

1481

New Jersey Court of Errors & Appeals.

CHRISTIAN BUTTLER et al.,
Appellants,
vs.
ELIZABETH ROSENBLATH,
Respondent.

On Creditors
Bill.

BRIEF OF RESPONDENT.

The bill in this case is filed by Elizabeth Rosenblath, a judgment creditor, to set aside certain transfers of property alleged therein to be fraudulent.

The property in question was conveyed to Christian Buttler and Mina, his wife, by Catherine Quidort, October 12, 1881, the consideration being \$2300.

At the time of the conveyance the property was unimproved. On November 28, 1881, Christian Buttler as owner of the premises, made a contract with John A. Crothers for the erection of a house on said property and filed the said contract in the office of the Clerk of the County of Hudson the same day.

Vide admission, page 15.

On July 31st, 1882, Christian Buttler executed a lease of a part of the house erected by him as owner on the premises in question, to the respondent for the term of three years, from May 1st, 1883.

The receipts for rent given monthly, were signed by Christian Buttler and ran from August, 1882, to September, 1883, the last date being two months after the alleged fraudulent transfer.

On the 9th of June, 1883, the respondent loaned to the said Buttler the sum of \$200.

Respondent would not have loaned the money had not Buttler represented to her that he was the owner of the said property.

See pp. 27 and 28.

Buttler made the same representation to Mr. Rosenblath.

Page 25.

Mina Buttler knew of the effecting of the loan by her husband to the respondent.

Mrs. Gibson's testimony, page 24.

She permitted her husband to hold himself out as the owner of the property.

On July 19, 1883, Buttler and his wife conveyed the property to a third party and it was by the third party conveyed to Mrs. Buttler.

It is admitted that this conveyance was without consideration, for the purpose of placing title in Mina Buttler.

This we say in fraud of creditors.

If the circumstances are such as that the wife must have known that the husband was procuring credit on the strength of a joint ownership of property with her, she is estopped from denying it.

In *Besson v. Eveland*, 11 C. E. Green, 471, the Court said that the wife had permitted her husband to hold her property for years and incur debts on the faith of it, and could not now step in and withdraw it from creditors.

Did she have knowledge of the holding out of the husband that he was a joint owner of the property?

Did she permit, allow and consent to it?

The deed was made to both Christian Buttler and Mina Buttler, to them and their heirs forever.

It was recorded.

The contract for the erection of the house was signed by Christian Buttler as owner. It became a matter of public record.

She knew that the contract was signed by her husband.

Page 31.

He made the lease to the respondent.

Page 16.

She knew it was so signed.

Page 32.

He signed receipts for rent with her knowledge and approval.

Page 33.

So it fully appears that Mrs. Butler must have known and did know that her husband was holding himself out to the world as an owner of the property, and further it is quite as apparent that she consented to it, directed that it should be done, and approved of it.

It also fully appears that she was cognizant of the loan by the respondent to her husband, and knew the loan was made upon the strength of the husband's being an owner of the property.

Can she now claim that she was the sole owner of the property and thus defraud the creditor ?

But, as a matter of fact, was not the husband a joint owner ?

He said he was.

He said he owned the two houses.

Pages 19 and 25.

In April, 1883, he was bail for a defendant in Court.

Page 56.

Much of the moneys which entered into the consideration for the property and the cost of the building came from the profits of a business in which both were engaged, he being the foreman and chief baker and she attending to the store. He was under no salary, the profits of his labor was put into the common fund. He was her partner.

Pages 43, 44.

She says, when in Brooklyn *we* made \$1800 in the business.

Page 45.

When, after borrowing the money from the respondent he went to Coney Island, using this identical money in the business, Mrs. Buttler went with him, assisting in the business four or five days a week.

pp. 48, 49.

Does not all this show that they were together in all of their enterprises, joint owners and partners in business, using the monies of both in the purchase of the property, and that they were joint owners in that property.

And we submit it was only after the failure of the Coney Island business and after debts had accumulated that the idea of Mrs. Buttler being the sole owner of the property ever occurred to them.

It was acted upon to defraud creditors, and the conveyances made in pursuance thereby are void and should be set aside.

Under numerous decisions in this State, the conveyance to the wife, must be set aside. It would be against the plainest principles of justice to permit the wife to step in now and withdraw from the creditors the very property she had permitted her husband to represent to be his, and the apparent ownership of which had enabled him to contract this very debt.

The following authorities support our right to have these conveyances adjudged fraudulent.

- Besson v. Eveland, 11 C. E. Green, 472.
- Post vs. Stiger, 2 Stewart, 554.
- Sayer v. Fredericks, 1 C. E. Green, 205.
- Luers v. Brunjes, 7 Stewart, 19, 561.
- Clark v. Rosencranz, 4 Stewart, 665.
- Clark v. McGerhan, 10 C. E. Green, 423.
- Miller v. Sauerbier, 3 Stewart, 71, 76.

Tantum v. Green, 6 C. E. Green, 364.
 Metropolitan Bank v. Durant, 7 C. E.
 Green, 35.
 Annin v. Annin, 9 C. E. Green, 189.

In Humes vs. Scruggs, 4 Otto, 92, it is held that if a wife permits her money to be mixed with her husband's property and used to buy real estate or to give him credit in his business, and it is so used for years, such real estate becomes property of the husband to pay debts, and cannot be turned over to the wife on the eve of bankruptcy.

II.

Do husband and wife on conveyance to them jointly, hold as tenants in common, or by entirety?

This question has been improperly injected into this case. Its determination is not essential to the relief prayed for. The prayer for relief asks that these fraudulent conveyances be set aside and the complainant's judgment be declared a lien upon the right and interest of the said Christian Buttler, and that the said land may be sold free, clear and discharged of and from the said fraudulent deeds, under the writ of execution issued in said suit. See p. 7.

The decree, see p. 59, adjudges that these conveyances were fraudulent and that they be set aside, annulled and made void as to the estate of the said Christian Buttler therein, as against the said complainant, and that upon the failure of the said defendants to pay the said judgment, &c., that the Sheriff do proceed to sell the interest of the said Christian Buttler in said property.

The character of the estate of Christian Buttler was entirely foreign to the relief prayed for, and what the Court decreed as to the nature of the estate is to be treated as surplusage and immaterial.

As tenant by the entirety the husband would be entitled to the rents, issues and profits of the property and its absolute control.

A sale of his interest as tenant by the entirety would convey to the purchaser the right to hold and use the property during the husband's life, with possibility of taking the whole estate absolutely as survivor.

Wyckoff et al v. Gardner, Spencer, 556.

Bolles v. State Trust Co., 12 C. E. Green,
308.

Washburn & Campbell v. Burns, 5 Vroom,
20.

As tenant in common he was the absolute owner to one undivided half of the property.

If the Court hold that this question is fairly presented, we insist that the estate by entirety no longer exists in New Jersey and that the defendants hold as tenants in common.

The Vice-Chancellor was of the opinion that the Married Woman's Act of 1875, abolished estates by entirety and referred to See v. Zabriskie, 1 Stewart, 422, and Kip v. Kip, 6 Stew. 215, in support of his decision.

The former case was a bequest of the income of real property to husband and wife during the full term of their natural lives. The Hudson Orphan's Court held that they were tenants by the entirety, and the husband could not assign one-half of the income, as his share. The Chancellor reversed the decree and held that it was assignable, stating that the Married Woman's Act had changed the rule.

Kip v. Kip was a conveyance to a trustee to permit a husband and wife, during their joint lives, and the survivor during his or her life, to possess and enjoy the lands and to take the rents, issues and profits, and to take their rents issues and profits without liability to account.

The Court held that the husband and wife were tenants in common. Are these decisions sound ?

If the words of the Married Woman's Act are to be construed according to their usual signification, the conclusion is irresistible that the defendants hold as tenants in common.

Compare the Married Woman's Act of 1852 with the Act of 1875. The first and second sections are similar, but the third has been radically changed. And by that change the estate by the entirety was abolished. The third section provides that "It shall be lawful for any married female to receive by gift, grant, devise or bequest, and hold, to her sole and separate use, as if she were a single female, real and personal property, and the rents, issues and profits thereof, and the same shall not be subject to the disposal of her husband, nor be liable for his debts."

While section 3 of the Revision provides, "that the real and personal property, and the rents, issues and profits thereof, which any married woman has received or obtained since the fourth day of July, in the year of our Lord one thousand eight hundred and fifty-two, or which she shall hereafter receive or obtain, by purchase, gift, grant, devise, descent, bequest, or in any manner whatever, shall be her sole and separate property, as though she were a single woman."

The act of 1852 permitted her to receive and hold real property as though she were a single woman, while the act of 1875 obliges her to hold as though she were a single woman. The former was permissive while the latter is mandatory.

The act of 1852 did not abolish the estate by entirety, for unless she availed herself of the privilege of the statute the common law rule would still prevail, but under the act of 1875 property which the wife receives "in any manner whatever shall be her sole and separate property as though she were a single woman."

How is the property received by the wife in this case to be her sole and separate property as though she were a single woman, if the estate by entirety exist? It is clearly impossible. For under that tenure the husband has absolute control of the property during their joint lives. He is entitled to the rents, issues and profits of it, and can lease or mortgage it, while she may never become sole owner or use it as her property.

Surely, if the estate by entirety were held to exist the wife would not hold the property, as directed by the statute, to her sole use as though she were a single woman.

If this conveyance had been made to Christian Buttler and a single woman no one would question that they held as tenants in common. Mrs. Buttler stands in precisely the same position as though she were a single woman, and she must have the same property rights.

The statute says that she shall hold as though she were a single woman, while the contention of counsel for appellants is that she shall hold as though that act had no existence.

When the common law and a statute conflict, the common law gives way to the statute. They do conflict in this case and the statute must prevail.

“Where there is no express repeal, the former law, so far as it is consistent with the new rule, will be repealed by implication.”

Another rule of construction is that regard must be had to the old law, the mischief and the remedy. The meaning of this, is, that the Court should consider the defect in the law which the legislature had in mind and then find the remedy to its removal; this rule is little more than an amplification of the statement that “the spirit of a statute must be thought of,” “the reason of a law is the life of a law.”

In the case at bar the reasons for holding that the common law estate of tenants by entirety exists has been swept away by statute.

That was based upon the idea of legal unity; the absolute control of the husband over the wife and her property both real and personal. But the legislature has emancipated her from his control, given her the disposition of her own property, the right to make a will, to make contracts, to sue and be sued, to have individuality as strong and marked as that of her husband. What, therefore, becomes of the idea legal unity on which the estate by entirety rests? The oneness of husband and wife gone, what reason is there for holding that the estate by entirety is in force?

The cases referred to and on which counsel for appellants rely are not authoratative because decided before the act of 1875.

The doctrine of unity was carried so far under the common law, that if a devise of laud was made to a husband and wife and a third person, as tenants in common, the husband and wife would take but an undivided half as tenants by the entirety, while the remaining half would go to the third grantee; and that was declared to be the law in New Jersey.

Doe v. Hardenbergh, 5 Halst. 42.

This very case recently arose in England, and the construction of the Married Women's Property Act 1882, was the question at issue. (*In re Beach Mander vs. Harris*, 47 J. P. 23.) The act provided that, "a married women shall, in accordance with the provisions of this act, be capable of acquiring, holding, and disposing by will or otherwise of any real or personal property as her separate property in the same manner as if she were a *femme sole*, without the intervention of any trustee." "It appears to me," said Chitty, J., delivering the opinion of the High Court, (Chancery Division), "that the act makes such alterations in the husband and wife, that it severs that unity of person, and divides that compound person which the law formerly recognized, to such an extent as to make it wrong for the Court to apply the old principle which was founded on unity of person. On these grounds, shortly, I am of opinion that this property is divisible in thirds, subject to the joint tenancy being severed. I therefore decide that a joint tenancy exists, and that Mander takes one-third, Mr. Harris one-third, and Mrs. Harris the remaining one-third for her separate use, and I make an order accordingly."

Certainly, the Court could have found no stronger ground upon which to base its decision than the act itself.

The language of the New Jersey act is very similar, and should receive the same construction.

The Illinois Married Woman's Act, Rev. Statutes 1868, p. 458, provides that: "All the property both real and personal, belonging to any married woman as her sole and separate property, or which any woman hereafter married, owns at the time of her marriage, or which any married woman, during coverture acquires in good faith from any per-

“son, other than her husband, by descent, devise or otherwise, together with all the rents, issues and profits thereof, shall, notwithstanding her marriage, be and remain during coverture her sole and separate property under her sole control, and be held, owned, possessed and enjoyed by her the same as though she were sole and unmarried.”

The Revision of 1874, see page 576, chapter 68 provides that a wife may own, hold and convey real estate same as her husband.

In *Cooper v. Cooper*, 76 Ill., 57, this act received construction. The conveyance was made 1865, to husband and wife jointly. Opinion by Ch. Justice Walker, held :

“The *habendum* clause is this, ‘To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, heirs and assigns forever.’ The parties in this case treat this as a conveyance to the husband and wife in fee simple absolute ; and one side contends that they took an estate by entirety, with survivorship to the longest heir, according to the rule of the common law governing such tenures. On the other side it is insisted that since the adoption of the act of 1861, commonly known as the “Married Woman’s Law,” the parties took as tenants in common ; that this act authorized a married woman to acquire during coverture, real and personal property, &c.

“This statute seems to have removed all of the reasons for holding that such a conveyance creates an estate by the entirety. At the common law, the husband, by marriage, acquired all of the title to his wife’s personal property and choses in action, the right to hold and enjoy the rents and profits of her real estate, and to all of the personal property she might ac-

quire during coverture and to all of her earnings ; and these were the principal considerations which led to the common-law rule, that real estate thus acquired should be held as an estate by the entirety with survivorship ; and this was all based on the theory that the husband and wife were by the law considered but one person, and could not have separate and conflicting property rights. But our statutes have so far changed the common law that they are not one person, so far as the acquisition and enjoyment of property is concerned. To the extent of acquiring property, and so far as its enjoyment is concerned, and the enjoyment of her earnings, the statute has declared in effect that they are two independent persons." * * *

"And under these great changes no reason is perceived, nor is any suggested, why a married woman should not hold property thus acquired in person and as tenant in common with her husband, precisely as she might with another person." * * * If, then, we look at all of our legislation on this subject, we can entertain no doubt that the General Assembly intended to remove all the fetters that barred married women in acquiring and controlling property, and that this was removed with the others. Mrs. Cooper having acquired the right to purchase and hold in common with her husband, took the property with the incidents of that estate."

The Court says in this case, "the deed states that the consideration was paid by party of the second part and the grantees are described as the party of the second part, and the reasonable presumption is that they both paid for it. But even if it were shown that the entire consideration was paid by the husband, we presume no one but a creditor of his could object."

NEW HAMPSHIRE ACT.

General Statutes of 1867, Ch. 121, Sec. 14.

“Every conveyance or devise of real estate made to two or more persons shall be construed to create an estate in common and not in joint tenancy, unless it shall be expressed therein that such estate is to be holden by the grantees or devisees as joint tenants, or to them and the survivor of them, or words are used clearly expressing an intention to create a joint tenancy.”

Ch. 163, pg. 337.

SEC. 1. Wife may hold to her separate use and her own property free from interference or control of husband, entitled to earnings, &c.

SEC. 13. “Every married woman holding property in her own right shall have the same rights and remedies thereto * * as if she were unmarried.”

SEC. 14. Nothing in this chapter shall be construed to empower any husband to convey any property to his wife in any other manner or with any other effect than if the same had not been passed.”

SEC. 15. Husband entitled to curtesy on death of wife.

Under General Statutes of 1878, Sec. 11. Ch. 183, may make will, contracts, sue and be sued, &c.

NEW HAMPSHIRE CASE.

Clark v. Clark, 56 N. H. 105, (1875), opinion by Ch. J. Cushing, p. 110.

“It appears that the testator died in 1862, after the act in regard to the estate of married women

took effect, whereby married women, so far as their property not derived from their husband was concerned, became practically endowed with the rights and subject to the liabilities of unmarried women, that mysterious joint tenancy in which the subtle genius of the English real law so much delighted itself, when the tenants took not *per me et per tout*, but by entireties, could no longer arise. The existence of a married woman, so far as her property is concerned, is no longer by our law merged in that of her husband, but she has become a separate being, endowed, so far as her separate estate is concerned, with the powers and subject to the liabilities of unmarried women.

“By General Statutes, ch. 121, sec. 14, this devise must be construed to create a tenancy in common, unless words are used clearly expressing an intention to create a joint tenancy.” The devise being to husband and wife jointly, they hold as tenants in common.”

The strongest reasoning to be found in the reports for holding that the Married Woman's Act has abolished the estate by entirety is presented in the case of *Hoffman vs. Stigers*, 28 Iowa, 302, cited below. The statutes of that State provide :

Sec. 2200, Rev. Statutes of Iowa, pg. 388. “Married women may receive grants or gifts from their husbands without the intervention of trustees, but this provision applies only to form and manner and leaves the substantial rights of all parties unchanged.”

Sec. 2214. “Conveyances to two or more in their own right creates a tenancy in common unless a contrary interest is expressed.”

Sec. 2215. “A married woman may convey her interest in real estate in the same manner as other persons.”

On a conveyance to husband and wife jointly, the Court holding that an estate by entirety is abolished, says :

“At common law the husband and wife were so far, so completely, so essentially *one*, that they could not take by moieties. And why? Because of this absolute oneness. But does this reason longer exist or at least with us?

As already suggested, the wife can take real property in her own name, and by gift or grant *from the husband*, even without the intervention of a trustee (Rev. § 2200), and she may convey her interest in real estate in the same manner as other persons. If she may take title in her own right, and may convey as other persons, what becomes of the idea of legal unity? She takes in her own right, either jointly with her husband or anyone else, and then becomes a tenant in common. At common law this could not be, because she could not thus take nor thus convey. Under our law, however, as we have frequently had occasion to state or recognize, the wife is invested with greater privileges, and hence assumes greater responsibilities or liabilities than at common law, and though her marital rights are not entirely changed, being modified only in a prescribed or to a limited extent, they are so innovated upon, as that, in relation to her property, real and personal, she may contract and be contracted with, sue and be sued, convey and receive conveyances, as the husband may. Indeed her ability now, as compared with the rule of the common law, to take a separate estate, has enabled her to stand seized in her own right jointly with the husband and to hold by moieties just as joint tenants could. We say these considerations seem conclusively to show that the rule of the common law as to estates by entirety cannot obtain here. The doctrine always stood upon what was a little more than the *merest fiction*, and as this, by our legislation, has measurably given way to theories and doctrine more in accord with the time and actual relations of husband and wife, the rule itself must be abandoned.”

This case also distinguishes the New York Act and points out the reasons for adopting a different rule in Iowa, all of which are pertinent to the case at bar.

