

N. J. Court of Errors and Appeals.

BETWEEN—

JULIA B. WILLISON,

Appellant,

and

ALBERT B. C. SALMON,

Receiver, Respondent.

On Appeal.

BRIEF FOR RESPONDENT.

STATEMENT OF FACTS.

In May, 1885, George M. Douglass recovered a judgment in the Supreme Court of this State against James B. Willison for \$2,440.53 upon which execution was issued and returned wholly unsatisfied.

Willison was a builder and contractor. Shortly after the entry of the judgment against him he gave up doing business in his own name, and thereafter took all contracts and did all his business in the name of his wife, Julia B. Willison. In March, 1886, Mrs. Willison, acting through her husband, made a contract with complainant for the erection of a house in Newark. The contract was duly filed in the clerk's office.

On July 1, 1886, Douglass, the judgment creditor, obtained an order for the examination of James B. Willison

upon supplementary proceedings. The examination disclosed the fact of the transfer of Willison's business to his wife, the existence of the Bowlby contract, and that the final payment of \$1,000 was about due on this contract, the building being completed except as to a few minor details. On July 15, 1886, A. B. C. Salmon was appointed by the Supreme Court as receiver of the things in action, &c., of Willison, and especially of the sum due on said Bowlby contract, "so far as the same belonged to him." The receiver at once served notice of his appointment on Mrs. Bowlby, and notified her to pay all sums due on the contract to him as receiver, and not to Mrs. Willison. The building was afterwards finished by Mrs. Willison acting through her husband.

Various materialmen, who had furnished to Mrs. Willison material for the erection of the building, served notices on the complainant, demanding payment to them of their bills out of the amount due on the contract. These notices were all served after the appointment of a receiver.

Thereupon the complainant filed her bill asking that the receiver and the various claimants interplead. The parties having all answered the bill, the cause was heard on pleadings and proofs before W. B. Williams, Esquire, Advisory Master. Complainant having taken a decree requiring defendants to interplead, paid into court the money due on the contract.

In the controversy between the receiver on the one hand and Mrs. Willison and the materialmen and labors on the other the Court of Chancery adjudged

"That the building contract in the complainant's bill mentioned, made in the name of the defendant, Julia B. Willison, with the complainant, and bearing date the third day of March, A. D. 1886, was in reality the contract of James T. Willison, the husband of the said Julia B. Willison, and was made by the said James T. Willison, in the name of his said wife as a cover and fraudulent device for the purpose of hindering and delaying his judg-

ment creditor, George M. Douglass, in the collection of his judgment in the answer of the defendant receiver mentioned;"

And that court decreed

"That the said sum of one thousand dollars remaining in the hands of the said complainant and due on said building contract, was the property of the said James T. Willison and not of the defendant Julia B. Willison, and that the same by virtue of the force and effect of the statute in such case made and provided, became the property of the said defendant, Albert B. C. Salmon, by his appointment by said Supreme Court as receiver of the property and things in action of the said James T. Willison, and that said sum at the time of the completion of said contract and the filing of the bill of complaint in this cause, was the property of said receiver and was not subject to the claims of or payable to either or any of the other defendants in this cause."

From this decree Mrs. Willison has appealed.

I.

The Court of Chancery correctly decided that the Bowlby contract was in reality the contract of James T. Willison the husband, and not of Mrs. Willison the appellant, and that it was made by James T. Willison in his wife's name as a cover and fraudulent device for the purpose of hindering and delaying the judgment creditor in the collection of his judgment against James T. Willison.

The evidence shows:

"That the judgment of Douglass was entered May 2d, 1885, for the sum of \$2,440.53; that prior and up to said last mentioned date James T. Willison had been and was engaged in the business of a carpenter and builder in the city of Newark, and at the time said judgment was entered had several contracts in his own name in process of performance for the construction and repair of buildings in said city; that in the prosecution of said works and contracts he had money invested belonging to himself, and was likely to, and in fact did afterwards, realize good and large profits from the completion of said contracts which belonged solely to himself; that on or about the date of the recovery of said judgment said James T. Willison in order to hinder, delay and defraud the said George M. Douglass in the collection of his said judg-

ment conveyed away to third parties all his real estate of any value, consisting of an undivided one-fourth part of a farm in Morris County, and at the same time in order to further hinder, delay and defraud said Douglass did adopt and take the name of his wife, the said Julia B. Willison, under which to carry on and transact his said business and did thereafter carry on his said business in her name; that said Julia B. Willison had no money, property or material to put into said business, and put nothing into it; that said James T. Willison proceeded just as he had heretofore done to use his own materials, tools and shop for the transaction of said business; and did from time to time collect moneys from said contracts above mentioned that had been taken in his own name and put and used them in the business carried on in his wife's name, in all respects as his own, that said business was in truth and in fact his own and was never even transferred to his said wife; that it was conducted entirely by him without control, supervision by or accounting to his wife; all contracts, papers, vouchers, and other papers connected with said business were signed solely by him, but in his wife's name. That said contract with the complainant in her bill mentioned, although taken in the name of said Julia B. Willison, was in truth and in fact the contract of said James T. Willison."

The change of the business to the wife's name was made between the date of verdict found and the entry of judgment.

Testimony of James T. Willison, page 31.

At that time James T. Willison had several pending contracts in his own name, which he finished in his wife's name. Page 30.

He has had the same shop, tools and everything just as before. Page 32.

Has had no wages or salary, has put in his own labor and skill as a carpenter and builder; his wife has done nothing and furnished nothing.

Every debt of his own but this judgment has been paid by him.

The contract with Bowlby is made out in the masculine gender.

He supports the family by his exertions in his wife's name. Page 43; lines 10-20.

Notes, receipts and bills were given, taken and received—sometimes in the name of the husband and sometimes in the name of the wife.

Notice this testimony of the appellant:

Q. You had no means or capital to put into the business, nothing except your husband's experience, tools and work—anything else? A. No, sir.

Q. And therefore the arrangement was that the results of your husband's work, your husband's experience, your husband's tools and ability to get contracts, were thereafter to be yours, was that all of it? A. Yes, sir.

II.

The following cases are cited to sustain the position that a business carried on by the husband in the name of the wife under such circumstances as are disclosed in this case is the business of the husband.

Tresch v Wirtz, 7 Stew., 124.

Kutcher v. Williams, 13 id., 436.

Voorhees v. Bonesteel, 16 Wall., 16.

Aldridge v. Muirheid, 11 Otto., 397, and especially the citation from the charge of the Circuit Judge on page 299.

Owen v. Cowley, 36 N. Y., 600.

Draper v. 35 id., 512.

"Earnings by a husband from a business carried on in the wife's name, when she had no money invested in it, cannot be regarded as hers."

New v. Oldfield, 110 Ill., 138.

III.

Appellant cannot object to the decree ordering defendants to interplead, because she has not appealed therefrom.

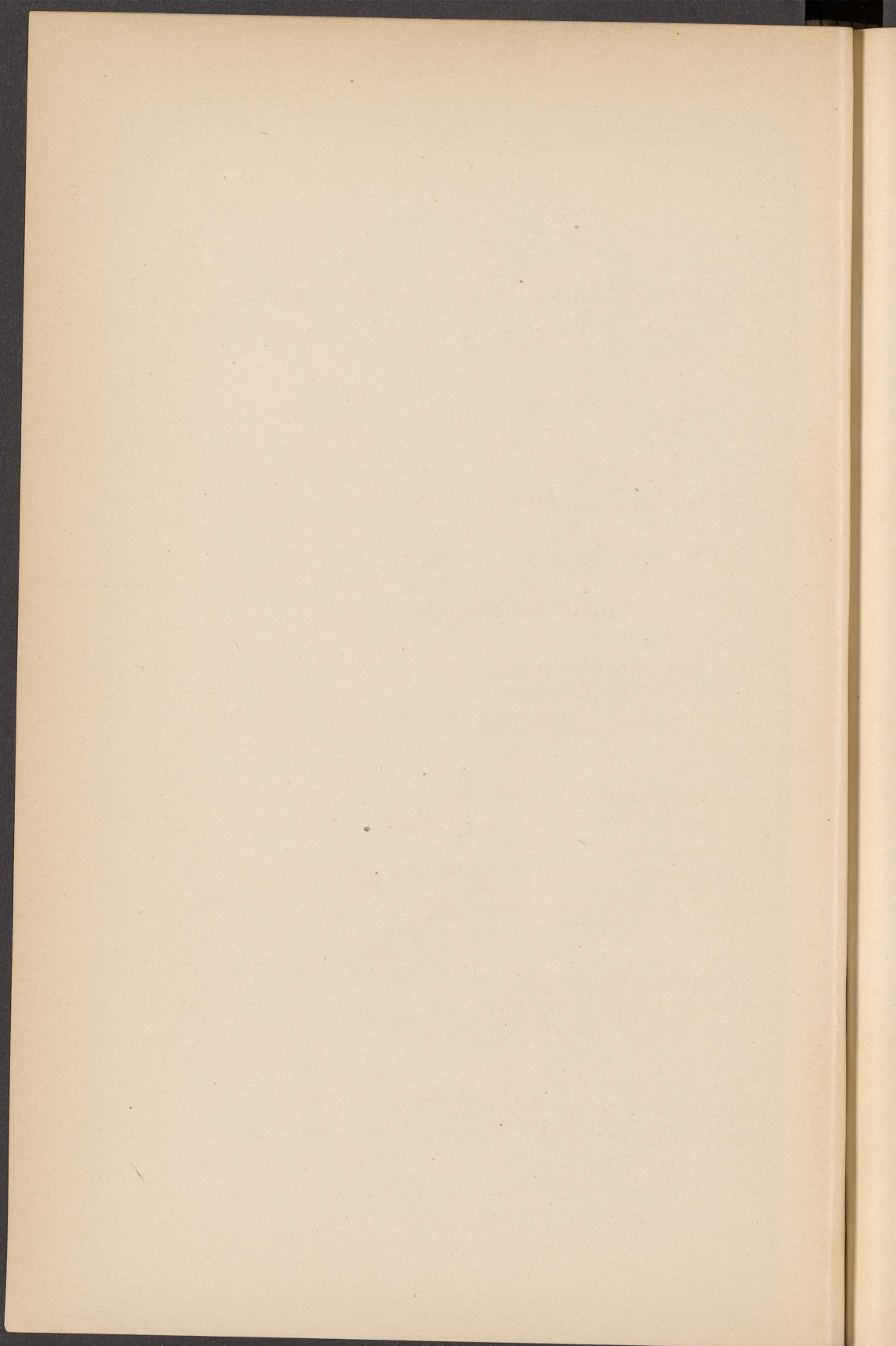
IV.

Appellant can only object to the decree appealed from so far as it affects her, and cannot raise the questions involved in the claims of the materialmen, who have not appealed.

JOHN W. GRIGGS,
Of Counsel with Respondent.

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Applicant can only object to the charges if he can show that he is not the person named in the charges and that he is not the person who has been charged with the offence.



New Jersey Court of Errors and Appeals.

BETWEEN JULIA B. WILLISON, <i>Appellant,</i> AND ALBERT B. C. SALMON, Receiver, &c. <i>Respondent.</i>	}	<i>On Appeal from the Court of Chan- cery.</i>
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Brief for Appellant.

The material question in the case is: Has the Receiver any title to the fund in court?

The discussion of this question may be divided into three branches:

1. The appellant was legally competent to make the contract with Bowlby and to execute the same, *although she had no separate estate.*

She could buy material and hire labor on her personal credit.

Wilson v. Herbert, 12 Vr. 456.

She could make and perform the contract by an agent; her husband could be her agent.

Tresch v. Wirtz, 7 Stew. 124.

The pleadings admit, and the evidence shows that the contract was made with the appellant through her agent, and that she performed it; therefore *prima facie*, the fund in court belongs to her.

2. The making of this contract by the appellant was not fraudulent as to her husband's creditors.

Sections 11 and 12 of the act entitled "An act for the prevention of frauds and perjuries," Rev. p. 446, do not apply.

A contract to build a house is a contract of letting and hiring of work and labor.

Addison on Contracts, 384 and 930.

Consequently, the making of the contract by the wife does not involve the transfer of any *property* of the husband.

But it is claimed by the Receiver that the contract was made in the wife's name merely as a cover, so that the husband could have the benefit of it without any liability to his creditors.

This claim is not proved. The husband says that *originally* he made the arrangement with his wife not only because the judgment had been obtained against him, but also *because it was necessary to adopt that course to be able to make a living for himself and family.*

And the wife says that she undertook the work *because she was obliged to do so, to support the family.*

The fact is plain: *that the husband's credit was gone, and he could not get any contracts.*

The wife says too, that the management of the business by her has brought her much more responsibility and more labor; she assists in drawing of specifications, making of estimates, &c.

The original arrangement did not involve the transfer of any property. At the time of the judgment Willison had some contracts which he finished. *It does not appear that any of his money was used as capital in the wife's business.*

The whole case shows *very clearly* that the appellant and her husband have *only made a living* out of the business; that there has been no accumulation of money or property.

“The property of a debtor, by the laws of all commercial countries, belongs to his creditors. Not so with his talents and his industry.

“Whether he has much, or little, or nothing, his first duty is the support of his family. The instinctive impulse of every just man holds this to be the first purpose of his industry. He may bury his talent in the earth, or he may give it to his wife or friend. No law ancient or modern of which I am aware has ever held to the contrary. No country unless both barbarous and heathen has ever authorized the sale of the person of a debtor for the satisfaction of his debts.”

Hunt C. in *Abbey v. Deyo*, 44 N. Y., 343.

In a somewhat similar case, where a husband was insolvent and thus unable to give the bond required in order to obtain a contract to make extensive repairs on a public building, he had his wife's name inserted in the contract and she gave the bond. He actually did the work. Held, that the earnings belonged to her, she was the contractor and performed the contract.

Applegate v. Taylor, 56 Miss., 687.

The only difference between the case cited and this is, the wife in that case had separate property.

But it is submitted, that in this State at the present time, *the absence of a separate estate does not incapacitate a married woman to make such a contract and to give bond for its performance by her.*

Consequently, the fact of the insolvency of the husband is not proof that the contract was fraudulently made in the wife's name, but on the contrary *it proves the husband's inability to make the contract or to perform it.*

3. The appointment of the Receiver did not vest in him the title to this fund.

The contract, *at law*, is an instrument made by the appellant and Bowlby. The Receiver's sole remedy was to proceed *in equity* to compel the appellant *to assign this contract to him*.

Miller *v.* Mackenzie, 2 Stew., 291.

The act in aid of discovery does not give the Judge appointing a receiver any power to adjudicate as to the ownership of any property or things in action or to compel a third party to convey and deliver any property or things in action to the Receiver.

Rev. p 394, sec. 26.

Colton *v.* Bigelow, 12 Vr., 266.

At the time of the appointment of the Receiver there was no payment due on this contract.

He was appointed July 15, 1886.

Money was due August 3 or 5, 1886.

The question as to the Receiver's rights if he had compelled an assignment of the contract is not necessarily in the case, but if it should be thought to be material, the argument would be that *he has not shown any equitable reason for such relief*.

The act, sect. 24, Rev. p. 393 provides: The judgment creditor, * * * shall present * * * a petition, &c., stating his belief "*that said judgment debtor hath property, or money, or things in action due to him or held in trust for him where the trust has been created by or the fund held in trust has proceeded from himself, &c.*" Sect. 26, Rev. p. 394 provides "It shall be lawful for said judge to make order appointing a Receiver of the property and things in action belonging, *or due to, or held in trust for such debtor as aforesaid*, at the time of the issuing said execution, *or at any time afterwards.*"

The words "as aforesaid" have been held to relate to the property described in Sect. 24, which the debtor may be forbidden to transfer; they also relate, it is submitted, to the description of the debtor's property contained in the first part of Sect. 24, as necessary to be alleged in the petition for discovery.

Howell v. McDowell, 18 Vr. 359.

If this contract had been *in fact* in the name of the judgment debtor, the Receiver would have acquired title by virtue of his appointment, which *probably* would have given him the right to perform the contract and earn the last payment.

The Receiver could not have been appointed upon the ground that *there was money due to the judgment debtor*, because such was not the fact.

The power of the Judge is to appoint a Receiver of the money due to the judgment debtor "as aforesaid," at the time of issuing the execution, *or at any time afterwards*.

The last clause has never been judicially construed.

It certainly will not be contended that the words relate to an indefinite future time, and that there is no limitation on the power of a Receiver to take the judgment debtor's property.

The act, Sec. 24, expressly provides that it must appear that the debtor has *money due to him*, &c. Sec. 26 expressly provides for the appointment of a Receiver of the money due to the debtor *as aforesaid*; and Sec. 26 further provides that the Receiver "shall receive authority to possess, receive, and if need be * * * sue for *such* property or things in action," i. e., *such money due to the debtor*.

He could neither possess, receive nor sue for *money not due*.

The words "as aforesaid" are also a limitation of the power of the Judge to appoint a Receiver only of such property as has been discovered and which comes within the description in Sec. 24. Money *not due*, is not in that description.

