jurisdiction of the court; but a short consideration may be necessary. The objection to the jurisdiction was not well taken, as we have hereinbefore shown. The bill was subsequently dismissed in so far as it claimed damages for lands sold for taxes, so that the third ground of demurrer need not be considered.

There remains the second ground, charging that the allegations of the bill in regard to the demand for rents lost through the failure and negligence of Peeler in his life-time to collect, are insufficient, vague, indefinite, and uncertain. This ground of demurrer should have been sustained. The bill merely states in this regard "that said Peeler had neglected said business, and hence had failed to collent rents that, with diligence, he might have collected," and was clearly insufficient as the basis of a liability. As, however, no testimony appears to have been taken on account of failure to collect rents, and as such charge was totally disregarded in the court below by the judge deciding the case, it does not appear that the demurrer need cut much figure in the consideration of the appeal in this court.

This brings us to the main complaint of appellant, substantially that on the bill, answer, and proof as made in the circuit court the appellee is not entitled to a decree for any sum whatever, appellant contending that under the agreements made by Peeler no trust relation was created, so far as the lands and the rents thereof were concerned, and that the agreement with Mrs. Butler to credit rents in the contract of 1873 was without consideration, and that claims for rent under it are barred by the statute of limitations. The view we take of the case is this: The original transactions between B. J. Butler and Peeler created a trust in favor of Butler for the two acceptances transferred by Butler to Peeler as collateral security for the payment of Butler, Terry & Co.'s debt to Peeler, and by the express terms of the documents in writing passed between the parties the trust extended to and covered the mortgaged real estate when the mortgage securing the acceptances was foreclosed by Peeler, and he bought in the mortgaged property. From the date of purchase under the foreclosure the lands bought by Peeler thereunder took the place of the acceptances, and Peeler's title thereto was that of trustee for the security of his debt against Butler, Terry & Co. He fully acknowledged the trust in the agreement entered into in 1873 with Mrs. Butler, and again when he made the settlement in 1888 with the complainant. In the agreement of 1873 his rights as trustee were more clearly defined, and his liabilities enlarged, than in the original agreement. The settlement made in 1888 seems to have been on the basis of the agreement of 1873, and the settlement was to the effect that the rents Peeler had received were sufficient to extinguish the debt due him by Butler, Terry & Co., as well as the taxes paid by him, and his outlays, charges, and expenses, including compensation. No account was stated, nor vouchers exhibited; in fact, no account could have been stated, as Peeler's papers and accounts had been destroyed by fire. The case shows that Peeler represented that he had received rent about equal to paying the debt, and

then offered to and did convey the lands in question to the complainant, who accepted the same, giving full acquittance.

Under the pleadings and proof there are two serious difficulties in the way of a recovery by the appellee: (1) Although a full account of the trust is prayed for in the bill, on the theory that the settlement of 1888 should be avoided on account of Peeler's misrepresentations in making the said settlement, yet no account has been taken, or sufficient proof offered, to show that on a full account Peeler's estate would be indebted in any sum. The case, in this respect, at best, for appellee, only shows that Peeler said that he had not collected any rents at all from the Upper place, when in truth and in fact he had collected about $1,200. It seems clear that appellee cannot recover solely on the ground that Peeler made false representations which appellee believed, and that he collected rents from the Upper place. Unless Peeler collected rents from all the lands, sufficient to more than pay the Butler, Terry & Co. debt, with interest, costs, outlays, and charges, appellee cannot recover. (2) The proof as to false representations by Peeler is not sufficient to overthrow the settlement of 1888. The bill alleged the false representation in terms, and called on the defendant to answer under oath. The defendant answered on oath, denying fully and specifically that Peeler made the representations alleged in the bill to be false and untrue. The appellee's proof on the point consists of the testimony of only one witness,—that of her attorney and solicitor, Mr. Marshall; and there are no corroborating circumstances shown sufficient to defeat the sworn answer. The only corroboration claimed is that Marshall also testified that he sent Peeler a letter, in which he said that Peeler had represented in the settlement that he had received no rents from the Upper place, and Peeler had not answered the letter. We notice, however, that the letter of Marshall referred to was one in answer to a previous letter of Peeler in regard to seizing some cotton from the Upper place, and apparently required no answer. In our opinion, no presumption arises against Peeler from neglecting to answer. When the answer to a bill is required to be made, and is made, under oath, and is responsive to the allegations of the bill, such allegations must, to entitle complainant to relief, be sustained by the testimony of two witnesses, or of one witness corroborated by circumstances which are equivalent in weight to the testimony of another witness. See 2 Story, Eq. Jur. § 1528; *Vigel* v. *Hopp*, 104 U. S. 441; *Railroad Co.* v. *Dull*, 124 U. S. 175, 8 Sup. Ct. Rep. 433; *Development Co.* v. *Silva*, 125 U. S. 249, 8 Sup. Ct. Rep. 881; *Beals* v. *Railroad Co.*, 133 U. S. 295, 10 Sup. Ct. Rep. 314. Our judgment is that the complainant in the court below failed to establish a case for equitable relief, and that the decree in her favor was erroneous, and should be reversed; and that, on the case as made, the defendant should have had a decree dismissing the bill. The decree appealed from is therefore reversed, with costs, and the cause remanded, with instructions to dismiss the bill.