The Supreme Court of Alabama has reached the same conclusion, in reasoning clear and logical. In *Walthall vs. Govee*, 36 Ala. 728, they say: "By the married woman's legislation the one legal person of the common law has resolved itself into two distinct persons, so far at least as the capacity of taking separate estates is concerned. *Both of the grantees being capable of taking separately it is impossible that they should take by entireties as if they constituted a single person.* Of necessity they take by moieties. Being thus invested with the capacity of taking by moieties, the reason on which the rule of the common law was founded has ceased to exist and a devise to husband and wife must stand upon the same footing and create the same estate as if it had been made before coverture to parties who afterwards intermarried. Such the view of the question taken by the Supreme Court of Alabama.'

The same rule has been adopted in Connecticut, Ohio, Kentucky and Missouri.

- See *Whitney vs. Fuller*, 11 Conn. 337.
Sargeant vs. Stemberger, 2 Ohio, 305.
Wilson vs. Flemming, 13 ib. 68.
Penn vs. Cox. 16 ib. 30.
Rogers v. Gordon, 1 Dana, 342 (Ky.)
Polk v. Allen, 19 Mo. 467.

A contrary conclusion has been reached in Pennsylvania and New York. In the Pennsylvania case, *Stuckey v. Keefe*, 26 Pa. St. 400. One of the grounds upon which the decision is based, is, that during coverture husband and wife cannot hold or enjoy any other estate. This is manifestly incorrect, for if they were tenants in common or joint tenants, be-

fore marriage, their coverture would not change the nature of the tenancy.

Reasoning so unfounded will hardly be accepted by this Court, as argument, that the estate by entirety exists in New Jersey.

The recent decision in New York holding that there the estate by entirety had not been abolished, can have no weight in the determination of this question, as the Married Woman's Separate Property Acts on which the decision rests are totally different from the New Jersey act, and admit of the construction given them by the Court in *Berttes v. Noonan* 92 N. Y. 152. Section 3 of Chap. 200 of the Laws of 1848, as amended by chap. 375 of the Laws of 1849, provides that, "Any married female *may* take by inheritance or by gift, grant, devise or bequest, from any person other than her husband, and hold to her sole and separate use, and convey and devise real and personal property, or any interest or estate therein, and the rents, issues and profits thereof in the same manner and with like effect, as if she were unmarried, and the same shall not be subject to the disposal of her husband or be liable for his debts." It is not the effect of this section, and plainly was not its purpose to change the force and operation of a conveyance to a wife.

By Section 1, of the Act (Chapter 90, Laws 1860), it is provided that "the property, both real and personal, which any married woman now owns as a sole and separate property; that which comes to her by descent, devise, bequest, gift or grant; that which a woman married in this State owns at the time of her marriage, and the rents, issues and profits of all such property, shall, notwithstanding her marriage, be and remain her sole and separate property."

The Act of 1862 provides, "Any married woman possessed of real estate as her separate property, may bargain, sell and convey such property and enter into any contract in reference to the same with the like effect in all respects as if she were unmarried."

It requires but a glance to see that these acts and the New Jersey act are not parallel.

The one provides that a married woman *may* hold property to her sole and separate use, while the other provides that all property acquired by the wife "in any manner whatever, shall be her sole and separate property, as though she were a single woman."

Now that the individuality of a married woman has been established by the legislature; that she has a separate existence; that she can make contracts, sue and be sued; is entitled to her own earnings; can hold her property both real and personal, and exercise absolute control over it, and dispose of it by will; may bind herself by covenants in conveyance of her own property; may testify for or against her husband; now that the husband is no longer liable for the debts of his wife contracted before marriage, nor for those contracted by her in her own name after marriage. Now that the legislature has in almost every imaginable way destroyed the legal fiction, that husband and wife are one, are we to give a forced and unnatural construction to the Married Woman's Act, in order to establish their unity?

Nor does the misinterpretation of the Married Woman's Act, by the legal fraternity, present, to our minds, any substantial reason for judicial evasion or nullification of the law.

Respectfully submitted.

WILLIAM T. HOFFMAN, and
JOHN W. HERBERT, JR.,
Counsel for Respondent.

New Jersey Court of Errors and Appeals

CHRISTIAN BUTTLAR and MINNA BUTTLAR,

his wife,

Appellants,

and

ELIZABETH ROSENBLATH,

Respondent.

On Appeal.

Brief of Abel I. Smith, Sol. of Appellants.

The first insistent of appellants is that Minna Buttlar and Christian Buttlar, her husband, by virtue of the conveyance to them from Catharine Quidort (mentioned on pages 1 and 2 of printed case in copy of bill of complainant) and also on page 9 (in copy of answer) became each seized of the premises conveyed as tenants by the entirety, and that therefore the decree found on pages 58 and 59, by which it is adjudged and decreed that said appellants were seized as tenants in common of said lands and tenements, is erroneous.

As to this I submit:

1st. That by the common law, when land was conveyed to husband and wife, they did not take as tenants in common, or as joint tenants, but each became seized of the entirety, *per tout et non per my*, and upon the death of either the whole survived to the other.

By reference to all the authorities, both English and American, many of which are hereafter referred to, it will be seen that it is universally laid down, that under the common law joint tenants hold by moieties or other proportional parts, they being seized *per my et per tout*, but that of husband and wife, both have not an undivided moiety, but the entirety. They do not take and

hold by the moieties, but each the entirety. Each is not seized of an undivided moiety, but both are and each is seized of the whole. The same words of conveyance, which make two other persons joint tenants, will make a husband and wife "tenants of the entirety."

Den v. Heidenberg, 5 Halst, 1st Ed., 42, 2d Ed., 49, and many cases there cited.

2d. Land so conveyed to husband and wife, in New Jersey has always been (or supposed to have been) held according to the common law rule above mentioned.

1828—*Den v. Heidenburgh*, 5 Halst., 42, already cited.

1861—*Thomas v. De Baum*, 1 McCarter, 79.

1862—*McDermott v. French*, 2 McCarter, 79.

Den v. Gardner, Spencer, 556.

Washburn et al. v. Burns, 5 Vroom, 19.

Bolles v. State Trust Co., 12 C. E. G., 308.

Greiner v. Greiner, 8 Stew., 140.

3d. Such estate is not affected by the act of the Legislature for converting estates in joint tendency into tenancies in common.

This has been expressly held not only in our State but universally in other States where similar statutes exist.

I refer to above cited cases in New Jersey, also.

Shaw v. Hersey, 5 Mass., 521.

Jackson v. Stevens, 16 Johns. R., 110.

Dios v. Glover, 1 Hoff. Ch., 71.

Torrey v. Torrey, 14 N. Y., 430.

Pierce v. Chase, 108 Mass., 254.

Lowell v. Daniels, 2 Gray, 161.

Bemis v. Call, 10 Allen, 512.

The above rules have always prevailed in our State, and in accordance therewith a vast number of conveyances have been made throughout the State, and titles passed by the legal profession of New Jersey, and a large amount of property is so held, at least 400 tracts of land

in Hudson County alone. It being the general and almost invariable practice among the Germans to take their conveyances in the name of husband and wife—the money with which these purchases are made being the joint savings of both.

It is now claimed, however, that the legislation in this State, in the years 1862 and 1874, in reference to the rights and property of married women, has changed the common law rule in force in this State; so that now, when land is conveyed to husband and wife, they take as tenants in common, as if unmarried.

The statutes in question will be found. Nixon's Digest, 4th Edition, page 547 and Revision, page 636.

The wording of this act is substantially the same as similar acts in other states.

It is claimed that section 3, of said revision, changes the common law rule, in that it provides that the real and personal estate, etc., which any married woman has received, etc., "*or which she shall hereafter receive or obtain, by purchase, etc., shall be her sole and separate property, as though she were a single woman.*"

The effect of this section upon the personal estate of the wife is plain. I don't suppose it needed any such statute to protect the wife as to her real estate, except as to her husband's common law rights therein.

The statute was intended in whatever way you consider it, for the benefit of the wife. It sought to protect her rights. It was not its object to take away any of her rights. I submit, therefore,

1. That it was not the effect or purpose of this act or section to change the force and operation of a conveyance. It does not enlarge the estate which a wife would otherwise take in land conveyed to her. And whatever the effect of a conveyance to a husband and wife was prior to that statute, so it remains. If the operation of such a conveyance was to convey the entire estate to each of the grantees, so that each became seized of the entirety, there is nothing in the force or effect of the language used to change the operation of such a deed

so as to make the grantees tenants in common. The act had not in view the force and effect of the instrument by which the estate may be granted to her, but regulates its enjoyment after it has vested in her.

92 N. Y., 158.

56 Pa., St. 106.

2d. If the express words and provisions of the statute changing estates by joint tenancy into tenancy in common did not affect an estate by entirety. Such a result will not follow by implication from the Married Woman's acts.

3d. That to have the effect claimed it must necessarily follow that the married woman's acts destroyed the common law—unity of husband and wife—and made them substantially separate persons for all purposes. I submit that the act in question does not go so far, and was never so intended. While this extreme doctrine has been held in some few of the States, the contrary has been held in most of them. I do not think that the Courts in our State are ready to go with the minority in this matter. It is too radical a change to be effected by implication, based on the words and intention of the statutes in question. Such a change should be made, if at all, by express enactment.

There is no reason for holding that the act in question has any such effect as claimed.

The only cases in New Jersey that are said to support the doctrine disputed by me are

Washburn v. Burns, already cited, and
See v. Zabriskie, 1 Stewart, pages 427 and
428. *Kipp v Kipp* 6 Stewart 213.

But the effect of the married woman acts was not considered or raised in ~~these cases~~ ^{when the estate by entirety} the first of these cases and was only considered in the last two so far as it affected the use by her. I ask the Court to consider what must necessarily be

The decision of Vice Chancellor Van Fleet in this case will only be found reported in N. J. Law Journal for May 1884 pages 143 + 144. And as I claim stands unsupported by any case in New Jersey —

the result of making husband and wife joint tenants of such an estate.

Similar legislation to that found in our Statutes, as to the rights and property of married women, exists in many of the States of the Union. And the decisions are nearly uniform in all the States where the question has arisen that a conveyance to husband and wife has the common law effect, notwithstanding such legislation.

I refer, therefore, to some of them, the opinion of many of the learned Judges being given *in extenso*, as furnishing not only a more elaborate and concise exposition of the law than could be got anywhere else, but also the best brief that I can offer to the Court upon this subject.

Robinson *v.* Eagle and wife, 29 Arkansas,
202.

Question arose on conveyance to husband and wife.

The opinion of the Court, after stating *in extenso* the common-law rule, that husband and wife take an "estate of entirety" under such a conveyance, goes on to say :

"The counsel for the appellant admits the common-law rule as we state it, but contends that it has been changed by Statute and the Constitution of 1868. This brings us to the consideration of the question, Has this well-settled common-law rule of property been changed or modified by our Statute and Constitution of 1868?"

We think not. Sec. 9, Chap. 37, Gould's Digest, 265, provides: "Every interest in real estate, granted or devised to two or more persons (other than executors or trustees as such), shall be in tenancy in common, unless expressly declared in such grant or devised to be a joint tenancy."

Sec. 6, Article 12, of the Constitution of 1868, relied upon by counsel for appellant, reads as follows:

“The real and personal property of any female in this State acquired either before or after marriage, whether by gift, grant, inheritance, desire or otherwise, shall, so long as she may choose, be and remain the separate estate and property of such female, and may be devised or bequeathed by her the same as if she were *femme sole*.”

It is insisted by the counsel for the appellant that the clause in the Constitution of 1868 above cited has so enlarged the rights and powers of a married woman that she is now in contemplation of law, a distinct person, and entitled to all the privileges of a single woman.

We cannot assent to such a proposition. This article only applies to the separate estate of the wife, and is intended merely to preserve it from liability for the debts of her husband, and authorizes her to devise and bequeath it, etc.

Citing cases in New York, Massachusetts, etc.

In conclusion, we would remark that we are not only sustained by authority and precedent, but also by sound reason and good policy. The marriage relation is a peculiar one. It is of Divine Origin, and He who spake as never man spake, declares that “they twain shall be one flesh.” This bond of union between husband and wife contemplates not only a union of hearts, but a union of property and all other interests, and all laws which tend to sever property rights between them certainly have the effect to weaken the ties which bind them “for better or for worse,” and thus become a fruitful source of bickering and discontent which often end in separation and divorce.

We are aware that there has been a strong tendency of late to “enlarge the rights of married women,” and in most of the States laws have been passed to protect the separate property of the wife. We doubt the policy, and would certainly not be disposed to enlarge the rule so as to include property conveyed to husband and wife jointly. We prefer to stand by the rule sanctioned by Divine wisdom, as well as the decisions of the ablest

jurists of England and America, a rule which has been acquiesced in for centuries in Great Britain and approved and followed in nearly all the States.

McDuff, *et. al.*, *v.* Beachamp, 50 Mississippi, 531.

Question arose on a mortgage made by husband and wife, when the title was in them jointly.

Held—That the estate of McDuff and wife was an estate of entirety. The conveyance did not make them joint tenants or tenants in common. In *Hemingway, Adm'r, v. Scales*, 42 Miss., 16 and 17, it was held that this sort of estate existed in this State as at common law. That it was not abolished by Art. 18, p. 309, of the Code of 1857, declaring that all conveyances to two or more persons shall be construed to create estates in common, and not in joint tenancy.

Has Mrs. McDuff such an estate as is "separate" within the meaning of the statutes for the protection of the property of married women? In *Goelet v. Gori*, 31 Barb., 314, the single point considered by the Court was as to the effect of the New York statute on that subject (which is much like ours) on a conveyance to husband and wife. It was ruled that it had no application to such an estate. These statutes were not designed to embrace estates, which the feme covert takes and holds jointly with her husband, but those which she takes and holds (to the extent defined) as if she had no husband, the marital rights remain as they were at the common law, unaffected by the statutes framed for the protection of the common property.

Citing Cases.

One of the incidents of the estate is that it can only be alienated by the joint act of the husband and wife.

Stuckey v. Keefes, Exrs., 2 Casey, 26 Pa. St., 397.

Opinion of the Court by Lewis, C. J.

A conveyance to husband and wife creates neither a tenancy in common nor a joint tenancy. The estate of joint tenants is a unit made up of devisable parts, that of husband and wife is also a unit, but it is made up of indivisible parts. In the first case there are several holders of different moities or portions, and upon the death of either the survivor takes a new estate. He acquires by survivorship the moiety of his deceased cotenant. In the last case, although there are two natural persons, they are but one person in law, and upon the death of either, the survivor takes no new estate. It is a mere change in the properties of the legal person holding, and not an alteration in the estate holden. The whole estate continues in the survivor the same as it would continue in a corporation after the death of one of the corporators. This has been the settled law for centuries, etc.

If husband and wife cannot take a conveyance by moieties, if they are absolutely *incapable of receiving such a grant*, it is clear that no words in the conveyance to them, however clearly expressed, can give them that capacity. How stands the arguments in this? Tenants in common may sell their respective shares. They are compellable to make partition. They are liable to reciprocal actions of waste and of account, and if one turns the other out of possession an action of ejectment will lie against him. These incidents cannot exist in an estate held by husband and wife. No action of *partition* or *waste* or *account* or *ejectment* can be maintained by one against the other. The husband could not sell his moiety free from the dower of his wife. The wife could not sell hers at all without the consent of the husband. It is evident, therefore, that the estate, during the lives of the grantees, or ^{more} during the continuance of the marriage bond, would have ~~more~~ of the chief incidents of a tenancy in common. The existence of a tenancy in common, which cannot be so held or enjoyed during the lives of the holders, and which have none of the incidents of such an estate, is a legal impossibility.

But there is a charm in the equity of equality, and this inclines the mind at first blush to hold that the grantees are entitled to take in equal parts—that is by moieties. Let us pause to look at the manner in which such a doctrine would operate where the grantee were husband and wife. The husband may dispose of his moiety so that the wife can never enjoy any part of it during his life, and at his death she could only receive one third of it for life. Even this she would be deprived of if husband had creditors who chose to interfere with her. He may also enter upon her moiety and take the whole profits during his life, or he may sell it to a stranger, or his creditors may take it in execution, and the wife may then be deprived of it entirely as long as the husband lives. This is the equity of equality which would exist between husband and wife if they were capable of holding as tenants in common. Her chances of enjoying anything under the grant would depend upon the miserable advantage to be derived from the death of the husband, even then she would get no part of her husband's moiety except dower. Not so, if the estate be regarded as an entirety, &c. There is therefore more equity in holding the estate to be an entirety than in regarding it as held in moieties.

McCurdy and Stevenson *vs.* Canning, 64 Penn. State Rep., p. 39.

A purchaser at sheriff's sale, under a judgment against a husband, of his interest in an estate held with his wife by entireties, cannot recover possession during the wife's life.

If an estate be made to husband and wife during coverture, they are not properly joint tenants, or tenants in common, but both are seized of the entirety.

Neither can dispose of any part without the assent of the other, but the whole must remain to the survivor.

The same words which would make two other persons joint tenants will make husband and wife tenants by the entirety.

The act of April 11, 1848 (married women) prevents a

purchaser at sheriff's sale of a husband's interest in an estate held by entireties, while the wife lives, from recovering possession, even for the life of the husband.

The Court says :

Joint tenants are each seized of an undivided moiety of the whole, but husband and wife are seized of the whole, and not of undivided moieties. Of such an estate, as Montagne, C. J., says in Plowden, 58: The husband has the entire use, and the wife has the entire use, for there are no moieties between husband and wife. The attainder of the husband does not effect the wife's estate, 1 Inst, 187 a. Nor can the husband forfeit or alien so as to sever the tenancy, "because," as Cruise says, "the whole of it belongs to the wife as well as to him," tit. 18, ch. 1. Nor is such an estate affected by the statutes of partition. 4 Kents Com., 363.

Thornton v. Thornton, 3 Rand. R., 179.

The act of 31st of March, 1812, which destroyed survivorship between joint tenants in Pennsylvania, does not apply to entireties held by husband and wife. *Robb v. Beaver*, 8 W. & S., 111. So that the estate remains as at common law, excepting in so far as it may have been affected by the act of April 11, 1848, commonly called the married woman's acts. It would seem to have followed at common law from the unity of husband and wife, and the subjection of the latter to the former, that the husband had the control of the estate during his life and might convey or mortgage it during that period. This is conceded by Kennedy, *J.*, in *Fairchilds v. Castelleux*, 1 Barr., 181, and decided in *Barber v. Harris*, 15 Wendl., 615; *Jackson v. McConnell*, 19 Wendl., 175. If the husband might convey or mortgage it for the period of his own life, it would seem to follow necessarily that it might be taken in execution and sold by the sheriff for the same period, and that a purchaser of such an interest would be entitled to recover the possession during the life of the husband by an action of ejectment. But just here the act of 11th April, 1848,

interposes its inseparable bar to such a result, declaring that "every species and description of property, of whatever name or kind, which may accrue to any married woman during coverture, by will, descent, deed of conveyance or otherwise, shall be owned, used and enjoyed by such married woman as her own separate property, and shall not be subject to levy and execution for the debts or liabilities of her husband; nor shall such property be sold, conveyed, mortgaged or transferred, or in any manner encumbered, etc., without her written consent, etc.