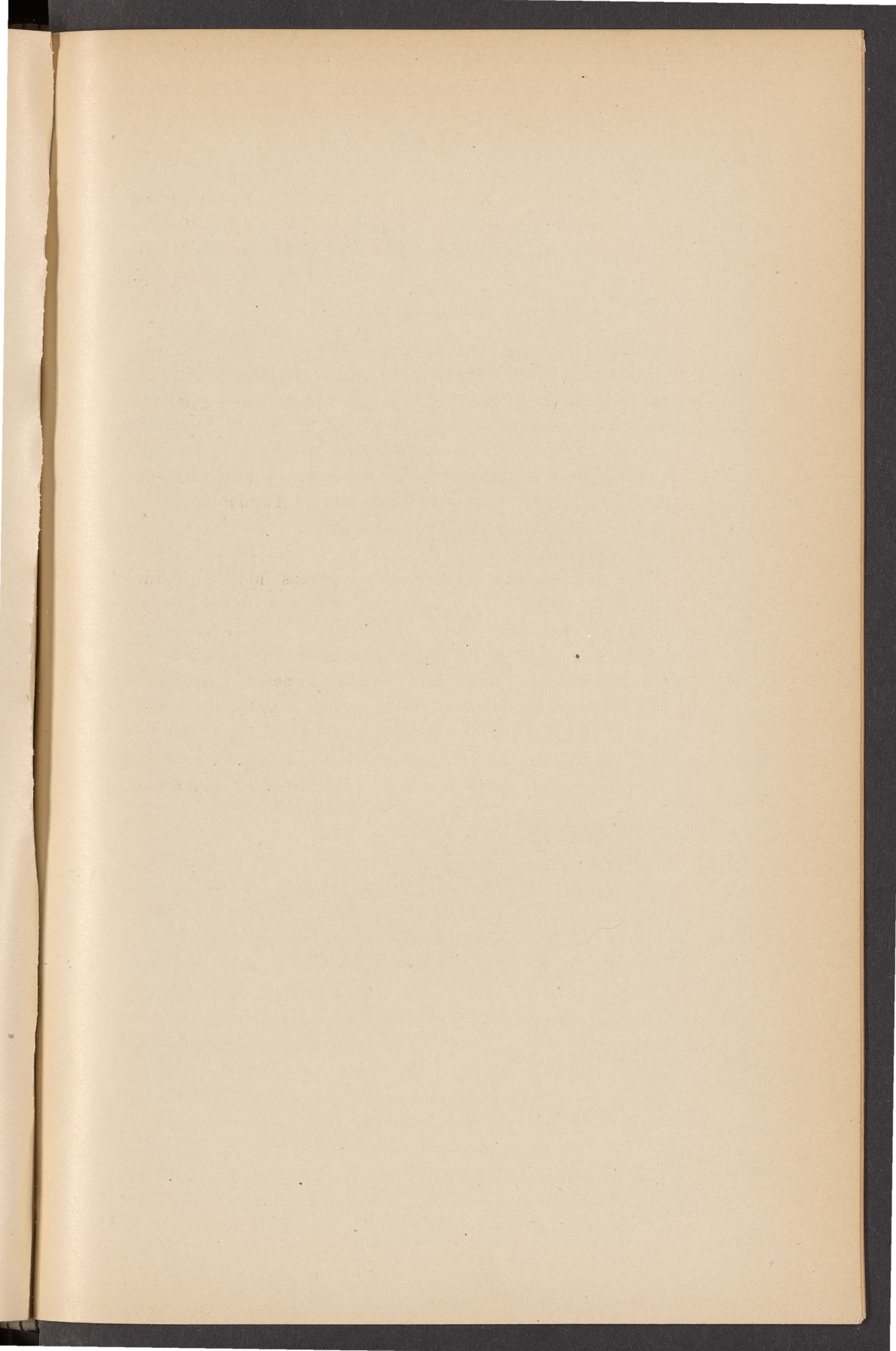
Therefore, it is submitted, that the phrase, "or at any time afterwards," relates *to the time intervening between the issuing of execution and the appointment of the Receiver.*

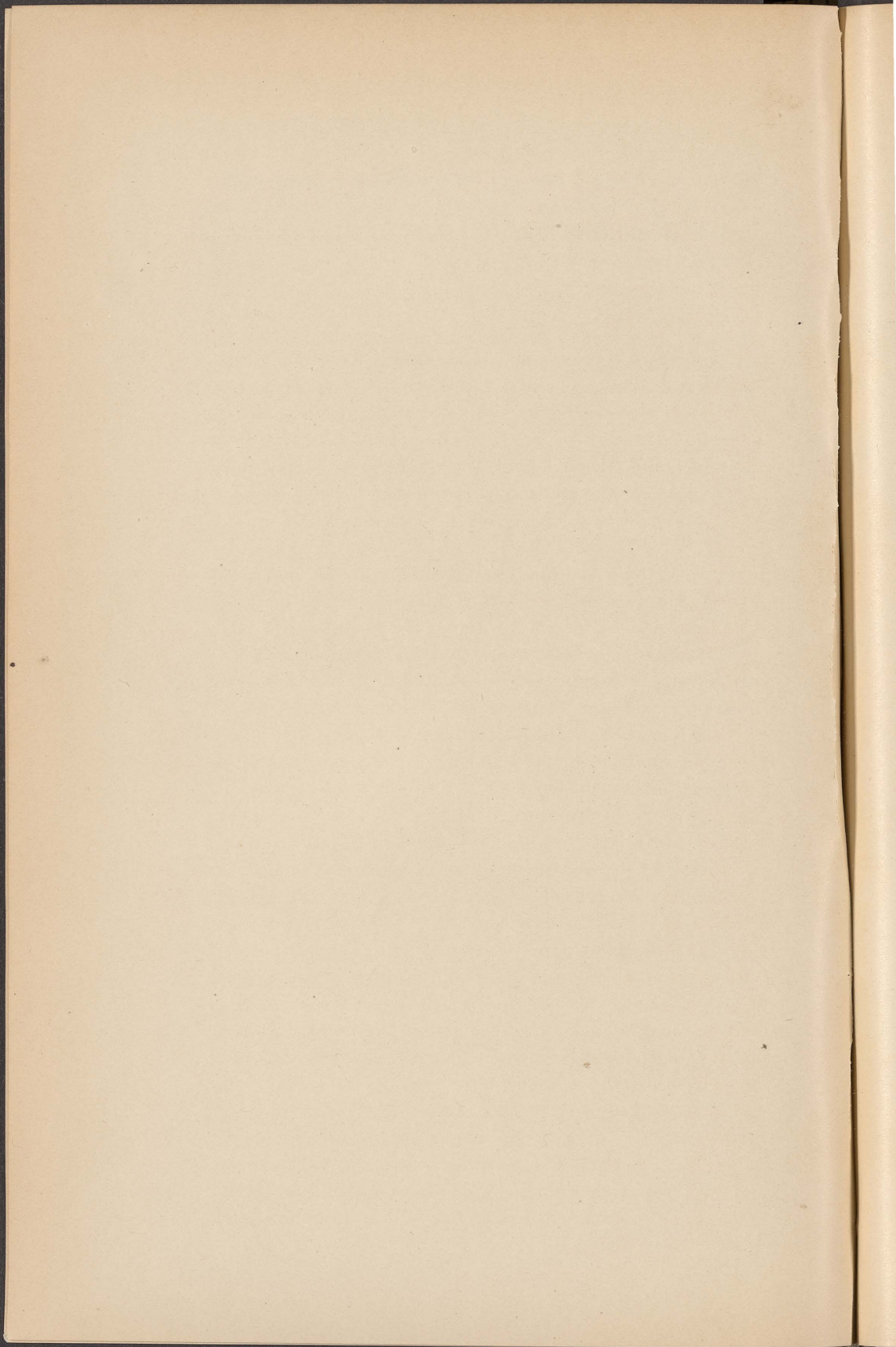
The answer of the Receiver in this case admits that the fund in court *did not become due until August 14, 1886*, the time stated in the bill of complaint.

The conclusion is that the Receiver has no title to the fund.

Finally, it is respectfully submitted that the decree below should be reversed, and as the appellant desires to pay the several claimants for material, &c., that a decree may be made ordering such payments out of the fund.

FRANK E. BRADNER,
Of Counsel with Appellant.





In Chancery of New Jersey.

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

In chancery complaining shows unto your Honor your oratrix, Elizabeth Bowlby, of the city of Newark, in the county of Essex and state of New Jersey: That, on or 10
about the third day of March, eighteen hundred and eighty-six, your oratrix made a contract in writing with one Julia B. Willison for the erection of a dwelling house in the city of Newark, for your oratrix, for which your oratrix agreed to pay the said Julia B. Willison the sum of twenty-six hundred dollars; that on or about the fourteenth day of August, eighteen hundred and eighty-six, the said building was completed by the said Julia B. Willison and accepted by your oratrix, and that under and by virtue of the terms of the contract your oratrix is indebted to the said Julia B. 20
Willison in the sum of one thousand dollars, being the last payment due under said contract; that your oratrix has this money in hand and is ready and willing to pay the same to the said Julia B. Willison or to any other person who is lawfully authorized to receive the same.

That your oratrix has been informed and verily believes and therefore charges the truth to be that, sometime in the year eighteen hundred and eighty-five, one George M. Douglass recovered a judgment in the New Jersey Supreme Court against Morris Hoppaugh and James T. Willison, the 30
husband of the said Julia B. Willison, for a large amount of money, the exact amount of which recovery your oratrix is unable to state, and that the amount due thereon remaining unpaid, the said George M. Douglass instituted supplementary proceedings against the said James T. Willison, and such proceedings were had thereunder that on or about the fifteenth day of July, eighteen hundred and eighty-six, Albert B. C. Salmon was appointed receiver of the property and things in action of the said James T. Willison by an order made by Jonathan Dixon, one of the justices of the 40

Supreme Court of New Jersey, a copy of which is hereto annexed.

And your oratrix shows that by virtue thereof, said Albert B. C. Salmon, as such receiver, claims to be entitled to the said sum of money owing by your oratrix on said building contract, and that on the twentieth day of July, eighteen hundred and eighty-six, or thereabouts, made a demand on your oratrix therefor, of which the following is a copy :

10	GEORGE M. DOUGLASS, <i>vs.</i> MORRIS HOPPAUGH AND JAMES T. WILLISON.	}	<i>New Jersey Supreme Court. In Cov- enant. Notice.</i>
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To Elizabeth Bowlsby :

Take notice, that I, A. B. C. Salmon, have been appointed by the Supreme Court of this State, receiver of all the property and things in action of James T. Willison, and particularly a sum of money due from you to him ; and you are hereby further notified not to pay the same to said James T. Willison but to pay the same to me as such receiver.

(Signed) A. B. C. SALMON,
Receiver.

That your oratrix has been informed that sundry of the laborers and material men, who furnished material and did work on the said building have not been paid for their said labor and materials ; that the said contract between your oratrix and said Julia B. Willison having been filed in the Essex county Clerk's office as required by law no lien claim can be filed therefor and that in consequence thereof said material, men and laborers have served notices on your oratrix in pursuance of the third section of the Mechanics Lien Law as follows :

That one Paul Carnelli sometime in the month of August eighteen hundred and eighty-six, but on what day your oratrix does not know and cannot state, served a notice on your oratrix of which the following is a copy :

Mrs. Elizabeth Bolby :

40 I notify you that I do demand the payment due to me

for \$97 painting your house on Bloomfield Ave. Contract received from Mr. Willison, Carpenter Builder.

(Signed)

P. CARNELLI.

That on or about the thirteenth day of July, eighteen hundred and eighty-six, the Bradley and Currier Co. Limited, served a notice on your oratrix of which the following is a copy :

NEWARK, July 13, 1886. 10

Mrs. Elizabeth Bowlby :

We demand that you retain from the money due Julia B. Willison on the building being erected by her in Bloomfield avenue, for you, the sum of two hundred and fifty dollars for windows, blinds and doors.

\$250. (Signed) THE BRADLEY & CURRIER Co.
Limited.
Per Russell.

That on or about the said thirteenth day of July, eighteen hundred and eighty-six, one Jacob Moses served a notice on your oratrix of which the following is a copy :

To Mrs. Elizabeth Bowlby :

You are hereby notified that Julia R. Willison is justly indebted to me in the sum of two hundred and seventy 00-100 dollars for plumbing and trimming a certain brick building owned by you and being situated in Newark, in the county of Essex and State of New Jersey, and that I have demanded payment from the said Julia R. Willison, of the said sum of money so due and owing to me as afore-said ;

And that she, the said Julia R. Willison has refused to pay the same.—You are therefore hereby notified and required to retain the payment of the money so due and claimed by me out of the amount owing by you to the said Julia R. Willison, and upon being satisfied of the correctness of my demand to pay the said sum of money unto me.

Dated July 13, 1886.

(Signed)

JACOB MOSES. 40

That on or about the fourteenth day of July, eighteen hundred and eighty-six, one Abraham Miller served a notice on your oratrix of which the following is a true copy:

NEWARK, July 14, 1886.

Mrs. Elizabeth Bowsby—Dear Madam :

You are hereby notified that I have a claim of two hundred and fifty-six dollars on your new building on Bloomfield avenue, the amount due me as per contract with Mr. Willison for mason done and material furnished on same, for
10 which I shall hold you responsible and which amount I desire you to hold and not to pay the said Willison or other parties.

Yours, &c.,

(Signed)

ABRAHAM MILLER.

That on or about the twenty-eighth day of August, eighteen hundred and eighty-six, the said The Bradley and Currier Co. Limited, served another notice on your oratrix, of which the following is a copy :

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NEW YORK, Aug. 28, 1886.

Mrs. Elizabeth Bowsby :

You are hereby notified that Mrs. J. B. Willison is indebted to us in the sum of two hundred and fifty dollars (\$250) for windows, blinds, doors, &c., furnished by us and used by Mrs. J. B. Willison in the erection and completion of your frame building, No. — Bloomfield avenue, of the city of Newark, county of Essex, State of New Jersey, which sum she upon demand being made by us, refused to pay, and you are hereby notified and directed to withhold
30 the said sum of money from her and pay the same to us. This notice is given in pursuance of the statute made and provided for in such cases.

Dated New York, Aug. 28, '86.

(Signed)

THE BRADLEY & CURRIER Co.

Limited.

Per JOHN J. HUGHES, *Sec. and Treas.*

That each and every of said notices and claims against
40 your oratrix, are directed against the said sum of money

so due from the said Julia B. Willison, and your oratrix is unable to determine to whom the same belongs.

That she is and always has been ready and willing to pay the same to such persons as may be by law fully entitled to the same and to whom she could pay it with safety, and she hereby offers to pay the same into this court.

And your oratrix further shows that she has been threatened with suit by the various parties above named, and she fears that she may be sued, and subjected to costs and to the expense of defending herself unless this court will afford her relief, and she shows that she has not in any respect colluded with any of the said parties above named touching this cause, and that she has not been indemnified by any of them, but that she brings this suit of her own free will to avoid being injured or molested touching the matters herein contained. 10

Wherefore your oratrix prays.

1. That the said defendants hereinafter named, and each of them may answer this bill and each fact above stated on their corporal oath. 20

2. That the defendants hereto may interplead and settle their right as to the said sum of money and that your oratrix may be at liberty to pay the same into court, and that the said defendants may be enjoined from proceeding at law against your oratrix, and that your oratrix upon payment into court of said amount and procuring said defendants to interplead according to the course of this court, may be discharged from all liability to the said defendants in the premises and may have her costs herein.

May it please your Honor to grant not only the State's writ of injunction as herein prayed; 30

But also the State's writ of subpœna issuing out of and under the seal of this honorable court to be directed to the said Julia B. Willison, Paul Carnelli, The Bradley & Currier Co. Limited, Jacob Moses, Abraham Miller, Albert B. C. Salmon, receiver of the property and things in action of James T. Willison, therein and thereby commanding them, and each of them on a certain day and under a certain penalty therein to be inserted to be and appear before your Honor in this honorable court, then and there to answer all 40

and singular the premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

And your oratrix as in duty bound will ever pray, etc.

ABRAHAM MANNERS,

Solicitor for and of Counsel for Complainant.

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NEW JERSEY SUPREME COURT.

GEORGE M. DOUGLASS, <i>vs.</i> MORRIS HOPPAUGH AND JAMES T. WILLISON.	}	<i>In Covenant. Order Ap- pointing Re- ceiver.</i>
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20 The examination of the defendant, James T. Willison, having been taken and certified to me by A. B. C. Salmon, Supreme Court Commissioner, under his hand, in pursuance of the order of discovery made in this cause, on the first day of July, instant, whereupon, after considering the evidence of said defendant, taken before said commissioner, I, Jonathan Dixon, one of the justices of the Supreme Court, do order that A. B. C. Salmon, Esq., of the city of Newark, be and hereby is appointed receiver of the property and things in action of the said defendant, James T. Willison, belonging or due to, or held in trust for him, on the third

30 day of May, A.D. 1885, being the day of the issuing of the execution in this cause, or at any time afterward, and particularly of a certain unliquidated claim against Elizabeth Bowlby, on a contract for building a house, which contract was performed by said defendant in the name of Julia B. Willison, his wife; also of a certain unliquidated claim against Sallie Beatby, and a similar claim against John A. Miller, so far as said claims belongs to said defendant, with authority to possess, receive, and if need be, in his own name, as such receiver, to sue for such property and things

40 in action.

Given under my hand this fifteenth day of July, A.D. 1886, and this order shall take effect forthwith.

JONATHAN DIXON, *Judge.*

New Jersey, }
Essex County, } *ss.:*

Elizabeth Bowlby, of full age, being duly sworn according to law, on her oath, says, that she is the complainant in the foregoing bill of complaint mentioned; that she has exhibited her bill of interpleader against the defendants in the above stated cause, without any fraud or collusion between her and the said defendants, and that said bill is not exhibited at the request of the said defendants or any or either of them, and that the complainant is not indemnified by the said defendants or any or either of them; and she further says that she has exhibited said bill with no other intent but to avoid being sued or molested by the said defendants, touching the matters contained in said bill. 10

ELIZABETH BOWLBY.

Sworn and subscribed before me, this 3d day of September, 1886. 20

J. E. HOWELL, *Master in Chancery of N. J.*

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">BETWEEN</p> <p style="text-align: center;">ELIZABETH BOWLBY,</p> <p style="text-align: center;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">JULIA B. WILLISON, <i>et als.,</i></p> <p style="text-align: center;"><i>Defendants.</i></p>	}	<p style="text-align: right;">30</p> <p style="text-align: right;"><i>On bill, &c.</i></p> <p style="text-align: right;"><i>Answer.</i></p>
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The answer of Julia B. Willison, one of the defendants to the bill of complaint of Elizabeth Bowlby, filed in the above entitled cause.

This defendant answering says :

1. That she admits as in said bill alleged that she did on or about the third day of March, eighteen hundred and eighty-six, make a contract in writing with said complainant for the erection of a dwelling house in the City of Newark for the said complainant for the sum twenty-six hundred dollars; that said contract is now on file in the office of the clerk of Essex county; that she completed said dwelling house about the fourteenth day of August, A. D. 1886, when it was accepted by the said complainant, and that at the time of said acceptance there was due from the said complainant to this defendant the amount of one thousand dollars, being the last payment on account thereof.

2. That this defendant has no knowledge as to the alleged recovery of the judgment by George M. Douglass against Morris Hoppangh and James T. Willison, and of the appointment of Albert B. C. Salmon as receiver of the property and things in action of James T. Willison, or of the service of the said notice by him as such receiver other than is contained in said bill, but believes it to be true as therein stated, and also that said bill contains a copy of said notice.

3. And this defendant further answering says, that the sundry laborers and material men named in said bill have not been paid by this defendant the balance respectively claimed by them, but that she has no knowledge other than is contained in the said bill and believes it to be true as therein stated, as to the serving of the several notices by the said material men and laborers in said bill mentioned.

4. That she has no knowledge other than is contained in said bill, but believes it to be true as therein stated, that sometime in the month of August, eighteen hundred and eighty-six, one Paul Carnelli served a notice on the said complainant under the provisions of the third section of the mechanics' lien law of this State, therein claiming the sum of ninety-seven dollars for work done on said dwelling house, and this defendant believes said bill contains a copy of said notice.

5. That this defendant has no knowledge other than is contained in said bill, but believes it to be true as therein stated, that on or about the thirteenth day of July and on the twenty-eighth day of August, eighteen hundred and eighty-six, the Bradley and Currier Company, limited, caused a notice to be served on the said complainant under the provisions of the third section of the mechanics' lien law of this State, therein claiming the sum of two hundred and fifty dollars for material furnished for and used by this defendant in the erection and construction of said dwelling 10 house, and this defendant believes said bill contains a copy of said notices.