FOWLE *et al.* v. PARK *et al.*

(Circuit Court, S. D. Ohio, W. D. January 22, 1892.)

1. BREACH OF CONTRACT—SALE OF PATENT MEDICINE—DAMAGES.
   Where one advertises and sells a proprietary article in a specified territory in violation of a contract the other party cannot recover as damages any moneys spent by him in advertising for the purpose of counteracting the effect thereof, since he might, in the first instance, have resorted to the courts for the protection of his rights.
2. SAME—ACCOUNTING.
   In a suit for injunction and an accounting for violation of a contract not to sell a proprietary article in a specified territory, belonging to complainant, equity cannot decree an accounting for losses suffered by complainant by reason of reducing the price to meet defendant's competition. The accounting is limited to defendant's profits.
3. SAME—REMOTE DAMAGES.
   Even if such damages were allowable generally, losses incurred by continued sales at the reduced prices after defendant had withdrawn from the territory would be too remote to merit consideration.
4. SAME—CALCULATION OF PROFITS.
   Each party having manufactured the article for himself according to the same *formula*, the profits for which an accounting can be allowed must be computed upon the basis of the actual cost to defendant, and not to plaintiff, of making and selling the article; since the selling of nostrums of this character depends less upon intrinsic merits than the expedients used to recommend them to the public, which fact renders the cost of selling by one party no criterion of the cost to another.
5. SAME—INTEREST.
   In an accounting for profits made by selling a proprietary medicine in a specified territory contrary to a contract, interest should be allowed, for though the liability is *ex delicto*, it arises upon a contract.
6. LACHES—EXCUSE.
   One who knows that another is selling a proprietary article in a certain territory in violation of a contract between them, cannot justify a prolonged sleeping upon his rights on the ground that he has not sufficient knowledge of the details to bring suit, since he could bring suit by stating the facts generally according to his knowledge, and by means of interrogatories have a discovery of the details from the other party.
7. SAME—STATUTE OF LIMITATIONS.
   The delay in bringing suit should only operate to reduce the time for which an accounting could be had to the time fixed by the state statute of limitations for actions on written contracts.
8. JUDICIAL NOTICE—SELLING NOSTRUMS.
   The fact that the selling of proprietary medicines and nostrums depends less upon the merits of the medicines themselves than upon the expedients used to recommend them to the public is so notorious that the court will take judicial notice thereof.
9. BANKRUPTCY—EFFECT OF DISCHARGE.
   A discharge in bankruptcy releases the bankrupt from liability for breach of a contract with a creditor who assented to the composition, although the creditor had no knowledge of the breach at the time of giving his assent.
10. SAME—PLEADING DISCHARGE.
    A debtor who fails to plead his discharge in bankruptcy waives the benefit thereof.

In Equity. Bill by Seth A. Fowle and Horace S. Fowle against John D. Park, Ambro R. Park, and Godfrey F. Park for an injunction and accounting. The defendants filed an answer and a cross-bill for an injunction. Both the bill and cross-bill were originally dismissed by the circuit court. On appeal by complainant the decree was reversed. 9 Sup. Ct. Rep. 658. Subsequently a perpetual injunction was allowed against defendants, and the cause was referred to a master for an ac-