"The case, therefore, stands thus: Here is a married woman who is neither a joint tenant or tenant in common with the husband, but who is seized of the whole estate, and with him entitled to possession of the whole. If a purchaser of the husband's interest may be put into possession with her, what follows? This: 1st. You have destroyed her estate and turned her entirely into a joint tenancy or tenancy in common. 2d. You have deprived her altogether of the possession, because it is not in the nature of things that she can enjoy actual possession with a stranger as she did with her husband. 3d. You have taken away her property without her consent and destroyed her rights, which were protected by the Act of April 11th, 1848. She was entitled to the possession of the whole with her husband. You propose to give possession of the whole to a stranger, a possession which she cannot and which he probably would not enjoy. If it should be answered that the property may be rented and a moiety of the rents and profits may be paid to her, that is only to say that you may deprive her of her estate and give her another of inferior value, a substitution which you have no right to propose. The words of the Act of 1848 are of so comprehensive a character, and its purpose to protect every possible interest of the wife is so plain, that we cannot, by any possible construction, consistent with the object of the Legislature and the language which they have used, except *this interest from its protection*.

These considerations lead us to the conclusion that one

who, without the consent of the wife, purchases the husband's interest in real estate in which both husband and wife are seized of the entirety, and to the possession of the whole of which she is entitled equally with him, does not acquire during the wife's life any right to the possession, either jointly with her or to her entire exclusion. Practically, these two propositions are not alternatives but the same, for we can as easily marry her to a stranger as marry her possession to his without destroying her estate.

Judgment for the defendant on the point reserved :

The plaintiff took a writ of error and assigned for error the entering of the judgment for the defendant.

Read, *J.*—" We affirm this judgment for the reasons so well assigned by the learned Judge (Judge Hazen) in his able opinion in the court below.

The above was an action of ejectment. On August 20th, 1855, one Patterson conveyed the premises in question to the defendants, " their heirs and assigns." The habendum of the deed was, " To have and to hold the said "three-story brick building and lot or piece of ground "and the hereditaments and premises hereby granted, or "mentioned and intended so to be, with the appurtenances, as tenants in common, and not as joint tenants, unto the said Robert Canning and the said Eliza Canning, their heirs and assigns, to and for the only "proper use and behoof of the said Robert Canning and "Eliza Canning, their heirs and assigns forever."

A judgment was subsequently recovered against Robert Canning, under which in 1859 his interest in the premises was sold to the plaintiff.

On the trial the Court (*Hazen, J.*) directed a verdict for the plaintiffs for the husband's interest and for the wife for her interest, reserving the point, "whether under the deed the plaintiffs can recover at all in their action." The verdict was in accordance with this instruc-

tion. The Court afterwards entered judgment for the defendant on the point reserved.

Diven *v.* Diven, 56 Pa. State., 106.

The act of March 31st, 1812, abolishing joint tenancy, does not apply to a joint estate of husband and wife.

The act of 11th April, 1848, does not convert such estate into a tenancy in common.

The single design of the act of 1848 was to *protect* the wife's property by removing it from under the dominion of the husband, not to destroy the oneness of husband and wife.

The act had not in view the force and effect of the instrument by which the estate may be granted to her, but regulates its enjoyment after it has vested in her.

The act no more destroys her union with her husband than a settlement to her separate estate.

Strong, *J.*, says : It is conceded (unless the act of April 11th, 1848, commonly called the "Married Woman's Act," has changed the rule) that under a deed to husband and wife, the grantees do not take by moities but each becomes seized of the entirety, holding *per tout e non per my*. This is a *necessary consequence of the legal doctrine* that husband and wife are one person, etc.

But it is said the act of 1848 by destroying the legal unity of the husband and wife has converted such an estate into a tenancy in common—that is, that such a deed conveys a different estate from that which the same deed would have created if made prior to the passage of the act. To this we cannot assent. It mistakes alike the letter and spirit of the statute, imputing to it a purpose never intended. The design of the Legislature was single. It was not to destroy the oneness of husband and wife, but to protect the wife's property by removing it from under the dominion of the husband, etc.

The act of 1848 is a remedial statute and we construe it so as to suppress the mischief against which it was aimed—but not as altering the common law any further than is necessary to remove

that mischief. To hold it as operating upon the deed conveying land to a wife making such deed assume a different estate from what it would have assumed without the act, is to lose sight of the legislative purpose. Were we to do so, it would become in many cases a means of divesting her of her property instead of an instrument of protection. In the present case, if it has converted the estate granted to Diver and his wife into a tenancy in common, it has taken from her ownership and enjoyment of the entirety during her husband's life, and her right of survivorship to the whole, etc.

We hold, then, that no such effect is to be given to the act of 1848 or any of its cognate acts, the legal unity of husband and wife still remains, and consequently Mrs. Diver on the death of her husband succeeded to the whole estate granted by the deed.

Fisher *v.* Perrine, 25 Mich., 350.

Chandler *v.* Cheney, 37 Ind., 391.

Morburg *v.* Cole, 49 Md., 402.

Bennett *v.* Child, 19 Wis., 362.

Bertles *v.* Nunan, 96 New York, 152.

Reversing.

Meeker et al. *v.* Wright, 76 New York, 262.

I refer particularly to the case of Bertles *v.* Nunan, as it will be found upon examination to cover the whole history of the law upon the subject. Almost all the adjudicated cases being there cited either in the brief of counsel or opinion of court. The whole matter is well summed up in 1 Bishop on the Laws of Married Women, 438, §§ 613, &c., 2 Bishop, 284, §§ 284. In the last section the learned author says: "Under the late married women statutes, the effect of which is to prevent any part of the wife's interest in her lands passing to her husband, the rule of the common law, by force of which the two became tenants by the entirety of lands conveyed to both is not changed." And he says: The reason for the

doctrine, looking at the question in the light of legal principle, is that the statutes which preserve to married women their separate rights of property, do not have, or profess to have, any effect upon the capacity of the wife to take property, or the manner of her taking it. But when she does take it, they simply preserve the right in her, to her separate use, forbidding it to pass in part or in full, to her husband under the rules of the unwritten law. If, then, land is conveyed to a husband and his wife, they take precisely as at the common law, that is, "*as tenants by the entirety.*"

It is true that a contrary doctrine has been held in some few States, and particularly in New Hampshire.

Albion *v.* Lord, 39 N. H., 196.

Clough *v.* Russell, 55 N. H., 279.

Clark *v.* Clark, 56 N. H., 105.

It will be seen, however, that these cases were decided principally on the statute, changing joint tenancies into tenancies in common. But consider the admitted result.

The footnote of the reporter to Clough *v.* Russell, states, that in Albion *v.* Lord, "it was strenuously contended that if the construction finally given should be engrafted upon the statute, the wife could not only sue her husband as if he were a stranger, but could in a large class of causes arrest him and throw him into jail. The Court conceded that this would be the necessary and logical result of the decision, but said that this would not be a sufficient warrant for a construction which, as it seemed to them, would nullify the legislative will.

Copy of Genl. Statute, Ch. 121, Sec. 14.

Every conveyance or devise of real estate made to two or more persons, shall be construed to create an estate in common and not in joint tenancy, unless it shall be expressed therein that such estate is to be holden by the grantees or devisees as joint tenants, or to them and the survivor of them, or other words, are

used clearly, expressing an intention to create a joint tenancy."

Chap. 114, sects. 1 and 13. General Statutes, page 337, etc.

and Insistments

The second insistment of appellants is that the said defendant, Christian Buttlar, did not before the making of such conveyances to Gottlieb H. Bier, on July 19th, A.D. 1883, or afterwards, have any estate or interest in the said lots of land and premises, as against said defendant, Minna Buttlar, that was liable to complainant's said judgment, or to levy and sale thereunder.

Under the common law the husband had the use and control of property conveyed to husband and wife during their joint lives. During this period the wife had no interest in or control over the property. The limit of this right of the husband was that he could not do any act to the prejudice of the ulterior rights of the wife. And this has been so held in our State. And therefore, that though the husband could not convey so as to prejudice her rights in case she survive; yet he could demise, alien or mortgage his interest during his own life.

Den v. Gardner, Spencer, 556.

It has also been held that the husband had such an interest that he can burthen the property to this extent with a mechanic's lien.

Washburn et al. v. Burns, 5 Vroom, 19.

But it has also been expressly held in the above cited cases of *Thomas v. De Baum, 1 McCarter, 37,* and *McDermott v. French, 2 McCarter, 79.*

1st. That the husband cannot dispose of any part of the estate during coverture by his sole act, nor can the wife. The estate can only be disposed of by their joint act.

2d. That a judgment against the husband alone could not encumber or affect the joint estate of the husband and wife.

3d. That the estate could not be sold at law to satisfy the judgment, and would not be affected by a decree in equity.

There would appear to be a great difference between the case at law in 5th Vroom, 19, and the cases in McCarter, but it will be seen upon examination that there is nothing in the 5th Vroom case that materially differs from the cases in equity.

The case at law was decided upon the Mechanic's Lien Law—which is a statutory proceeding in the nature of a charge upon land—to secure a priority or preference of payment to be enforced against the particular property.

Phillips in Mechanic's Lien, pages 15 to 17.

The statute under which the decision in 5th Vroom made was will be found in Nixon's Digest, 4th edition, page 572. It reads thus: "If any building be erected by a tenant or other person than the owner of the land, then only the building and the estate of such tenant—or other person so erecting such building—shall be subject to the lien created by this act and the other provisions thereof."

There was strong reason, therefore, why such a claim should be enforced as was done in that case.

All of these cases, though, seem to have been decided without any reference to the married woman's acts.

I submit that the effect of the married women's act was to take away from the husband his common-law rights in property held jointly by husband and wife, and that no separate interest or right remains exclusively and separately in him that can be applied, taken and sold in payment of a judgment against the husband.

This whole subject is well explained and fully covered in the decisions already cited by me, and reference is again made to them in this connection.

It will be seen by examination that it has been generally held that these acts passed for the protection of married women and their property, did not enlarge the husband's rights and cut down the wife's, but on the con-

trary enlarged the wife's rights and curtailed the husband's.

I submit that the statutes in question in our State had the same effect as in other States.

I refer also to the case of Cochran and Fulton *vs.* Kemey, 9 Bush. (Ky.), 199. It is there said the adoption of the act of February 23, 1846 (married woman's act) deprived creditors of a husband of the right to subject to the payment of their debts an estate of this character in such manner as to deprive him of the possession during the life of his wife because she as well as he owns and holds a present vested interest in it, and to dispossess the husband for the benefit of his creditors would in effect be to apply the wife's present interest in the land to the payment of his debts. The conveyance to Kemey and wife were made subsequent to the enactment of this law, and Mrs. Kemey is entitled to its benefit. We conclude therefore that Kemey can not by any act of his prejudice Mrs. Kemey's right to survivorship, and that his creditors have no power to deprive her of the enjoyment of the land while it remains undetermined whether she or her husband will ultimately become the sole owner of the fee.

The Court says, on page 408: The property belongs as much to the wife as to the husband, and she has just as clear, undoubted and equitable a right to the use and enjoyment of the property during the existence of the marriage as she has to succeed to the estate upon the death of her husband. The opposite doctrine is full of absurdities and gross injustices. If the doctrine contended for by the appellant is correct, the husband may, without the consent and concurrence of his wife, lease the property to a stranger, and compel his wife and children to leave their comfortable home that belongs as much to her as to him, and compel them to live in some miserable hovel, while the husband spends his time in riotous living upon the rent derived from the joint estate. In such a case the wife can have no relief except in the death of her husband. *If the husband has a life estate, separate and distinct from his wife, then he*

may mortgage such estate, or it may be seized and sold upon execution for his debts. In either event the purchaser would acquire just the same interest that the husband had. The purchaser would be entitled to the possession during the life of the husband to the exclusion of the wife. The right of the wife to the joint enjoyment of the estate during the marriage is as valuable and sacred as the right of taking the entire estate by survivorship upon the death of the husband. The rights of the wife in the joint property are as sacred as those of the husband are, and should be as firmly secured, guarded and protected by the law as his. There is an equity—in inequality—but there is gross iniquity and injustice in permitting the husband to deprive the wife of the use and enjoyment of an estate that does not belong exclusively to either, but to both, and which belongs as much to the wife as to the husband.

The third insistent of appellants is, that the said Minna Buttlar and her husband had the right both in law and equity to convey the said premises (as they did) on July 19, 1883, to the defendants, Gottlieb Bier, and that said Bier and wife had an equal right to reconvey the same to said Minna Buttlar, and that the title so got by Minna Buttlar is good against all persons whatsoever, and particularly said appellee, by reason of her subsequent judgment; and that therefore the decree setting aside, annulling and making void said conveyances as to the estate of the said Christian Buttlar therein, as against the judgment and execution of said appellee (on the ground that the same were made and executed with the intent to defraud the said appellee, as a creditor of said Christian Buttlar) is erroneous and should be reversed.

If the Court arrives at the conclusion that the said appellants were tenants by the entirety, and so held the premises in question, then there can be no doubt but what Minna Buttlar with her husband joining, had a perfect legal right to convey the premises by the deed in question to Gottlieb Bier, even though her object had been to thereby put the title solely in herself. They jointly had

3rd insistent

the right to convey to whomsoever they pleased, and the fact that at the time her husband had a creditor (even if she had known it, which, however, she denies) would not have made such a conveyance fraudulent as to such creditor. There was nothing in this fact that could have legally prevented her from making a conveyance, or that required her to hold this property for the benefit (if any) of her husband's creditors.

Reference is made in this connection to the following case :

Meeker, et. al. v. Wright, et. al., 76 N. Y., 31 Sickles, 262. The Court says :

Where, since the passage of the Act of 1860, concerning the rights and liabilities of husband and wife, lands have been conveyed to a husband and wife jointly, without any statement in the deed as to the manner in which the grantees shall hold, they are tenants in common.

Torrey v. Torrey (14 N. Y., 430) distinguished; *Goelet v. Erie* (31 Barb., 314); *Miller v. Miller* (9 Abb. Pr., N. Y., 444); *Beadle v. Hollister* (3 Hun., 519); *Freeman v. Barber* (3 T. & C., 574), so far as this point is concerned disapproved.

The Court says, on page 271: The same result will follow even if the deed from Clarissa Smith to Samuel Daily and Cordelia Daily did not make them tenants in common. If, as the Court below held, they, by virtue of it, became tenants of the entirety, then by the common law Samuel Daily had the right to alienate in fee his share subject only to the wife's right of survivorship, and the further right to sell, lease or mortgage the entire property for the joint lives of himself and wife. He had also the right to the possession of the property during the same time, and to the receipt of the rents and profits thereof, and all this he might do without his wife's consent, and even in spite of her opposition; or with her consent, she joining in the conveyance, give to any one a

title in fee—indeed if they had conveyed to a third person, although expressly for the purpose of having that third person convey to her, her title so obtained would be good in law and equity, and this would be so although in the deed it had been written that the sole purpose of such conveyance was to vest in the wife a title in fee simple.

Followed and approved in *Arnold et. al., v. Arnold*, 30 Indiana, 305.

If, however, the Court should conclude that the appellants were tenants in common. I submit that as ^{such} ~~sub~~ tenants they had a perfect legal and equitable right to make said conveyance irrespective of the claim of the appellee against the said Christian Buttlar.

It appears by the undisputed testimony of the appellants in this case, supported by the exhibits on the part of the appellants, that of the consideration paid for the said premises, Minna Buttlar paid the whole of it out of her separate money which she had made and saved from the business carried on by her and had received from her home in Germany, and that the whole cost of the building erected upon said property (excepting a mortgage now upon the same) was also paid for out of the same moneys. See testimony on part of defendants below and exhibits for defendants below.

It has been held in our State "that where land is by one deed conveyed to two or more persons who contribute to the purchase money in unequal amounts, their shares in the property will in the absence of an agreement to the contrary be in proportion to their respective contributions."

Shrover v. Isaacs, 1 Stew, 320.

The appellant, Minna Buttlar, had certainly as strong an equitable right in this case as she would have had against a stranger. She certainly had a much stronger equitable right to protection than this appellee the claim-

ant against the husband, and if in order to protect that right she conveyed this property (which really belonged wholly to her) I submit that the conveyance thereof was not in any view fraudulent as against the said appellee. The appellant, jointly would have had a perfect right to convey said premises to one creditor to the exclusion of others, and who had a stronger claim to be protected in this case than this appellant, Minna Buttlar, who had paid all the consideration money?

the Insistment

The fourth insistment of appellant is that there is a stronger equity in favor of the wife (under the circumstances and upon the merits of this case) than the appellee, and said appellant, Minna Buttlar is equitably entitled to the first protection of the Court.

This property, as already stated, is really hers. If the title had been in the husband's name alone, the Court would under the present circumstances have protected it from the creditors of the husband.

Case v. Demarest, 10 Stewart, 393.

7 Stew., 124 to 158.

7 Vroom, 481-

3 Stewart, 215-

She had a right to allow her husband to collect the rents and make him her agent, and the fact that this was done does not deprive her of any of her legal or equitable rights.

The appellant, Minna Buttlar, is innocent in this case. No fraud has been shown that she was a party to. She wanted to protect her equitable rights, and did so by these conveyances. She did not know at the time of said conveyances about the loan by appellee to her husband of the money for which this judgment was recovered. See pages 34 and 35.

~~That she was a party to.~~ Her whole design in making the conveyance to Bier was to protect herself and her equitable rights, and this she had the right to do.

Reference is made in this connection to

Kutcher v. Williams, 13 Stew., 436.

