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New Jersey Court of Errors and Appeals.

BETWEEN

THE HAMBURGH MANUFACTURING COMPANY, ET AL., *Appellants*,

AND

ELIAS L'HOMEDIEU, ET AL., *Respondents.*

On Appeal from Decree of the Chancellor on advice of Joseph F. Randolph, Esq., a Master in Chancery, on Exceptions to Report of A. Gifford, Esq., Master in Chancery.

WM. PENNINGTON, Solicitor of Appellants.

ROBERT HAMILTON, Solicitor of Respondents.

IN CHANCERY OF NEW JERSEY.

BETWEEN

THE HAMBURGH MANUFACTURING COMPANY, AND OTHERS, *Complainants*,

AND

ELIAS L'HOMEDIEU, JOSEPH E. EDSALL AND OTHERS, *Defendants*.

Interlocutory Decree.

This cause coming on to be heard in the presence of respective counsel of the complainants and the defendants, and the bill, answer, replication, proofs and exhibits, having been read, and the arguments of the respective counsel having been heard, and the chancellor having taken time to consider the same; it is declared that the said complainants are not entitled to the relief prayed for by them, as to the property in the said bill particularly described, and conveyed to the defendant Elias L'Homedieu, as the property of the Clinton Manufacturing Company, the chancellor being of opinion that the said sale was fraudulent and void as against the creditors of the said Clinton Company, the same having been effected under a fraudulent agreement between the said Edward W. Pratt and the said defendants. It is further declared that as to the property of the complainants, The Hamburgh Manufacturing Company, and which was conveyed to the said Elias L'Homedieu by John Broderick, sheriff of the county of Sussex on the 4th day of December, 1838, that the same was purchased and conveyed to the said Elias L'Homedieu, upon the trust, and for the purposes in the said bill mentioned to wit: to pay off all legal incumbrances upon the said property, and to pay and satisfy the said defendants respectively, all just and legal claims due from the said "The Hamburgh Manufacturing Company," to them as creditors of the said company, and that after the payment of the said incumbrances and debts; then in trust for the said Company. It is further declared that the said complainants are interested in the said trust and are entitled to have the accounts taken as prayed for, against the said Elias L'Homedieu and the said Joseph E. Edsall, of the income and proceeds of the personal property of the said "The Hamburgh Manufacturing Company," as well as the rents, issues and profits of the said real estate, taken possession of by them on the 10th day of June, A. D. 1839.

It is now on this thirtieth day of June, 1846, ordered that it be referred to Archer Gifford, Esq., one of the masters of this Court, to take an account of the said personal property taken possession of by the said Elias L'Homedieu and Joseph E. Edsall, under the said trust, and of all other the personal property, being the proceeds and profits of the said real estate and personal estate, or purchased with the proceeds or profits thereof, and of the rents, issues, profits and produce of the said real estate, which have been possessed or received by the said defendants, Elias L'Homedieu and Joseph E. Edsall, or either of them, or by any other person or persons by their or either of their order, or for their or either of their use.

And that the said master also take an account of the respective debts, due from the said "The Hamburgh Manufacturing Company" to the defendants respectively, at the time of the said conveyance to the said Elias L'Homedieu, and the interest which hath accrued thereon, and the amount, if any, paid to them respectively upon their said claims, and what, if any thing, is now due, on their said respective claims, and the said master is at liberty, if he shall see fit, to examine the parties under oath, and to compel them to produce before him, all books of account and papers in their possession or power. And all further directions are reserved until the coming in of the Master's Report.

O. S. Halsted, *C.*

MASTER'S REPORT.