6. That this defendant has no knowledge other than is contained in said bill, but believes it to be true as therein stated, that on the thirteenth day of July, A.D. eighteen hundred and eighty-six, one Jacob Moses caused a notice to be served on the said complainant under the provisions of the third section of the mechanics' lien law of this State, therein claiming payment of the sum of two hundred and seventy dollars for work done and performed upon said 20 dwelling house, and this defendant believes said bill contains a copy of said notice.

7. That this defendant has no knowledge other than is contained in said bill, but believes it to be true as therein stated, that on or about the fourteenth day of July, A.D. eighteen hundred and eighty-six, one Abraham Miller caused a notice to be served on the said complainant under the provisions of the third section of the mechanics' lien law of this State, therein claiming payment of the sum of two hundred and fifty-six dollars; and this defendant believes said 30 bill contains a copy of said notice.

8. That this defendant has no knowledge other than is contained in said bill, but says that if it is true as therein stated, that each of said notices were directed against the said sum of one thousand dollars, as due this defendant from said complainant on account of said contract, it became and was the duty of the said complainant, under and by virtue of the provisions of the third section of the mechanics' lien law of this State, to have paid the several persons so causing said notices to be served as aforesaid, the amounts sev- 40

erally claimed by them, with the exception of Albert B. C. Salmon, receiver, etc., of James T. Willison.

10 And this defendant further answering, says, that the said James T. Willison had no interest in said sum of one thousand dollars and was entitled to no portion thereof at the time of the appointment of the said Albert B. C. Salmon, receiver, as aforesaid, or at any time prior or subsequent thereto, and for that reason the said Albert B. C. Salmon, as such receiver, has no right, title or interest of, in or to said sum of one thousand dollars or any part thereof.

And this defendant submits to this Honorable Court that all and every of the matters in said complainant's bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief in this Court, and this defendant hopes she shall have the same benefit of this defence as if she had demurred to the said complainant's bill.

20 All of 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 her reasonable costs and charges in this behalf most wrongfully sustained.

THEO. L. CURRIE,
Solicitor for Defendant, Julia B. Willison.

New Jersey, }
Essex County, } *ss.:*

30 Julia B. Willison, the above named defendant, being duly sworn, on her oath, saith, that the matters and things set forth in the above answer so far as relates to her own acts are true, and so far as the same relate to the acts of any other person or persons she believes them to be true.

JULIA B. WILLISON,

Sworn and subscribed before me, at Newark, N. J., this sixteenth day of November, A.D. 1886.

FRANK E. BRADNER,
Master in Chancery of N. J.

he had money invested belonging to himself, and was likely to, and in fact did afterwards, realize good and large profits from the completion of said contracts which belonged solely to himself; that on or about the date of the recovery of said judgment said James T. Willison in order to hinder, delay and defraud the said George M. Douglass in the collection of his said judgment conveyed away to third parties all his real estate of any value, consisting of an undivided one fourth part of a farm in Morris county, and at

10 the same time in order to further hinder, delay and defraud said Douglass did adopt and take the name of his wife, the said Julia B. Willison, under which to carry on and transact his said business and did thereafter carry on his said business in her name; that said Julia B. Willison had no money, property or material to put into said business, and put nothing into it; that said James T. Willison proceeded just as he had theretofore done to use his own materials, tools and shop for the transaction of said business; and did from

20 time to time collect moneys from said contracts above mentioned that had been taken in his own name and put and used them in the business carried on in his wife's name, in all respects as his own, that said business was in truth and in fact his own and was never even transferred to his said wife; that it was conducted entirely by him without control, supervision by or accounting to his wife; all contracts, papers, vouchers, and other papers connected with said business were signed solely by him, but in his wife's name. That said contract with the complainant in her bill mentioned, although taken in the name of said Julia B. Willison was

30 in truth and in fact the contract of said James T. Willison, and was in all respects of the same character as is above stated with reference to contracts taken in her name; that the money due thereon was and is the money of the said James T. Willison and does not belong to said Julia B. Willison.

And this defendant further answering says, on information and belief, that on the third day of May, A.D. 1885, a writ of execution against the goods and chattels, lands and tenements of said James T. Willison and his co-defendant

40 in said suit was issued out of the said Supreme Court and

directed and delivered to the sheriff of the county of Essex ; that said sheriff afterwards, to wit, on the day of , 1885, returned said writ wholly unsatisfied for want of goods and chattels, lands and tenements of the said defendants named therein out of which to make the amount of said judgment or any part thereof; that, subsequently, said judgment remaining wholly unsatisfied, on the fifteenth day of July, A.D. 1886, after an order for and the examination of the said James T. Willison upon oath pursuant to proceedings for discovery of his property and things in action taken in said cause in said Supreme Court according to the form of the statute concerning executions, an order was made in said cause by Jonathan Dixon, Esquire, one of the associate justices of said court, appointing this defendant receiver of the property and things in action of said James T. Willison belonging or due to him on the third day of May, 1885, being the day of the issuing of the execution in said cause, or at any time afterwards, and particularly of the said claim against the said complainant so far as the same belonged to said James T. Willison, as by duly certified copies of said judgment, execution and orders and proceeding, reference being thereunto had, will more fully appear, the said order appointing this defendant such receiver being also set forth in the schedule to said bill of complaint.

And this defendant avers that said money due on the contract with the complainant belonged wholly to said James T. Willison and that by virtue of said order and proceedings in said suit this defendant became and was and is entitled to the whole of the said sum due on said contract from the complainant, and he is advised and therefore claims that he is entitled to have the same decreed to be paid to him.

All which matters and things this defendant is ready to aver, maintain and prove when and where this Honorable Court may direct.

He therefore prays that the complainant may be decreed to pay said sum less her costs of this suit to this defendant, and that he may have such other and further relief in the

premises as the nature of his case may require and as may be agreeable to equity.

JOHN W. GRIGGS,
Solicitor for and of Counsel with
Salmon, Receiver, defendant.

State of New Jersey, {
Essex County, { *ss.*

10 Albert B. C. Salmon, the defendant named in the above answer, being duly sworn according to law, on his oath says that the matters and things set forth in the above answer are true so far as to his own acts, and so far as relates to the acts of others he believes them to be true.

A. B. C. SALMON.

Sworn and subscribed before me, this third day of November, 1886.

J. FRANK FORT,
M. C. C. of N. J.

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IN CHANCERY OF NEW JERSEY.

BETWEEN
ELIZABETH BOWLBY,
Complainant,
and
JULIA B. WILLISON & *als.*,
Defendants.

30 The answer of The Bradley & Currier Company, Limited, one of the defendants to the bill of complaint of Elizabeth Bowlby, complainant.

This defendant for answer to the said bill admits the making of the contract set out in said bill between the complainant and the defendant, Julia B. Willison, and the execution of the work therein provided for by said Julia B. Willison and that there is due to said Julia B. Willison or to the laborers and material men who did work under said contract, the sum of one thousand dollars as the same are set out in said bill.

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2. And this defendant further answering says and admits the recovery of the judgment by George M. Douglass against James T. Willison and the appointment of a receiver thereunder as set out in said bill, and that said receiver and the other defendants to this suit have each served notices on the complainant claiming the said fund of one thousand dollars, or some portion thereof as is set out in said bill, but as to whether the said defendants or any of them, (except this defendant) have any lawful claim on said fund this defendant has no knowledge, and cannot state any facts in relation thereto, and it prays that each of the said defendants may make such proof of their respective claims as they may be advised is necessary. 10

3. And this defendant further answering says, that some time after the said contract had been made between the complainant and said Julia B. Willison, the said Julia B. Willison and this defendant made an agreement by which this defendant agreed to sell and deliver to said Julia B. Willison all the windows, blinds, and doors required by her for the completion of the building which she had contracted to erect for the complainant; that in accordance therewith this defendant did deliver to said Julia B. Willison all such material as was provided for in and by said agreement, and that upon such delivery the said Julia B. Willison became indebted to this defendant in the sum of two hundred and fifty dollars, which was the contract price therefor, and this defendant further answering says that all the materials which were so furnished, were actually used by said Julia B. Willison in the erection and completion of the complainant's dwelling house under said contract. 20 30

4. And this defendant further answering says that after the said sum of two hundred and fifty dollars became due and payable as aforesaid, this defendant on or about the twenty-eighth day of August, eighteen hundred and eighty-six, demanded payment thereof of the said Julia B. Willison, that she thereupon refused payment of the said sum, and that on the day last named this defendant served upon the complainant a notice setting out the above mentioned facts, and requesting her to retain the said amount out of any moneys due to said Julia B. Willison from her, and to pay the same 40

to this defendant, and that the bill herein contains a true copy of the notice which was so served.

5. And this defendant further answering says that the said sum of two hundred and fifty dollars, with all arrears of interest thereon, still remains due from the said complainant and Julia B. Willison to it, no part thereof having been paid, and that by virtue of the premises, and in pursuance of the [third section of the mechanics' lien law this defendant obtained a lien upon or an equitable assignment
10 of the fund in the complainant's hands, or so much thereof as may be necessary to pay the amount due to this defendant as aforesaid, with interest and the costs of this defendant in this suit.

6. And this defendant further answering joins in the prayer of the said bill that the complainant may, upon payment into Court of the said sum of one thousand dollars, be released and discharged from payment to the defendants herein or any of them, and that a decree of interpleader
20 may pass requiring the defendants hereto to interplead together in relation to the said fund, and that a decree may be made directing payment of the amount due to this defendant, with interest and costs, out of the said fund, in preference to any and all of the other defendants who have not acquired a prior right to the said fund, or a prior interest therein.

COULT & HOWELL,
Solicitors and of Counsel with Defendants.

Essex County, ss.:

30 William P. Russell, of full age, being duly sworn on his oath says, that he is the agent and attorney of the defendant, The Bradley & Currier Company, Limited, named in the foregoing answer; that the said defendant is a citizen of the State of New York; that the matters and things in the foregoing answer set out, so far as they relate to the acts of said Company are true, and so far as they relate to the acts of others he believes them to be true.

W. P. RUSSELL.

Subscribed and sworn before me this 27th day of January, 1887.

JAY TEN EYCK,
Notary Public of New Jersey.

IN CHANCERY OF NEW JERSEY.

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<p style="text-align: center;">BETWEEN</p> <p style="text-align: center;">ELIZABETH BOWLBY, <i>Complainant,</i> <i>and</i> JULIA B. WILLISON, <i>et als.</i>, <i>Defendants.</i></p>	}	<p style="text-align: center;"><i>On Bill of Inter- pleader.</i></p>
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The answer of Jacob Moses, one of the defendants to the bill of complaint filed in the above stated cause. 20

This defendant answering says that he admits that said complainant contracted on or about the third day of March, eighteen hundred and eighty-six, in writing with Julia B. Willison, one of the defendants herein, for the erection of a dwelling house, and that said contract was filed in the office of the clerk of the County of Essex, and that on or about the fourteenth day of August, eighteen hundred and eighty-six, said building was completed and accepted by said complainant, and that under the terms of said contract said complainant is indebted to said Julia B. Willison in 30 the sum of one thousand dollars, and that this defendant on or about the thirteenth day of July, eighteen hundred and eighty-six served complainant with the notice, a copy of which is contained in complainant's said bill of complaint, and that divers other claims upon the money so owing by complainant under said contract have been made to complainant by the persons in the manner and at the times mentioned in complainant's said bill of complaint, and that said complainant is entitled to be discharged from all liability to said defendant upon payment of said sum of 40

one thousand dollars into court, and a decree that said defendants interplead according to the course and practice of this court.

And this defendant further answering, says that on or about the fifteenth day of April, eighteen hundred and eighty-six, he contracted with said Julia B. Willison, through James T. Willison, her agent, to furnish the materials and to do and perform the work and labor of plumbing said dwelling and tinning the roof of the extension
 10 thereof according to the plans and specifications of her said contract, and that subsequently he furnished said materials and labor, and on or about the first day of July, eighteen hundred and eighty-six, completed the plumbing and tinning of said dwelling house according to his said contract and thereupon became and was entitled to receive from said Julia B. Willison the sum of two hundred and seventy dollars in payment of said materials and work and labor. That thereupon defendant demanded payment thereof from said Julia B. Willison, through her said agent, and that said
 20 Willison refused to pay the same alleging that she was unable so to do. That afterwards to wit on or about the thirteenth day of July, eighteen hundred and eighty-six, defendant being unable to lien said dwelling house by reason of said contract being filed as aforesaid, did demand payment of said sum from the complainant and did serve complainant with the notice in writing hereinbefore mentioned. And this defendant charges that said demand and notice was valid and sufficient in law and operated as an assignment or a subrogation *pro tanto* of the one thousand dollars due said
 30 Willison from complainant as aforesaid, and that no part of said two hundred and seventy dollars having been paid, but the whole amount remaining due and payable he ought in equity and good conscience to be paid said sum of two hundred and seventy dollars out of said fund of one thousand dollars.

And this defendant further answering says, that he hath no knowledge of the judgment of George M. Douglass against Morris Hoppaugh and James T. Willison, nor of the supplementary proceedings thereon, nor any knowledge
 40 of the appointment of Albert B. C. Salmon receiver of the

property and things in action of James T. Willison, as in complainant's bill of complaint set forth and alleged and leaves said Salmon to his proof thereof.

But this defendant denies that by virtue of such appointment and the demand in complainant's bill mentioned, the said Salmon did or could acquire any interest in or valid claim upon the said fund of one thousand dollars, or any equity in this Court as against this defendant. And this defendant further says that said appointment of said Salmon as receiver, and his said demand upon complainant, 10 were made subsequent in point of time as in complainant's bill alleged to the service upon complainant of defendant's notice; and this defendant expressly charges that if said Salmon hath acquired any interest in or valid claim upon said fund, that it is subsequent to the claim of defendant, and that this defendant ought to be first paid out of said fund.

And this defendant further answering says, that he hath no knowledge of the facts referred to in the claims of his co-defendants in complainant's bill mentioned, and leaves 20 them to their proofs of the same respectively.

But this defendant expressly charges that his said notice, as appears from complainant's bill, was served in point of time prior to the notice of any of said defendants in said bill mentioned, and that this defendant is entitled to be paid first out of said sum of one thousand dollars.

All which matters and things this defendant is ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays it may be decreed that his said claim of two hundred and seventy dollars be first paid out 30 of said fund of one thousand dollars, together with his reasonable costs and charges in this behalf most wrongfully sustained, and that he have such further or other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience.

And this defendant will ever pray, &c.

ERNEST E. COE,

Solicitor and Counsel with Defendant, Jacob Moses.

State of New Jersey, }
 County of Essex, } ss. :

Jacob Moses, 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.

JACOB MOSES.

Sworn to and subscribed this sixteenth day of November,
 10 A. D. 1886, before me, at Newark, N. J.

WALTER M. LYON,
Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

	BETWEEN	
20	ELIZABETH BOWLBY,	} <i>On Bill of Interpleader.</i>
	<i>Complainant,</i>	
	<i>and</i>	
	JULIA B. WILLISON, <i>et als.,</i>	
	<i>Defendants.</i>	

The answer of Paul Carnelli, one of the defendants to the bill of complaint filed in the above stated cause.

This defendant answering says that he admits that said
 30 complainant contracted on or about the third day of March, eighteen hundred and eighty-six, in writing, with Julia B. Willison, one of the defendants herein, for the erection of a dwelling house and that said contract was filed in the office of the clerk of the county of Essex, and that on or about the fourteenth day of August, eighteen hundred and eighty-six, said building was completed and accepted by said complainant, and that under the terms of said contract said complainant is indebted to said Julia B. Willison in the sum of one thousand dollars; and that this defendant,
 40 on or about the fourteenth day of August, eighteen hundred

and eighty-six, served complainant with the notice, a copy of which is contained in complainant's said bill of complaint, and that divers other claims upon the money so owing by complainant under said contract have been made to complainant by the persons in the manner and at the times mentioned in complainant's said bill of complaint, and that said complainant is entitled to be discharged from all liability to said defendant upon payment of said sum of one thousand dollars into court and a decree that said defendants interplead according to the course and practice of this Court. 10

And this defendant further answering says that on or about the first day of June, eighteen hundred and eighty-six, he contracted with said Julia B. Willison, through James T. Willison, her agent, to furnish the materials and to do and perform the work and labor of painting said dwelling house inside and out according to the plans and specifications of her said contract, and that subsequently he furnished said materials and did said work and labor, and on or about the fourteenth day of August, eighteen hundred and eighty-six, completed the painting of said dwelling house, according to his contract and thereupon became and was entitled to receive from said Julia B. Willison the sum of ninety-seven dollars in payment of said materials and work and labor. That thereupon this defendant demanded payment thereof from said Julia B. Willison, through her said agent, and that said Willison refused to pay the same, alleging that she was unable so to do. That afterwards, to wit, on or about the fourteenth day of August, eighteen hundred and eighty-six, this defendant being unable to lien 20 said dwelling house, by reason of said contract being filed as aforesaid, did demand payment of said sum from complainant and did serve complainant with the notice in writing hereinbefore mentioned. And this defendant charges that said demand and notice was valid and sufficient in law and operated as an assignment or a subrogation *pro tanto* of the balance of the one thousand dollars due said Willison from complainant as aforesaid, and that no part of said ninety-seven dollars having been paid, but the whole amount remaining due and payable, he ought, in equity and good 30 40

conscience, to be paid said sum of ninety-seven dollars out of the said sum of one thousand dollars.

And this defendant, further answering, says, that he hath no knowledge of the judgment of George M. Douglass against Morris Hoppaugh and James T. Willison, nor of the supplementary proceedings thereon, nor any knowledge of the appointment of Albert B. C. Salmon, receiver of the property and things in action of James T. Willison as in complainant's bill of complaint set forth and alleged, and leaves
 10 said Salmon to his proof thereof. But this defendant denies that by virtue of such appointment and the demand in complainant's bill mentioned the said Salmon did or could acquire any interest in or valid claim upon the said fund of one thousand dollars or any equity in this Court as against this defendant.

And this defendant, further answering, says, that he admits that said Salmon served the notice in complainant's bill mentioned, on or about the twentieth day of July, eighteen hundred and eighty-six, and that the same was
 20 prior in time to the service of defendant's claim, but this defendant says that at that time said dwelling house was unfinished and that no payment was due and owing from complainant on her contract filed in the clerk's office of the county of Essex, as aforesaid, and this defendant charges that said notice was a nullity and without any force or effect as against this defendant.

And this defendant further says and expressly charges that if said Salmon by virtue of his said notice acquired any right or interest in said contract said interest was sub-
 30 ject to the completion of the contract and the payment of work and labor subsequently bestowed upon said dwelling house by this defendant, and that this defendant ought to be first paid out of said fund of one thousand dollars.

And this defendant further answering, says he hath no knowledge of the facts referred to in the notices of his co-defendants in complainant's bill mentioned and leaves them to their respective proofs thereof, but he admits the service of their respective notices as in complainant's bill set forth; but this defendant says and expressly charges that at the
 40 times of the service thereof said dwelling house was unfin-

ished and that no payment was due and owing from complainant on her contract filed in the clerk's office of the county of Essex as aforesaid, and this defendant charges that said notices were nullities and without any force or effect as against this defendant, and that this defendant ought to be first paid out of said fund of one thousand dollars.