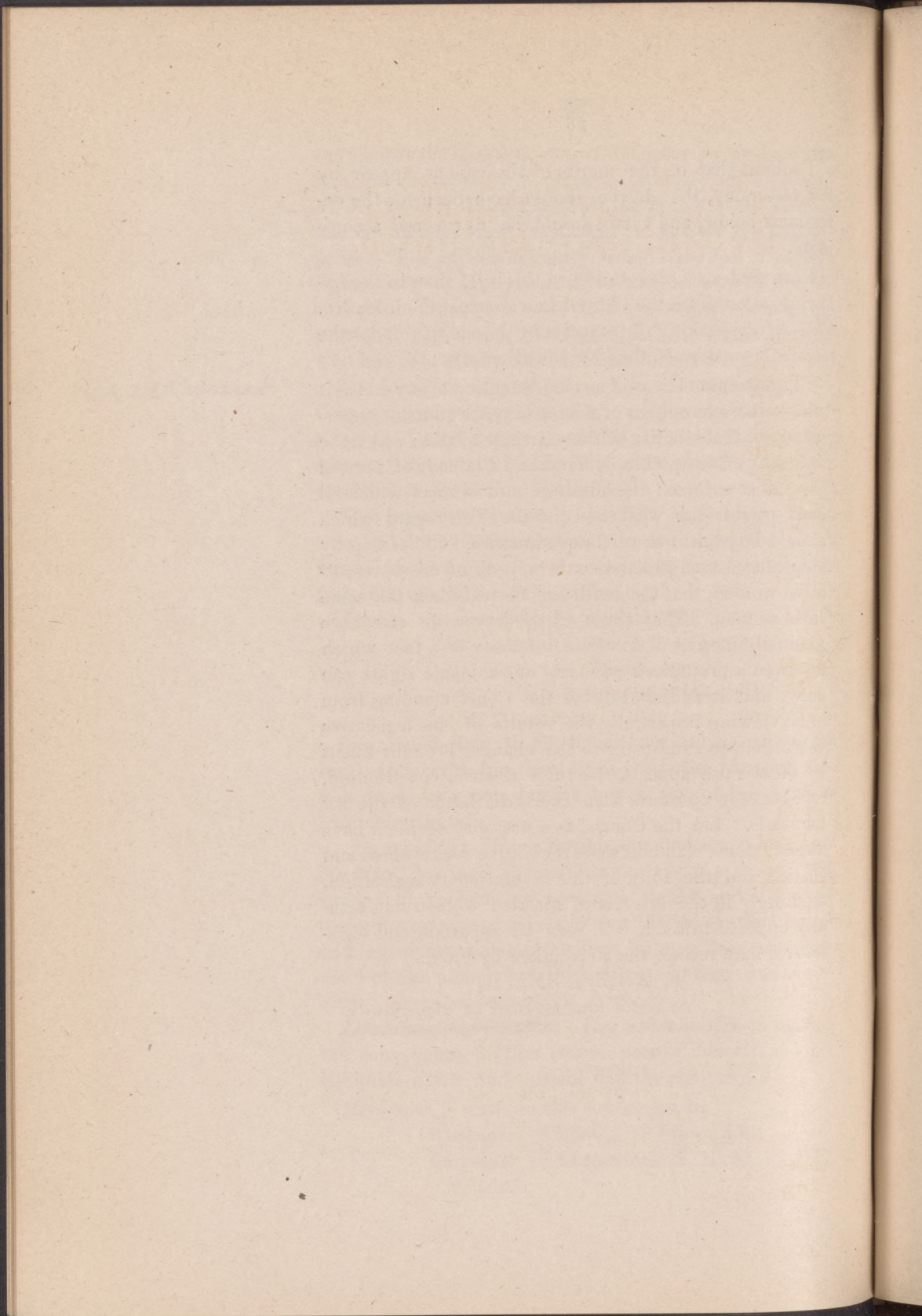
Carpenter v. Carpenter's S. H. S., 12 C. E.,
9, 502.

I submit that on the merits of the case as appear by the testimony, the decree should have been for the defendants below, and there should be a reversal accordingly.

I can find no better closing to this brief than in the following, taken from the Central Law Journal, Vol. 18, No. 17. After speaking of tenancies by the entirety under the married woman's act, the learned author says :

“The common law paid no such attention to any end as it
 “did to the securement of domestic peace and the preser-
 “vation of that sanctity of the marriage relation which the
 “interests of the public demand and the code of natural
 “law must enforce; the admiration of woman which all
 “men possess has weakened the unselfish regard which
 “should be paid to the dictates of nature, and has step by
 “step caused men to listen to the appeals of misrepresent-
 “ative women, that the gentle sex be placed on the same
 “level as men. That these married woman's acts have
 “gradually increased domestic infelicity is a fact which
 “not even a prejudiced advocate of woman's rights can
 “deny, and it is the duty of the Court standing from
 “afar, viewing impartially the results of this legislative
 “relaxation, to administer to the changes brought about
 “by these false appeals, the rules of strict construction,
 “and concede no more than the strict letter of the act
 “demands. Let the Courts, as a majority of them have
 “already done, stand between legislative recklessness and
 “justice, and the folly of this revolutionary legislation,
 “seemingly in the interest of married women but actu-
 “ally opposed to them, will soon be apparent, and legis-
 “latures may retrace the steps taken by them.”

ABEL I. SMITH,
Solicitor and Counsel of Appellants.



Defendant's Exhibits.

JOHN WILDE,
to
HENRY BISCHOFF.

Mortgages \$2,500.00.

Dated May 1, 1880; recorded May 8, 1880; acknowledged May 8, 1880, before

W. M. C. CLIFFORD,

Notary Public N. Y. Co.

(No. 2571.)

Due May 1, 1885.

Interest 6 per cent., payable half yearly.

Covers property in the city of New York, situated on the easterly side of Essex street, 51 ft. 4 in. southerly from the southerly side of Grand street, 19 ft. 11 in. by 50.

Usual conditions and clauses.

HENRY BISCHOFF,
to
MINNA CATH. BUTTLAR.

Assignment of mortgage.

Dated Nov. 15. 1880; recorded Nov. 15, 1880; con-
signment, \$2,300.00.

Grants, bargains, sells, assigns, sets over the above
mortgage.

Usual clauses.

Satisfaction price for above mortgage executed by Minna Ch. Buttlar; dated October 14, 1881, and recorded October 15, 1881.

This Indenture, made the twelfth day of October, in the year one thousand eight hundred and eighty-one, *between* Catharine Quidort, of the City of New York, in the County of New York and State of New York, of the first part, and Christian Buttlar, and Minna his wife, of the City of Hoboken, in the County of Hudson, and State of New Jersey, of the second part, *witnesseth*, that the said party, of the first part, for and in consideration of the sum of twenty-three hundred dollars, lawful money of the United States of America, to her in hand, well and truly paid by the said parties, of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; and the said party of the first part therewith, fully satisfied, contented and paid, *hath* given, granted, bargained, sold, aliened, released, engrossed, conveyed and confirmed, and by these presents *doth* give, grant, bargain, sell, alien, release, engross, convey and confirm, unto the said parties, of the second part, and to their heirs and assigns forever, *all*, etc. [Here follows description of property.]

Together with all and singular the tenements, hereditaments and appurtenances to the same belonging, or in anywise appertaining, *also*, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof, *to have and to hold* all and singular, the above described piece or parcel of land and premises with the appurtenances, unto the said parties of the second part, their heirs and assigns, to the only proper use, benefit and behoof of the said parties of the second part, their heirs and assigns forever.

And the said Catharine Quidort, for herself, her heirs, executors and administrators, *doth* covenant and grant, to

and with the said parties of the second part, their heirs and assigns, that she, the said Catharine Quidort, is the true, lawful and right owner of all and singular, the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging.

And that the said premises, or any part thereof, at the time of the sealing and delivering of these presents, are not encumbered by any mortgage, judgment or limitation or by any incumbrance whatsoever, by which the title of the said parties of the second part hereby made or intended to be made for the above-described land and premises, can or may be changed, charged, altered or defeated in any whatsoever. And also that the said party of the first part now hath good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid.

And, also, the said Catharine Quidort will warrant, secure and forever defend the said land and premises unto the parties of the second part, their heirs and assigns forever against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatever.

In witness whereof, the said party of the first part hath hereunto set her hand and seal the day and year first above written.

C. QUIDORT. [L. s.]

Signed, sealed and delivered in the presence of

W. H. BRONSON,
JULIUS CHATELAN.

STATE OF NEW JERSEY, HUDSON COUNTY, ss.

Be it remembered, that on this thirteenth day of October in the year one thousand eight hundred and eighty-one, before me, William F. Rusch, commissioner of deeds in and for said county, personally appeared Cath-

arine Quidort, who, I am satisfied, is the grantor in the within deed of conveyance named; and I, having first made known to her the contents thereof, she did acknowledge that she signed, sealed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

WM. F. RUSCH,
Commissioner of Deeds.

In Chancery of New Jersey.

Between

ELIZABETH ROSENBLATH,

Compl't,

and

CHRISTIAN BUTTLAR ET ALS.,

Defts.

On Bill, &c. 10

To his Honor THEODORE RUNYON, *Chancellor of the State of New Jersey :*

Complaining, shows unto your Honor, your oratrix Elizabeth Rosenblath, of the City of Hoboken, 20
in County of Hudson, and State of New Jersey, that
on or before the nineteenth day of July, eighteen
hundred and eighty-three, Christian Buttlar and
Minna Buttlar his wife, of the City of Hoboken, in
the County of Hudson, State of New Jersey, were
seized and possessed in fee simple of all that certain
piece or parcel of land and premises hereinafter par-
ticularly described, situate, lying and being in the
City of Hoboken, in the County of Hudson and State
of New Jersey, beginning at a point in the westerly 30
line of Clinton street, distant one hundred feet north-
erly from the northwesterly corner of First and Clin-
ton streets, and running thence northerly and along
the westerly line of Clinton street fifty (50) feet ;
thence westerly and parallel with First street one
hundred feet (100 ft.) ; thence southerly and parallel
with Clinton street fifty (50) feet ; and thence east-
erly and parallel with First street one hundred (100)
ft. to the westerly line of Clinton street, the point or
place of beginning, with the buildings thereon, being 40

the lots known and distinguished upon a certain map entitled "Map of property situate at Hoboken, Hudson county, New Jersey, belonging to the estate of John G. Coster, deceased, surveyed and laid out into lots November, 1860, by Daniel Ewan and Austin D. Ewan, city surveyors, New York," and filed in the office of the Register of the County of Hudson, as lots numbered twenty-nine and thirty, in block number thirty-two, being the same premises sold and
 10 conveyed to the said Christian Buttlar and Minna Buttlar his wife by Catharine Quidort, by deed bearing date Oct. 12, A. D. 1881, and recorded in Book 360 of Deeds, page 327.

And your oratrix further shows, that on or about the nineteenth day of September, in the year of our Lord one thousand eight hundred and eighty-three, the said Christian Buttlar being justly indebted to your oratrix in the sum of two hundred dollars and upwards, your oratrix then commenced an action
 20 of debt against the said Christian Buttlar for the recovery of the said debt and interest thereon in the District Court of Hoboken, Hudson county, New Jersey, and such proceedings were thereupon had in the said suit, that afterwards, to wit, on the ninth day of October, in the year last aforesaid, your oratrix recovered a judgment against the said Christian Buttlar in the said District Court for the sum of two hundred and four dollars debt, and twenty-four dollars and seventy-two cents costs, as by the record of the said
 30 judgment now remaining in the office of the clerk of the said District Court at Hoboken, reference being thereunto had, will more fully and at large appear.

And your oratrix further saith, that for the purpose of making said judgment a lien upon the lands, tenements, hereditaments and real estate whereof the said Christian Buttlar was seized, on the nineteenth day of July, in the year eighteen hundred and eighty-three, or at any time afterwards, in whose hands soever the same might be, she by her attorney made
 40 affidavit and filed the same with the clerk of the

Court of Common Pleas of Hudson county, setting forth that said judgment obtained as aforesaid in said District Court of Hoboken was *bona fide*, and was still due and unpaid in whole and in part; and thereupon caused said judgment to be duly docketed in the Court of Common Pleas of Hudson county on the tenth day of October, in the year last aforesaid, which said judgment was for the sum of two hundred and thirty-one dollars and twenty-two cents, including the costs of suit, obtaining transcript from the clerk of the said District Court of Hoboken, and for the fee to the said Clerk of the Court of Common Pleas of Hudson county for filing said statement or transcript and docketing said judgment, reference being thereunto had will more fully and at large appear. 10

And your oratrix further shows, that for the purpose of obtaining satisfaction of said judgment she caused to be issued thereon out of said Court of Common Pleas of Hudson county a writ of *feri facias de bonis et turis* on the sixteenth day of October, 20 in the year eighteen hundred and eighty-three, which writ first having been duly recorded was delivered to the Sheriff of the County of Hudson to whom it was directed, and thereby he was commanded that of the goods and chattels of the said Christian Buttlar in his county, he should cause to be made the said sum of two hundred and thirty-one dollars and twenty-two cents so as aforesaid adjudged to your oratrix: and that if sufficient goods and chattels of said Christian Buttlar, in his county he could not find whereof to 30 make said moneys, he should cause the whole or the residue, as the case might require, of the said moneys to be made of the lands, tenements, hereditaments and real estate whereof the said Christian Buttlar was seized on the said tenth day of October, in the year eighteen hundred and eighty-three, or at any time afterwards, in whose hands soever the same might be; and that the said sheriff should have those moneys before said Court of Common Pleas on the return day of said writ, to render to your ora- 40

trix in satisfaction of her said judgment, and that he should have then and there the said writ.

And your oratrix further shows, that Cornelius J. Cronan, the sheriff of said County of Hudson, to whom was delivered and directed the said writ of execution, being unable to find any goods and chattels of the said Christian Buttlar whereon to levy and make the said judgment, levied upon the lands and premises hereinbefore described as the property
 10 of the said Christian Buttlar as tenant in common with Minna Buttlar, as by the writ of execution or the record thereof, and the return to said writ thereon endorsed in the office of the clerk of the Court of Common Pleas at Jersey City, Hudson county aforesaid, reference being thereto had will more fully and at large appear.

And your oratrix further shows, that the said Christian Buttlar being seized and possessed of said lots of land and premises as aforesaid, as tenant in
 20 common with Minna Buttlar, which are of the value of ten thousand dollars and upwards, afterwards, at or about the dates or times, and by the pretended deeds hereinafter mentioned, and after the said debt so due to your oratrix had been created, and in order to secure his right, title and interest in said property for his own use and benefit, and protect it from the said claim of your oratrix, and prevent your oratrix from collecting her said debt, combining and confederating with the persons hereinafter named, and with
 30 divers other persons, whose names are at present unknown to your oratrix, but whose names when discovered, she prays may be inserted herein with proper words, to charge them as defendants hereto, and contriving to defraud your oratrix, did by deed dated on the nineteenth day of July, in the year eighteen hundred and eighty three, and recorded in Liber 382 of Deeds for Hudson county, page 300, with his wife Minna Buttlar pretend to convey the lots of land first above described, to one Gottlieb H.
 40 Bier, for the nominal consideration of one dollar, who

by deed bearing date the same day and year last afore-said pretended to convey the said lots by deed in which his wife said Sophie Bier, joined to the said Minna Buttlar wife of said Christian Buttlar, for the nominal consideration of one dollar, which last mentioned deed was recorded in Book 382 of Deeds for Hudson county, page 301.

And your oratrix further shows, that she has been informed and believes it to be true and therefore expressly charges, that no consideration whatever was 10 paid for either of the said conveyances; and that the said Christian Buttlar as tenant in common of said lands, tenements and hereditaments has always held, occupied, possessed and enjoyed and received the rents and profits of said lands as fully to all intents and purposes as before the execution of said pretended conveyances.

And your oratrix further shows, that she has frequently and in a friendly manner applied to the said Minna Buttlar to pay the said judgment or to cancel 20 and surrender the said fraudulent conveyance, or to recover or cause to be recovered the interest of the said Christian Buttlar in said lots of land to him so that it may be sold under an execution for the satisfaction of the said judgment as in equity and good conscience she ought to have done, and as your oratrix well hoped she would have done, but which she wholly refused to do. And your oratrix further shows, that on or about the sixth day of October, in the year one thousand eight hundred and eighty-three, 30 a judgment in favor of one James F. Minturn against the said Christian Buttlar was docketed in the Court of Common Pleas from the said District Court of Hoboken, for the sum of seventy-five dollars debt and six dollars and thirty-seven cents costs of suit, which said judgment appears on the record in the office of the clerk of the Court of Common Pleas as still unpaid and unsatisfied and without execution having been issued thereon. Your oratrix therefore expressly charges, that the lien she has acquired by levy 40

made under the execution issued as aforesaid, is prior to the lien of the judgment of the said James F. Minturn against the said Christian Buttlar.

And your oratrix further shows, that on or about the sixth day of October, in the year one thousand eight hundred and eighty-three, another judgment in favor of the said James F. Minturn against the said Christian Buttlar was docketed in the said Court of Common Pleas from the said District Court of Hobo-
 10 ken for the sum of seventy-four dollars debt and six dollars and thirty-seven cents costs of suit. Which said judgment appears upon the record in the office of the clerk of the Court of Common Pleas as still unpaid and unsatisfied and without execution having been issued thereon; your oratrix therefore expressly charges that the lien she has acquired by levy made under the execution issued as aforesaid, is prior to the lien of the judgment of the said James F. Minturn against the said Christian Buttlar.

20 In consideration whereof, and for as much as your oratrix is remediless in the premises at the common law, and cannot have adequate relief except by the aid of this Honorable Court,

To the end therefore, that the said Christian Buttlar and Minna Buttlar his wife, Gottlieb H. Bier and Sophie Bier his wife, and James F. Minturn defendants hereto, and their confederates when discovered may without oath, full, true and perfect answer make to all and singular the premises according to their
 30 knowledge, information, remembrance and belief, and that they may set forth and discover the real estate belonging to the said Christian Buttlar and conveyed as hereinbefore mentioned, and what disposition has been made of or incumbrances put upon the same fully and particularly, and in whose possession said real estate has been since the nineteenth day of July, eighteen hundred and eighty-three, and whether the same is incumbered and if so in what manner; in whose favor; by whom; and to what
 40 amount, and whether such conveyance as before men-

tioned was made of the real estate, and if so for or upon what consideration, and to whom, when and by whom the same was paid, and who has possessed and occupied said premises and received the rents, issues and profits thereof since the said alleged or pretended conveyance thereof; and that the said defendant Minna Buttlar, may be decreed to pay your oratrix the full amount due and owing to her on the said judgment, with the interest, cost and execution fees accrued thereon may be declared a lien upon the 10 right and interest of the said Christian Buttlar in the real estate so conveyed by her to the said Gottlieb H. Bier and Sophie Bier his wife, and that the said fraudulent conveyance and all other fraudulent conveyances created or suffered between the said defendants and effecting the said land may be set aside and declared null and void; and that the said land may be sold free, clear and discharged of and from the said fraudulent deed, and all other fraudulent deeds and encumbrances under said writ of execution issued in said suit or otherwise, and the proceeds thereof, or such part of the the same as may be necessary may be applied to the payment of your oratrix's said judgment, and that your oratrix may have such other and further relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience. 20

May it please your Honor the premises considered, to grant to your oratrix the State's writ of subpoena 30 issuing out of and under the seal of this Honorable Court, directed to the said Christian Buttlar, and Minna Buttlar his wife, Gottlieb H. Bier and Sophie Bier his wife, and James F. Minturn, therein and thereby commanding them and each of them at a certain day and under a certain penalty to be therein expressed, personally to be and appear before your Honor in this Honorable Court, then and there to answer 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 will ever pray, &c.

