

NEW JERSEY COURT OF ERRORS AND APPEALS.

SAMUEL FLEISCHMAN, appellant,
v.
 CHARLES E. YOUNG and OTHERS, appellees, } *On appeal.*

AFFIDAVITS ON FIRST BILL.

IN CHANCERY OF NEW JERSEY.

BETWEEN

CHARLES E. YOUNG and OTHERS, complainants, }
and } *On bill.*
 LOUIS TRIER and OTHERS, defendants, }

NEW JERSEY, Essex county, *ss.*—*Theodore Runyon*, of full age, being duly sworn according to law, on his oath saith, that the facts, matters, and things in the foregoing bill of complaint contained, mentioned, and set forth concerning the business operations of the firm of Trier & Co., therein mentioned, and the situation of the 5
 affairs of said concern, he verily believes to be true, this deponent having derived his information in regard thereto from a gentleman who for some time past acted as clerk or book-keeper of said firm, and was in their employ.

THEODORE RUNYON. 10

Sworn and subscribed before me, at Elizabethtown, July 25th, 1853.

B. WILLIAMSON, C.

NEW JERSEY, Essex county, *ss.*—*Samuel Halsey*, of the city of Newark in said county, being duly sworn according to law, on his oath saith, that he, on Wednesday or Thursday of the present 15
 week, met Louis Trier, of the firm of Trier & Co. of Newark aforesaid, in the street in said city, and spoke to him of the impropriety of said Trier's having then recently procured from the firm of Halsey & Taylor, of which deponent is a member, an exchange of said Trier & Co's note for that of said Halsey & Taylor, for 20
 the accommodation of said firm of Trier & Co., seeing that, as appeared by the confession of judgments then recently made by said Trier & Co. in favor of certain persons, the said firm of Trier &

Co. could not at the time of said exchange of notes have been solvent; and the said Trier then said to deponent that he was not aware that the firm owed the borrowed money for which those judgments had been confessed, until about eight days prior to the
 5 day of the conversation which deponent is now narrating; said Trier's exact expression was "about eight days ago."

SAMUEL HALSEY.

Sworn and subscribed before me, at Newark, this 30th day of July, A. D. 1853.

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HENRY D. HEDDEN, J. P.

NEW JERSEY, Essex county, ss.—*Charles S. Macknet*, of the city of Newark in the county of Essex aforesaid, being duly sworn according to law, on his oath saith, that he is, and for from ten to fifteen years last past has been, a director in the State Bank at
 15 Newark; that he is well acquainted with Louis Trier, of Newark aforesaid, one of the firm of Trier & Co.; that occasionally, and more particularly within the last six or eight weeks, the said Trier has applied to this deponent, as such director, to get deponent to use his influence in the board of directors of said bank towards
 20 getting paper discounted by said bank for said firm of Trier & Co.; that on those interviews within the last six or eight weeks, said Trier has represented always to deponent that said firm was perfectly solvent, and able to pay all paper which might be discounted for them by said bank, and that should any of the paper of others
 25 which might be discounted by said bank for said firm be returned protested, that the firm was entirely able to take such paper up at once. In said interviews, said Trier represented to deponent that said firm was doing a flourishing business, and particularly impressed upon deponent the fact, that they bought their goods for
 30 cash, and had very few notes out, and that said firm did not owe much. And deponent further saith, that, on Monday last, he taxed said Trier with having deceived him in regard to the affairs of said concern, and asked for an explanation as to how he could with truth tell deponent that said firm did not owe much, when, as it appeared,
 35 they had recently confessed judgments for about twenty thousand dollars; and said Trier gave deponent to understand in answer, that he did not know, until the time when they took their account of stock, that the firm owed about sixteen thousand dollars for money which he had always supposed Dittenhoeffler had put into the busi-

ness as capital, but which he then found Dittenhœffer had borrowed in the name of the firm.

CHARLES S. MACKNET.

Sworn and subscribed before me, at Newark, this 28th day of July, 1853.