All which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays that it may be decreed by the Court that his said claim of ninety-seven dollars be first paid out of said fund of one thousand dollars together with his reasonable costs and charges in this behalf most wrongfully sustained, and that he have such further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience. 10

And this defendant will ever pray, &c.,

JAMES M. TRIMBLE,

Solicitor and of Counsel with Defendant.

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State of New Jersey, }
County of Essex, } ss.:

Paul Carnelli, 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.

PAOLO CARNELLI.

Sworn to and subscribed this fifteenth day of November, 30
A. D. 1886, before me at Newark, N. J.

WALTER M. LYON,

Master in Chancery of New Jersey.

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IN CHANCERY OF NEW JERSEY,

10	<p style="text-align: center;">BETWEEN</p> <p style="text-align: center;">ELIZABETH BOWLBY,</p> <p style="text-align: center;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">JULIA B. WILLISON, <i>et als.,</i></p> <p style="text-align: center;"><i>Defendants.</i></p>	}	<p><i>On Bill, &c.</i></p> <p><i>Answer.</i></p>
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The answer of Abraham Miller, one of the defendants to the bill of complaint of Elizabeth Bowlby filed in the above entitled cause.

This defendant answering, says :

1. That he admits, as in said bill alleged, that the defendant, Julia B. Willison, on or about the third day of March, eighteen hundred and eighty-six, made a contract in writing with said complainant, for the erection of a dwelling house in the city of Newark, for the said complainant, for the sum of twenty-six hundred dollars ; that said contract is now on file in the office of the clerk of Essex County ; that the said defendant, Julia B. Willison, completed said dwelling house about the fourteenth day of August, A.D. eighteen hundred and eighty-six, when, as this defendant believes, and as is alleged in said bill, it was accepted by said complainant and that at the time of said acceptance there was due from the said complainant to the said Julia B. Willison, the sum of one thousand dollars, being the last payment on account thereof.

2. That this defendant had no knowledge as to the alleged recovery of the judgment by George M. Douglass against Morris Hoppaugh and James T. Willison, and of the appointment of Albert B. C. Salmon, as receiver of the property and things in action of James T. Willison, or of the service of the said notice by him as receiver, other than is contained in said bill, but believes it to be true as therein stated and also that said bill contains a copy of said notice.

3. That this defendant has no knowledge other than is

contained in said bill, but believes it to be true as therein stated, as to the service under the provisions of the third section of the mechanics' lien laws of this State, by the various material men who have furnished materials for and laborers who weré engaged in the erection of said dwelling house, of the notices mentioned in paragraphs 5, 6, 7 and 9 of said bill of complaint and the service of Albert B. C. Salmon as receiver, etc., of the notices mentioned in paragraph 3 of said bill, that all of said notices were directed against said sum of one thousand dollars as due to the said defendant, Julia B. Willison as aforesaid and that said bill contains copies of said notices. 10

4. And this defendant further answering, says, that on or about the first day of March, eighteen hundred and eighty-six, he contracted with the said Julia B. Willison, through her agent, James T. Willison, to furnish the materials and to do the mason work of said dwelling house according to the plans and specifications of her said contract, and that subsequently he furnished said materials and did said mason work, and on or about the eighth day of July, eighteen hundred and eighty-six completed the mason work of said dwelling house according to the contract and thereupon became and was entitled to receive from the said Julia B. Willison, the sum of two hundred and fifty-six dollars in payment of said materials and work and labor; that thereupon this defendant demanded payment thereof from said Julia B. Willison, through her agent James T. Willison, and that said Willison refused to pay the same, alleging that she was unable so to do; that afterwards, to wit, on or about the fourteenth day of July, eighteen hundred and eighty-six, this defendant being unable to lien said dwelling house by reason of said contract being filed as aforesaid, did demand payment of said sum from the complainant and did serve said complainant with a notice in writing, under the third section of the mechanics' lien law of this State, therein claiming payment of said sum of two hundred and fifty-six dollars, and which was directed against said sum of one thousand dollars so due from said complainant as aforesaid. 20 30

5. And this defendant charges that said demand and notice was valid and sufficient in law and operated as an 40

assignment *pro tanto* of the said sum of one thousand dollars due said Julia B. Willison from said complainant as aforesaid, and that no part of said sum of two hundred and fifty-six dollars having been paid him, but the whole amount thereof remaining unpaid, he ought, in equity and good conscious to be paid the said sum of two hundred and fifty-six dollars out of said fund of one thousand dollars.

6. But this defendant further answering says, that by virtue of his appointment as receiver as aforesaid and of the service of the demand in said complainant's bill mentioned the said Albert B. C. Salmon did not nor could acquire any interest in or valid claim upon the said sum of one thousand dollars, or any equity in this court as against this defendant; and the appointment of said Salmon as such receiver and the service by him of said demand upon said complainant were made subsequent to the service of the notice upon said complainant by this defendant, and this defendant expressly charges that if said Salmon as such receiver hath acquired any interest in or valid claim upon said fund it is subsequent to the claim of this defendant, under and by virtue of the mechanics' lien law of this State; and that this defendant ought to be first paid out of said fund.

And this defendant submits to this Honorable Court that all and every of the matters in said complainant's bill mentioned and complained of are matters which may be tried and determined at law and with respect to which the said complainant is not entitled to any relief in this court, and this defendant hopes he shall have the same benefit of this defense as if he had demurred to the said complainant's bill.

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.

WILLIAM L. FORD,
Solicitor of Defendant, Abraham Miller.

New Jersey, }
 Essex County. } ss. :

Abraham Miller, the above named defendant being duly sworn, on his oath says 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 the same relate to the acts of any other person or persons he believes them to be true.

ABRAHAM MILLER.

Sworn and subscribed before me at Newark, N. J., this 10
 sixteenth day of November, A. D. 1886.

FRANK E. BRADNER,
Master in Chancery of N. J.

IN CHANCERY OF NEW JERSEY.

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BETWEEN
 ELIZABETH BOWLBY,
Complainant,
and
 JULIA B. WILLISON, *et als.,*
Defendants.

Transcript of stenographer's notes of testimony taken in the above stated cause before W. B. Williams, Esq., Advisory Master at the Vice Chancellor's Chambers in the city of Newark, January 27th, 1887, at 10 A. M., in presence of W. L. Ford, of counsel with Abraham Miller; J. M. Trimble, Esq., as counsel for Paul Carnelli; E. E. Coe, Esq., for Jacob Moses; T. L. Currie and Frank E. Bradner, associated as counsel for Mrs. Willison, and Senator Griggs as counsel for Albert B. C. Salmon, the Receiver, and Messrs. Coult & Howell, as counsel for Elizabeth Bowlby, the complainant.

Bill read.

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By Mr. Howell—I have given notice of an application for leave to file an answer for the Bradley & Currier Co., Limited.

Frank E. Bradner, Esq. for Mrs. Willison moved that the bill be dismissed, because it did not set forth a proper case for a decree of interpleader. The motion was denied and decree of interpleader ordered.

Senator Griggs, on the part of Salmon, the Receiver, offers in evidence contract dated March 3d, 1886, Mrs. Elizabeth Bowlby party of the first part and J. B. Willison party of the second part. The contract is signed J. B. Willison per James T. Willison.

Contract marked Exhibit S. 1.

Every covenant is in the masculine gender.

It is agreed by counsel that this is a correct copy and shall be used instead of the original which was here and is taken away.

20 It is admitted that George M. Douglass recovered a judgment in the New Jersey Supreme Court May 2d, 1885, against James T. Willison and Morris Hoppaugh for \$2,440.23.

That on the 3d day of May, 1885 execution was issued directed to the Sheriff of Essex county, which was afterwards returned wholly unsatisfied.

That on the 1st day of July, 1886 on petition filed in the Supreme Court for discovery, an order of discovery was made on that day by Judge Dixon, directing the defendant 30 in that case to appear and be examined at a subsequent date which was July 13th, 1886.

That the defendant, James T. Willison did appear before Mr. Salmon, Supreme Court Commissioner, on that day and was examined.

That upon the examination being certified to the Judge an order was made on the 15th of July, 1886, appointing Albert B. C. Salmon, Receiver; part of the order has been read here and it is attached to the complainant's bill, and it is agreed to use the copy attached to the bill in place of the 40 original.

Albert B. C. Salmon being duly sworn on his own behalf saith :

Examined by Senator Griggs :

Q. You are a Supreme Court Commissioner? A. Yes.

Q. Did James T. Willison appear before you on the 13th of July last to be examined? A. He did, I believe that is the date.

Q. On supplemental proceedings? A. Yes.

Q. Did you reduce the examination to writing? A. I did. 10

Q. He was examined under the order? A. Yes, and I have a copy of the examination here.

Q. Have you looked it over? A. I have read over part of it.

Senator Griggs offers the testimony taken by the commissioner of Mr. Willison under the supplemental proceedings in evidence.

Counsel for Mrs. Willison objects to that testimony being introduced.

The offer is withdrawn for the present. 20

James T. Willison being duly sworn on the part of the receiver, on oath, saith :

Examined by Senator Griggs :

Q. Are you the husband of Julia B. Willison? A. Yes.

Q. What is your business? A. I have been a carpenter 30 and builder.

Q. Prior to May 3d, 1885, had you been engaged in the business of carpenter and builder? A. Yes.

Q. With Morris Hoppaugh as partner? A. Yes.

Q. Taking contracts for building houses in Newark?
A. Yes.

Q. Were you examined last July before Mr. Salmon? A.
I was examined, yes, sir.

Q. With reference to your property? A. Yes.

Q. Was the testimony you gave there true and correct? 40

Objected to by Mr. Bradner.

Question withdrawn.

Q. Do you remember when this judgment was obtained against you by Mr. Douglass? A. Yes, I do; yes, sir.

Q. At that time had you any contracts in course of completion—you and Mr. Hoppaugh?

Objected to by Mr. Bradner.

Question admitted.

10

A. No, sir.

Q. Were there not several contracts unfinished and in the course of completion at the time Mr. Douglass recovered his judgment against you? A. There was none of them under the name of Hoppaugh and Willison.

Q. Were there any in your own name? A. Yes.

Q. How many? A. Some three or four, I cannot remember just now exactly how many.

Q. They were all filed in the clerk's office? A. I suppose they were, I did not file them, it is a natural consequence for them to be filed.

Q. Do you recollect how much work you had contracted for and unfinished at that time? A. I cannot say.

Q. Give us some idea? A. I cannot.

Q. Did you afterwards finish these contracts? A. Yes.

Q. Finished by you? A. Yes, by me.

Q. Right after the judgment did you cease to do business in your own name? A. I did.

Q. In whose name did you do business? A. In my wife's name, Julia B. Willison.

Q. Why? A. Simply because I was bankrupt and had no money at all.

Q. Was that it? A. Yes.

Q. Is that the only reason? A. That is the only reason.

Q. Had your wife any money? A. No, sir.

Q. You didn't improve your condition by adopting her name then? A. No, sir.

Q. How soon after the judgment did you adopt your wife's name? A. It was not against me when I adopted my wife's name.

40

Q. The verdict had been found against you when you adopted your wife's name? A. I believe it had.

Q. And it was between the date of the verdict and the entering up of the judgment that you adopted your wife's name? A. Yes.

Q. Had the recovery of that judgment against you anything to do with your adopting your wife's name? A. No, not particularly, because I would have to give up business any how.

Q. Question repeated? A. No, sir.

Q. Did you have any purpose in mind to prevent Mr. Douglass under his judgment from getting any moneys you might earn, when you did that? A. No, sir. 10

Q. Now, I am going to ask you this question—do you recollect on your examination last July, this question being asked you, and answering as follows: “Why did you proceed about the time this judgment was recovered against you to do business in your wife's name? A. It would have been impossible for me to have done it because of the judgment of \$2,400 against me.” Was that question asked you, and did you give that answer? A. I cannot remember. 20

Q. Can you say you did not? A. I cannot, or that I did.

Q. Can you say whether or not, that is correct as a fact? A. I cannot say as it is, because I do not remember what I did say.

Q. Why did you proceed about the time this judgment was recovered against you to do business in your wife's name? A. I answered that a few minutes ago; I could not carry it on in my own name.

Q. Why? A. I was worse off than nothing. 30

Q. Because of what? A. I had no money.

Q. Because of why? A. The judgment coming on me I had to change; I didn't have any money when I left George M. Douglass' building—not one dollar.

Q. Since you have adopted your wife's name you have finished the four or five contracts which you had in your own name? A. I finished them in my own name, that is, I finished up the building; I do not know whether one or two houses; I can tell though by looking at the books; if 40

I had any on hand, I finished them; I cannot remember whether before or afterwards, because I can't remember.

Q. You have a shop? A. I did have.

Q. When? A. Before the judgment came against me.

Q. You have had the same shop ever since, and worked in it? A. Yes.

Q. And your name is on it as carpenter? A. No, only the name of Willison.

Q. Is not that the same as was always there? A. No,
10 it was J. T. Willison.

Q. When did you change it? A. About the time of the judgment.

Q. Was it not changed last July? A. No, sir.

Q. You did not put any name on it, but just left it Willison? A. Yes, sir.

Q. You had some tools there? A. Yes, sir.

Q. Some lumber on hand? A. Very little lumber.

Q. You had some? A. Yes, sir.

Q. And you proceeded with the tools and used the shop
20 just as before? A. It is all there yet.

Q. You went on and used it just the same as you always had? A. Yes, sir; because there was nothing to hinder me that I could see.

Mr. Trimble objects to these questions as being too leading.

Questions admitted.

Q. You said you had to stop business in your own name because you could not pay your debts; did you use every-
30 thing that you had coming to you to pay, equitably, the the debts you had? A. I did.

Q. Did you pay everything you owed? A. No, sir.

Q. What did you not pay?

A. I think there is one bill of \$50 I owed to a plumber in my own name.

Q. What else? A. And there was in the neighborhood of some \$300 in the name of Bradley & Cummings.

Q. Had you not deeded a farm in Morris county the day the judgment was rendered? A. Because, it was an honest,
40 rightful debt.

Q. You tried to settle with everybody but Douglass?

A. Yes, sir.

Q. And you succeeded in paying everybody except the \$50 to the plumber? A. I do not remember; I would have to look.

Q. Has anybody else troubled you for debts? A. I do not think they have.

Q. You have taken contracts in your wife's name ever since May, 1885; how is that?

A. I have done the work in my wife's name and I have 10 overseed the work for her, that is all.

Q. You have worked yourself? A. Very little; only attended to the business for her; I have ordered the lumber, &c.

Q. Have you not gone on just exactly as you did before the change, except that the name is different? A. I do not know as I worked so hard.

Q. Why? A. Simply because I had more to look after.

Q. How; more work to do? A. No, sir; I have been out of work.

Q. Only you didn't work so hard? A. Yes; that is it. 20

Q. You superintended everything for her? A. Yes, sir.

Q. This contract for the Bowlby's house, you signed that? A. Yes, for my wife.

Q. We will consent that everything you have done is done for your wife, that she is the master over you entirely. Who wrote this contract? A. Mr. Coleman.

Q. You saw it before you signed it? A. I think I did.

Q. You knew what it contained? A. I knew it was an agreement for building.

Q. You knew the price? A. Yes. 30

Q. And when you were to get it? A. Yes.

Q. Didn't you know the contract contained that? A. They always do.

Q. You continued to collect the moneys due on this contract you had in your own name and to use it right along in the new business, didn't you? A. No, I paid up all my debts with it and got out of it.

Q. Didn't you swear so before Mr. Salmon? A. I do not know what was in that paper, it was never read to me, the paper was not. 40

Q. Your wife has never put a dollar into the business?
A. No, sir, never before.

Q. You have got a living out of it? A. That is all I had.

Q. And ever since? A. That is all I have.

Q. Have you not bought goods and had them charged to you in your own name right in connection with Mrs. Willison's business? A. Not to my knowledge.

Q. And have not notices been served on you as if you were the owner? A. Not to my knowledge, no, sir.

10 Q. Do you know Mr. Carnelli? A. Yes, sir, I do.

Q. Do you know of his serving a notice on Mrs. Bowlby?
A. I understand he did.

Q. You saw it? A. I did not.

Q. Have you got Carnelli's bill here? A. I have not.

Q. Have you got it anywhere? A. Nothing more than the statement that I put down that the painting was to be so much for the building, that is all there is about it.

Q. Abraham Miller, have you got his bill? A. No, sir.

Q. Did you not make contracts with these people in your
20 own name? A. No, sir.

Q. For materials? A. No, sir.

Q. You bought all the stuff? A. I did not, I did the
lumber.

Q. Who did buy it if you didn't? A. The mason work and material?

Q. Yes? A. Mr. Miller I suppose.

Q. Who got Miller to do it? A. I went to him and I got his bid on the mason work in my wife's name.

Q. You did the whole thing yourself, but used your
30 wife's name? A. I acted as her agent.

Q. You did it without consulting her, merely went on and did it? A. No, sir; you are mistaken there, she knew when I figured on the building and knew just what the mason's bill was.

Q. When did you tell her that? A. I did my figuring at night in the house when she and I were together, she writes some specifications and copies them.

Q. Have you any books of account that you have kept since you went into business? A. No, sir.

40 Q. Have you kept no books? A. Only memorandums.

Q. Where are they? A. At home.

Q. You did not bring them? A. No, sir.

Q. You kept no books? A. No, sir.

Q. Kept no books of account? A. No, sir; not since I went out of business myself.

Q. Your wife owns no property at all when you went into this business? A. No, sir.

Q. Was not worth anything? A. No, sir.

Q. You had some money coming to you on these contracts? A. I do not remember whether they were finished 10 before or after the judgment.

Q. Didn't you have some contracts just finished about that time? A. I cannot state just how that is, whether they were done just before or after—whatever money there was on them went to pay for material men.

Q. How many houses did you build in your wife's name? A. I cannot tell just how many, some eight or ten.

Q. Did you make any profit on them? A. If I have I haven't seen it yet.

Q. You have used up all the money you got in living? 20
A. About made a living.

Q. And that is all the wage you have got is the living for your family? A. Yes, sir.

Q. No arrangement for compensation to you from your wife? A. There is not enough money to pay the debts to-day.

Q. What are your tools worth? A. Not over \$100.

Q. They have been used in your wife's business? A. Everything remained just as it was when the sheriff took levy, he did not take them and I have used them.

Q. Did you have a horse and wagon? A. No, sir. 30

Q. You live in the same place? A. Yes, sir.

Q. You hired a house? A. Yes, sir.

Q. You keep the same shop as before? A. On the same ground.

Q. Do you recollect swearing to this before Mr. Salmon: "You did it in your wife's name to protect it from your creditors; nothing more than to make an honest living, and to protect it from being taken by creditors." "I had to make an honest living, &c." Is that correct? A. I do not remember. 40

Q. Is the fact stated correctly; is that so that you did put it out of your hands to protect it from judgments, &c. Is that correct? A. I admit that.