HOFFMAN & HERBERT,
Sols. for and of Counsel with Complainant.

A true copy :

10 G. S. DURYEE, Clk.

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IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH ROSENBLATH,
Compl't,

and

CHRISTIAN BUTTLAR ET ALS.,
Defts.

On Bill, &c.

*Answer of
Minna Buttlar* 10

The separate answer of Minna Buttlar to the bill of complaint in above cause.

The said defendant, answering, says that she admits that on the twelfth day of October, A. D. 1881, one Catharine Quidort, by deed of conveyance of said date, conveyed to this defendant and said Christian Buttlar, her husband, the lots of land described in paragraph 1 of said bill of complaint. 20

And this defendant, further answering, says that the consideration of said deed, and amount actually paid for said lots of land and premises, was \$2,300.

That the said consideration was paid by this defendant with money of her own separate estate and property, and that the insertion of her husband's name in said conveyance as one of the grantees thereof was merely done by the permission of this defendant to please her said husband, and at his request. 30
That it was understood by this defendant at the time of taking said conveyance, and she was advised by her counsel learned in the law, that her said husband, by the insertion of his name in said conveyance as one of the grantees, would acquire no right or interest in said premises that could in anywise affect or interfere with this defendant's legal and equitable rights therein, and her free, clear, and uninterrupted use and enjoyment of the same; that, as this defend- 40

ant was advised as aforesaid, and understood that her husband, by said conveyance, acquired the right to said premises in case of her death, and nothing more.

And this defendant, further answering, says that as to the indebtedness of the said Christian Buttlar to the said complainant, and the suit and judgment thereon in the District Court of Hoboken, and the docketing of the same in the Hudson Common Pleas
 10 and the proceedings therein, and the issuing of a writ of fieri facias *de bonis et terris*, and the subsequent proceedings therein, all as set forth and stated in sections 1, 2, 3, 4 and 5 of said bill of complaint, this defendant hath no knowledge, excepting as set forth in said bill of complaint and upon information, and cannot therefore admit or deny the same, and leaves the said complainant to make such proof thereof as she may be able, under the rules and practice of this Court.

20 And this defendant further answering says, that she denies that the said Christian Buttlar was ever seized and possessed of said lots of land and premises as aforesaid, as tenant in common with this defendant, and that the said Christian Buttlar after the said alleged debt to complainant had been created and in order to secure his right, title and interest in said property, for his own use and benefit and protect it from the claim of said complainant, and prevent said complainant from collecting her said al-
 30 leged debt, combined and confederated with this defendant and said Gottlieb H. Bier and Sophie Bier, or any or either of them, or with any other persons whatsoever to defraud said complainant, and to that end joined in the conveyances mentioned in paragraph 6 of said bill of complaint.

This defendant further answering says, that on the said nineteenth day of July, 'A. D. 1883, this defendant had no knowledge of any indebtedness whatever of her said husband to said complainant. That the
 40 first knowledge that she had of the alleged indebted-

ness to said complainant mentioned in said bill of complaint was on or about the 9th day of September A. D. 1883, when she was for the first time informed of the fact. That she admits, that on the nineteenth of July, A. D. 1883, her said husband joined with her in conveying said premises to said Gottlieb H. Bier and wife, and that the said Gottlieb H. Bier and wife by conveyance bearing even date therewith, conveyed the said premises to this defendant, and that the consideration thereof was \$1.00, but denies 10 that the object of said conveyances was as set forth in said bill of complaint, and that said consideration was not in fact paid. This defendant on the contrary further says, that her said husband during the summer of 1883 and contrary to the wishes of this defendant, became engaged in the saloon business at Coney Island; that she thereupon determined to take the entire control and management of her property into her own hands, and said conveyances were to that end made to Gottlieb H. Bier, and by said 20 Bier and wife to this defendant.

That she denies, that the said Christian Buttlar since the making of said conveyances, as tenant in common of said lands, tenements and hereditaments, has always had, occupied, possessed, enjoyed, and received the rents and profits of the same, but on the contrary says, that since the making of said conveyances she alone has received the rents, issues and profits of said premises as her separate property, and has used and applied the same in such manner as 30 to her seemed proper and for the best interests of her property.

And this defendant, further answering, says that in the year after the purchase by her of said lots she had erected upon the same a new building, at a cost of about \$8,500. That \$5,000 of the money with which said building was constructed was borrowed by this defendant (her husband joining in said mortgage) from one Nicholas H. Cheesebrough, which said mortgage bears date 40

and is still a subsisting lien and encumbrance upon said lots of land and premises. That the balance of said \$8,500, to wit: the sum of \$3,500, or thereabouts, was the separate money and property of this defendant.

And this defendant, further answering, says that said real estate is now, and has always been, in her possession. That the only encumbrance thereon is said mortgage of \$5,000. That the consideration of
10 said conveyances to said Bier and this defendant, as stated therein, was one dollar, and in fact paid.

And this defendant, further answering, says that she insists, if it be true that said Christian Buttlar was indebted to said complainant, and that said judgment was recovered in said District Court, and that the same was docketed in said Court of Common Pleas, and that said execution issued thereon and said proceedings were had therein, and said levy was made by said sheriff, all as stated in sections 2, 3, 4
20 and 5 of said bill (but which this defendant does not admit), that said levy by said sheriff was illegal and invalid, and said complainant acquired no rights thereunder against said lands and tenements, and that the said lands and tenements were not liable to levy and sale under said execution, and that said complainant never had, by reason of said judgment, and has not now, any legal or equitable right to take and sell, under said execution or otherwise, said lands, tenements and hereditaments, or to have the
03 same applied to satisfy said judgment.

That if said Christian Buttlar had any rights whatever in said premises (which this defendant denies), they were not those of a tenant in common, and never have been, and are not now, liable either in law or equity to the lien of said judgment, or to any execution or levy or sale thereunder as against this defendant, and her legal and equitable rights in said lands and premises.

And that the rights of this defendant in said lands
40 and premises were paramount to those of said com-

plainant, and that so far as said complainant is concerned said Christian Buttlar had the right to join in said conveyance to said Bier, and this defendant had the right to take said conveyance from said Bier and wife.

And that this defendant has the right to hold, possess and enjoy the said premises free and clear of and unaffected by the alleged claim and judgment of said complainant.

This defendant therefore humbly prays to be hence 10 dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

ABEL I. SMITH,
Sol. and of Counsel with Deft.,
MINNA BUTTLAR.

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IN CHANCERY OF NEW JERSEY.

10	Between ELIZABETH ROSENBLATH, Complainant, and CHRISTIAN BUTTLAR, AND ALS., Defendants.	}	On Bill, &c.
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Before his Honor A. V. VAN FLEET, Vice-Chancellor.

20 MR. JOHN W. HERBERT, for complainant.
 MR. ABEL I. SMITH, for defendants.

Transcript of the shorthand report of the evidence given in this cause upon the hearing thereof at the Vice-Chancellor's Chambers, at Jersey City, N. J., on Wednesday, April 2, 1884.

30 Counsel for defendant admitted that a judgment was recovered in the District Court of Hoboken, by Elizabeth Rosenblath against Christian Buttlar, on the day named in the bill of complaint, and that the judgment was duly docketed in the Court of Common Pleas, and execution issued thereon, and levy made on the property in question.

By the COURT. You admit the judgment, issuing of execution, and that the execution was recorded.

40 By MR. SMITH. Yes, I admit all those matters; the understanding is, that Mr. Herbert will admit some papers of mine.

HENRY K. VAN HORN, a witness produced on the part of the complainant, having been duly sworn, saith.

Direct examination by MR. HERBERT :

- Q. You are County Clerk of Hudson County?
 A. Yes, sir.
 Q. Have you a contract made between Christian Buttlar and one John A. Crothers? Yes, sir. 10
 Q. On file in your office? A. Yes, sir.
 Q. Is this the paper? (handing witness a paper.)
 A. Yes, sir.
 Q. Is that taken from the files of your office? A. Yes, sir.

By MR. HERBERT. I desire to have that marked for identification; the object of it is to prove that the contract for the building of the houses on the property was made and signed by Christian Buttlar. It describes the 20 property, and he is stated to be the owner of the property over his own signature. I desire to offer it in evidence.

(Objected to. Objection overruled. Marked Exhibit 1 for complainant.)

By MR. HERBERT. The contract shows that the houses were upon the lots in controversy.

Not cross-examined.

The execution of the contract is admitted, 30 and it is also admitted that it is for the erection of a house on the lots in controversy, being the same houses mentioned in the answer of the defendant, Minna Buttlar. The contract was filed November 28th, 1881.

ELIZABETH ROSENBLATH, a witness produced on the part of the complainant, having been duly sworn, saith: 40

Direct examination by MR. HERBERT :

Q. You are the complainant? A. Yes, sir.

Q. Where are you living now? A. 34 Clinton street, Hoboken.

Q. In the house built on the property in question—this property of Mr. Buttlar's? A. Yes, sir.

Q. How long have you been living there? A. I have been there a year and eight months to-morrow.

10 Q. What is your business? A. The baker business.

Q. Who sold you your business? A. Mr. Buttlar.

Q. Did he make a bill of sale at the time? A. Yes.

Q. (Handing witness a paper.) Is that the bill of sale? A. That is the bill of sale.

Q. Do you know Mr. Buttlar's signature? A. Yes, sir; that is his signature.

Q. You have seen him write? A. Yes, sir.

20 Q. And know that is his? A. Yes, sir.

Counsel for the defendant agrees to waive proof of said paper by the subscribing witnesses. Said paper was then offered in evidence, and marked Exhibit No. 2 for complainant, being a bill of sale dated on the 31st day of July, 1882.

Q. At the time you purchased that bakery from Mr. Buttlar, where did you begin business? A. In 30 34 Clinton street.

Q. That same place? A. Yes, sir.

Q. In Mr. Buttlar's house? A. Yes, sir.

Q. Did he make you a lease of the premises? A. Yes, he gave me a lease.

Q. (Handing witness a paper.) Is this the lease? A. Yes, sir; that is the lease.

Q. Were all those names signed there at the time the lease was made? A. I could not tell you exactly if they were all signed on that one day; I know this 40 was signed (pointing to a signature), and *this*.

- Q. How about *that* one? (pointing to a signature.)
 A. I don't know whether that was in there or not.

By the COURT. Whose name is that which she does not know about?

By MR. HERBERT. Minna Buttlar's. This is the lease of the 31st day of July, 1882, between Christian Buttlar and Elizabeth Rosenblath, and the name of Minna Buttlar was inserted there surreptitiously by Mrs. Buttlar after this debt was created; I offer it in evidence. 10

Q. That is Mr. Buttlar's signature, is it? A. Yes, sir.

Q. And that is yours? A. Yes, sir.

Q. At the time you signed was Minna Buttlar's name in there? A. I don't know.

Same marked Exhibit No. 3, on the part of the complainant. 20

Q. At the time that you made that—signed it—did you have any further business with Mr. Buttlar? A. I gave him a hundred dollars for the lease.

Q. A hundred dollar deposit? A. Yes, sir; I gave a hundred dollars to him as soon as the lease was made; I gave him a hundred dollars, without interest.

Q. Did he give you a receipt for the hundred dollars? A. Yes, sir. 30

Q. (Handing witness a paper.) Is that it? A. That is the receipt.

Q. Is *that* his signature? A. Yes, sir; that is Mr. Buttlar's writing.

Q. There is the name Minna Buttlar there? A. Yes, sir; I seen that.

Q. When was that put in there? A. I don't know; I could not tell you.

Q. Was it in there at the time you got it? A. I don't think it was. 40

Said receipt offered in evidence, marked Exhibit No. 4 for the complainant.

Q. When did you pay your rent? A. On the 1st.

Q. First of every month? A. Yes, sir.

Q. And when you paid it did you take a receipt?
A. Yes, sir.

Q. (Handing witness papers.) Are those the receipts? A. Those are my receipts?

10 Q. These are the receipts you received? A. Yes, sir.

Q. Now, do you know the signatures to these receipts—the name at the bottom? A. Yes, sir; that is Christian Buttlar.

Q. To all those receipts? A. All those what are there together.

By MR. HERBERT. I offer them all in evidence; there are thirteen receipts, which can be marked as one Exhibit.

20 Same marked Exhibit No. 5 for complainant

Q. Now, I show you seven other receipts; who are they signed by? A. Those are signed by Minna Buttlar.

Q. One of them—the first one—look at that. A. That was signed Christian Buttlar, and that is scratched and Minna Buttlar put in it.

Q. That is September? A. Yes, sir; September.

Q. 1883? Yes, sir.

30 Complainant's counsel offered said seven receipts in evidence as one exhibit.

Marked Exhibit No. 6 on the part of the complainant.

By MR. SMITH. Of course, all these offers are subject to the objection that they cannot prejudice the defendant, Minna Buttlar.

40 By the COURT. The receipts are competent as against both defendants. They show in what manner the property was dealt with.

Q. You had some business with Christian Buttlar?

A. Yes, sir.

Q. What was it? A. They wanted some money.

Q. How much? A. I loaned him \$200.

Q. When? A. On the 9th day of June, on Saturday night.

Q. For how long? A. For three months.

Q. What year? A. June 9th, 1883.

Q. And it was to recover that that you brought suit in the District Court of Hoboken? A. Yes, sir. 10

Q. And got judgment? A. Yes, sir.

Q. Did you ever say anything to Mrs. Buttlar about having loaned that money to her husband?

A. I was going over on the 2d or 3d day of July, I could not tell you exactly the day, because I did not think anything of it at the time, and I said to Mrs. Buttlar "will you please lend me ten dollars on account, that I gave your husband that money;" that is all I said, because I did not think anything would come around like this case. I don't know 20 anything more.

Q. Well did she let you have the money? A. She let me have the money and I gave it back to her.

Q. That is all?

Cross examination by MR. SMITH.

Q. You borrowed this ten dollars? A. I borrowed it.

Q. You went there to borrow it? A. Yes, sir.

Q. How long did you borrow it for? A. Well, I 30 guess it was for two or three days, I could not tell you exactly; I know I gave it back to her in the same money just like she gave me—a ten-dollar gold piece.

Q. You had it two or three days, and then paid it back to her? A. Yes, sir.

Q. Had it anything to do with this money that was due from her husband to you? A. It had nothing to do with it.

Q. When you loaned him the \$200 it was agreed, 40

wasn't it, that it should be for three months, and then you would extend it for three months more?

A. No, sir; he only took it for three months.

Q. But wasn't it understood at the end of the three months the loan would be extended three months? A. No, sir; he said he would pay me back that money in four weeks with interest for three months; he said "I will give you it back in four weeks, and give you interest for three months,"
10 and so I gave him the money.

Q. Wasn't the note according to the agreement, payable on the 9th of December, 1883? A. No, sir; there is witnesses for the note.

Q. Just answer the question, yes or no? A. No.

By MR. SMITH. I desire to ask the witness whether the note was not payable in six months, and then ask her if on the 9th of December, the defendant did not tender her the amount of the note with interest.
20

Offer overruled.

CELIA GIBSON, a witness produced on the part of the aforesaid complainant, having been duly sworn, saith:

Direct examination by MR. HERBERT:

Q. Where did you live in June last? A. In Mr. Buttlar's house, 36 Clinton street.

30 Q. Did you ever have any conversation with Mrs. Buttlar regarding the loan made by Mrs. Rosenblath to her husband Christian Buttlar? A. All I can say about that is that I lived in his house, and sometime in June—I don't recollect exactly when—Mrs. Buttlar came to my room, and she said, "I was coming in to see you to beg you for a good favor," and I asked her what it was; she said "I was going to ask you to lend my husband a couple of hundred dollars, but" she says, "never mind now, I got it
40 from Mrs. Rosenblath in the baker shop.

Q. By the COURT. When was this? A. Some-time in June, 1883.

Cross-examination by MR. SMITH:

Q. Are you a married woman? A. Yes, sir.

Q. How long have you been in those rooms? A. Fourteen months.

Q. What does your husband do? A. I don't live with him; he is a workingman—a laboring man; I live with me three children.

Q. How long since you have been away from him? A. Nine years.

Q. What do you do for your support? A. My children are big—they support me.

Q. Are you in the habit of loaning money—have you loaned any money before? A. No, sir.

Q. You don't have any to loan, do you? A. No, sir.

Q. Had you ever loaned any money to Mrs. Butt- 20
lar before that time? A. No, sir.

Q. And she had never asked you for any? A. She asked me that time for some.

Q. Had she asked you before? A. No, sir.

Q. Where do you live now? A. 135 First street.

Q. How did you come to go away from that house? A. Because I did not like it; the rent was too high.

Q. When did you go away? A. I moved the first of July or last of June, I could not remember which.

Q. Was there anybody present on this occasion, 30
when you say Mrs. Buttlar came in to see you? A. No, sir; it was on a Sunday morning—that is all I recollect.

Q. How long before you went away? A. I could not tell you the day any more, but it was in June.

Q. How many weeks before you moved? A. I could not tell you.

Q. You moved the last of June, and she came in on a Sunday morning, you say. Now, was it Sunday week or Sunday two weeks before you moved? A. I 40

could not say exactly, but I know it was in June—I know that.

Q. What time on Sunday morning? A. Early.

Q. What do you mean by early? A. About ten o'clock.

Q. Cannot you tell what Sunday it was? A. No, sir.

Q. Cannot you tell what date of the month? A. No, sir.

10 Q. Or how long it was before you moved. A. No, sir.

Q. What did you say to her when she asked you to loan her the money. A. That I had not got the money to loan.

Q. What did she say then? A. That was all she said—"You need not, because my husband got it in the baker shop of Rosenblath."

Q. She said that at the same time? A. Yes, sir.

Q. The same Sunday morning? A. Yes, sir.

20 Q. You are an intimate friend of Mrs. Rosenblath? A. I don't know her any more than she lives there.

Q. How did she know what you knew about this thing—who told her? A. Well, last night I met her in the street, and she asked me if I knew anything about that money, and I told her that I only knew this that I have told you.

Q. Last night is the first she knew about it. A. Yes, sir.

Q. That is all.

30

THOMAS ROSENBLATH, a witness produced on the part of the aforesaid complainant, being duly sworn, saith :

Direct examination by MR. HERBERT :

Q. You are the husband of Elizabeth Rosenblath?

A. Yes, sir.

Q. The complainant? A. Yes, sir.

40 Q. Did you see Minna Buttlar sign her name to

that receipt? A. Not Mrs Buttlar, she did not sign her name at the time, only Mr Buttlar signed it.

