant, shall have fully answered the said bill of complaint, and our said court shall make other order to the contrary.

Witness, his HONOR, ABRAHAM O. ZABRISKIE, our Chancellor, at Trenton, the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and 235 seventy-two.

CHARLES BORCHERLING, Jr.,
Solicitor.

H. S. LITTLE,
Clerk.

IN CHANCERY OF NEW JERSEY.

Between

236

HUGO SUTRO,
Complainant.

and

GUSTAVE WAGNER,
Defendant.

} *On Bill for Relief.*

Application having been made to the Court of the 237
appointment of a receiver in this cause, of which ap-
plication, it appears to the Court, due notice has been
given to the solicitor of the defendant, and it appearing
to the Court reasonable and proper that such applica-
tion should be granted,

It is, on motion of Charles Borchering, Junior, solicitor and of counsel with the complainant, ordered that Elias N. Miller, Esquire, of the city of Newark, in the county of Essex, be and is hereby appointed a receiver in this cause to take charge of all the goods, wares, 238 merchandise, machinery chattels, and personal property of said parties to this suit as partners in trade, and also of all bills, bonds, notes, vouchers and effects belonging to said copartners; to collect and receive all moneys due and owing, and to become due and payable to the said copartners, and to hold the same until the further order of the Court in that behalf.

And to report to this Court from time to time of his proceedings as such receiver, and in all respect to act under the control and authority of this Court, under powers to be hereafter enlarged or diminished at the 239 pleasure of the Court; and that the receiver be allowed for his services just compensation, to be allowed by the Court.

Dated, April 29, 1873.

A. O. ZABRISKIE.

C.

A true copy.

H. S LITTLE,

240

Clerk.

IN CHANCERY.

February Term, 1873.

HUGO SUTRO,

*Complainant,**vs.*

GUSTAVE WAGNER,

Defendant.

241

There was notice on part of defendant of a motion to dissolve an injunction heretofore granted in this suit, and a notice on the part of the complainant for the appointment of a receiver. By consent both motions were agreed together.

MR. BORCHERLING for Complainant.

MR. GUILD for the Defendant.

242

The CHANCELLOR :

This suit is by one partner against the other for a dissolution on account and a receiver.

The grounds of complaint, on a failure by the defendant to fulfill his partnership obligations, his neglect and refusal to proceed with any efficiency in the business, his fraudulent appropriation of the funds, and his fraudulent voluntary conveyance of his separate property to his son, for the purpose of placing it beyond the reach of creditors of the firm, so as to leave the complainant's separate property liable for the debts of 243

the firm beyond its assets, and giving notice of such transfer to the Mercantile Agency for the purpose of ruining the credit of the firm.

The answer of the defendant denies some of these charges, but not all; the voluntary transfer of his separate property, and the notice of it to the Mercantile Agency, are not denied.

244 These, in connection with some other matters not denied, are sufficient to show that the defendant had deliberately resolved to break up and ruin the business of the firm; and the personal relations of the two partners are such that they can never carry on the business together to advantage. The injunction must be retained and a receiver appointed.

The motion to dissolve is denied with costs; the costs of the motion for receiver must abide the event.

245 COURT OF ERRORS AND APPEALS.

Between :

GUSTAVE WAGNER,

Appellant.

and

HUGO SUTRO,

Respondent.

*On Bill, Answer,
Injunction, etc.*

246 To the Honorable Court of Errors and Appeals. ss.

The petition of Gustave Wagner, in the above stated ~~case~~ ^{cause}, shows that your petitioner is aggrieved by an

order made by the Chancellor, bearing date the 29th of April, 1873, appointing a receiver in this cause; and also by an order of the same date denying a motion to dissolve an injunction granted in the cause.

Your petitioner appeals from the said orders upon the ground they are erroneous, for that the said receiver should not have been ordered, and that the said motion 247 to dissolve the injunction should not have been denied.

Your petitioner prays the said orders may be reversed and set aside, and your petitioner may have such relief as is meet.

B. WILLIAMSON,

Solicitor and of Counsel with Appellant.

Dated May 24, 1873.

(A true copy).

248

HENRY C. KELSEY,

Clerk.