Q. Have you done jobbing work and repairing, &c.? A. Some jobbing.

Q. Did it yourself? A. No, sir.

Q. Have you not worked with your own hands? A. Very little.

Q. Some? A. Yes, a little.

10 Q. Have you had business enough to require all your time in superintending? A. For some time I did not do any work. I have not been doing much now for the last three or four weeks.

Q. You said I think you used the material you had on hand when the judgment was obtained in your wife's business? A. Yes; I suppose there was \$10 worth of material.

20 Q. Is there any difference at all in the business you carried on since May, 1885, to the business that you carried on prior to May, 1885, except the difference in name? A. Yes, because I haven't had the work I had before.

Q. Any difference in the character of the work? A. Yes, sir; everybody that I build for or do a job for understands that I am not doing it for myself.

Q. Any difference at all except the name? A. Yes, because I done more of it myself.

Q. Is that the only difference? A. I suppose that is the only difference.

30 *Cross-examination by T. L. Currie, Esq.:*

Q. Your shop is on 4th Avenue and Bloomfield Avenue? A. Yes, sir.

Q. You were in business as a firm in the name of Hop-paugh & Willison for how many years? A. I think two years.

Q. That firm dissolved when? A. At the expiration of the time we done Douglass' bakery; I think it was about the first of January, 1885; I think 1884 or 1885.

40 Q. And that firm was dissolved at that time? A. Yes, sir.

Q. You started to take some contracts for yourself, then?
A. Yes, I then went by myself.

Q. As I understand, some time in the early part of 1885, Douglass obtained a judgment against you for damages?

A. No, I think it was the following year, wasn't it?

Q. 1885. A. Well, it was after I went into business for myself, the judgment was recovered.

Q. The firm of Hoppaugh & Willison dissolved in 1884, then? A. It must have been in 1884, I do not remember exactly the date.

Q. You say you had some contracts in your own name at the time this judgment was obtained against you? A. Yes.

Q. Those were finished up and paid your indebtedness?
A. If they were not done prior to the time, they were finished up afterwards and the money went to pay the material men.

Q. Did you pay out all the money you had? A. Yes, sir.

Q. What property did you have? A. A quarter interest in a farm up above Morristown, there is a house and lot there.

Q. What did you do with that? A. I turned the farm over as part payment of my debts.

Q. To whom? A. To Barklett & Co.

Q. Lumber men? A. Yes, the house stands there just as it was.

Q. Is Mr. Barklett here? A. Yes.

Q. You got a fair consideration for it? A. I considered so.

Q. This carpenter shop—how much rent did you pay— what kind of a building is it? A. One story.

Q. How much a year? A. \$16.50.

Q. Living in the same place you lived then? A. Yes, sir.

Q. Five rooms on second floor in Garside street? A. Yes, sir.

Q. Do you own the furniture in the house? A. No, sir.

Q. Who does that belong to? A. It belongs to my wife, yes, if I understand it right the greatest part of it.

Q. What did you do then, after you transferred your prop-

erty to Barklett, how did you take contract? A. In my wife's name.

Q. Did you have a power of attorney from her? A. Yes, sir.

Q. She had no means of her own at that time? A. None at all.

Q. Where is the power of attorney? A. It was left in the hands of Andrew Hoppaugh, to put on file, I have not discovered it since.

10 Q. You have looked for it? A. Yes, sir.

Q. Mr. Hoppaugh is a lawyer? A. Yes, sir.

Q. Where is he? A. He moved out West.

Q. Did you go to the different material men and tell them about the arrangement made with your wife? A. Yes, sir, I done no business except I told them.

Q. And since you took all the contracts in the name of your wife? A. Yes, sir.

Q. And the building material have been charged to her? A. Yes, sir.

20 Q. You have built eight or ten buildings? A. Some where in that neighborhood.

Q. Have you accumulated any profits from those buildings? A. I have not discovered any yet.

Q. You say you have no bank account? A. I have no bank account and I do not think there is enough coming to-day if everything was collected to cover her indebtedness.

Q. Have you made more than an ordinary living—living wages since? A. I have not made my wages.

30 Q. What does your family consist of? A. Wife, two children, sister-in-law and myself.

Q. The counsel asked you about some lumber, how much lumber did you have on hand belonging to yourself at the time you commenced contracting in your wife's name? A. I do not suppose there was \$10 worth.

Q. How much were your tools worth? A. About \$100. I would average them at that, they would not average that but I suppose they would cost me that.

Q. In the house of Mrs. Bowlby was all the material contracted for in your wife's name? A. Yes.

40 Q. Of this \$1,000 coming to your wife from Mrs. Bowlby

is not your wife indebted to material people to a sum equal to that? A. Yes.

Q. On this identical house? A. Yes.

Q. If all the material was paid for in the Bowlby house that was furnished as you have stated would there be anything left of the \$1,000 in Mrs. Bowlby's hands? A. No, sir, there would not be anything left.

Q. Just look at this paper and tell me what it is (handing witness paper)? A. They are the specifications of the Bowlby house. 10

Q. Signed by whom? A. By me as per Julia B. Willison.

Q. How many men did your wife have in her employ? A. From one to about six, the average is 3 or 4.

Re-direct by Mr. Griggs:

Q. You hired these men, discharged them, paid them and everything else? A. As her agent, yes.

Q. How much money has Mrs. Bowlby paid on her contract? A. Sixteen hundred dollars.

Q. Can you say how much of that has been paid out for for material and labor that actually went into the house? 20
A. No, I cannot, because I did not keep that account of it.

Q. You cannot say that you have had living money out of it? A. I cannot say but that I put other money from other places into it; I do not think there is a carpenter in the city that could build a house and use only the money that came out of that building.

Q. Have you not used money derived from contracts taken in your wife's name to complete contracts in your own name? A. No, not that I remember. 30

Q. Did you not run the contracts right on without drawing any line between them? A. Yes, perhaps I did.

Q. To whom did Mrs. Bowlby pay the \$1,600 to? A. I received the checks from Mr. Hay; she did not pay it at all.

Q. You paid it out? A. I paid it out.

Q. The old sign is still on your shop? A. Yes, just the same.

Q. The one with James T. Willison? A. Nothing but Willison on it now. 40

Q. Only a piece of tin over the other letters, are there?

A. Yes, nothing but Willison on it now.

Q. Have you any bill heads or anything of that kind?

A. No, sir.

Q. Never had any change in that respect? A. I never had any bill heads printed since I left the firm.

Q. You always sent them out in the old firm name?

A. I never used any.

Q. How did you make out bills? A. I made out the
10 bills in Julia B. Willison's name, either J. B. Willison or Mrs. J. B. Willison; very likely a good many of them in the name of Mrs. J. B. Willison.

Q. Did you not send a bill for work done under this arrangement to John A. Miller, in your own name, and afterwards after the appointment of receiver, came up and got it and made out a new one? A. No, sir.

Q. Nothing of that kind? A. No, sir.

Q. Did you know of any such transaction? A. I did not; if it is so, it is something new to me.

20 Q. When did you take the first bill to Miller? A. I cannot tell you.

Q. Before or after Salmon was appointed receiver? A. I never presented a bill to Miller since he was appointed receiver.

Q. Either by yourself or anybody else? A. No, sir, not since I had notice of the appointment of receiver.

Q. Did you do it after you was examined and before the appointment of receiver? A. I cannot say.

30 Q. Do you not have some recollection of that? A. No, sir; if I did I gave the correct amount to Mr. Salmon the day I was examined.

Q. That is not the question—it is the presenting of a bill to Mr. Miller? A. I cannot swear to that; I do not remember when the bill was really presented.

Cross-examination by Mr. Bradner:

Q. How did Mrs. Bowlby pay you? A. By check.

Q. Always? A. Yes.

Q. To whose order was the check made?

Objection by Mr. Griggs on the ground that the checks themselves are the best evidence.

A. Mr. Bradner asks Mrs. Bowlby's counsel to produce the checks.

Q. Who endorsed the checks?

Objection by Mr. Griggs.

Question overruled.

Q. Could you use those checks yourself, Mr. Willison? 10

Objection by Mr. Griggs.

Question reserved.

Cross-examination by Mr. Howell.

Q. After the contract was made with Mrs. Bowlby, of whom did you purchase your windows, blinds, &c. A. Bradley, Currier & Co., New York.

Q. What was the nature of your purchases—sash, blinds and doors was the articles mentioned in the contract? A. 20
Yes, sir.

Q. Any agreement between you and them, or did you buy it on open account? A. I always signed an agreement when I signed a contract with them, and they give me a written copy of what they furnished me; I accept that and signed an agreement to that effect.

Q. Have you a copy of that paper? A. No, sir.

Q. You haven't it here? A. I have such a paper same as the one they got, they kept one copy and I got the other.

Q. Who conducted the negotiations, you or your wife? 30
A. I did.

Q. In pursuance of that contract, did the Bradley, Currier & Co. furnish the windows and blinds? A. Yes, to complete the house.

Q. Were they delivered? A. At the building on Bloomfield avenue.

Q. Did you pay for them? A. I have not.

By the Court:

Q. Had this written specification on its face the price? 40

A. Yes; I was to furnish so many blinds, windows, sash, &c., for so much money.

Q. And they furnish such goods? A. Yes.

Q. And Mr. Willison did not pay them the money? A. No, sir.

Q. All the stuff furnished by them was actually used in this building? A. Yes, sir.

Q. Do you know whether any demand was ever made by the Bradley, Currier & Co. on your wife for the payment
10 of this money? A. I do not recollect whether they made any demand on my wife or not; the building was not quite completed when this thing transpired. When the Receiver laid his claims on it, and when the Bradley, Currier & Co. gave their notice the building was not quite complete.

Q. Do you know anything about two notices by the Bradley, Currier & Co.? A. No, sir; I did not see this notice; they were sent to Mrs. Bowlby or to her agent.

Q. Where did you give this order to the Bradley, Currier & Co.; in Newark or in New York? A. Newark;
20 here to their agent.

Q. What is his name? A. Russell.

Q. After furnishing these goods and material, and it was delivered and used in the building, did Mr. Russell ever come to see you about the money? A. No, sir; no more than when I was there it was understood when the building was completed and the last payment made on it he should receive his money.

Examined by Mr. Trimble:

30 Q. I understood you to testify that in May, 1885, when you made this change and took contracts in your wife's name that you had no money? A. No money.

Q. And this change did not involve the transfer of any capital of yours to your wife? A. No, sir, not at all; not a cent.

Q. Or any property? A. No, sir.

Further re-direct by Mr. Griggs:

40 Q. Did I not understand you to say that you did not know whether there was money due on those contracts or

not? A. As I said, I cannot say whether my contracts was all finished up when this thing came against me or not; whatever money came from them contracts was paid on the old contracts.

Q. Did you draw any line or keep any account between the new and the old business? A. No more than in this, when I received money from a building, if it is contract money and the last money, I pay every man that has hauled any material or furnished any material on that building as far as the money goes, and as I say I had no money invested and I paid every dollar out. 10

Q. If you had any money left what did you do with it? A. I had to live; I did not expect to starve to death.

Q. You did use some then? A. I used it for a living for my family.

Q. Just as you used what you needed out of Mrs. Willison's business? A. Yes, sir.

Q. So, practically, the family is supported by your exertions, in your wife's name? A. That would be the sum and substance of it, I suppose. 20

Q. Have you any books to show anything about your receipts since May 2d, 1885? A. Mr. Currie has a receipt book of what I paid out.

Q. Have you got nothing to show what you took in? A. I could give you the contract, but I cannot to-day; I can give you all the contracts I have done.

Q. Is this the only receipt book you have (handing witness memorandum book)? A. I have lots of loose receipts; that is the only regular receipt book I have.

Q. This begins some time in 1886; you did not keep any in 1885? A. No, sir; not a regular book. 30

Q. Have you all the receipts you paid out since 1885 in your possession somewhere? A. I think I have.

Q. Can you produce them all here? A. I have not them here now.

Q. Has Mr. Currie any of them? A. No, sir; only the book.

Q. Do you recollect the contract for altering some houses, I think, on Ogden street? A. For Mr. Wakeman?

Q. Yes. A. Yes, sir. 40

Q. When was that finished? A. After judgment came out against me; but then they were not in my name then.

Q. You took the contract in your name? A. Yes, and threw them up.

Q. What do you mean by that? A. I gave up the contract.

Q. Go on? A. That ended it.

Q. You took a new one in your wife's name? A. Only
10 on the new building.

Q. Didn't you finish the Wakeman contract? A. No, sir; because I had not commenced the new building when the judgment came against me.

Q. Did you not do work on the Wakeman contract—was there not more than one? A. There was a new building and an old one.

Q. Did you do any work on the Wakeman property since the judgment? A. Not in my own name.

Q. In your wife's name? A. Only days' work.

20 Q. Did you do any work for Mr. Wakeman covered by the contract taken in your own name? A. The old house; when I done the work the contract was not in my own name.

Q. You threw up the contract in your own name and took a contract in your wife's name? A. For the new houses.

Q. At the same price? A. Yes.

Q. So that really you substituted your wife's name as contractor, for your own? A. I did not or had not commenced the job at all and would have thrown the job up entirely if I had not changed.
30

Q. So that the contract you had secured you transferred to your wife? A. I believe so.

Q. The contract with you was on file? A. Yes, sir.

Q. Was the contract between your wife and Mr. Wakeman put on file? A. I cannot tell, Mr. Wakeman attended to that.

Q. How much was that contract? A. I cannot tell you.

Q. Is was \$8,000 or \$9,000, was it not? A. No not so much
40 as that.

Q. How much was it? A. I cannot tell you honestly about that, I do not know whether it was \$8,000 or \$1,000.

Q. Don't you know whether it was \$8,000 or \$1,000?

A. I think it was about \$1,400 or \$1,500, I cannot state the amount.

Q. Did you not do work on this old contract after the judgment? A. Not in my own name, I have not done a day's work in my own name, but in my wife's name in day's work I did, but I did not do it on contract; you asked me if I done it on contract, I did not do a day's work on the contract after I threw up the job. 10

Q. They were incomplete? A. Yes, I did not touch them, all I had done to the old houses when the judgment came against me was to cut them in two.

Q. Under your contract? A. Yes.

Q. And your wife step into your place? A. No, my wife did not touch them contract on the old house.

Q. Who did? A. Mr. Vanderhoof; he contracted and I done them at day's work, or my wife done the day's work. 20

Q. Your wife? A. That is, I did the work by the day in her name.

Q. When was that? A. It was about the time the judgment came against me.

Q. About the time, but after? A. The work was done after.

Q. Shortly after? A. Yes, sir, shortly after.

Mr. Trimble objects to this testimony as being immaterial and irrelevant as against the defendants 30
Moses and Carnelli.

Q. How much did you get paid for what you did on the Wakeman houses, in your wife's name? A. I cannot tell you now.

Q. Have you no account of it at all? A. No, sir.

Q. Can you say whether it was as much as \$500? A. Which do you have reference to, the new houses or the old ones?

Q. Was this done in your wife's name? A. The new 40

houses my wife contracted; the old house was done by Bradley.

Q. Now I refer to this, you say you worked for Vanderhoof? A. Yes, sir.

Q. Did you have men working under you? A. Yes.

Q. Did Mr. Vanderhoof pay you the money for them? A. The money came to my wife.

Q. Came to you in her name? A. Yes.

Q. And you paid the men? A. Yes.

10 Q. And kept the profit on it? A. That is the sum and substance of it, yes.

Q. That is, every time a man was paid \$4 you kept something of it for profit? A. Yes, that is the way it is done.

Q. These are the same men you had working for you before? A. Yes.

Q. You turned them in to work for Vanderhoof to take the contract? A. Yes.

20 Q. You managed the whole thing for Vanderhoof, did you not? A. Yes.

Q. So the only difference is, that you were the real man and Vanderhoof was the nominal man? A. Yes, that is about it.

Mr. Currie offers in evidence the specification of this Mrs. Bowlby's house; it is marked Exhibit "W 1;" also the contract, which is marked Exhibit "W 2."

30 Q. Who is M. J. Hawes? A. A man in Pennsylvania.

Q. What is he? A. A lumber man.

Q. Did you buy any lumber of him? A. Yes.

Q. Give a note for it? A. Yes.

Q. For your wife's debt? A. Yes; she was away at the time, and he made a mistake in the receipt.

Q. Look at that receipt dated June 8th, 1886, "Received from J. T. Willison \$159 by note in settlement of bill of April, 1886"? A. I gave an individual note because my wife was out of the way at the time.

40 Q. Did you think I asked you to explain all that—did

I ask you why you gave that note in your own name?

A. No, sir.

Q. Is that the day you gave the note? A. I do not know.

Q. Was it the day you got the receipt? A. Yes.

Q. It was your own note? A. Yes.

Q. Why was that a wrong receipt? A. I told him of it at the time that he wrote the wrong name in the receipt book.

Q. You gave him the note, then why should he not give you a receipt in your own name? A. It was a bill in my wife's name. 10

Q. But you had the power of attorney to do all these things, why did you not give her note? A. I do not suppose I thought of it, that is just about it.

Q. You used to indorse checks drawn to her order and get the money on them? A. I do not know but what I have.

Q. You always did invariably? A. No, sir; I have not, there may be one or two that I got the money on; further than that she got her own checks indorsed. 20

Q. Have you given any other notes since giving the note, this one, since the business was in your wife's name? A. Yes.

Q. Signed them yourself? A. Yes.

Q. In your own name? A. No, sir.

Q. Did you ever give a note in your wife's name? A. Yes, sir.

Q. Signed it yourself? A. No, sir.

Q. Who did? A. My wife. 30

Q. Did you ever have any notes given out for material used in your wife's name? A. Yes, sir.

Q. And did you not tell Mr. Salmon that you would have to stop business if you didn't? A. I didn't give that note, I didn't know what note you referred to, the note I spoke to Mr. Salmon about it was the Bradley's note.

Q. How were you liable on it? A. I borrowed the note.

Q. From whom? A. From my wife.

Q. Was not your name on it? A. No, sir; my name was not on it in no way, shape or manner. 40

Q. How many notes have you given in your wife's name to which you have signed your individual name? A. Quite a good many.

Q. All been to pay your wife's debts? A. Yes, and the money came out of her work to pay for them.

By Mr. Howell :

Q. When you went to the Bradley, Currier & Co. to make this agreement with them you spoke about, did you tell them anything about the Bowlby contract? A. The material they furnished was for the Bowlby contract.

Q. Did you tell Mr. Russell about the manner in which the contract was drawn—the Bowlby contract? A. Yes, he has furnished plenty of material before, in the same way, that was perfectly understood.