In pursuance of an order of this Court, in the above stated cause, made on the twentieth day of September, A. D. 1848, by which, among other things therein contained, it is ordered that it be referred to Archer Gifford, Esquire, one of the Masters of this Court, to take an account of the personal property taken possession of by the said Elias L'Homedieu and Joseph E. Edsall, under the said trust, and of all other the personal property, being the proceeds and profits of the said real estate and personal estate or purchased with the proceeds or profits thereof, and of the rents, issues and profits and produce of the said real estate, as well of the Clinton Manufacturing Company as of the Hamburgh Manufacturing Company, which have been possessed or received by the said defendants, Elias L'Homedieu and Joseph E. Edsall, or either of them, or by any other person or persons, by their or either of their order, or for their or either of their use. And further in conformity to the decree of this Court, theretofore made in this cause, that the said Master also take an account of the respective debts due from the said "The Hamburgh Manufacturing Company" to the defendants, respectively, at the time of the said conveyance to the said Elias L'Homedieu, and the interest which hath accrued thereon, and the amount, if any, paid to them respectively, I, the said Archer Gifford, do respectfully report to his honor, the Chancellor, that having first duly notified the parties, I have been attended at my office, and at other places, by the counsel of the respective parties, and do find that Elias L'Homedieu did, by deed of assignment and transfer bearing date the second day of April, A. D. 1846, and marked exhibit R. H., No. 5, sell and convey and assign his estate, right, title and interest in the property in question, and all his claims, liens and debts thereon, to Joseph E. Edsall—that the said Elias L'Homedieu has since departed this life, and that the said Joseph E. Edsall, as surviving trustee, has accounted before me for the rents, issues and profits and proceeds of the trust property, pursuant to the terms of the reference in this cause, from the first day of June, A. D. 1839, the time of taking possession of the said property by the said L'Homedieu and Edsall, until the first day of June, A. D. 1849, from which time to the time of taking this account, the said premises have been vacated, all business thereon having been discontinued, and no use whatever made of said property, either for letting or any other purpose whatever. And I do further report that in taking such account, it fully appears, that from the rents, issues and profits, and all the proceeds and produce of the said trust property, there remains nothing in the hands of the said Joseph E. Edsall, to whom the trust survived, wherewith to be charged. And I do further find from the evidence taken before me, that the said premises having lain dormant from the time prior to December, A. D. 1838 to June, A. D. 1839, when the defendants took possession. The dam, flooms, and some other of the most valuable works on the said property, having been destroyed by freshets, and otherwise injured, and become tenantless, that the advances which became necessary for erections and repairs, and in conducting the business of the said property, exceeds the receipts from the business carried on by said defendants. and from all other sources of revenue, the sum of one hundred and thirty-four thousand twenty-five dollars and sixty-one cents, without taking into account any salary or allowance of commissioners, which will appear by Schedule B., No. 5, to this my report annexed, and which I pray may be considered as part thereof. I do further report that there have existed a large amount of debts against the Hamburgh Manufacturing property, none of which appear to have been paid or compromised before the taking possession thereof by the said L'Homedieu and Edsall, as hereinbefore mentioned, although the said premises had been leased to Edward W. Pratt, from the first of December, A. D. 1838, for three years, with a view to the payment and settlement of said debts, without any money realized thereon, and I find that the liens upon the said trust property and the debts of creditors of the Hamburgh Manufacturing Company, and which are preferred under the said trust, being claims on the tract itself, including Edsall's mortgage on the Mine farm, and secured by the trust deed, in conformity to the decree of the Court of Appeals, and the reference to me by this honorable Court, are as follows, that is to say :

Firstly. Liens by mortgage and judgments, and otherwise secured by the trust originally in part given to the said Joseph E. Edsall, and in part assigned and transferred to him, and now held by him, and due thereon to him up to the first day of July instant, the sum of fifty-eight thousand two-hundred and twenty-eight *thousand* dollars and twenty-five cents, as appears by Schedule A., No. 2, to this my report annexed.

Secondly. Debts secured by the trust, to others than the said Joseph E. Edsall, that is to say: To Daniel Haines and others, the amount of six thousand four hundred and ninety-seven dollars and nine cents, as appears more particularly by Schedule A., No. 3, which said Schedules I pray may be considered as a part of this my report.

I have further made the general results to appear by the several additional Schedules—B. No. 1, B. No. 2, B. No. 3, B. No. 4, and B. No. 5, which I pray may also be taken and considered as part of this my report.