Q. When was her name signed to that receipt, do you know? A. That was just about the day when she came from Coney Island; the time he came from Coney Island I spoke to him, and said "the time is passed and I want to get that money." He said "I have not got the money, but you let it go down on the rent at five dollars a month." This was in September, 1883, when he came from Coney Island; so I said I would let it go down to five dollars a month rent, which would be forty months. He said to me "I have not got anything, and all you can do is to put me in prison." So I said to him, "well, you give me another note and let your lady sign it too," but she would not sign it.

Q. When did she put her name to that paper, about what time was it—at that time (referring to Exhibit 4)? A. Yes, sir.

Q. (Exhibit 3 being shown witness, being a lease 20 between Christian Buttlar and Elizabeth Rosenblath.) Do you know when that name of Minna Buttlar was signed there? A. Yes, sir.

Q. When? A. Mr. Buttlar was not satisfied with that, so she signed her name afterwards.

Q. When? A. That was just the day after he came from Coney Island?

Q. In September? A. Yes, sir.

Q. 1883? A. Yes, sir.

Q. That is all.

03

Cross-examination by MR. SMITH :

Q. What had you to do with it? A. Well, I am the husband—the agent—I am the man.

Q. Who leased this property, you or your wife?

A. It belongs to my wife.

Q. She carries on the business, does not she? A. Yes, sir.

Q. The baker business? A. Yes, sir.

40

Q. You do the business, don't you—the most of it?

A. Yes, sir.

Q. For your wife? A. Yes, sir.

Q. Has she any business or not in that house. A. Yes, sir.

Q. Is it in her name or in your name? A. My wife's name.

Q. She rented these premises, did she? A. Yes, sir.

10 Q. From Mr. Buttlar? A. Yes, sir.

Q. Did she hire them, or did you hire them? A. She did.

Q. Who saw Mr. and Mrs. Buttlar about them?

A. Well, Mr. Buttlar came first to me and asked me about the money, and afterwards he sent to my wife to see if he could get the money from my wife, and my wife said, "Let Mr. Buttlar give me a receipt for six months' rent." But I said I did not like that.

20 Q. Six months' rent? A. Yes, sir; only I did not want to insult the man, and a note was given for three months.

Q. Your wife did not want to let him have the money unless she had a receipt for six months' rent?

A. Yes, sir; she wanted a receipt from Buttlar for six months.

Q. Now, my question to you just now was, who rented the property—who made the contract? A. My wife and Mr. Buttlar.

30 Q. Now, where was this lease signed? A. In his room.

Q. In his room? A. Yes, sir.

Q. Who was there? A. Well, I don't know.

Q. Were you there? A. No, sir. Mr. Buttlar took it over and brought it back again.

Q. Where did your wife sign her name? A. In my room—in our room.

Q. Where did Mr. Buttlar sign his name? A. In our room—in our kitchen room.

40 Q. And then he took it for his wife to sign her name, did he? A. Yes, sir.

Q. Why were you not satisfied without having Mrs. Buttlar's name on it? A. On account he told me he lost everything, and that he no more the property owned; that he no more owned the house. Before that he told me he owned the two houses. I said to him, "Mr. Buttlar, if you loose that money what shall I do?" And he said, "Don't you believe I am good if I owned two big houses."

Q. Then why did you ask that Mrs. Buttlar should sign it? A. Because he was no more the property 10 owner.

Q. And you were afraid of him? A. Yes, sir; sure I was.

By the COURT. Do I understand the witness to give as a reason why it was desired that Mrs. Buttlar should sign the lease, that Mr. Buttlar was no longer the owner of the property.

By MR. HERBERT. Yes, sir, that is what he 20 says.

Q. Now this other paper, where was that signed, in your place or where (Exhibit No. 4)? A. Well, I cannot see that without my spectacles.

Q. You saw it awhile ago when Mr. Herbert handed it to you. Now when was it signed? A. (After adjusting spectacles). It was signed on the day he got the money.

Q. Who got the money? A. Mr. Buttlar. 30

Q. Yes, the hundred dollars? A. That was a hundred dollars.

Q. Where was it signed, do you know? A. Well, that was signed in our place.

Q. Who was there at the time? A. Me and my wife.

Q. Anybody else? A. I don't recollect exactly.

Q. You don't remember who else was there? A. No, sir—I was trusting Mr. Buttlar too much.

Q. You did not trust him very much when you 40

gave him the \$100? A. Yes, sir; that was too much to trust, too.

Q. Do you say it was signed in your presence?

A. Yes, sir.

Q. You don't remember who were there? A. No, sir; Mrs. Buttlar and Mr. Buttlar were there.

Q. Mr. and Mrs. Buttlar were there? A. Yes, sir.

Q. You remember that, do you? A. A. Yes, sir.

Q. And she signed her name then, didn't she, at
10 the same time? A. She signed her name for the one hundred dollars three months afterwards, or I don't know just exactly how long it was afterwards, but a few days after he came home from Coney Island, then she signed the paper for a hundred dollars.

Q. Then she signed the lease and all the other papers on the same day? A. No, sir; she signed the lease before she signed the other paper the day after she came from Coney Island.

Q. I thought you said she signed them both at the
20 same time? A. No, sir.

Q. How long before he came from Coney Island did she sign the lease? A. I could not tell you just exactly.

Q. You don't remember exactly when she did sign it? A. Well, Mr. Buttlar took it over to her.

Q. You don't remember exactly when she did sign it? A. No, sir.

Q. Mr. Buttlar took it over to her and brought it back signed? A. Yes, sir.

30 Q. But the other paper—this receipt—she signed after he came back from Coney Island? A. Yes, sir.

Q. In whose room did she sign it? A. In the kitchen room.

Q. This paper, Exhibit 4? A. Yes, sir.

MRS. ELIZABETH ROSENBLATH, recalled.

Further direct-examination by MR. HERBERT:

40 Q. At the time this money was loaned by you to

Christian Buttlar, was there anything said about his owning the property? A. I asked Mr. Buttlar, "Well, if you lose that money, how will you pay me then?" Then he says: "I own property enough; can't I pay you two hundred dollars if I lose this?" And that is all; and then I loaned it.

Q. How did he go? A. He makes *that* (witness illustrated).

Q. Do you mean by pointing to the property? A. Yes, sir. 10

Q. This property was 34 and 36 Clinton street?
A. Yes, sir; the two houses.

Q. Would you have loaned him the money if you had not believed he was the owner of the property?

(Objected to. Overruled.)

Cross-examination by MR. SMITH:

Q. Why did you ask him that question? A. Because I wanted to know if I get my money back. 20

Re-direct:

Q. On the strength of the representations he made to you, then, did you loan him that money? A. I loaned him that money when I asked him this question, and he told me about he owned the property, and if he lose the one hundred dollars if he is not man enough to pay me two hundred dollars; so then I handed him the money. 30

Re-cross:

Q. Mrs. Rosenblath, why did you ask him this question as to about how he could pay you, and whether he might not lose the money? A. Well, I don't know; I asked him because I was afraid to lose my money by Mr. Buttlar.

Q. Why? A. Well, I felt it when I gave it to him.

Q. Why, you have been a tenant there for how long? A. I gave it to him for three months.

Q. I say you have been a tenant in that house for 40

a year, haven't you? A. I don't care; I gave Mr. Buttlar fifty dollars before that, and he promised me twenty-five cents to pay the interest, and he gives me a piece of paper; and when the time was out he brought me fifteen dollars, and the rent was thirty-five dollars, and he did not give me the twenty-five cents, and I ask him three times for it, and then I had to take it off the rent—the twenty-five cents.

Q. You have been a tenant in the house, haven't you, for a year? A. I was a tenant in the house for a year and a month.

Q. And you have been given these receipts from Mr. Buttlar? A. Yes, sir.

Q. And you say you supposed he was the owner of the property, from the receipts? A. He told me so when I asked him this question when I handed the money.

Q. But from the receipts he handed you, from the papers he signed, you supposed he was the owner of the property? A. Sure.

Q. Then why did you ask him this question at that time, if you supposed he was the owner of the property—why did you ask him that question? A. Well, I don't know, I could not help, so I asked him.

Complainant rests.

MINNA BUTTLAR, a witness produced on the part of the aforesaid defendant, having been duly sworn according to law, deposeth and saith.

Direct examination by MR. SMITH :

Q. You are one of the defendants in this case, are you not? A. Yes.

Q. Wife of Christian Buttlar? A. Yes, sir.

Q. This property was purchased on October 12, 1881, wasn't it—that is the time it was purchased—the time you bought it? A. I bought it, I think, on the 12th or 13th.

04 Q. Who bought it? A. I bought it.

Q. With whose money was this property purchased? A. With my money.

(Objected to as immaterial. Objection overruled.)

Q. This property was purchased with your money you say? A. Yes, sir; with my money.

Q. Your own separate money? A. Yes, sir.

Q. The day that you bought the property \$2300, was paid for it? Yes, sir. 10

Q. Where did the money come from that day that you paid for the property? A. I had it on a mortgage which I held on Mr. Wildis' property.

Q. In New Jersey or New York? A. New York.

Q. The mortgage was for how much money? A. \$2300.

Q. When was that mortgage paid in to you? A. On the 13th.

Q. 13th of October, 1881? A. Yes, sir.

Q. And with that money you did what—paid this 20 amount mentioned in this deed to you and your husband? A. Yes, sir; I paid it for the lot.

Q. With that money you paid the amount mentioned in the deed? A. Yes, sir; with the twenty-three hundred dollars I bought the house.

Q. You paid that amount for the house? A. Yes, sir; the same day as I got this mortgage paid off I took it directly and bought land with it.

Q. And received the deed? A. Yes, sir; I received the deed. 30

Q. Was anything said at the time that you took this property as to whose name you wanted the deed in, and why your husband's name was inserted in it? A. Nothing was said about it at that time. They asked me if I wanted it just as the agreement was, and I said "Yes."

Q. What, if anything, was said by you or the parties at the time the conveyance was made, about putting your husband's name in it? A. I didn't say anything about putting his name in the deed; I don't 40

know how he got in; it must have got in by mistake; I don't know; they may have misunderstood me.

Q. At the time you took the deed, then, you didn't understand that your husband's name was in? A. When I seen it was in I kicked about it, and I said, "Who told you to put my husband's name in?" and they said, "Well, we thought just as long as you were married you wanted it in—both names." I said, "I didn't tell you so; I made the agreement only in my
10 name, and not my husband's, and nobody else was with me, and I bought it alone without my husband;" and then they said, "No matter about it; your husband can't do anything; he can't own anything, and can't get anything on to it on account of debt;" and they said, "If you intend to put a house on it your husband is more better able—he can help you better about it." And I thought if that be the case I leave it in; I wasn't smart; I wasn't lawyer; and I believed what they told me then, so I left my husband's
20 name in the deed.

Q. And that was the way his name came to be put in the deed? A. Yes, sir.

Q. You bought the property yourself? A. Yes, sir; my husband was not along with me when I made the agreement, and when I bought it.

Q. Who told you it made no difference about your husband's name being in the deed? A. This man what made the deed at that time; he told me it was no difference if my husband's name was in; that he
30 could not have any hold on it afterwards, on account of if he made debts. He was a lawyer, and I believed him. So then I said, "As long as it is now in, leave it in, so long as he can help me better if I build the house." They said he would have more power.

Q. Then you held the property after the deed had been made to you, until about 1881? A. The building was put on the property that same fall—they began it then—in 1881 they began to build.

Q. The contract for putting up that building? A.
40 Well, they asked me if I wanted so and so; I was

there and it was talked over with me as to how I wanted it built.

Q. Between you and whom? A. Between me and the architect.

Q. Who was to prepare the agreement for you? A. Well, the architect made it out, and I think my husband signed to it.

Q. Why didn't you sign to it? A. He didn't ask me, so I thought it was not necessary for me to sign it. They didn't ask me to sign it, so I thought it was not necessary. I didn't know anything about these things. I was never in them before, so I didn't say anything.

Q. Afterwards the house was leased. After the house was built the place was leased to Mrs. Rosenblath; some part of it? A. Yes, sir; but not right off.

Q. Who made the lease of the property to her? A. Well, I signed the lease.

Q. Do you remember when that lease was signed by you? A. Yes, sir.

Q. When? A. It was signed several days after the lease was made.

Q. Just state how soon afterwards, and when and where you signed it? A. I signed it in my own room.

Q. Who brought it to you? A. My husband.

Q. How long after the property was leased to them; it is dated on the 31st day of July, 1882, and it is said your name wasn't put in until some time afterwards. Can you tell us the circumstances as to that? A. It was a couple of days afterwards I signed my name.

Q. A couple of days after the lease was made you signed your name? A. Yes, sir.

Q. State why you know that to be so? A. Because we moved right afterwards, and my husband brought over into the room where I lived; we had moved up at that time into the other house.

Q. You moved into what other house? A. No. 36, and Mrs. Rosenblath leased No. 34, and then when

she took possession of the premises No. 34, I moved into No. 36.

Q. You had formerly occupied No. 34 yourself?

A. Yes, sir.

Q. You and your husband? A. Yes, sir.

Q. And when she leased it you moved into No. 36?

A. Yes, sir

Q. And this lease was signed before you moved into. 36? A. No, sir; it was signed after we got
10 into 36; he brought it over to me in No. 36 a couple of days afterwards.

Q. Who brought it over? A. My husband brought it over, because Mrs. Rosenblath wasn't satisfied, and she said that I should sign it; so I did.

Q. Who brought it over and said Mrs. Rosenblath was not satisfied? A. My husband; and he said that she wanted me to sign the lease.

Q. And so you signed it? A. Yes, sir; I thought
20 it was no more than right, as long as the property was mine, that I had to sign the lease.

Q. And then your husband took it back? A. Yes, sir; he took it from out of my rooms, and I suppose he gave it back.

Q. By the COURT. Had your husband signed it before you had? A. Yes, sir; he signed it. I had to stay home and attend to busines. I could not go along, and I suppose that was the trouble why I didn't sign it right away; that is the way it came, and then through moving, and all this business it
30 was a couple of days afterwards before I signed it. I know a couple of days before that when I was sitting in my room it was upside down, and I wasn't settled in No. 36, until a couple of days afterwards.

Further direct:

Q. When was that receipt signed by you, do you remember that, to July 31st, 1882, for the payment of \$100? A. That was signed last summer, in September.

40 Q. How did they happen to be signed? A. She

said as long as I gave the lease, and I own the property, I ought to sign for this \$100 they gave my husband, and I said, "yes, I am willing to do that, the money is paid and I will sign it—so that you shall not lose the money I will sign it."

Q. Who asked you to do that, Mr. Rosenblath?

A. Yes, sir; Mr Rosenblath asked my husband and my husband asked me would not I sign it; I said "yes," so he brought it over to my room and I signed it. 10

Q. Who gave the receipts to the tenants? A. Well, I handed them to them usually, when they gave me the money.

Q. Who gave the receipts, you or your husband, to the party who paid the rent? A. I gave the receipts, but I generally had my husband write them for me, because I am not very smart in writing.

Q. He generally wrote the receipts? A. Yes, sir, for me.

Q. Who generally signed them, you or your husband? A. Sometimes I signed them—sometimes my husband did, when he wrote them; he thought it was no matter about that. I told him to make the receipts out all ready, and so he did; he wrote them out.

Q. You told him to have the receipts wrote, and to make them out. A. Yes, sir.

Q. And he signed them. A. Yes, sir; first off.

Q. And the money that was received from these tenants—what was done with it? A. I paid the interest and the expenses from it. 30

Q. Was it paid to you? A. It was paid always to me.

Q. After your husband collected it, did he pay it to you? A. When he received any he paid it to me. He generally didn't always pay it to me, because I was always home, and they generally paid it to me, but if he did receive any money, he always paid it to me.

Q. And you have always managed and controlled 40

this money that was paid in, yourself? A. Yes, sir.

Q. When did you first know of your husband borrowing two hundred dollars from Mrs. Rosenblath?

A. The first I knew of it was the 2d of September.

Q. 1883? A. Yes, sir.

Q. How did you come to know it then? A. Mrs. Rosenblath came in on the 2d of September, in the morning, and she said, "You wonder, I suppose, that I was not here last night." I said, "Oh, well, it is
10 time enough this morning." "Well," she said, "I haven't got any money, but you can give me the receipt." Says I, "How is that?" "Well," she said, "your husband owes me two hundred dollars on a note, and you take it off of that." "Oh, no," said I, "how can I take it off that? When did he give you a note?" "Oh," she said, "so and so, in June." "Well," said I, "I don't know anything about that, so I can't give you any payment off the rent; I cannot give you a receipt without you pay me the
20 money." So while we were talking she said, "Well, you can believe it; you ask your husband if that is not true." And I said, "No; I have got nothing to do with that; you get that yourself." Then she said, "Well, I have lost the note, but it is true, and when you see your husband you ask him about it." I said, "No, you do that yourself; I have got nothing to do with yours and my husband's business." So then she left the room, and in the afternoon she came in again and threw the money on the table, and she
30 said, "I want a receipt from you." I said, "All right," and I picked up the money and gave her a receipt.

Q. Is that the first you knew of her money transactions with your husband? A. That was the first I knew of it—I was surprised.

Q. You heard the testimony of Mrs. Gibson about your coming into her room, and what you said? What have you to say about that? A. There is not one word of truth in it. I never did such a thing as

that; I never thought of such a thing; I never would have done such a thing.

Q. You never did such a thing or said such a thing to Mrs. Gibson?

By the COURT. She said so.

Q. Do you remember having any conversation with Mrs. Gibson at all about this note, in any way? A. Not at all. How could I? I never knew anything 10 about it.

Q. State how it was that these conveyances were made by you and your husband to Mr. Bier, and by him and his wife to you. What was the reason of that? A. Well, my husband went to Coney Island, in business, without my knowing about his name being in it; and after while I found that out, and then I asked him to take his name out of it, because I didn't like it, and I asked him several times before that to do it. 20

Q. You asked him to take his name out of the deed? A. Yes, sir.

Q. What did he say to that? A. Well, he said that didn't matter. He said, "Of course, I don't own the things."

(Objected to. Objection overruled.)

Q. Go on now, from where you stopped. You said that when you asked him to take his name out 30 of the deed he said the property was yours, and that it made no difference to you? A. He said it made no difference to me; he said "you own the property," and that he had not much interest in it anyhow, and that I might as well have it in my own name.

Q. Who had these conveyances drawn, you or your husband? A. Well, I made my mind up as soon as I found that out.

Q. Who drew the deed from your husband to yourself, and from Bier to you? A. I wanted it done 40

and I asked Mrs. Bier would not she buy it of my husband so that I could buy it from her.

Q. Who went and ordered the deeds drawn and had it done? A. I did—excuse me, I didn't understand what all those words mean.

Q. Did your husband go with you to have them made? A. My husband was at Coney Island, and I ordered him to go and sign them when he came home.