Q. Then Mr. Russell understood that this was furnished to your wife and not to you? A. Yes, to my wife, not me.

By Mr. Trimble :

Q. I understood your testimony that you had signed these notes in your wife's absence; as a matter of fact I wish to know whether in signing these notes you acted for yourself individually or as agent? A. As agent for my wife, but gave my individual note. That is the way I understand it, because they preferred to take my name on the note without my bothering to get her name. I have asked them to wait until I got up to the house to get my wife's name on it, and they said put your name on, and they used the note until her money came in to pay them.

30 By Mr. Griggs :

Q. "May 8th, M. J. Stiner, \$50." This receipt is to you individually. "May 21st, 1886, B. Myer," another receipt. Look at these; were these for material? A. I suppose they were.

Q. Don't you know? A. The supposition is that I haven't paid anything out—interrupted.

Q. It was not for borrowed money? A. No, sir.

Q. Nor for household expenses? A. No, sir.

Q. No creditors have preferred to take your notes rather than her's? A. It was done to save trouble.

Q. Why was it that having this power of attorney you did not sign the notes in your wife's name—you said as to one note you did not think of it—I am now asking you as to all of them? A. As far as regards the notes I did not suppose it made any difference.

By Mr. Bradner :

Q. How long did you say after the judgment had been recovered against you, this arrangement was made with your wife? A. Between the verdict and the judgment. 10

Q. After this judgment did you make any attempt to get any credit yourself? A. No, sir; I never asked anybody to trust me afterwards; I told every one how the matter stood, and it came out in the papers.

Q. Why did you go and tell these people about it? A. I had to be in some employment some how.

Q. Did you know you could not make any contracts while this judgment was in existence? A. I suppose that to be the case.

Q. How many contracts since that time have been made 20 by you in your wife's name, or about how many? A. Well I suppose it must have been eight or ten.

Q. Have they all resulted in profit? A. I do not think there have been much profit in them.

Q. Any loss in any contract? A. As I stated the whole thing a while ago, I think if all the money due my wife was paid in and all the bills paid there would be nothing left, and perhaps there would not be enough to pay the bills.

Q. How much does she owe on contracts for material and 30 labor? A. Well, I cannot say, exactly.

Q. Would there be enough money, if she got this \$1,000, to pay the debts? A. No, sir; because that \$1,000 is covered, anyhow, by what ought to be credited on the Bowlby house.

Q. When any money has been made on the contracts, has that money been used to carry on further business? A. The money that has been earned on other contracts or in days' work has been put into the business, because I have not had 40 anything under the heavens to live on.

Q. There has been nothing accumulated? A. No, sir.

Q. No money invested in your wife's name? A. No, sir, none at all.

Julia B. Willison, being duly sworn, on her oath, saith :

Examined by Senator Griggs :

10 Q. You are the wife of James T. Willison? A. Yes.

Q. Do you recollect giving the power of attorney to your husband? A. I do.

Q. Do you know when that was done? A. I think, in May, 1885; I cannot tell exactly the date.

Q. Can you tell whether before or after the judgment of Mr. Douglass entered against him? A. It was just after the trial, but I cannot say what date.

Q. Just after the verdict? A. Yes, sir.

Q. Who asked you to give that power of attorney? A.

20 I do not know that any one asked me to do it.

Q. How did you come to do it? A. There seemed to be no alternative at that time.

Q. Did you and your husband have a talk about it after the verdict? A. Yes, sir; it was talked over between us.

Q. Just tell us how you came to give it? A. Well, of course, we were without means, and it was necessary for us to have support, and I did that by advice so as to be able to maintain the family.

Q. Whose advice? A. I had counsel.

30 Q. Lawyer's advice? A. Yes, sir.

Q. Why did you do it just at that time? A. Well, before that, my husband's business had been supporting the family.

Q. What change had come? A. His business seemed to be at that time at a stand still.

Q. What was the cause of it? A. I cannot explain that.

Q. Had that verdict anything to do with it? A. Of course that had something to do with stopping his business.

40 Q. Had that anything to do with your giving the power of attorney? A. I do not know as that would—interrupted.

Q. Was not that power of attorney given because of that verdict? A. Yes, sir, and his business being at a stand still at that time.

Q. Did he not have some contracts that he was at work on at that time? A. I cannot tell you positively about that.

Q. You did not know exactly what condition his business was in? A. Not entirely, I paid very little attention to his affairs.

Q. Did he or you have any settlement or statement of the condition his business was in? A. He could not have 10 given a statement.

Q. Did he make any to you? A. Not specially as I know of.

Q. Then you do not know, except from what he told you, whether he had good contracts and good money coming to you or not? A. That is the only way I would have to do, his word.

Q. That was without his showing you any figures at all? A. Yes.

Q. Do you know now, or did you ever know, what work 20 he had on hand or what money he had due to him at that time when you gave the power of attorney? A. I did not know whether there was any money due him at that time.

Q. You do not know anything about it? A. At that time I did not.

Q. Never did know? A. At that time I did not know.

Q. What lawyer advised you about this matter? A. Lawyer Hayes.

Q. Was he your husband's lawyer in that suit? A. He 30 was.

Q. At whose request did you go to his office, if you went there? A. Well, I went at my own accord.

Q. Anybody go with you? A. My husband went with me.

Q. Did you suggest going there or did he? A. I cannot answer that.

Q. I want to know whether he asked you to go or whether you asked him to go? A. I cannot answer that.

Q. I want to know whether this was a thing that originated entirely out of your head or whether it was that he 40

suggested you should go? A. I often thought that I should take the business.

Q. Question repeated. A. Well, I guess we both had that one opinion, that I should take the business.

Q. What one opinion? A. That I should take the business; it was my idea and his also.

Q. When did you arrive at that opinion, before or after you went to the lawyer? A. I was decided about that before I went, if such things were possible to do as that.

10 Q. What was your object in taking the business yourself? A. To maintain my family.

Q. You did not do the business? A. Well, through my agent, of course.

Q. Your husband did it, he worked for you? A. Yes, sir.

Q. You did not pay him anything for working? A. He got his support.

Q. You got yours and the family just the same as you had always had it? A. Yes.

20 Q. That was the only difference that it was in your name then where as formerly it had been in his name? A. Well, of course it brought me more responsibility.

Q. How? A. Because I had then to have an oversight of the business.

Q. Why so? A. Persons carrying on business—interrupted.

Q. You had an agent? A. Well, but still I like to know whether it was done or not.

30 Q. You had no means or capital to put into the business, nothing except your husband's experience, tools and work—anything else? A. No, sir.

Q. And therefore the arrangement was that the results of your husband's work, your husband's experience, your husband's tools and ability to get contracts, was thereafter to be yours, was that all of it? A. Yes, sir.

Cross examination by Mr. Currie:

40 Q. You knew at the time when this arrangement was made that you was making yourself personally responsible for all debts and contracts? A. Yes.

Q. For what reason is it you stated that that made you more particular? A. I do not understand, because of my responsibility because that would make me more decided.

Q. Before this arrangement was made did you ever sign any checks or notes? A. No, sir.

Q. After the arrangement did you? A. The checks pretty much all, if not all.

Q. They were drawn payable to your order? A. Yes.

Q. Who paid the rent of the shop? A. It was paid from my means.

Q. The question is who paid it? A. I suppose it is paid¹⁰ by me generally from my money.

Q. You mean from the results of the business you were carrying on through him? A. Yes.

Q. You were aware that all goods and materials were charged to you? A. Yes.

Q. When your husband took contracts in your name did he inform you as to who he made contracts with? A. Yes, sir.

Q. Well, what was the agreement between you and your husband in that respect. I mean what was the agreement²⁰ between you and your husband as to what compensation he was to receive for getting contracts and acting as your agent? A. Of course he was to have his living, and outside of that if there was anything I was to have control of that.

Q. What do you mean by his living? A. His board and clothing.

Q. Anything over and above that was to belong to you? A. Yes, sir.

30

Re-direct by Mr. Griggs :

Q. You say you were aware that all the goods your husband bought was charged to you? A. Yes, sir.

Q. How do you know they were? A. From bills I received.

Q. Do you know there were never any bills charged him that you did not see? A. I cannot say that.

Q. You did get some in your name? A. A good many.

Q. Did you not get some in his name? A. I think not.⁴⁰

Q. Are you sure? A. I cannot be positive, but I do not think there was any.

Q. Do you know of his giving notes of his own for your bills? A. On my power of attorney.

Q. Did he sign your name to notes on account of his power of attorney? A. I believe he has.

Q. Do you know? A. I cannot swear positively about that.

Q. If there was any notes of yours given he signed them?
A. Not always; I have signed them myself.

10 Q. How many have you signed? A. One or two.

Q. He always informed you when he took contracts—did he always inform you of taking jobbing work? A. I think I knew of all the jobbing.

Q. There was no change in that respect, was there? A. No, sir.

Q. He always talked about his business at home? A. Yes, sir.

Q. Do you know of a contract having been taken with Mr. Wakeman? A. Yes, sir.

20 Q. In your name? A. Yes, sir.

Q. Did you know of it about the time it was done; did you know at the time it was done that it was going to be done in your name? A. I was taking charge of the business, and my husband had a power of attorney to act for me.

Q. I want to know, before the Wakeman contract was taken in your name, whether you knew that it was going to be taken in your name? A. I did.

30 Q. How? A. The figuring was done at the house, and the specification was written there, and I of course knew about the whole matter.

Q. Those were the only specifications ever written about the Wakeman's house? A. I do not think there was but one specification.

Q. Was not that for a contract your husband took in his own name before the verdict in the Douglass case? A. I think not.

40 Q. Do you think your husband did not have a contract in his own name for the Wakeman house? A. He had for repairing the house.

Q. And for the new house too? A. I do not know about that.

Q. Do you know of his having a contract in his own name which he threw up and which you took afterwards?

A. I am not certain about that.

Q. If anything of that kind was done, you did not know about it at the time? A. Not that he threw up the contract, I generally knew if he took a contract in my name.

Q. Do you recollect anything about it? A. I cannot.

Q. You have now therefore no recollection on that subject at all? A. I do not recollect positively. 10

Q. Please state what contracts your husband has made in your name since the power of attorney was given? A. It would be hard for me to tell all of them.

Q. How many have there been? A. Some eight or ten.

Q. Mention as many as you can? A. There were two—one from Mr. Wakeman, two for Mr. B., Mrs. Bowlby, and there have been several since then.

Q. Give their names? A. Mr. Osborne and one in Barker street, I cannot recall the name. 20

Q. The Wakeman contract, do you not know that was originally in your husband's name? A. I did not know.

Q. Were not the Vanderhoof contracts in your husband's name? A. No, sir; I believe not.

Q. When were they done? A. Two years last summer, I think that is the time.

Q. Do you know how much the B. contracts were for? A. I cannot tell you now, I knew at the time.

Q. You do not know now? A. No, sir.

Q. Do you know whether he made anything on them or not? A. I do not, I guess not. 30

Q. Did you ever know anything about it? A. No, sir; nothing more than that.

Q. Was anything made at all on the Bowlby contract? A. I judge not.

Q. You do not know anything about it? A. Of course that is not complete yet.

Q. Have you any books or statement showing what the work has cost? A. I have not books. 40

Q. Or anything else have you to show what it cost?
A. Nothing but the bills; they would show the cost.

Q. And then if we take what had been paid to the men and figure up, we would find out the cost? A. Yes.

Q. You had not done that? A. No, sir; I could not get that from the men.

Q. You have not done that? A. No, sir, but I could get it.

10 Q. Do you know how much has been paid on the Bowlby contract? A. About \$1,600.

Q. How do you know? A. Of course the last payment is the only one that has been stopped.

Q. It has been paid to your husband all that has been paid? A. The checks or money have been paid to him, yes.

Q. And he paid it out? A. Yes, he paid it out.

20

J. T. Willison being recalled.

Examined by Senator Griggs:

Q. Were not the Vanderhoof contracts originally taken in your name? A. No, sir.

Q. Never? A. No, sir.

30 **Albert B. C. Salmon**, being duly sworn on his own behalf, saith:

Examined by Senator Griggs:

Q. You served a notice on Mrs. Bowlby on your appointment as receiver? A. I did.

Q. Have you a copy of it here? A. I have not; I sent the copy of it to you; I may have one at my office, but I have not any here.

40 Q. I show you the one in the bill—is that a copy? A. Yes, sir, that is a copy.

Q. Can you tell when that was served? A. I cannot tell from anything that is there.

Q. What would you say about the time? A. I should say about the 20th of July, 1886; I can explain why I recollect it.

Q. Tell why you know? A. I went away on my vacation about the 15th or 16th of July; I was gone about four or five days, and I received a letter from Senator Griggs where I was in regard to this matter and came home and served his notice and went back again; so that the 20th of July is about the time, although I do not remember the exact date. 10

Q. Did you notify or say anything to Mrs. Bowlby, earlier? A. I did.

Q. On the subject of your right and claim?

Question objected to.

Admitted.

A. In the notice I followed the language of the order. 20

Q. You have not been paid the amount of this? A. No, sir.

Walter W. Bartlett, being duly sworn, on the part of Mrs. Willison, on oath, saith:

Examined by Frank E. Bradner, Esq.:

A. Are you the gentleman to whom J. T. Willison transferred some property? A. I am. 30

Q. In the spring of 1885? A. Yes, sir.

Q. Why did he make that transfer to you? A. He owed me about \$600 or \$700 at that time.

Q. How long have you known Mr. Willison? A. I have known Mr. Willison five or six years.

Q. Did you have personal dealings with him? A. I have.

Q. What is your business? A. I am in the lumber business. 40

Q. Do you know the fact that Mr. Douglass recovered a judgment against Mr. Willison? A. I do.

Q. Did you, at the time of its recovery? A. I did; yes, sir.

Q. Since that judgment was entered against Mr. Willison, have you had any dealings with him? A. I have not.

Q. Have you had any dealings with Mr. Willison, wherein he represented some other party? A. I have not; no, sir.

10 Q. Do you know Julia B. Willison? A. I did.

Q. Have you had dealings with her? A. I have.

Q. What? A. Some lumber.

Q. How long have you been selling lumber to her? A. I have been selling lumber since May, 1885.

Q. Have you got your contracts or books of account here? A. I have not, as far back as that; I sold out my business some time ago and my old books went with the business.

Q. Do you know anything about the Bowlby contract? A. I furnished the lumber part of it on the Bowlby contract.

20 Q. To whom did you charge that lumber? A. Mrs. Julia B. Willison.

Objected by Senator Griggs on the ground that it is immaterial.

Admitted.

Q. Is there anything due you for lumber sold on the Bowlby house? A. I believe there is a balance.

Q. How much? A. I think about \$180.

30 Q. Why have you not charged lumber to J. T. Willison since May, 1885? A. Well, I knew he had a judgment against him, and I did not feel warranted to trust him since that time.

Q. Why did you make the charges against his wife? A. I believe he told me all lumber he got for his wife to charge it to her. He did not get any more lumber on his own account, and I charged it to her.

Q. Have you got your books here? A. Yes, sir.

Q. Turn to the account of Mrs. Willison.

Witness produces book, and turns to page 124, being an account with Mrs. J. B. Willison, August, 1886, in book labelled Ledger.

By Mr. Griggs :

Q. Where are your old books? A. I sold them with my old business.

Q. How far does this account run down to? A. Down to the 20th of this month I think is the last item.

Q. How much does she owe you? A. I have not struck 10 a balance; I cannot tell you just now.

Q. Have you not got it figured up? A. I did not keep these books myself; my book-keeper keeps them.

Q. Here is one for \$9.36 at that place? A. Yes.

Q. You have dealt right along since August? A. Yes.

Q. Did you sell her anything she wanted? A. Yes.

By Mr. Bradner :

When did you commence to deal with her? A. I think in May, 1885, we commenced to deal with her. 20

Cross-examination by Senator Griggs :

Q. You said Mr. Willison owed you \$600 or \$700 at the time of this Douglass judgment was obtained? A. I think in the neighborhood of that amount.

Q. And he turned over to you some property in Morris-town, being as part payment? A. Yes, sir.

Q. How much was that to pay of that debt? A. I think about \$400.

Q. When did he pay you the balance? A. I called the 30 debt square.

Q. Have you never been paid the balance? A. No, sir.

Q. So that that was in payment of your old debt? A. Yes.

Q. You haven't your old books here? A. No, sir.

Q. And have nothing to show when you began to charge Mrs. Willison? A. No, sir; they are on my old books.

Q. You mean you sold goods and charged them to her by her husband's direction? A. Yes.

Q. She never ordered them herself? A. No, sir. 40

Q. Are you sure you took that deed in full settlement of all he owed you? A. I am; yes, sir.

Q. Has he not paid you anything since? A. Not one dollar; no, sir.

By Mr Bradner :

10 I offer to show that dealers have sold goods under the same circumstances as detailed by Mr. Bartlett and charged the same on Mr. Willison's order to be charged to Mrs. Willison, said goods being for the performance of the contracts which Mr. Willison has alluded to in his testimony as carried on since the arrangement with his wife, that his wife should take the business.

By the Court :

20 Being of opinion that it sufficiently appears in the testimony already given that this was the course of business adopted, I exclude any further testimony of the material men themselves at this point as mere cumulative testimony.

Henry C. Klemm, being duly sworn on behalf of Mrs. Willison on oath, saith :

Examined by Mr. Currie :

Q. You are the subscribing witness to the contract between Mrs. Bowlby and Mrs. Willison? A. Yes, sir.

30 Q. And are the architect? A. Yes, sir.

Q. Be good enough to look at these papers and say what they are? A. They are specifications.

Q. They are also witnessed by you? A. Yes.

Q. Signed how? A. Elizabeth Bowlby, J. B. Willison, per James T. Willison.

Q. When was the building finished? A. I cannot exactly tell you.

40 Q. Look at this paper and tell me what it is? A. A certificate that the building was completed and that he was entitled to payment. (Paper read.)

Certificate offered in evidence and marked Exhibit W. 2, which reads as follows :

Newark, New Jersey, August 5th, 1886.

MRS. ELIZABETH BOWLBY :—

The contractor for the work on your building, situated in Bloomfield avenue, is entitled to the sum of one thousand dollars (\$1,000), the same being the final payment on said building, as per agreement made March 3d, 1886, and now on file in the Essex County Court House.

Yours respectfully, 10

HENRY C. KLEMM, *Architect.*

\$1,000. J. B. WILLISON, *Contractor.*

Q. What is the date of that? A. August 5th, I delivered it to Mrs. Willison.

Q. Is that the date the building was finished? A. Yes, when I thought it was completed.

Q. Were you required to certify before any payments were made? A. Yes, sir.

Q. Do you know to whom the payments were made? 20
A. No, sir, I do not.

Q. Do you know how much the material furnished for this building cost? A. No, sir.

Examined by Senator Griggs :

Q. Mrs. Bowlby had taken possession of the premises before that was given, hadn't she? A. She had, yes, sir, I believe she was in the house.

Q. Did she not move in in July? A. I cannot say.

Q. Was not the house substantially finished by July 1st? 30
A. All finished with the exception of painting.

Q. How much of a job was that? A. It was all finished by the 1st of July except some little fixings around, plumbing and carpenter work.