In making my report respecting the several matters above mentioned and referred to in the Schedules annexed, I have considered the said Joseph E. Edsall by virtue of the said conveyance or assignment of said Elias L'Homedieu to him, and by having survived the said L'Homedieu, to have acted as a trustee for said creditors, and as such trustee accountable (acting as a trustee for said creditors) for any rents and profits that may have come to his hands, but not accountable for loss or damage or for use or occupation of the said premises. I have further considered that under the circumstances, that the said Joseph E. Edsall was a mortgagee of said premises, and one of the largest creditors, and it appearing from evidence that the said property was taken possession of with the intention of carrying on a business which has utterly failed, and that no balance remains in the hands of said Edsall, for which he can be allowable, but rather a balance due to him, that I have made no allowance of commissions to said Edsall, to which, as trustee, he might otherwise be deemed to be entitled. All which is respectfully submitted.

A. Gifford,
M. & E. in Ch'y.

Newark, July 1, 1856.

EXCEPTIONS TO MASTER'S REPORT.

Exceptions taken by the complainants in this cause to the report made thereon, on the first day of July, in the year of our Lord, 1856, and filed with the clerk of this Court, on the 21st day of October last, by Archer Gifford, Esq., one of the masters of this Court, to whom this cause was referred by a decretal order made in the said cause on the 20th of September, A. D. 1848, touching the matters therein referred to him.

First Exception. For that the said Master has proceeded in his said report on a wrong basis, in charging the trust estate, or the trust fund with the losses in the business conducted by the defendant, Joseph E. Edsall, and by the said Joseph E. Edsall and Elias L'Homedieu on their own account and for their own benefit.

Second Exception. Because the said Master has charged the trust fund and the trust property with the expenses of the improvements and rebuilding of The Hamburgh Manufacturing Company works and other property contained in the said trust, made for the convenience of the said Joseph E. Edsall and of the said Joseph E. Edsall and Elias L'Homedieu, in aid of their own private business and to advance their own private ends.

Third Exception. Because the complainants claimed before the Master that the said Joseph E. Edsall and the said Joseph E. Edsall and Elias L'Homedieu should be charged in the account with an annual rent for the trust property during the time he and they occupied the same in carrying on their private business, which mode of accounting was denied by the said Master, and the cestui que trusts and creditors were treated by the said Master as partners in the said business, and liable for the losses in the same conducted solely for the benefit of the said Joseph E. Edsall and the said Joseph E. Edsall and Elias L'Homedieu.

Fourth Exception. Because the Master persisted in treating the cestui que trusts and creditors as partners in the said business not only against the most positive insistment of the complainants, but against the clearest proofs in the cause, that the business of the said defendants was undertaken for their own and sole benefit, without any consultation with the said parties, and upon the fullest evidence that if successful, the business was to enure to the personal benefit of the debts of the defendants alone, and not to that of the complainants.

Fifth Exception. Because the Master has not charged the said Joseph E. Edsall with all the personal property, ores and wood taken by the said Joseph E. Edsall and the said Joseph E. Edsall and Elias L'Homedieu, and used by them, or either of them for their own uses and purposes in carrying on business at the said works, nor with the true amount sold by them, or either of them.

Sixth Exception. Because the Master in his report says the said Joseph E. Edsall has accounted before him for the rents, issues and profits of the property in his hands, and yet, that from the same there was nothing in the hands of the said Joseph E. Edsall wherewith he could be charged, and that against uncontradicted and the fullest evidence that the said rents, issues and profits were of large value annually.

Seventh Exception. Because no power or authority was given the Master to charge the trust fund or the trust property, or the cestui que trusts with the results of the business carried on upon the works at Hamburgh, by the said L'Homedieu and Joseph E. Edsall, or by the said Joseph E. Edsall, no such matter having been referred to the said Master by the order of reference, but on the contrary, he was directed to take an account of all the property taken possession of by the said defendants under the said trust, and of the proceeds and profits of the real estate, and the rents, issues, profits and produce of the said real estate.