Q. You informed your husband to go and sign
10 them? A. Yes, after I had them made.

Q. And you wanted to have his name taken out of the deeds? A. That is just what I wanted; that is just what I done it for.

Q. And you knew nothing at that time of this indebtedness to Rosenblath?

By the COURT. She said so.

Q. At that time, when these conveyances were made, what did you understand from your husband,
20 was the business he was engaged in? A. I understood he was in a bathing saloon over in Coney Island.

Q. Did he say then what profits he expected to make from the business?

(Objected to.)

Q. After the conveyances were made—after the conveyances were made who then took charge of the
30 property? A. Well, I always had charge of the property, and I had it afterwards as well as I always did.

Q. You always had charge of it? A. Yes, sir.

Q. And after that you took exclusive charge of it, did you? A. Yes, sir; I signed my name to the receipts myself, and paid everything myself, like I used to.

Q. The mortgage that you speak about was between John Wildis and Henry Bischoff? A. Yes, sir.

40 Q. And what was done with that mortgage, was

it assigned by Bischoff to you? A. I bought it from Henry Bischoff; he held it on Mr. Wildis; the money came from Mr. Wildis, and I gave him a discharge for it when it was paid off.

MR. SMITH: I offer in evidence exemplified copies of the bond and mortgage according to the act of Congress, marked defendant's Exhibit No. 1.

10

Q. This money you paid to Mr. Bischoff was your money? A. Yes, sir.

Q. Had you at that time any other money of your own? A. Yes, sir; I had some money.

Q. To what amount do you know; can you tell, or have you no idea? A. No, I don't know.

Q. Was it over \$2000? A. Do you mean at the time I got these lots?

Q. Yes. A. Certainly I had more money then.

Q. Was it over \$2000 or \$3000? A. I had \$3500 20 and some odd dollars besides this \$2300, which I bought the lots with.

Q. What became of that money, did it go into these houses? A. Yes, sir; it paid the mason, the carpenter and the painter.

Q. Was any of the money for the house or for the property paid out of money of Mr. Buttler's? A. No, sir; this was all my money.

Q. Was any part of the cost of the lots or the improvements upon them, paid out of Mr. Buttler's 30 money or paid by him? A. No, sir; all the money that went into it was my own; none of my husband's money went into it.

Q. Was he a man of any property or means at all? A. No, sir.

Q. Didn't he have anything? A. I don't know of his having anything.

Q. This money that you had, how long had you had it? A. The \$2300?

40

Q. The whole of the money? A. Well, I had some money when I married my husband.

Q. That you got from home I suppose? A. I had that from home; I had that long before; I always had it, and I had a comfortable home too.

Q. How much was that? A. \$550.

Q. Then did you get any money afterwards? A. About two years after I married my husband I had \$860.

10 Q. When did you marry him? A. In 1872.

Q. And two years afterwards you got \$860 more?
A. Yes, sir.

Q. Where did that come from? A. That came from my parents at home.

Q. by whom was that paid to you, or through whom? A. By a man who had an office in 18 First street; Mr. Kern.

Q. In New York? A. Yes, sir.

Q. Have you been over there to find this man?

20 A. I have.

Q. Lately? A. Yes, sir.

Q. What did you find out became of him? A. I found out that he failed and wasn't there any more, and I asked if any of his books or anything was there so that I could bring them, and they said no, they could not find anything there any more; there was nothing left behind when he left.

Q. Now that other \$1300; what did you do with that \$1300, did you go into any business with it?

30 A. In 1875 I went into business in First street, Hoboken, between Adam and Jefferson streets.

Q. What business? A. The baking business.

Q. Did you buy a business there? A. I started it there.

Q. Did you buy the business? A. No, sir; I leased the place or rented the place, and bought the fixtures, and began business.

Q. You leased the place? A. Yes, sir.

Q. In whose name? A. In my name.

Q. You carried on business there in your own name? A. Yes, sir.

Q. And it was your name that was used in the business? A. Yes, sir.

Q. How much did you pay for the fixtures? A. \$400.

Q. Who did you rent the place from? A. Mrs. Steinberg.

Q. Was it rented in your name? A. Yes, sir.

Q. How long did you stay in business there? A. 10 I stayed in business there until July of 1878.

Q. July, 1878? A. No, sir; 1877, in July.

Q. What did you do with it then? A. I sold it to a man named Boleye.

Q. Philip Boleye? A. Yes, sir.

Q. For how much? A. I think for 450 or \$500; I will not swear to that it is so long ago.

Q. And did you sell for cash or was part of it mortgaged? A. Part cash and part mortgage.

Q. Mortgaged for how much, do you remember? 20 A. It was about \$300 or over; I would not say exactly.

Q. Did you make any money during that time, when you were in business? A. I done a splendid business there.

Q. How much did you make during that period? A. I made about \$3000.

Q. Clear? Yes, sir.

Q. Made about \$3000 clear? A. I could not say exactly clear, but I know when I left it I had \$4300 or about \$4200 or \$4300, when I left there after I 30 sold out.

Q. After you sold out you had about \$4200 or \$4300? A. Yes, sir; something around \$4200; I don't know exactly to a dollar.

Q. That you had yourself as your own separate money? A. Yes, sir; that was my own money.

Q. And you claimed it as your own? A. Yes, sir.

Q. And had it as your own? A. Yes, sir: I always said that I had that.

Q. Now did you go into any other business after that? A. Yes, sir; I did.

Q. What business? A. Another baker business.

Q. Where? A. At First street.

Q. Hoboken? A. Yes, sir; No. 184 First street, Hoboken.

Q. In whose name was that business carried on? A. I bought it from William Worth.

Q. Out of the money you had? A. Yes, sir.

10 Q. How much did you pay for it? A. I paid for that business \$500.

Q. Did you buy any fixtures? A. Yes, sir.

Q. How much did you pay for those? I paid \$300 more for them.

Q. How long did you stay in business there? A. I stayed in business there about a year—I commenced in January, and stayed until the next May—until a year after that.

20 Q. Then what did you do? A. I mean I was there a year and five months.

Q. Yes. Then what did you do afterwards? A. I sold that business to a person named Mr. Kiss.

Q. For how much? A. A thousand dollars.

Q. Did you make any money during those times? A. I did, sir; I done a splendid business there, but I got too much pulled down, so that I could not stand any more business at all.

Q. It was too hard work? A. Yes, sir.

30 Q. How much did you make during the time you were there in that business? A. Well I could not tell you exactly what I made, but I know what I had after I sold out. I know I had \$2300 on mortgage to Mr. Wildis, and after that I had in money \$3000, and some more money which made 5000 and some odd dollars altogether.

Q. You had that after you sold this business out to Mr. Kiss? A. Yes, sir.

Q. And that money you kept until you bought this property? A. Yes, sir.

40 Q. That remained with you? A. That money I

had when I bought this property, but part was on mortgage.

Q. I think you said when you leased this property that you went into business at the same time—when you leased the property from Mr. Worth? A. Yes, sir.

Q. Was there a written lease at that time? A. Yes, sir.

Q. Between you and Mr. Worth? A. Yes, sir.

Q. Was that business also carried on in your name? A. Yes, sir.

Q. When Mrs. Rosenblath came to you to borrow the \$10 that she speaks about, was anything said by her at that time, about your husband's note? A. Not at all, sir.

Q. What did she say; was it merely in relation to borrowing the money? A. She asked me if I could loan her \$10.

Q. Where was that? A. That was in her store, and I said "no," that I could not lend her as much as \$10; she said "I can give it to you back to-morrow;" said I "If you will give it back to me to-morrow I can lend you as much as \$10;" so she came up in about half an hour afterwards and I lent her a \$10 gold piece as she said, and she told me she wanted it to pay her flour man with because she run short \$10, but she said she would take the money in in the store and give it back to me to-morrow. I said "all right, I will let you have as much as \$10." So I gave her this \$10 gold piece, and the second day after or the day after that, I could not tell you exactly any more, she handed me the \$10 gold piece back in my room, and said, "here is the ten dollar gold piece you gave me, I did not need it."

Q. Nothing was said about your husband borrowing of her by note? A. No, sir; this was about June; I remember that because my child was quite sick yet.

Q. You have children? A. Yes, sir.

Q. How many? A. Two living and two dead.

Q. And you remember it because it was at the time your child was sick? A. Yes, sir; my oldest girl was sick, and that is the reason I remember it.

Q. How much mortgages are on this property? A. \$5000.

Q. Who holds that mortgage? A. Mr. Cheesborough.

Q. That is all.

10 Q. By the COURT. When did Mrs. Rosenblath come into possession of the property—when did she take possession of and occupy the bakery, or of the rooms in which she conducts her bakery; she lives in your building now—when did she commence living there? A. I think it was the 1st of June—no, July.

Q. The lease says the first day of May—three years from the first day of May, 1883? A. Yes, but she got there before I took possession before.

20 Q. I don't quite understand you. Did she pay you rent from the first of May? A. Yes, sir.

Q. Did she take possession on the 1st of May? A. No, sir; she took possession in August before that; she had it then, but the lease was only made from the next May. She took it in the summer time but the lease only commenced in the next May afterwards. She took possession in August, 1882.

30 By the COURT. Then Mrs. Rosenblath entered into the possession of this property in August, 1882; is that agreed upon, gentlemen?

By both counsels. Yes, sir.

Q. And she remained in possession under a different letting—a distinct letting—from August, 1882, up to the first of May, 1883, her term under this lease commencing on the first of May, 1883? A. Yes, sir.

Cross-examination by MR. HERBERT:

40 Q. You were married to Mr. Buttler in 1872? A. Yes, sir.

Q. He is your second husband? A. Yes, sir.

Q. Where were you married? A. In New York.

Q. Were you in any business? A. I was not in any business, I was living private.

Q. Never had been in business prior to that, had you? A. No, sir; not before I married Mr. Buttler.

Q. You had never carried on the bakery business to that time? A. No, sir.

Q. Your husband is the baker? A. Yes, sir.

Q. Since you married him you began business first 10 where? A. I began my first business in First street, Hoboken, I began business there.

Q. But where did you and your husband first begin business? A. In Graham Avenue.

Q. Brooklyn? Yes, sir.

Q. You were in business there for how long? A. Not a great while.

Q. About three years? A. Yes, sir.

Q. And then you went into business where? A. I went into business in First street, Hoboken. 20

Q. Did you have but one place of business in Hoboken? A. That is all I had.

Q. Is that all your husband had while he was married to you? A. No, my husband had a business while he was in partnership with me; we had a business together in Graham avenue.

Q. You had a business together? A. Yes, sir; we had a business together.

Q. Immediately after that business where did you go into business? A. I got a business then in First 30 street, Hoboken, and commenced business there.

Q. Who was your baker there? A. I had my husband to act as foreman.

Q. When you were in business in Hoboken your husband was in business with you? A. Not with me, it was in my own name, he worked in the shop.

Q. He was doing the business with you? A. He was working for me.

Q. Well, he was doing the business, wasn't he? A. No, sir; I paid the money and I ordered every- 10 thing that I wanted, and paid for what I owed.

Q. But he attended to the baking? A. Yes, sir; he attended to the bake-house.

Q. And you sold the goods? A. I ran the business; yes, sir.

Q. Did you pay your husband by the month? A. I let him have his spending money, and his clothing and money to support the family.

Q. You didn't pay him any steady sum a month? A. It was not exactly made out what I should pay him a month, but I paid him what he needed.

10 Q. MR. SMITH. And for the support of the family too? A. Yes, sir.

Further cross :

Q. The family were supported out of the business? A. Yes, sir.

Q. And you were supported out of the business? A. I supported the family out of the business.

Q. And your husband was supported out of the 20 business? A. Well, he had everything he needed, and I gave him clothes and spending money, and all what he needed.

Q. But you didn't pay him any regular sum a month? A. It was not made out exactly how much he should have a month.

Q. When you went into business in Hoboken you said you had a sum of how much? A. Fifteen hundred dollars.

Q. Where did that money come from? A. That 30 was my money that came from my parents, which was money I had.

Q. Wasn't it partly what you had made in Brooklyn? A. No, sir; not any of this fifteen hundred dollars; that was my money; eight hundred dollars was from Europe, and five hundred and fifty dollars I had when I married my husband, and a comfortable home, too.

Q. Where did the eight hundred dollars come from? A. From my parents at home—eight hundred 40 and sixty dollars.

Q. And the balance of this money was made by you after you had married Mr. Buttlar, and while you were in business? A. I was married before we went into business.

Q. Then all of that money was made in the bakery business? A. What money?

Q. The balance that made up the eighty-five hundred dollars. A. There was no balance made up in the business.

10

By the COURT. She said fifty-five hundred dollars.

WITNESS. I had five thousand and fifty dollars.

Q. Five thousand and fifty dollars? A. Five hundred and fifty dollars, I mean.

Q. From home? A. No, sir; I had that when I got married, and the eight hundred and sixty dollars came from home.

20

Q. That was your capital? A. Yes, sir.

Q. When did you get that money from home? A. In 1874.

Q. That was two years after you married Mr. Buttlar? A. Yes, sir.

Q. Prior to that time you had been doing business over in Brooklyn, hadn't you? A. Yes, sir.

Q. Did you make any money there? A. We did.

Q. How much? A. About \$1800.

Q. And then you came to Hoboken? A. Yes, sir. 30

Q. While you were in Brooklyn, you said a little while ago, you and your husband were in partnership? A. Yes, sir.

Q. Now, this \$1800 was used in buying what? A. I don't understand you.

Q. What did you do with the \$1800 you made in Brooklyn? A. I didn't touch that at all; that was in the bank—what we didn't use of it.

Q. What did you do with that money finally? A. Which money?

40

Q. The \$1800? A. My husband went to Europe and he took some of the money for that.

Q. Did you go along with him? No, sir; I didn't go along with him at that time.

Q. When was it that he went to Europe? A. After we sold the business that we had there for two years in Brooklyn.

Q. Did he immediately after selling the business in Brooklyn go to Europe? A. Yes, sir.

10 Q. When he came back how much money did he have? A. I didn't count it—I don't know.

Q. How much remained of that \$1800 that you made in Brooklyn? A. I can't tell exactly.

Q. About how much? A. Well, I don't know, I never paid much attention to it.

Q. About a thousand dollars? A. I think so.

Q. A little more? A. I never paid much attention to that money, only to mine.

Q. You used that money in buying that bakery together, you and your husband, didn't you? A. No, 20 sir; I took it from the Brooklyn Savings Bank.

Q. Where had your husband kept his money? A. I don't know.

Q. You kept your money in the Williamsburgh Savings Bank? A. Yes, sir; that was the money that I had from Germany.

Q. How much did you have in there? A. \$860.

Q. Is that all? A. That is all I had there.

Q. Did you have any more in any other bank?

30 A. Yes, sir; in the savings bank at Fourteenth street.

Q. How much did you have there? A. I had \$600 there.

Q. Is that all? A. That is all I had in the bank there with interest.

Q. Did you have more in the bank? A. I had some money home, but no more in the bank.

Q. Did you have any more money? A. Yes, sir; in the house, but I always kept that in the house.

Q. That you got from your business? A. No, sir; 4 that is money I earned.

Q. How did you earn it? A. I earned money by finishing pants before my husband knew me.

Q. But I mean after your husband married you?

A. And I earned some after I got married.

Q. MR. SMITH. Your husband went into business afterwards, didn't he? A. Yes, sir; and my husband went to the bank and put money in, but whether he put it in his name or in both names, I don't know.

10

Further cross:

Q. This eighteen hundred dollars—how was that put in? A. I think in his name alone; I don't remember how that was.

Q. Half of that belonged to you? A. Well, I don't know whether it does or not, but it ought to.

Q. You considered it so, didn't you? A. Well, I don't never have anything from it.

Q. Your business in Hoboken was attended to in the bakery by your husband, and you did the selling?

A. Yes, sir; I done the whole business.

Q. You didn't do anything more than sell? A. I seen after the flour supply and everything; I always had to order flour and everything.

Q. Your husband didn't do that. Now, when this property was sold to Mr. Bohley, didn't your husband make a bill of sale of the property first? A. No, sir.

Q. What? A. No, sir; how could he. 30

Q. Well, didn't Mr. Bohley tell you that he wanted you to make a bill of sale? A. No, sir; I sold it to him, and the bill of sale was made out right away; I gave him the bill of sale.

Q. But did your husband also give him a bill of sale? A. Maybe he put his name into it to satisfy him; I don't remember about those things, but I don't think he did.

Q. Don't you know that your husband joined you in making that bill of sale, and that his name was in 40

there, and yours? A. No, sir; I don't remember that his name was in it.

Q. You don't remember? A. No, but I know I made it.

Q. Wasn't your husband's name in it? A. I don't remember any more, but I should not think it was.

Q. Well, you can't swear it was not? A. I would not swear; I don't know perfectly sure.

Q. When your husband went into business in Coney Island, didn't you go down there with him? A. I went down to see him a couple of times.

Q. Did you go down and stay? A. Yes, sir; I stayed a couple of days, and then went home to my business again.

Q. Didn't you go down there and stay four weeks at a time? A. Not four weeks, but four days.

Q. How many days? A. Four or five days.

Q. At a time? A. Yes, sir; certainly, I think it was.

20 Q. Now, didn't you assist your husband in the business there? A. I had nothing to do with my husband.

Q. Didn't you assist him—didn't you help him in his business at Coney Island? A. Sometimes I helped him; when he had a great deal to do I helped him; I helped him at something—wringing out the clothes; that is how I helped him.

Q. When he undertook that business you knew that he was going down there in business, didn't 30 you? A. No, sir; I didn't know he was going there.

Q. Didn't he say anything to you about it? A. Not when he bought it, but after he went.

Q. Didn't he tell you that he didn't own money enough to buy it? A. He didn't tell me any such thing about the money.

Q. Didn't he tell you a word about his going down there? A. He didn't say anything about his going into business at Coney Island; no, sir.

Q. You did not know anything about it until after 04 he bought? A. No, sir.

Q. And then you went down and stayed four or five days a week? A. I visited there several times while he was there, and stayed four or five days; I don't know particularly.

Q. Where did you suppose your husband got the money from to buy that business? A. I didn't suppose at all.

Q. Well, you knew he had to have money to buy the business, didn't you? A. May be, but he had enough money; I don't know where he got it from. 10

Q. You knew he had to borrow money to buy it, didn't you? A. What do I know about it, probably he had money; what do I know?

Q. Your husband didn't say anything about that, eh? A. He did not.

Q. Why did Mrs. Rosenblath have to borrow that \$10 of you? A. I don't know any more than what she told me—that she was short.

