

Lewis, Moot & Lewis,
Attorneys and Counselors,
Buffalo, N.Y.
GEORGE L. LEWIS. ADELBERT MOOT.
L. L. LEWIS, JR.

Feb. 27, 1890.

My dear Judge:-

I received your letter at half past nine last night, and now at one o'clock to-day I am able for the first time to answer.

I have not time to refer to authorities in detail in support of my position now, but I assert nothing I cannot substantiate by solid authority. I speak from experience and previous examination and litigation.

Let me say first, that you are right in your impressions as to the practice and as to your rights and those of your wife; in fact, you are usually right. You are not the bond slave of your creditors. You have a right to work for your wife and give her your services, from now until doomsday. If you prefer her to copyright a book which you afterwards write in the manner you do, it is unquestionably hers, and no creditor can reach it by supplementary proceedings, creditors' bill, or other device.

This proposition has been demonstrated with reference to a man who gives his services to his wife and tills her farm, or acts as her agent in a store, and you will readily see either of these cases present more tangible ground to a creditor than your case.

I cannot now stop to refer you to the cases, but I will produce them when necessary.

The examination of Mrs. Tourgee is under the Code, Section

2441. Under this section, they have no right to ask her a single question about any debt or property held by her for you, except the debt or property they make the basis of their proceeding. When she answers broadly that she owes you no debt and holds no property for you and has none of your property in her possession, she has covered the whole ground.

If they then ask her specific questions as to specific property, she may refuse to answer, or answer as she sees fit. If she refuses to answer, then they seek to fine her for contempt by a proceeding of which she has notice, where the question can be argued. If the Court should hold she should have answered, that order is not final, but an appeal from it may be taken to our General Term and Court of Appeals. If the matter involved in the order should be ~~the~~ construction of the copyright law, of course the case might be carried into the United States Supreme Court.

The question of whether your wife has money or property belonging to you cannot be tried on such a reference. Her answer that she has not, is conclusive, and if they desire to question it, they must question it by an action in the ordinary way, where she can defend and be heard.

Westside Bank vs. Pugsley, 47 N. Y., 368.

Your indebtedness to your wife is legitimate, and ~~you~~ will uphold any transfers you have made to her or may make to her, until that indebtedness has been fully discharged.

~~Even if I was not correct in what I have just stated,~~ there are many cases in this state sustaining this position.

In conclusion, that you may receive this promptly, let me say, -First, your wife cannot be badgered as to your affairs, because she has been ordered to answer, not as a witness, but as a third person. Her answer that she has no money or property of yours, settles the question, under the Code Sec. 2441, and 47 N. Y., 368, and that class of cases.

Second, Neither now, nor hereafter, by this or any other proceeding, can the proceeds of any book you may have written, or may write, for her, copyrighted by her, be reached by your creditors, because you are not their slave, but may give your services to your wife, and because your indebtedness to her is abundant consideration to support your transfers to her.

I am very busy, but if you want me at any time, or in any place, wire me and I will do my level best to render you any assistance in my power. I feel, however, that your letter shows that you fully appreciate this proceeding, and need no counsel on a "~~strong~~ *slab* reference".

I advise your wife to refuse to answer further than I have indicated, and I will take the responsibility of her following that advice.

Hoping that the wicked will soon cease from troubling you,

I am,

To

Sincerely your friend,

Hon. A. W. Tourgee, Mayville, N. Y.

Adelbert Moot

1875

Day 12 Lee
Van Buren Spee,
52 Annual 98.

CHATHAM COUNTY HISTORICAL SOCIETY 2014