Eighth Exception. Because the said Master erred in charging against the trusts the improvements made on the works at Hamburgh, and machinery placed therein.

Ninth Exception. Because the said Master has allowed the said Joseph E. Edsall, the acting trustee and survivor, a larger amount of claims than he is entitled to, and has allowed such claims for their face with interest, when in truth and in fact, they were bought in by the said Joseph E. Edsall, for a very small amount, and should have been allowed him only for the amount paid by him for them with interest.

Tenth Exception. Because the said Master acted upon the idea, but which is expressly contradicted by the proof in the cause, that the trustees took possession of the property with the intention of carrying on the business for the benefit of the creditors and others interested in the concern, and as the business failed in his opinion, therefore the creditors and stockholders are to suffer.

Eleventh Exception. Because the said Master declared by his report there was nothing coming from the said Joseph E. Edsall, on account of the said trust, but that a large sum, to wit the sum of one hundred and thirty-four thousand and seventy-five dollars and sixty-one cents, was due and owing to him for advances and repairs, and in conducting the said business; whereas on the true mode of accounting, a large sum of money was due and owing from the said defendant, Joseph E. Edsall, as trustee to the said trust, for property sold by him, and for the rents and profits of the real estate received by him or which he was justly chargeable for.

Twelfth Exception. Because the said Master, while he declared the said Joseph E. Edsall a trustee and as such trustee accountable for any rents and profits that may have come to his hands, refused to charge him for any loss or damage of the premises in his charge, or for the use and occupation of the said premises.

In which said several matters above specified these exceptants except to the said report, and humbly conceive that the said Master hath erred, and that the said report is wrong, unjust and inequitable, and therefore pray that the said report, so far as regards the particulars above specified, and as a whole as being founded on a wrong principle of accounting, may be disallowed, rejected and set aside and a new report be ordered to be taken, and that the said report may be corrected and amended accordingly, and they pray the judgment of this court thereupon.

WM. PENNINGTON,
Solicitor and of Counsel with Complainants, Exceptants.

ORDER

OVERRULING EXCEPTIONS AND CONFIRMING REPORT.

This cause having been referred to Archer Gifford, Esq., one of the Masters of this Court, to take an account, as in the order of reference in that behalf made by this Court, and on file, will more fully appear, and the said Master having taken the said account, and made his report thereupon, bearing date on the first day of July, 1856, and filed in this Court on the twenty-first day of October, in the last said year, as in and by the said report and Schedules thereto annexed, will more fully appear. And the said complainants, by their counsel and solicitor, William Pennington, having on the eighth day of January, 1857, filed exceptions to the said Master's report, and the chancellor having been of counsel, while at the bar, with the complainants, by an order made on the twentieth day of May, 1857, by consent of parties, Joseph F. Randolph, Esq., one of the Masters of this Court, was substituted in the place of the chancellor, to hear the said exceptions, and advise the chancellor thereon, and the said Master Randolph having heard the counsel of the respective parties upon the same, and having advised the chancellor that the said exceptions should be overruled, it is thereupon on this twenty-fourth day of February, 1858, ordered and decreed by the chancellor that the said exceptions be overruled, and that the said report of the said Master Gifford do stand ratified and confirmed with costs.

B. WILLIAMSON, C.

PETITION OF APPEAL.

To the Honorable the Judges of the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey :

The petition of the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by an interlocutory decree, made by his honor the chancellor, bearing date the twenty-fourth day of February, in the year of our Lord, one thousand eight hundred and fifty-eight, in a suit wherein the said appellants are complainants and the said respondents are defendants, on exceptions filed by the said complainants to the report of Master Archer Gifford, Esq., to whom the said cause was referred, to state an account in this report, to wit: that the said decree overrules the exceptions taken to the said Master's report, and affirms the said report in all respects with costs. And your petitioners appeal from the said decree upon the ground that the same is erroneous, for that the said report of the said Master should have been set aside with costs, and the said exceptions sustained, and the cause referred back to some Master of this Court, to restate the said account on new principles, and such as are embraced in the exceptions to the said report, filed in the Court of Chancery.