C. H. ANDRUSS, J. P.

5

Examination of witnesses in a cause depending in the Court of Chancery of the State of New Jersey, wherein Charles E. Young, John Young, Samuel Halsey, Charles Taylor, Abraham Mockridge, Elias Francis, John S. Peshine, Daniel F. Colic, Alexander M. 10
Agens, David S. Osborn, Julius Adler, William Cory, and George Martz, are complainants, and Louis Trier, Abraham Dittenhœffer, Isaac Dittenhœffer, Herman Bernheimer, Samuel Fleischman, Samuel Schiffer, Gabriel Schiffer, Jacob Schiffer, Philip Pike, and John Kennedy are defendants; taken at the of- 15
fice of Theodore Runyon, esquire, in the city of Newark, on the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and fifty-three, before Thomas N. McCarter, one of the masters and examiners of the said court, in the presence of Theodore Runyon, esquire, solicitor for and of counsel with the 20
complainants above named.

Solomon Newman, of the city of Newark, a witness produced on the part of the complainants in the above stated cause, being duly sworn, deposes and saith—I was one of the firm of Newman, Trier & Co.; that firm was composed of myself, Abraham Ditten- 25
 hœffer, and Louis Trier. It is about thirteen months since that firm was dissolved, and I left the firm; the business was carried on after that time by the firm of Trier & Co., composed of Louis Trier and Abraham Dittenhœffer. Newman, Trier & Co. dissolved about the fourteenth day of July, eighteen hundred and fifty-two, when 30
 the bargain was made by which Abraham Dittenhœffer was admitted into the firm of Newman & Trier; that bargain was made by Isaac Dittenhœffer, the father of Abraham; Abraham never had any thing to do with the business nor with making the bargain for the partnership. I did not see him; the fact was that Isaac Ditten- 35
 hœffer was really the partner in the concern, and Abraham's name was used instead of Isaac's, at Isaac's request, for certain reasons of his own. Isaac Dittenhœffer agreed to put into the concern ten

thousand dollars (\$10,000) as capital ; he did put in that amount. Before he came into the concern, he, Isaac, had failed in business in New York ; I understood, from him, that he himself was able to put in ten thousand dollars as capital. When I went out of the
 5 firm Isaac Dittenhœffer bought me out, and paid me four thousand nine hundred dollars for my interest in the concern. When Abraham Dittenhœffer came into the concern, I should think he was about sixteen years of age, perhaps a little more or a little less, but not much different from that. When Isaac Dittenhœffer bought out
 10 my interest in the concern, he was from that time to take my share of the profits in addition to the share he already had, that is to say, Dittenhœffer was to have two-thirds, and Trier one third of the profits. At the time the firm of Newman, Trier & Co. was formed, I had never, to my recollection, seen Abraham Dittenhœffer, his
 15 son, neither did I see him until about two months or six weeks after that partnership was entered into, when I was introduced to Abraham, by his father, in the city of New York. Isaac introduced him to me as his son Abraham. The agreement for the partnership of Newman, Trier & Co. was made at the office of Lewis C. Gro-
 20 ver, esq., in the city of Newark.

S. NEWMAN.

Sworn and subscribed, this 29th day of July, A. D. 1853, before me.

THOMAS N. McCARTER, M. C.

25 *Jacob Thomas Garthwaite*, a witness produced on the part of the complainants above named, being duly sworn, on his oath says— I live in the city of Newark, and am, and for many years past have been engaged in the leather business in said city. I am acquainted with the firm of Trier & Co.; I have known the firm since
 30 its existence as a firm; I have known Louis Trier six or seven years; I did not know Isaac Dittenhœffer until about three months after the firm of Trier & Co. was formed; I knew him by sight at the time he entered into the concern; I saw him about there at the time the arrangement was made for forming the firm. I never knew
 35 Abraham Dittenhœffer until a few days ago—since they stopped payment. My establishment is next door to their office in Market-street, in this city, and has been ever since the firm was formed. I have been intimately acquainted with Louis Trier, as a business acquaintance, for six years, but more particularly since the exist-

ence of the firm of Trier & Co. I always supposed that Isaac Dittenhœffer formed the "Company" in the firm of Newman, Trier & Co., in fact Louis Trier told me that he did, and introduced me to Isaac Dittenhœffer as his partner.