Q. Did she say "I am short because I loaned your husband money?" A. Not at all. 20

Q. You are very positive about that? A. I am sure of that—that she did not say anything.

Q. Now when you sold the business to Boleye, did he pay your husband? A. No, sir; he paid it to me.

Q. How did he pay you? A. Money first and secured the rest by mortgage—I hold the chattel mortgage on this place.

Q. You held the chattel mortgage on his place? A. On his fixtures. 30

Q. How much money did he pay you? A. About one hundred dollars.

Q. Who collected the balance? A. I did.

Q. When? A. When I went out in Germany.

Q. I thought you said that it was secured by a chattel mortgage? A. I held a chattel mortgage on him until I got some money from Germany, what came from his parents.

Q. How much was that? A. That was three hundred odd dollars. 40

Q. You went over and got that money? A. Yes, sir; we went to Europe at that time.

Q. Was the money paid to you or to your husband? A. It was paid to me.

Q. At the time the money was paid did you sign a receipt for it, or did your husband, or both of you together? A. I signed it.

Q. You alone? A. Yes, sir.

Q. In Germany, at the time you gave that receipt, 10 didn't your husband receive the money? A. No, sir.

Q. And didn't he sign the receipt—didn't the officer refuse to pay the money, and say that he would not do so until your husband signed the receipt? A. I know nothing about my husband signing the receipt.

Re-direct:

Q. After you and your husband had gone into business—after you were married—you say you made 20 eighteen hundred dollars? A. Yes, sir.

Q. And your husband went to Europe. Now, after he came back was he in any business in his name—did he go into any business? A. Yes, sir; after he came back from Europe.

Q. What business? A. The baker business.

Q. Do you know how much he paid for that business? A. I don't know.

Q. How long was he in it? A. About half of the year.

30 Q. When you went down to Coney Island—when was that, do you remember? A. Yes, in July.

Q. And you went down for what purpose? A. To see my husband. The children were sick when he left me and I went over with the children to see him there with my children—I took them along.

Q. That is all.

CHRISTIAN BUTTLAR, a witness produced on behalf of the defendants, having been duly sworn according to law, deposedeth and saith.

Direct examination :

Q. This property was purchased with whose money? A. My wife's money.

Q. You have heard her testimony as to where she got it from, and how she made the money, is that true or not? A. That is all true.

Q. When did you first tell Mrs. Buttlar about the loan from Mrs. Rosenblath? A. I did not. 10

Q. Answer my question; when did you first tell her? A. When she came to Coney Island and asked me.

Q. When was that? A. In the commencement of September she came and asked me if I had money from Mrs. Rosenblath, and I said "Yes, I had \$200."

Q. What did she say? A. She said she didn't know about it, and I said that I would pay her as soon as I had the money. 20

Q. When you bought this business in Coney Island what was the business? A. Lager beer saloon and bathing houses.

Q. When you borrowed the money from Mrs. Rosenblath, did you have any idea about not being able to pay it at all?

(Objected to.)

Q. How did you expect to pay it? A. I bought 30 the place from Mr. Rush, and he told me I would make a thousand dollars there.

Q. And it was upon that idea you borrowed the money and went into business? A. Yes, sir.

Q. When these conveyances were made, how did they come to be made? Do you remember about that? You heard your wife's testimony as to that? A. My wife came to me, and she said that she didn't want my name any more in the deed, and I told her that if she wanted it she could do it. 40

Q. And upon that you signed this conveyance?
A. Yes, sir; I signed the conveyance.

Q. When was that lease signed by Mrs. Buttlar—the Rosenblath lease? A. Well, just after the lease was made Mr. Rosenblath came to me and said, “Mr. Buttlar, your wife didn’t sign that lease, and I want her to sign it.” I told him she would do it; so I took the lease and asked her to sign it, and she did.

10 Q. Was he dissatisfied because she hadn’t signed it, or what did he say was the reason? A. He said I was not the only owner of the property, so he wanted the name of the other owner.

Q. What did you do upon that? A. Well, I took the lease out of Mr. Rosenblath’s hands, and went to my room and requested my wife to sign it, and she did, and then I took it back to Mr. Rosenblath.

Q. That was a few days after the lease? A. Well, a week or several days, I could not say any nearer.

20 Q. When the property was just leased before they went in, what were they to pay for the property then? A. Do you mean the Rosenblaths?

Q. Yes, they went in in August? A. Yes, sir.

Q. How much were they to pay a month then?
A. \$35.

Q. Who did they lease the place from, you or your wife? A. From me.

Q. Was your wife present? A. Yes, sir; she was present.

30 Q. And afterwards this lease was made, was it?
A. Yes, sir.

Q. After this \$200 was loaned to you from Mrs. Rosenblath—you heard Mrs. Rosenblath’s testimony—what did you say, if anything, about owning the premises or anything of that kind? A. Well, will you allow me to state?

Q. State what you said to her at that time? A. Well, if your honor will allow me to explain.

40 The COURT. All counsel asks you for is just what was said.

A. Mrs. Rosenblath asked me—she said “if you lose that \$200 what will I do,” and I said “Mrs. Rosenblath, you must not think I want to get out of your \$200, I am always man enough to pay you \$200.” That is what I said.

Q. When you went there to get the \$200 what was said between you and Mrs. Rosenblath? A. I went in the morning. I was intending to buy that business in Coney Island, and I asked Mrs. Rosenblath can you let me have \$200, and she said you come in to-night and I will have a talk with my husband. So I went in that night, and then she said “I won’t lend you the money for only three months,” and she said “Mr. Buttler, I will give you the \$200 but you must take it for six months; I can’t lose the interest for three months.” Then I told her I would take the money, and if I can pay her the money back in three months I will do so, and I will give her the interest for six months also; but when the three months was up I wasn’t able to pay that note which was made out in three months. So when I came back from Coney Island Mrs. Rosenblath came in my room, and asked me about it, and she said the note was lost and I was willing to give them another note.

Q. The time when you borrowed the money from her, what did she mean when she spoke about perhaps she might lose it? A. Well, I could not give you any answer to that; I don’t know what she means by it; maybe she knows about the business at Coney Island; I don’t know anything about that.

Q. These conveyances that were made to Mr. and Mrs. Bier—you heard what your wife testified as to that. What was the reason— (interrupted.)

(Objected to as having been testified to before.)

Q. The business that was carried on by your wife in Hoboken—did you have any connection with it in any way? A. No, sir; I did not.

Q. It was carried on by her? A. She did the whole business

Q. Who had the money that was made? A. She had.

Q. You didn't claim any part of it? A. No, sir.

Q. Did you go into business after you were married, yourself? A. I was in business after I came from Europe.

Q. At first you went into business together? A. 10 Yes, sir.

Q. And made eighteen hundred dollars? A. Yes, sir.

Q. Then you went to Europe, and when you came back you went into business? A. Yes, sir; in Brooklyn.

Q. At what? A. Baker.

Q. How did you succeed? A. Badly.

Q. What did you pay for it? A. A thousand dollars.

20 Q. How long did you own it? A. Six months.

Q. What did you do then? A. I sold out; I could not make any money.

Q. For how much? A. Four hundred dollars.

Q. Then you lost \$600? A. Yes, sir.

Q. After your wife went into business in Hoboken? A. Yes, sir.

Q. Your wife after she had been in business with Mr. Boleye or rather after she bought that and sold it out again, then she went into business for herself?

30 A. We went to Europe first.

Q. And afterwards when she came back she went into business again? A. Yes, sir.

Q. Was that carried on in her own name? A. Yes, sir.

Q. The money paid then, whose money was that? A. Her money.

Q. At the time this property was purchased and this building erected, whose money was it that did it? A. My wife's money.

40 Q. You didn't claim any part of it? A. No, sir.

Cross-examination :

Q. When did you begin business in Coney Island, what time was it? A. The 9th of June.

Q. The same day that you borrowed this money from Mrs. Rosenblath? A. Yes, sir.

Q. And you were in business there for a month and a half almost, before you made the conveyance of this property to your wife? A. Well, not quite a month and a half; a month and some days.

Q. What did you do with the money that you made in Brooklyn—the \$1800? A. I went to Europe for the summer, and when I came back I bought that bakery. 10

Q. And in that bakery your wife was in partnership with you? A. No, sir; she was not in partnership.

Q. She lived with you? A. Yes, sir.

Q. And she assisted you? A. She attended to the house.

Q. Didn't she sell goods? A. Well, sometimes; but I had a saleslady there, and my wife went into the store sometimes, like wives do always. 20

Q. And when you sold out that business you came over to Hoboken? A. Yes, sir.

Q. And went into business—you and your wife—there? A. I didn't; she went into business; I was working up on the Hill.

Q. When she was in the bakery business? A. Yes, sir; and then I came down and worked for her then. 30

Q. Then you began working for her? A. Yes, sir.

Q. Whenever she was in business—wherever she had any business—you were always with her to do the baking? A. Yes, sir.

Q. And she did the selling? A. She done the business; she done more than the selling—she done all the business, and that is more than selling.

Q. How soon did you leave Coney Island? A. In the middle of September. 40

Q. So that you were down there how long? A. Three months and some days.

Re-direct:

Q. When did you go to Coney Island? A. The 9th of June or 10th of June.

10 Defendant's counsel offers the lease found in a book of miscellaneous records, page 479, dated January 6th, 1880, between William Worth to Catharine Buttlar. Marked Exhibit No. 1.

MINNA BUTTLAR recalled by defendant's counsel for further *direct examination*:

Q. What is your full name? A. Catharine Minna Buttlar.

20 Defendant's counsel offers in evidence mortgage from Philip Boleye to Minna Buttlar, dated the 19th of June, 1877. Marked Exhibit No. 2.

CHRISTIAN BUTTLAR recalled for further *direct examination*:

Q. Do you know Dora Herman? A. I can't remember.

30 Q. Didn't you on or about the first day of April, 1883, before Justice Rush, give bail for one Dora Herman, at which time you swore that this property belonged to you? A. Mr. Rush called me in and asked me if I would give bail for her; "well" I told him "Mr. Rush can I give bail," and he said "oh, that is nothing to us."

Q. Did you give bail for her? A. Well, I gave bail, but I don't know who for it was.

40 MR. SMITH. I suppose the deed is in evidence.

Q. You didn't own any other real property besides your interest in this land? A. No, sir.

Re-direct :

Q. You own this property on Coney Island yet?
A. Yes, sir.

Q. How much was that worth? A. Between two and three hundred dollars.

Q. That is all.

IN CHANCERY OF NEW JERSEY.

10	Between ELIZABETH ROSENBLATH, Complainant, and CHRISTIAN BUTTLAR AND MINNA BUTTLAR, his wife; GOTTLEIB H. BIER and SOPHIE BIER, his wife, and JAMES F. MINTURN, Defendants.	} Decree.
20		

This cause coming on to be heard before the Court upon bill, answer, replication and proofs, in the presence of Hoffman & Herbert, solicitors for and of counsel with the complainant, and Abel I. Smith, solicitor for and of counsel with the defendants, Christian Buttlar and Minna Buttlar, his wife, Gottlieb H. Bier and Sophie Bier, his wife, and the said defendant, James F. Minturn, having failed to plead, answer or demur to said bill of complaint; and the pleadings having been read, and the proofs taken and heard; and the Court being of the opinion that the several deeds of conveyance in the said bill mentioned and described, for the land and premises therein set forth, were made and executed with the intent to defraud the complainant as a creditor of the defendant, Christian Buttlar, and that the said complainant is entitled to the relief prayed for in said bill of complaint: It is thereupon, on this fourth day of April, in the year of our Lord one thousand eight hundred

and eighty-four, on motion of Hoffman & Herbert, of counsel with the complainant, ordered, adjudged and decreed, and the Court doth hereby order, adjudge and decree, that the said defendant, Christian Buttlar, was seized as against this complainant, as tenant in common with the defendant, Minna Buttlarr, of the land and tenements in said bill mentioned and described.

And the Court doth further order, adjudge and decree, that the said deeds of conveyance in said bill 10 mentioned and described, for the lots of land respectively therein set forth, that is to say: the deed of conveyance made by the defendant, Christian Buttlar, and Minna Buttlar, his wife, to the defendant, Gottlieb H. Bier, bearing date the nineteenth day of July, eighteen hundred and eighty-three, and recorded in Liber 382 of Deeds for Hudson county, New Jersey, page 300, &c. ; also the deed of conveyance made by the said Gottlieb H. Bier and Sophie Bier, his wife, to the said Minna Buttlar, bearing date the 20 same day and year last aforesaid, and recorded in Liber 382 of Deeds for Hudson county, New Jersey, page 301, &c., be set aside, annulled and made void, as to the estate of the said Christian Buttlar therein, as against the judgment "and execution" of the said complainant, in said bill set forth and described; and that the defendants, Christian Buttlar and Minna Buttlar, do pay the costs of the complainant in this cause, to be taxed, and that the complainant have execution therefor, according to the course and prac- 30 tice of this Court. And it is further ordered, that unless the defendants, Christian Buttlar and Minna Buttlar, shall, within twenty-five days after service upon them of a copy of this decree, and of the taxed bill of costs, pay to the complainant, or to her solicitor, the amount due to her upon her judgment in this cause referred to, together with the taxed costs thereon and execution fees, and the taxed costs of this suit, the sheriff of the said County of Hudson, to whom was directed and delivered the writ of *feri* 40

facias de bonis et terris, issued out of the Court of Common Pleas of Hudson county, New Jersey, at the suit of the said complainant, against the said defendant, Christian Buttlar, and in said bill mentioned and set forth, do proceed to sell the interest of the said Christian Buttlar in the said lots of land and premises, free, clear, and discharged of and from the said deeds of conveyance, and of and from all claims of the said Christian Buttlar thereunder, of and by
10 virtue thereof.

THEODORE RUNYON, C.

Respectfully advised.

A. V. VAN FLEET, V. C.

A true copy.

G. S. DURYEE, Clk.

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40

teenth day of July, eighteen hundred and eighty-three, and recorded in Liber 382 of Deeds for Hudson county, New Jersey, page 300, &c. ; also the deed of conveyance made by the said Gottlieb H. Bier and Sophie Bier, his wife, to the said Minna Buttlar, bearing date the same day and year last aforesaid, and recorded in Liber 382 of Deeds for Hudson county, New Jersey, page 301, &c., be set aside, annulled and made void, as to the estate of the said
 10 Christian Buttlar therein, as against the judgment and execution of the said complainant in said bill of complaint set forth and described.

And that the defendants, Christian Buttlar and Minna Buttlar, do pay the costs of the complainant in this cause, to be taxed, and that the complainant have execution therefore, according to the course and practice of this Court.

And that unless the defendants, Christian Buttlar and Minna Buttlar, shall, within twenty-five days
 20 after service upon them of a copy of said decree, and of the taxed bill of costs, pay to the complainant, or to her solicitor, the amount due to her upon her judgment in said cause referred to, together with the taxed costs thereon and execution fees, and the taxed costs of this suit, the sheriff of the said County of Hudson, to whom was directed and delivered the writ of *feri facias de bonis et terris*, issued out of the Court of Common Pleas of Hudson county, New Jersey, at the suit of the said complainant against
 30 the said defendant, Christian Buttlar, and in said bill mentioned and set forth, do proceed to sell the interest of the said Christian Buttlar in the said lots of land and premises, free, clear, and discharged of and from the said deeds of conveyance, and of and from all claims of the said Christian Buttlar thereunder, or by virtue thereof, upon the ground that the same is erroneous, for that the said defendants, Christian Buttlar and Minna Buttlar, as against said complainant, were and are seized of the lands and tene-

ments in said bill described, as tenants by the entirety and not as tenants in common.

And for that the said conveyances were good and valid conveyances in the law as against said complainant, and the said judgment and execution and levy thereunder.

And for that said defendant, Christian Buttlar, did not, before the making of said conveyances, or afterwards, have any estate or interest in the said lots of land and premises, as against said defendant, Minna 10 Buttlar, that was liable to said judgment, or to levy and sale thereunder.

And for that said decree should have been in favor of said defendants and against said complainant.

Your petitioners therefore pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden. And that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

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ABEL I. SMITH,
Solicitor and of
Counsel with Appellants.

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IN CHANCERY OF NEW JERSEY.

	Between	
10	CHRISTIAN BUTTLAR ET ALS.,	} Appellants,
	and	
	ELIZABETH ROSENBLATH,	} Respondent.

The answer of the above named respondent to the petition of appeal of the above named appellants.

20 This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless says, and admits, that a decree was on the fourth day of April last past, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes

30 that the said decree is agreeable to equity, and she prays that the same may be affirmed, with costs to be adjudged to this respondent.

HOFFMAN & HERBERT,
Sol'rs for Respondent.

COMPLAINANT'S EXHIBITS.

C. 1.

Contract between Christian Buttlar, as owner of the premises in question, with John A. Crothers, builder, for the erection of a house on said property. Contract filed Nov. 28, 1881.

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C. 2.

Bill of sale made by Christian Buttlar to Elizabeth Rosenblath, of bakery and store fixtures, 34 Clinton street, Hoboken. Cons. \$460. Dated July 31, 1882.

C. 3.

Lease dated July 31, 1882, between Christian Buttlar, party of the first part, and Elizabeth Rosenblath, party of the second part, by which the party of the first part lets to the party of the second part store and five rooms, at No. 34 Clinton street, Hoboken, for the term of three years from the first day of May, 1883, at the yearly rental of \$420, payable monthly in advance. Covenant of quiet enjoyment.

(Signed),

CHRISTIAN BUTTLAR. [L. s.]

M. BUTTLAR.

ELIZABETH ROSENBLATH. [L. s.] 20

The name of "M. Buttlar" was inserted after the alleged fraudulent conveyance had been made in July, 1883.

C. 4.

[COPY.]

"HOBOKEN, July 31, 1882.

"I, the undersigned, Chr. Buttlar, testify hereby
"that I received one hundred dollars, in United 40

"States lawful money, as security for three years' lease, and promise hereby to pay the legal interest yearly to Elizabeth Rosenblath; and further promise to pay the said \$100 to El. Rosenblath on the first day of May, in the year one thousand eight hundred and eighty-six.

MINNA BUTTLAR.

"CHRISTIAN BUTTLAR."

- 10 The name of Minna Buttlar was inserted after July, 1883.

C. 5.

Comprises thirteen receipts, given monthly from August 1st, 1882, to August 1st, 1883. The following is a copy of the last one—the other twelve are similar:

"HOBOKEN, N. J., August 1st, 1883.

- 20 "Received of Mrs. E. Rosenblath, the sum of thirty-five dollars, for one month's rent in advance for five rooms, store and bakery, in house No. 34 Clinton street, Hoboken, N. J., commencing on August 1st, 1883, and ending at September 1st, at noon; and it is expressly understood that the letting is for one month only.

"CHR. BUTTLAR."

"\$35 $\frac{00}{100}$."

30

C. 6.

Consists of seven receipts, given monthly for rent from September 1st, 1883, to March 1st, 1884, inclusive; similar to C. 5, excepting that the receipts are signed "M. Buttlar" instead "Chr. Buttlar."

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