Your petitioners therefore pray that the said decree of the chancellor may be reversed, set aside and for nothing holden; that your petitioners may be allowed their costs, and that your petitioners may have such relief in the premises as to this honorable Court shall seem meet.

Dated March 15, 1858.

WM. PENNINGTON,
Solicitor and of Counsel with Appellants.

Answer of respondents filed and in usual form.

OPINION.

RANDOLPH, Master. The interlocutory decree in this cause directs the Master to take an account of the personal property taken possession of by the said L'Homedieu & Edsall, under the trusts named in the decree, and of all other the personal property being the proceeds and profits of the said real and personal estate, or purchased with the proceeds or profits thereof, and of the rents and issues, profits and produce of the said real estate, as well of the Clinton as of the Hamburgh Manufacturing Company, which have been possessed or received by said defendants, or either of them, or by any other person or persons, by their order, or the order of either of them, for their use. The Master was also directed to take an account of the debts due from the Hamburgh Manufacturing Company to the defendants at the time of the conveyance to said L'Hommedieu and the interest and payments thereon.

The Master reports the debts due to Joseph E. Edsall, one of the defendants, from the Hamburgh Manufacturing Company, at the time of the conveyance to Elias L'Hommedieu, Dec. 24, 1838, with the interest from that time to the 1st of July, 1856, to be $58,228 25, and the other debts due from said Company to be $6,497 09. He also reports the advances made by the defendants in carrying on the Hamburgh Iron Works from the time they took possession of them, to be $380,020 40, and the proceeds arising from the sales of iron, &c., by the defendants, to be $207,661 64—leaving for excess of advances, $172,358 94, or deducting from the advances, $38,333 33, for services rendered by defendants, the excess of advances above the sales and receipts are reported at $134,025 61. The Master also reports that Joseph E. Edsall, having survived his co-trustee, the said Elias L'Hommedieu, has, as such survivor, accounted to him for "the rents, issues and profits and proceeds of the trust property, pursuant to the terms of the reference," from the taking possession of the trust property on the 1st of June, 1839, until the premises were vacated and the business discontinued by the defendants, June 1st, 1849, and he reports "that in taking such account, it fully appears that from the rents, issues and profits, and all the proceeds and produce of said trust property, there remains nothing in the hands of said Joseph E. Edsall, to whom the trust survived, wherewith to be charged."

To this report, several exceptions have been taken, but all that has been urged upon the hearing is substantially embraced in the first and third exceptions, which are

(1.) That the Master has proceeded in his report on a wrong basis, in charging the trust estate or trust fund with the losses in the business conducted by the defendants on their own account, and for their own benefit. And also, (3.) Because the complainants claimed, before the Master, that the defendants be charged with an annual rent for the trust property during the time they occupied the same in carrying on their private business, which mode of accounting was denied by the Master, and the *cestui que* trust and creditors were treated by him as partners in the said business, and liable for the losses in the same, conducted solely for the benefit of the defendants.

The complainants insist that by the terms of the reference, the Master must charge the defendants with an annual rent and the interest thereon, and they produce some two or three witnesses who state that from two to three or four thousand dollars a year would have been a fair rent for the trust property. On the other hand, the defendants say that they are only trustees, that they never rented the property, that they only took possession thereof at the earnest request of the creditors of the Hamburgh Company, when nobody else would take it, by law or otherwise, to preserve it from destruction, and to hold and work it until the same could be sold or rented; that for the same reason they were compelled to retain the same for several years, and work it at a sacrifice, and until the aggregate loss exceeded one hundred thousand dollars, and that therefore they have nothing for which they ought to account.

It appears from the evidence that all the personal property was sold by the sheriff, prior to the possession of the defendants, and as to any personal property, the proceeds and profits of the real estate, or purchased therewith, that of course must depend on the fact of there being such proceeds and profits; so that in reality the whole matter is narrowed down to the enquiry whether the Master has, in accordance with the reference, taken an account of the rents, issues, profits and produce of the real estate held in trust.