Q. How much would it require on the 15th of July to complete the whole building? A. I suppose about \$200.

Q. As much as that? A. I suppose so, I cannot tell exactly how much there was to do, I did not keep any record.

Q. Was it not completed on the 15th of July to within \$50? A. I cannot say. 40

Q. Would you swear there was \$50 worth of work to be done on the house on the 15th of July, on your best judgment? A. I should judge at about that time there was \$200 to complete that building on the 15th of July.

Q. What did that consist of? A. Leveling the cellar, tinning to be done, walks to be fenced up and plastering to be fixed over.

Q. Was the painting done then? A. All but the last coat of painting was done then.

10 Q. How much would it cost to complete the last coat? A. Oh, I suppose he had to go over the whole house, roofing to be painted—I suppose some \$30 or \$35, I think the last coat was on—part of it was on.

Q. Then it would not cost so much as \$35? A. That is what I would have had to pay to get somebody else to go there and do it.

Q. You do not know whether the cellar was leveled off on the fifteen of July or not? A. No, sir, it certainly was not leveled off previously to the certificate.

20 Q. There was a matter of \$3 or \$4 worth? A. Yes.

Q. Can you say that the fence was not up on the 15th of July? A. The fence was up only the gate was not hung.

Q. That would not be a matter of over \$2 or \$3 to hang the gates? A. I suppose not.

Q. The walks fixing how much would that be? A. \$3 or \$4.

Q. Would \$200 be excessive? A. I think so.

Q. Would not \$50 cover the whole thing on the 15th of July? A. I think it might.

30

By Mr. Bradner:

Q. You did not give the certificate until the work was all done? A. Not until it was all finished.

Cross-examination by Mr. Trimble:

Q. When did you visit that house during the month of July? A. I cannot tell you.

Q. You cannot say? A. No, sir.

40 Q. How can you say what its exact condition was on the 15th of July then? I only said about that time, I might

have visited it on the 10th or it might have been the 20th.

Q. Do you know what the painter was to receive for painting that house? A. No, sir.

Q. Do you know how much of his work was done on the 15th of July? A. As I said before I said I thought it was pretty nearly all finished except some of it had to be gone over.

Q. He had to put on the second coat? A. Some part of it.

Q. Do you know when he put on his last coat? A. No, 10
sir.

Q. Why did you testify in one breath that on the 15th of July he had \$200 to finish and then say it would only be \$50? A. I did not figure up the items.

Q. You really don't know anything about it? A. No, sir.

By the Court :

Q. Have you any means of determining when this house was completed? A. At the time the certificate was given was the time it was completed, I went up the day before 20
and saw everything was satisfactory.

Q. Can you say how long before that that it was complete? A. No, sir, I did not go up to to see; I went up time and time again and it was not finished and then Mr. Willison came over for his certificate and I went up again to see how it was and found it completed, and then gave him his certificate when I found everything satisfactory.

30

James T. Willison, being recalled on the part of Mrs. Willison :

Examined by Frank E. Bradner, Esq. :

Q. I show you Exhibit W. 2; do you recollect when you got that certificate from the architect? A. Yes, sir.

Q. Can you say how long before that was given you the Bowlby house was entirely complete? A. Well, it was not over two days before this was given; I think I notified 40

Klemm and he came up the day it was given and looked at the house and I came down to the office next day and got the certificate; that would be the 3d of August.

Q. Is that the day you fix it? A. Yes; I know that is the time I finished it, about.

Cross-examination by Mr. Griggs:

Q. On the 13th of July, when you were examined before Mr. Salmon, what remained to be done on the house? A.
10 I do not know as all the doors were hung at that time.

Q. Did anything except the painting remain to be done? A. Yes; I was in there after and put up shelving and doors.

Q. How much would it cost to finish the work? A. I think there was over \$200 worth of work to do.

Q. Did you not testify as follows, before Mr. Salmon: "That it would cost \$50 to finish it"? A. I do not recollect ever saying so.

20 Objection by Mr. Trimble, on the ground that it is not material how much remains to be done on this building.

Q. Did you, or not? A. I do not think I ever did.

Q. If you did say so you were likely to know more about it then than now? A. I do not think I ever said it would cost only \$50 to finish it.

Q. Didn't you pay money to Bartlett & King on your account after you gave them that deed? A. I cannot swear
30 to that.

Q. Did you not swear to that before Mr. Salmon? A. No; I cannot swear whether before or afterwards; I was paying Bartlett right along, I cannot swear whether before or after the date of that deed.

Jacob Moses being duly sworn on his own behalf on oath saith:

Examined by J. M. Trimble :

Q. What is your business? A. I am a plumber at 235 West Kinney Street.

Q. Do you know Julia B. Willison? A. Yes, sir.

Q. Do you know her husband, James T. Willison? A. Yes, sir.

Q. Do you know Elizabeth Bowlby? A. Yes, sir.

Q. Do you know the house erected in pursuance of this contract which has been offered in evidence? A. I done some work on it. 10

Q. What work? A. Tinning, gas work, plumbing, and fitting the whole house; all that was done in that line.

Q. In what line? A. Gas fitting, plumbing, hot and cold water, and tinning, and all the work complete.

Q. How did you come to do that, for Mrs. Bowlby or how? A. I done it for Mrs. Willison.

Q. On a contract? A. On a verbal contract.

Q. How much were you to receive? A. \$250, and \$20 extra for two wash trays, which Mrs. Willison made a bargain for afterwards for with me. 20

Q. So that your total price was \$270? A. Yes, sir; that is what I gave the notice for.

Q. Has any been paid you? A. No, sir.

Q. Did you make any demand on any one? A. On James T. Willison, her agent.

Q. What did he say? A. He said he could not get the money.

Q. What did you do? A. Put my notice in.

Q. Did you serve the notice personally? A. Yes, sir.

Q. Is that your signature (handing witness paper)? A. 30
Yes, sir.

Q. Is that the notice you served? A. Yes, sir.

Q. Sure of that? A. It is my signature.

Q. Is that the notice you served? A. I cannot read it without my specks; I did not bring any with me; I did not think there was occasion for it.

Glasses being handed to the witness, he is asked :

Q. Is that the notice? A. Yes, that is the notice. 40

Q. When did you serve that notice? A. On the 13th of July.

Q. Upon whom? A. To Mr. Hayes, her agent.

Q. Whose agent? A. Mrs. Bowlby's.

Q. How did you come to serve it upon him? A. He said he would see to it, and it would be all right.

Q. Did you have any conversation with her about it? A. No, sir.

Q. When did you do this work? A. I commenced in 10 March, made the contract and finished the work, I guess, about the 5th of July—either 5th or 8th of July—because we have to complete first, because they have to do the piecing in.

Q. Did you ever have any notice of the appointment of this receiver? A. No, sir.

Cross-examination by Senator Griggs:

Q. Did not Mr. Willison tell you that some creditors of his were trying to get this money? A. No, sir.

20 Q. Did he give you any reason for not paying you? A. He said there was \$1,000 coming to him, and he said he could not pay until he got it.

Q. Did he tell you why? A. No, sir.

Q. Did he tell you to serve this notice? A. Yes, sir.

Q. Who is this Mr. Hayes—how is he agent for Mrs. Bowlby? A. I believe he furnished the money, as far as I know.

Q. What kind of house was this you worked on? A. A two story building.

30 Q. Frame or brick? A. Frame.

Q. Not a brick house? A. No, sir.

Q. Your notice is for work done on a brick building? A. The number is right.

Q. Question repeated? A. That is a mistake in writing—that is all; it is all the same—it is the same house.

Q. That is a matter for somebody else to decide—not for you. A. Well, all right.

Q. Have you got your books here? A. No, sir.

Q. Did you charge this work up? A. Yes, sir, in my 40 book.

Q. Who did you charge it to? A. Mrs. Willison.

Q. Who told you to do that? A. I took the contract from Mr. Willison for Mrs. Willison.

Q. You did not take it from her? A. He gave it to me as her agent.

Q. He told you so? A. Yes, sir.

Contract offered in evidence.

10

Paul Carnelli, being duly sworn, on his own behalf, on oath, saith :

Examined by J. M. Trimble, Esq.:

Q. Where do you live? A. 273 Bank street.

Q. What is your business? A. Painter.

Q. Do you know Julia B. Willison? A. Yes, sir.

Q. Do you know James T. Willison, her husband. A. 20

Yes, sir.

Q. Do you know Elizabeth Bowlby? A. Yes, sir.

Q. Do you know the house erected under the contract which has been proved in this cause? A. Yes, sir.

Q. Did you do any work on that house? A. Yes, sir.

Q. What work? A. Painting.

Q. Did you do all the painting? A. Yes, sir; all.

Q. Did you do it by virtue of a contract? A. Yes, sir.

Q. What was your contract price for the work? A. \$97.

Q. When did you make that contract? A. To Mr. Willison.

Q. When? A. I do not know exactly.

Q. When did you do the work? A. I had about in a month, I cannot tell exactly.

Q. When did you finish your contract? A. I cannot tell exactly.

Q. Give us an idea? A. About the 3d of March, I do not remember, I can hardly tell.

Q. Cannot you tell the month you worked on the house?
A. About the month of July.

40

Q. In July? A. Yes, sir.

Q. Do you know—cannot you fix the day when you finished? A. No, sir.

Q. Do you know who did the last work on that house?
A. I did, I was the last man.

Q. Then you must have finished towards the end of July?
A. Yes, sir; that is certain.

Q. Is there any money due you now? A. Yes.

Q. How much? A. \$97.

10 Q. Did you make any demand for payment? A. Yes, sir.

Q. Of whom? A. Mrs. Bowlby, in her own house once, and after she told me I could not say nothing about this thing.

Q. Did you make any demand upon Mrs. Willison? A. No, sir.

Q. Didn't you make any on her? A. No, sir, I asked Mrs. Bowlby and she told me I cannot say nothing about it because I do not know what it is.

20 Q. Did you not ask Mrs. Willison to pay you. A. Certainly.

Q. Then you did make demand on her? A. Yes, sir, certainly, I think you said Bowlby.

Q. Did she pay you? A. No, sir.

Q. Why? A. Because she said she could not get her money.

Q. Why, do you know? A. I do not know.

Q. Is there any money still due you for that work? A. Ninety-seven dollars.

Q. Anything more? A. Some extra work of course.

30 Q. Did you ever see this gentleman (indicating Mr. Salmon)? A. No, sir.

It is admitted on the part of Mr. Salmon, the receiver, that they did not inform any creditors of Mr. and Mrs. Willison of their proceedings.

Q. Did this gentleman ever notify you that he had a claim against Mr. and Mrs. Willison? A. No, sir.

40 Q. Did he ever notify you not to proceed to work or to proceed on it purely to finish your contract? A. No, sir.

Q. Did you serve any notice on Mrs. Bowlby? A. Yes, I served one notice.

Q. Any notice in writing? A. I served a notice in her own hands.

Q. Is that it (showing witness paper)? A. Yes, that is my notice.

The notice is offered in evidence and marked Carnelli No. 1.

Q. On whom did you serve that notice? A. Mrs. Bowlby. 10

Q. Personally? A. Yes, sir.

Cross-examination by Senator Griggs :

Q. When you served the notice the work was done? A. Yes, sir.

Q. Can you tell what time in July it was? A. I cannot tell you nothing about it, I have different work in that direction and I would go half a day here and half a day there to work on it.

Q. Did you make your bargain with Mr. Willison? A. 20
Yes, sir.

Q. You trusted him did you? A. Yes, sir.

Q. Did he tell you anything about it being his wife's property? A. No, sir.

Q. You mentioned that in the notice? A. Yes, I did not know he was his wife's agent.

Q. You did not know it at that time? A. It was the first work I done for Willison.

Q. You did not know it till afterwards? A. No, sir.

30

By Mr. Bradner :

Q. Did you ever do any work for Mr. Willison before?
A. No, sir; after that I do work for him, afterwards and he pay me like a man.

Re-direct by Mr. Trimble :

Q. At this time were you aware that you made the contract with Mrs. Willison? A. No, sir; to Mr. Willison, agent for Mrs. Willison.

40

Q. Then you made the contract with Mrs. Willison? A. I made the contract with Mr. Willison as agent for Mrs. Willison.

Albert B. C. Salmon, being re-called on rebuttal, saith :

10 *Examined by Senator Griggs :*

Q. It was on the 20th of July you went to serve the notice on Mrs. Bowlby, did you go to this house of hers?

A. I did.

Q. Any body keeping it? A. Mrs. Bowlby was there.

Q. Did you have any conversation with her as to whether she owed any money on it at that time, and if so, how much?

Objection by Mr. Howell.

20

Objection withdrawn.

A. I did; I went there several days before the 20th of July to find Mr. Willison, and at that time the building was not complete, the front stoop was boarded up with boards to keep people off the paint and the painters were in the back rooms working; on the 20th I went there and the boards were down and I found Mrs. Bowlby and she told me she was living there, staying there and getting her rooms in order upstairs; she was upstairs when I went first, 30 but she came down and saw me in the hall and I served the notice upon her and explained to her what it was, what it meant; she seemed to be somewhat surprised at it and I believe I asked her the direct question whether the building was completed, at least she gave me to understand so and she said she would send this notice to her agent; I do not now remember his name, so that he would be restrained from paying over the money, as to telling me that he suggested it, I do not remember that.

Q. Do you recollect as to what Mr. Willison said on the 40 13th of July, what it would cost to finish the building? A.

I do not remember the words, but from reading the testimony it calls it to my recollection.

Q. What did he say, now you are refreshed? A. He said \$50 would complete the building. That testimony was taken stenographically, and I have the original notes at my house, which I can produce if necessary.

Q. Did Mr. Willison say anything on that examination as to having paid Mr. Bartlett anything after having given the deed to Bartlett & King—monies on account of his own indebtedness? A. He said he had paid them money, besides the conveyance of the property. 10

Q. Since the conveyance? A. Since the conveyance.

Cross-examination by Mr. Trimble:

Q. You say you are under the impression of something to that effect, that you asked Mrs. Bowlby the direct question whether the house was finished. What makes you think so? A. I have an impression that I asked that question, which drew forth the answer that it was, but still she might have volunteered so much; but anyhow she gave me to understand that the building was complete. 20

Q. How did she give you to understand that? A. She told me so.

Q. What words did she use? A. I cannot state the words anywhere near.

Q. You came away with the impression that the building was completed? A. Not only the impression, but that that was the fact.

Q. You are not sure that you got it from Mrs. Bowlby, or from your own inference? A. My impression is that I asked the question. 30

Q. You cannot give the language used? A. No, sir.

Q. Anybody else present? A. Yes, there was somebody else present, helping to clean the house, running up and down stairs; I cannot tell whether she heard what was said or not.

Q. Where did the conversation take place? A. Right in the hall; we stood there probably ten minutes conversing.

Q. You cannot give any of the conversation verbatim? A. I could not if it had only been yesterday. 40

Q. What did you go there for on the 20th of July? A. To see Mr. Willison. I went from that house to look for him because I understood he was working on that building.

Q. What for? A. I think I wanted to serve on him a copy of the order appointing me receiver, and also a notice not to collect any money due him for the work done on that house.

10 Q. Why did you not serve that order? A. I read that order and served him with a notice, and explained the papers to him.

Q. On that day? A. I did not say on that 20th of July. I went to his house and shop, and the shop was locked up and no one at his house. I tried to find him several times; I did not know the man by sight at that time, I had to find him by inquiry.

20 Q. Did you notify any of the workmen that you found there, not to go on with their work? A. No, sir, I did not pay any attention to the workmen; I think there was some around there; there might have been a plumber, but I did not take particular notice.

Cross-examination by Mr. Currie:

Q. You say you did not know Mr. Willison by sight? A. Not the first time I went to see him; the first time I went to see him was to serve the order on him for discovery, and then I did not know him; the order was sent down to me by Senator Griggs, and I went down to serve it myself so as to be sure it was served; I know I had some difficulty in finding him, but I did find him afterwards.

30

Abraham Miller, sworn.

Direct examination by Mr. Ford:

Q. You are a mason? A. Yes, sir; I done the work in Mrs. Bowlby's house.

Q. Did you have any contract for the Bowlby house?

A. Yes, sir.

40

Q. Written? A. We had no written contract; I rather

think there was a written proposal or bid, but there was no written contract.

Q. How much were you to get? A. \$710.

Q. You had how much? A. \$460; there was \$6 extra work that wasn't in the contract.

Q. How much is there due to you now? A. \$256.

Q. Have you ever demanded that money? A. I demanded it when the work was done; that is, when the mason work was done, but the house was not finished entirely. 10

Q. Who did you demand it from? A. I demanded it from Mrs. Willison, also Mr. Willison, he was acting, I suppose, as the agent superintending the work.

Q. That was your understanding? A. Yes, sir.

Q. You afterwards served notice on whom? A. Mrs. Bowlby.

Q. (Showing witness paper.) Is that a copy of it? A. I believe it is the original notice.

Q. When was the mason work done? A. I don't recollect the exact time, but a day or two before this notice was written; the time when I demanded payment from Mrs. Willison was a day or two before I served the notice. 20

Q. What is the date of it? A. July 14, 1886; it was served the same day it was written, the mason work was done at that time; the notice was served after the mason work was done, but before the building was completed.

By the Court :

Q. Who did you contract with? A. Mrs. Willison.

Q. You said your contract was how much? A. \$710, extras, \$6, and the balance due me is \$256. 30

Cross-examined by Senator Griggs :

Q. How did you serve this notice which is dated July 14? A. I left it with Mrs. Bowlby's agent, Mr. Hay, I didn't know where to find Mrs. Bowlby at the time.

Q. You speak of it as "per contract with Mrs. Willison"? A. It is an error; I had been doing a great deal of work for Mrs. Willison; but it was understood before I took this contract that it was for Mrs. Willison.

Q. You wrote: "You are hereby notified that I have a 40

claim of \$256 on your new building, on Bloomfield avenue; the amount due me as per contract with Mr. Willison, for mason work done and material furnished on same, for which I shall hold you responsible and which amount I desire you to hold and not pay to said Willison or other parties." So you had done a great deal of work for Mr. Willison? A. Yes, sir.

Q. He went right on with this work just the same as he did with other work? A. Not without an understanding.

10 Q. You had an understanding; he was very careful to tell you beforehand to make out all the papers in his wife's name? A. He told me he was carrying it in his wife's name.

Q. Can you tell how you happened to write "Mr. Willison"? A. No, I can't now; I must be mistaken; that is all.

By the Court:

Q. When did he tell you he wasn't carrying on the business? A. Some time before I took the contract; at the time they gave me the plans to figure on.

20

James T. Willison, re-called:

Direct examination by Mr Howell:

Q. When your wife made this contract for building this Bowlby house, who furnished the trimmings, the sash and blinds and doors? A. The Bradley, Currier Co.