I had a conversation, within six months past I think, with Louis Trier about the firm of Trier & Co., in which conversation said Trier told me that one Joseph C. Harvey had offered their paper for discount in the Dover Bank, and that the cashier had refused to discount it, for the reason that his partner was a minor, and that said Harvey had come down from Morris county to Newark to ascertain about the fact; and in this conversation Trier denied to me that his partner was a minor. I knew the age of Abraham Dittenhœffer from his own statement, made to me a few days ago; he told me, a few days ago, that he was seventeen years of age—and that was the only time I ever had any conversation with Abraham Dittenhœffer, and the first time I ever saw him to know him.

I have frequently seen Isaac Dittenhœffer about there, apparently engaged. Trier has frequently talked with me about the capital and business of the concern. Some time within three or four months past Mr. William Miles, of the firm of Hurley & Miles of the city of New York, leather dealers in said city, made a general inquiry of me about the solvency and character of the firm of Trier & Co. On my return home from New York, I mentioned that fact to Trier, and inquired particularly of him in relation to the strength of the concern, and whether their capital (which he gave me to understand was twenty-five thousand dollars) was *bona fide*, and bound for all the business debts of the firm, and would remain in the firm subject to the payment of the debts under any circumstances; he assured me that such was the case, and insisted upon it that nothing could happen to change it. He (Trier) always gave me to understand that their debts did not amount to more than eight or ten thousand dollars at any one time; he frequently gave me to understand this. His conversation led me to believe that there was nothing like a confidential debt, or any thing of that kind, hanging over the concern. To ascertain about this, was one object of my having the conversation with Trier. I always understood that they took a general account of their stock in January, and a sketch of their business in July, so that they could ascertain how they stood twice a year; I understood this from their book-keeper and from Trier himself.

J. T. GARTHWAITE.

Sworn and subscribed, this 3d day of July, A. D. 1853, before me.

THOMAS N. McCARTER, M. C.

Caleb W. Harrison, a witness produced on the part of the complainants, being duly sworn says—I reside in the city of Newark, have resided here two years and a half; my age is thirty-eight years. I was acquainted with the firm of Newman, Trier & Co.,
5 and also with the firm of Trier & Co., their successors; they carried on business in Newark, and had a tannery also in Orange. Their currying shop was in Market-street, Newark, and their Japan shop on the plank road. I acted in the capacity of book-keeper for Newman, Trier & Co. from August, eighteen hundred and fifty-
10 one, to January following; from that time on I acted as general clerk for the same firm up to the following July, when Abraham Dittenhœffler bought out the interest of Solomon Newman in the firm of Newman, Trier & Co., and for the firm of Trier & Co., which last firm was composed of Louis Trier and Abraham Dit-
15 tenhœffler. I acted in the same capacity of general clerk up to about the eighteenth day of July, instant; I did the business generally in the office, the indoor business and the banking business. The books of the concern were kept in the office; I had complete access to them. As far as I knew, the business carried on there
20 was successful; it was a profitable business; the losses that they incurred were inconsiderable, considering the amount of business that they were doing. An account of the stock and of the affairs of the business of the firm of Trier & Co. was taken from the fifth to the ninth day of July, instant, or thereabouts. At that time
25 I understood from the person employed in the business of taking the account, who resides in New York, and is now there, that the debts and liabilities of the firm appeared, by the books, to be between nine and ten thousand dollars; by this I mean what I consider the legitimate liabilities of the firm. The amount of the as-
30 sets appeared at that time, by the books, to be thirty thousand dollars, as he also then stated to me. He also said that there would be a surplus of some ten thousand dollars. He had been engaged in taking the account of stock. The names of Herman Bernheimer, Samuel Fleischman, Samuel Schiffer, Gabriel Schiffer, Jacob Schif-
35 fer, and Philip Pike have never appeared upon the books as creditors of the concern, nor was there any record of any notes or obligations of the concern made in their favor on the books of the concern; nor did the names of Moses Schloss, Samuel Bachrach, Abraham S. Hermann, Lehmaier Brothers, or any of them, appear
40 in any way on the books of said concern. When Abraham Dittenhœffler entered into the concern, he put in ten thousand dollars in cash; the most part of it was put into the bank; I know that it