30 Q. Was that done in pursuance of a written or verbal understanding? A. Well, it was written.

Q. Is that the paper that you hold in your hand? A. Yes, sir.

Q. Whose signature is appended—who wrote it? I wrote it.

(Paper offered in evidence.)

Q. That contract was accepted by you for your wife? A. 40 Yes, sir.

Q. And were the materials furnished? A. Yes, sir.

Q. Do you know when they were furnished? A. That must be prior to the completion of the job; they furnished the blinds some time in July.

Q. Did they ever send you a bill for it? A. Yes, sir.

Q. Have you the bill there? A. Yes, sir.

(Bill offered in evidence.)

Q. Do you know whether they were furnished before¹⁰ that bill was sent you or not? A. They never furnished any bill before the stuff was furnished; I never knew them to do it, anyhow.

Q. Now, did any of the Bradley Currier Co. people ever call upon you for money after that bill had been sent to you? A. Yes, sir; I think, "Tom"; I don't know what his last name is.

Q. Did you pay him any money? A. I did not.

Q. Well, afterwards, you went and had a conversation with somebody down at their office about this matter? A.²⁰ I did.

Q. Did you talk to them about serving notice? A. I did.

Q. What did you say? A. I told them I didn't know but what there would be trouble, and they had better serve notice on the owner; the money was due them and it wasn't mine or my wife's.

William P. Russell, sworn.

Direct-examination by Mr. Howell:

Q. You are the agent of the Bradley, Currier Co., in Newark? A. Yes, sir.

Q. Do you know about the sending of that bill? A. Yes, sir.

Q. And it was with you that this contract was made? A. Yes, sir.

Q. For furnishing that material for the Bowlby house? A.⁴⁰ It was.

Q. Now, with reference to that bill; when did you complete the delivery of the materials specified in that contract?

A. Well, I couldn't mention the exact date the contract was completed or the goods delivered; they were delivered at various stages of the construction; sent the sash when they were ready, the doors when they were ready and the blinds when they were ready to put on; it might have been two days previous to this bill or it might be two weeks.

10 Q. But it was previous? A. Undoubtedly; we never make a bill out for a contract until the job is completed.

Q. Who drew this notice that was served? A. The office boy wrote it.

Q. Was it on the day it bears date? A. I think so; yes, sir.

Q. Do you know when that notice was served, of your own knowledge? A. I didn't serve the notice personally; the boy in the office did it.

Q. Did you superintend the serving of it? A. Yes, sir;
20 I did; served about the 31st of July; I made a memorandum.

Q. What did you do about it; about the service of the notice? A. I had the boy draw it up from a form which I have and served it on Mr. Manners, as her attorney.

Q. You sent the boy to do it? A. Yes, sir.

Q. Do you know on what day you sent him? A. I am quite positive it was the 31st.

Q. Of what month? A. July; I have got a memorandum in my pocket.

30 Q. Is that memorandum in your handwriting? A. Yes, sir; August 31st.

Abraham Manners, sworn.

Direct examination by Mr. Howell:

Q. Do you know Mrs. Elizabeth Bowlby? A. I do.

Q. Do you recollect that she had a house built up on Bloomfield avenue, last summer? A. I heard she had; I
40 never saw it.

Q. Do you recollect that there was any difficulty between the contractors and her creditors in relation to it? A. There was; yes, sir.

Q. Did Mrs. Bowlby come to see you about it. A. She did.

Q. What instructions did she give you? A. I advised her to file a bill of interpleader and she did so.

Q. What authority, if any, did she give you in relation to looking after the legal matters pertaining to the contract and the trouble with the creditors! A. She told me to do whatever I thought was necessary, whatever I thought was right. 10

Q. Just look at that notice; did you ever see that before? A. I did; I had it in my possession.

Q. How did you get it? A. The Bradley-Currier Co.; Mr. Russell—their office boy brought it to me in the latter part of August; I see I have marked “Mrs. Bowlby” on the back of it in my handwriting; I couldn’t state the exact date.

Q. What authority had you to represent Mrs. Bowlby for the purposes of that notice? A. She told me to accept any notices that were necessary, because she said she was hardly ever at home; she was a dressmaker and away from home a good deal of the time. Sometimes away from Monday morning till Saturday night. 20

Q. You are a counsellor at law and solicitor in this court? A. Yes, sir.

30

Paul Carnelli, being re-called on his own behalf saith

Examined by Mr. Trimble:

Q. This is the notice you served upon Mrs. Bowlby (handing witness paper)? A. Yes, sir.

Q. When did you serve it? A. Between the 5th and 7th of August, I think, but I am not certain.

Q. When was it with relation to the completion of the business, before or after the building was completed? A. When the building was completed. 40

Abraham Manners, being re-called, saith :

Examined by Mr. Trimble :

Q. What do know about the \$1,000 ; who held it at the time you filed the bill, whether Mrs. Bowlby or her agent ?

A. My recollection of it is that she placed it in the hands of Mr. Hay simply to hold for her because she had no safe or bank account, the money was given to me by Hay when the Court ordered it to be paid in Court.

10 Q. He acted as her agent ? A. He acted as I presume as her agent. When she got into this trouble she went to him as her constitutional adviser.

By Mr. Boggs :

Q. Did he not as a matter of fact bring some of these notices to you that had been served on her ? A. I think he did after the suit was commenced, or maybe she brought them, or perhaps they came there together ; I do not remember exactly about it.

20

Ebenezer C. Hay, sworn.

Direct examination by Mr. Trimble :

I live 345 13th Avenue, Newark ; I am acquainted with Mrs. Bowlby ; I was the agent of Mrs. Bowlby in the erection of this building under the contract with Mrs. Willison.

30 Q. For what purpose were you agent ? A. To make payments under the orders of the architect.

Q. Did you have any dealings with the mechanics employed ? A. Nothing more than receiving their notices ; I received the notices of the mechanics who remained unpaid ; I received a notice from Mr. Moses ; my son drew up the notice ; I know the word "brick building" occurred in the notice instead of "wooden building ;" it was a mistake ; the building intended to be referred to was the one in question ; I was authorized by Mrs. Bowlby to receive this notice from Mr. Boggs, and attend to the whole business ; Mrs. Bowlby was away from the city at that time, so

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that personal service could not have been obtained upon her at that time; the unpaid balance of the contract price was in my hands at the time; I afterwards told Mrs. Bowlby that I had received these notices.

Cross examination by Mr. Salmon :

Mrs. Bowlby may have been in town at the time the Moses notice was served; I can't give the date of the service of the notice. Mrs. Bowlby did not authorize me to receive the notices before she went away at this time; she had no idea at that time that there would be any notices served. 10
She never authorized me to receive any of those notices. She told me to attend to the whole matter, but did not specify the notices, she couldn't because she didn't know anything about them. When I received the notices I sent a note to her and she came down to see me. Before I received the notices I never had any conversation with Mrs. Bowlby in which she authorized me to receive them.

Re-direct examination :

In response to my note she came to my office and I showed 20
her the notices from the mechanics and she told me to take them to my lawyer, Abraham Manners, the solicitor who filed this bill of interpleader.

This last examination objected to as relating to a conversation which occurred after the notices were served and therefore irrelevant.

When she came to my office might have been a few days and might have been a week after I received the notices. 30

Direct examination by Mr. Ford :

I do not remember receiving Miller's notices; there were more than two, three or four; the only ones I showed her were the ones served on me.

Objected to as not specifying the name of the party serving notice.

I can't remember the Miller notice being served on me. 40

IN CHANCERY OF NEW JERSEY.

ELIZABETH BOWLBY,

vs.

JULIA B. WILLISON, *et als.*} *On Bill of Inter-
pleader. Conclu-
sions.*

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It appears clearly that the house was not finished and the final payment of \$1,000, now in dispute was not earned by the contractor until August 3d, 1886. The architect's certificate seems also to have been essential under the contract; and this was not given until August 5. (See *Byrne vs. Sisters*, 16 Vroom, 213).

Miller and Moses served their notices on Mr. Hays, as the owner's agent, on July 14th, and he says he showed
20 them to the owner a few days or a week afterwards. So that whether service made on him was sufficient, or whether we consider it made when he showed them to Mrs. Bowlby, they were served before the house was finished. They were therefore ineffectual to create a lien upon or work an assignment of the fund, under the ruling on Butler's claim in *Kirtland vs. Moore*, 13 Stew., 106, 110.

Miller's notice is also fatally defective in not stating a refusal by the contractor to pay.

Carnelli served his notice, he says, between August 3 and
30 5, after the house was finished. But it is insufficient, like Miller's, because it omits to state the contractor's refusal to pay.

Bradley and Currier's first notice was unavailing on both the above grounds. Their last notice was served August 31, after the fund was earned, and is sufficient in form, and they have proved the demand on and refusal by the contractor, so that in their case the other questions raised must be met.

I think the evidence shows clearly that Mr. Willison was
40 carrying on the business of building, including this particu-

lar contract, under cover of his wife's name, as a mere device to evade and hinder the judgment creditor, Douglass. By the proceedings for discovery and appointment of receiver, whatever rights Willison had in this contract passed to the receiver, who could take any action necessary to remove or break away the fraudulent cover, as against Mrs. Willison, (*Miller vs. McKenzie*, 2 Stew., 291, *Bergen vs. Littel*, 14 Stew., 18) and as against any one holding under her with notice either of the fraud, or of the proceedings in discovery. (*Coleman vs. Roff*, 16 Vroom, 7). 10

So far as regards money already due and payable in any undertaking carried on under a fraudulent cover, there is no doubt that the receiver, at once, on his appointment, acquires title to it; and that as to the judgment-debtor, and as to any one having notice of the proceeding, that title relates back to the time of issuing the execution. (*Coleman vs. Roff*.) "With regard at least to the personal property, choses in action, and equitable interests of the debtor, the title passes to the receiver in virtue of his appointment." (*Harrison vs. Maxwell*, 15 Vr., 316.) 20

The execution in the present case was issued on May 5, 1885, the order for discovery made on July 1, 1886, and the receiver appointed on July 15, 1886. As we have seen the building was not completed till about August 3, 1886.

The "property" of the judgment debtor which passed to the receiver, included, I think, the building contract in question (so far at least as was necessary to protect the judgment creditors' claim, *Bostwick vs. Menck*, 40 N. Y. 383) and whatever should grow out of it by means of its further prosecution by the judgment debtor, or on his account.

The argument that the material man has a lien under 3d Section of Lien-law, arising the instant he furnishes materials, so that the receiver takes *cum onero* is expressly negatived in *Craig vs. Smith*, 8 Vroom, 549. (See also *Payne vs. Wilson*, 74 N. Y., 348, 356). His right to the special fund does not arise till he serves his notice—before that he is only a general creditor.

If, then, the word "property" includes unfinished contracts of the debtor, the assignee's title to this final pay-40

ment preceded the right which B. & C. sought to acquire by their notice. *Payne vs. Wilson*, 74 N. Y., holds that such a notice will not prevail against a prior equitable right to the fund, although unknown to the material-man, and that his position under his notice is not like that of a *bona fide* purchaser without notice.

In *Craig vs. Smith*, 8 Vroom, the contractor had assigned for benefit of creditors, before the notice was served, so that the application of the doctrine is no harder on the
10 material-man in this instance than it was in that case.

Whether the receiver was equitably bound to inform persons who might continue to furnish labor or materials of his position is not very important at this time, as B. & C. appear to have furnished most of their materials before the appointment. But such a duty on his part does not clearly appear; their credit was given to the contractor or on his personal responsibility. The receiver was not bound to inquire into the account between them and the contractor; for aught that appeared to him they might have other
20 security, or might be willing to go on without it. The result thus reached is adverse to the claim of Bradley & Currier, and requires a decree that the receiver is entitled to the whole fund, it being less than the amount of the judgment.

IN CHANCERY OF NEW JERSEY.

30	<p style="text-align: center;">BETWEEN</p> <p style="text-align: center;">ELIZABETH BOWLBY,</p> <p style="text-align: center;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">JULIA B. WILLISON, and others,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p style="font-size: 3em; line-height: 1;">}</p> <p><i>On Bill of Interpleader. Final Decree.</i></p>
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This cause coming on to be heard before Washington B. Williams, Esquire, one of the advisory masters of this Court, sitting for the chancellor, in the presence of John
40 W. Griggs, solicitor for and of counsel with the defendant,

Albert B. C. Salmon, receiver of the property and things in action of James T. Willison, judgment debtor, and of W. L. Ford, solicitor for and of counsel with the defendant, Abraham Miller, and J. M. Trimble, solicitor for and of counsel with the defendant, Paul Carnelli, and of Ernest E. Coe, solicitor for and of counsel with the defendant, Jacob Moses, and of Theoeore L. Currie, solicitor for and of counsel with the defendant, Julia B. Willison, and of Coult & Howell, solicitors for and of counsel with the defendant, the Bradley & Currier Company, limited, and the several 10
 answers of the said defendants being read, depositions of witnesses taken and the arguments of the respective counsel heard, and it appearing to the satisfaction of the Court that the building contract in the complainant's bill mentioned, made in the name of the defendant, Julia B. Willison, with the complainant, and bearing date the third day of March, A. D. 1886, was in reality the contract of James T. Willison, the husband of the said Julia B. Willison, and was made by the said James T. Willison, in the name of his said wife as a cover and fraudulent devise for the purpose of 20
 hindering and delaying his judgment creditor, George M. Douglass, in the collection of his judgment in the answer of the defendant receiver mentioned; and it further appearing that the said George M. Douglass, on the second day of May, A. D. 1885, recovered a judgment in the Supreme Court of this State against the said James T. Willison and one Morris Hoppaugh, for the sum of two thousand four hundred and forty $\frac{53}{100}$ dollars, and that after execution duly issued thereon and returned wholly unsatisfied, upon supplementary proceedings taken by said George M. Douglass, 30
 upon his said judgment, the said Albert B. C. Salmon, defendant, was by said Supreme Court appointed on the fifteenth day of July, A. D. 1886, receiver of the property and things in action of the said James T. Willison, and particularly of the claim due from the said complainant under the said building contract; and it further appearing to the Court that there was due on said building contract from the complainant at the time of filing the bill of complaint in this cause the sum of one thousand dollars, and that said sum has been by the said complainant paid into this Court, 40

and that the same, less the costs of the complainant, still remains deposited in this Court, and is subject to the order and direction thereof; and that the whole amount of the judgment of said George M. Douglass is still due and unpaid. It is thereupon on this twenty-first day of January, one thousand eight hundred and eighty-eight, by Alexander T. McGill, Jr., Chancellor of the State of New Jersey, ordered, adjudged and decreed and the said Chancellor, by virtue of the power and author

10 ity of this Court, does hereby order, adjudge and decree, that the said sum of one thousand dollars remaining in the hands of the complainant and due on said building contract was the property of the said James T. Willison and not of the defendant, Julia B. Willison, and that the same by virtue of the force and effect of the statute in such case made and provided became the property of the said defendant, Albert B. C. Salmon, by his appointment by said Supreme Court as receiver of the property and things in action of the

20 said James T. Willison, and that said sum at the time of the completion of said contract and the filing of the bill of complainant in this cause was the property of the said receiver, and was not subject to the claims of or payable to either or any of the other defendants in this cause, and that the said receiver was and now is entitled to the whole of said sum, together with all accumulation of interest thereon as assets and property of the said James T. Willison, to be collected and applied towards the payment and satisfaction of the aforesaid judgment; and it is further ordered that the balance of said sum of one thousand dollars (after deducting

30 the complainant's costs) paid into this Court as aforesaid, and now remaining deposited therein, together with all interest accumulated thereon, be paid to the said Albert B. C. Salmon, receiver as aforesaid or his solicitor.

And inasmuch as the defendants, Miller, Carnelli, Moses and the Bradley & Currier Company, Limited, had no notice of the fraud aforesaid upon which the receiver's title depends, costs are not awarded against them.

ALEX. T. MCGILL, JR., C.

Respectfully advised,

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WASHINGTON B. WILLIAMS, *Advisory Master.*

IN CHANCERY OF NEW JERSEY.

BETWEEN ELIZABETH BOWLBY, <i>Complainant,</i> <i>and</i> JULIA B. WILLISON, <i>et als.,</i> <i>Defendants.</i>	}	<i>On Bill, &c. Notice of Appeal.</i>	10
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The defendant, Julia B. Willison, hereby appeals from the final decree made in the above stated cause, and filed on the first day of February in the year eighteen hundred and eighty-eight, and from the whole and every part of said decree; and particularly from that part thereof as declares "that the said sum of one thousand dollars remaining in the hands of the complainant and due on said building contract was the property of the said James T. Willison and not of the defendant, Julia B. Willison;" and from that part thereof as directs the payment of the said sum of money (less the complainant's costs) to the defendant, Albert B. C. Salmon, Receiver of the property and things in action of James T. Willison, to the Court of Errors and Appeals in the last resort in all causes.

FRANK E. BRADNER,
*Solicitor for and of Counsel with the Defendant, Julia B.
Willison.*

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

FRANK E. BRADNER,
Of Counsel with Defendant, Julia B. Willison.

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N. J. COURT OF ERRORS AND APPEALS.

	BETWEEN	
	JULIA B. WILLISON,	} <i>On Appeal.</i> <i>Petition of</i> <i>Appeal.</i>
	<i>Appellant.</i>	
	<i>and</i>	
10	ALBERT B. C. SALMON, RECEIVER, ETC.,	
	<i>Respondent.</i>	

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

The humble petition of Julia B. Willison, the appellant in the above stated cause, respectfully shows, that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery, by his Honor, Alexander T. McGill, Jr.,
 20 Chancellor of New Jersey, bearing date the twenty-first day of January, in the year eighteen hundred and eighty-eight, and filed on the first day of February, in the same year, wherein Elizabeth Bowlby was complainant and Julia B. Willison and others, defendants, in this respect, to wit: That the said decree adjudges, "that the said sum of one thousand dollars remaining in the hands of the said complainant and due on said building contract, was the property of the said James T. Willison and not of the defendant
 30 Julia B. Willison, and that the same by virtue of the force and effect of the statute in such case made and provided, became the property of the said defendant, Albert B. C. Salmon, by his appointment by said Supreme Court as receiver of the property and things in action of the said James T. Willison, and that said sum at the time of the completion of said contract and the filing of the bill of complaint in this cause, was the property of said receiver and was not subject to the claims of or payable to either or any of the other defendants in this cause."

And also, in that said decree orders "that the balance of
 40 said sum of one thousand dollars (after deducting the com-

plainant's costs), paid into this Court as aforesaid and now remaining deposited therein, together with all interest accumulated thereon, be paid to the said Albert B. C. Salmon, receiver, as aforesaid or his solicitor."

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees and orders as aforesaid upon the ground that the same is erroneous, in that it adjudges that the said sum of one thousand dollars due on said building contract was the property of James T. Willison and not of your petitioner, and orders the payment of said money to said Albert B. C. Salmon, receiver of the property and things in action of said James T. Willison. 10

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

FRANK E. BRADNER,

Solicitor for and of Counsel with Appellant.

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