was all put into the concern ; it passed through my hands ; it was all put in by the first of December, eighteen hundred and fifty-one. I did not know Abraham Dittenhœffer for, I should think, a year after he entered into the concern, or in the neighborhood of a year. After I did become acquainted with him I understood he was a member of Columbia College, and I think he is still a member of that college ; when I first knew him I should judge, from his appearance, that he was about eighteen years of age. Isaac Dittenhœffer was supposed at that time to be the real partner in the concern, but that his name could not be used as a partner because he was a bankrupt. I believed so myself ; I had every reason to believe so. When he came out from New York he would converse upon the general matters of the business as if he were a partner, and I thought he was Abraham Dittenhœffer for the first year, or thereabouts. At the time of the taking of this account of stock I believed that the company was solvent, and that the balance sheet would show a nice balance. Last Wednesday a week, I think, I examined the books of the firm, and found an entry of certain notes of the firm, as follows :

“Passed to A. Dittenhœffer our notes drawn payable to ourselves, as follows :

June 30, one, 40 days from date, of	\$1265.00	
“ 30, “ 1 month “ “ “	2209.96	
“ 10, “ 30 days “ “ “	1200.00	
“ 20, “ 30 days “ “ “	1500.00	25
“ 30, “ on demand, of	2050.00	
“ 25, “ 1 month after date, of	2100.00	
	<hr/>	
	\$10,324.96	

I think the above is just the way in which the entry stands. The 30 first two were made a few days previous to the other four, which were all made at one time—about the first of July.

C. W. HARRISON.

Sworn and subscribed before me, at Newark, this 28th day of July, 1853.

AMZI DODD, M. C. 35

NEW JERSEY, ss.—*Baruch Rothschild*, being duly sworn, on his oath saith, that he has been in the employ of Newman, Trier & Co. and Trier & Co., leather manufacturers, at different times

since January, 1852, being employed to examine their books and
 to assist in taking their account of stock and making out their bal-
 ance sheets, and has been well acquainted with their concerns and
 with the manner in which their books were kept; that the books
 5 of said firm have always been kept incorrectly and inaccurately
 since he has known them, seldom or ever naming the true amount
 of their acknowledged indebtedness; that this deponent knew
 when Solomon Newman went out of said firm, that notes of said
 firm of Newman, Trier & Company had been given, and were out
 10 for a sum exceeding nine thousand dollars, which deponent under-
 stood to be for the moneys advanced through Isaac Dittenhøffer by
 Samuel Fleischman, and that said notes were, after said Solomon
 Newman left said firm, at his request obtained by this deponent, in
 order that the name of said Newman might be taken from said
 15 notes, and he discharged therefrom; that this deponent ascertained,
 from the account of stock taken by him for Newman, Trier & Co.,
 that Newman, Trier & Co. had lost six thousand dollars in five
 months' business; that when the account of Trier & Co. was taken
 in January, 1853, this deponent ascertained that the capital of said
 20 firm was nearly all sunk, and told Trier so; that this deponent took
 the account of stock, taken in presence of Leopold Haas, in July
 last; that the assets and property of said firm at said account
 amounted to about thirty-eight thousand dollars, and that there was
 included therein the full estimated value of the factory, without
 25 deducting a mortgage of 2300 dollars upon the same, and that all
 stock was set down at the value, as given by the foreman and in
 consultation with C. W. Harrison, the book-keeper; the tools and
 buildings were set down at original cost value; all doubtful debts
 were put in, as well as good debts, due to said firm; that the debts
 30 of the firm were inventoried at about thirty thousand dollars, some
 of which were taken from the books and others were given in by
 C. W. Harrison, the book-keeper of Trier & Co., and that said ac-
 count of debts of the firm was taken in the presence of said Har-
 rison; and that no debt was set down except it was taken from the
 35 books of the firm or stated by said C. W. Harrison; and that there
 were more debts of said firm not set down in said account; that
 the loss of six thousand dollars, above mentioned, was incurred in
 the management of the manufacturing business, and not by bad
 debts.

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BARUCH ROTHSCHILD.

Sworn to and subscribed, this 4th day of August, A. D. 1853, at
 Jersey City.

J. D. MILLER, M. C.

NEW JERSEY, ss.—*Leopold Haas*, of the city of New York, being duly sworn, on his oath saith, that he is the brother-in-law of Philip Pike, one of the defendants in this cause; that he negotiated, on behalf of Philip Pike, the loans made by him to Trier & Co., and for which judgment was confessed to Philip Pike, as set forth in the bill in this case; that said moneys were loaned to Trier & Co., which firm this deponent always understood consisted of Louis Trier and Abraham Dittenhœffer, and that said loans were not made to Isaac Dittenhœffer, who was reputed to be insolvent; that this deponent was told by Louis Trier that the moneys so lent, for which judgment was confessed, were used in the business of Trier & Co.; that this deponent delivered said moneys, or the checks therefor, on behalf of Philip Pike, to Isaac Dittenhœffer, who negotiated said loans for Trier & Co., which was done in the office of said Philip Pike, in New York; that one thousand dollars was advanced by check, March 26, 1853, and the balance of the amount of twenty-five hundred and fifty dollars, for which the note to that amount was given to Philip Pike, was advanced by check, March 29, 1853; that the sum of seven hundred and fifty dollars was advanced May 17, 1853, and the sum of thirteen hundred dollars June 20, 1853; that said amounts were advanced by the checks of Lemaier, Myers & Co., the firm of said Philip Pike, upon the Merchants Exchange Bank of New York; that for the two last sums no notes or securities were taken, they being temporary loans for a few days only.

That this deponent went to Newark, at the request of said Philip Pike, to be present at the taking of an account of the stock of said firm of Trier & Co., said Philip Pike having made some conditional arrangement to take an interest in said firm, if found in a prosperous condition; that the account of stock was begun on the fifth of July last, and finished on the eleventh of July, and that this deponent, on account of the object for which he was present, took careful and particular notice of the assets of said firm and the manner in which said account of stock was made; that by said account of stock, the property and assets of said firm amounted to about thirty-eight thousand dollars, that this deponent believed was an over estimate of the value of said property, and by a private estimate of his own, which he kept to report to Mr. Pike, and which he now has, he estimated their outstanding assets at seven thousand five hundred dollars, and their property and stock at 28,000 dollars—this included the Japan factory, valued at 7000 dollars, as unencumbered, which is subject to a mortgage of 2300

dollars, which was not then known or disclosed to this deponent; that the liabilities of said firm appeared by said account to be thirty thousand two hundred and six 73-100 dollars (\$30,206 73-100), of which a large part were falling due in the month of July. In that statement he recollects that there was stated the amount of
 5 forty-six hundred dollars which was due to Philip Pike; that this deponent has since seen entered in the bill book of said Trier & Co. the note given to Philip Pike for \$2550, also a charge of the amount of \$2050 as due in June on demand, also an amount of
 10 \$1526 20-100 due on note marked passed to S. Schiffer & Bro's, also a note for \$2600 at six months, under date of January 20, by Trier & Co., order of A. D.

That at the conclusion of said account of stock this deponent was satisfied that said firm of Trier & Co. could not go on, and he
 15 advised Philip Pike not to advance any more money, and to get the money he had loaned to said firm as soon as he could.

LEOPOLD HAAS.

Sworn to and subscribed, this 4th day of August, A. D. 1853,
 before me.

ROBERT GILCHRIST, Jr., M. C.