Ordinarily, an account required from a trustee of the rents and profits, or of the rents, issues, profits and produce, would be an account showing the balance in his hands of the rents and produce received over and above the necessary expenditure; but as in this case no rents were received by the trustees, unless they are themselves chargeable with the rents, it is necessary to look beyond the order of reference, to ascertain as well what the Court and party meant by the reference, as for what the trustees, by the principles of law and the facts in this case are chargeable.

It appears by the evidence in this case, that the Hamburgh and Clinton Manufacturing Companies, some years since being insolvent and the sheriff of Sussex county having against them several executions on which he had advertised, and was about to sell their property, the creditors of said Companies after several conferences on the subject, on the seventh day of December, 1838, entered into a written agreement, by which amongst other things, they agreed that Elias L'Hommedieu, as their agent and trustee, should purchase for the creditors' use, the property of the two Companies, to be sold by the sheriff, for any sum not exceeding with the incumbrances, the sum of thirty-two thousand dollars; and they authorized their agent and trustee to raise by bond and mortgage on the premises, such sum of money as would be sufficient to pay the purchase money, the amount of incumbrance, the creditors' debts and two thousand dollars to put the furnace in blast; they authorized him also, upon certain terms, to lease and to sell the property; after this agreement was executed, the property was sold, and Mr. L'Hommedieu in pursuance thereof, became the purchaser and subsequently entered into possession thereof, and leased the property and also entered into an agreement to sell the same to Edward W. Pratt, a large stockholder in the Company, one of the complainants, who, through pecuniary embarrassments and other causes, was unable to comply with his lease or agreement, or to possess and use the property under them; Mr. L'Hommedieu failing to dispose of the property by lease or otherwise, or to raise money thereon to pay the incumbrances and debts, and put the property in order for blast; the creditors were called together to devise the means for disposing of, or using the same. All the creditors except L'Hommedieu and Joseph E. Edsall refused to take upon themselves, together or separately, the use of the property, several of them declaring that they would rather lose their debts than run the risk; Mr. Pratt being at this time confined for debt, in the Newark jail, gave up his lease and agreement for purchase, and at length L'Hommedieu and Edsall, at the earnest request of the creditors, concluded to take possession of the property and endeavor to work it to the best advantage. Edsall was the largest creditor and held mortgages on the property, and says he took possession as mortgagee in conjunction with L'Hommedieu, as trustee, whom he has survived and whose interest he acquired, and he is now the sole trustee, not only for the agreeing creditors and such others as did not enter into the agreement, but also according to the decision of this Court and of the Court of Errors and Appeals, as trustee for The Hamburgh Company and its stockholders, amongst whom are Edward W. Pratt and the other complainants, if there be any thing left of the property and its earnings after the incumbrances and debts are all paid. There seems to have been no lease or other agreement either by parol or in writing entered into by or for L'Hommedieu and Edsall, when they took possession of the property with a view of working it, on the first day of June, 1839.

"Thomas D. Edsall says in his testimony before the Master, that he was present at two or three meetings of the creditors, at Hamburgh and at Newton, and one at Gov. Haines' office, prior to the possession taken of said works by L'Hommedieu; the creditors then said L'Hommedieu and Edsall should take possession and drive the said works, but they were not willing themselves to do so, because they considered it a losing business." Under these circumstances the defendants took possession, when the property was much out of repair and the dam carried away by a storm, and when it was necessary to expend large sums of their own money to put the works in operation before they could hope for any remuneration. We may ask perhaps as well at this point as any other, what was then the understanding between the trustees and the other creditors as to the rent for the property possessed; was it then understood that the trustees should pay a fixed rent for the property, be liable for its use and occupation without regard to the returns of their business, or that they should simply be charged as trustees, for all monies they might receive over and above their actual expenditure ?

The principles of law applicable to trustees, are well settled: a trustee is never permitted to make any profit to himself in any of the concerns of his trust; on the other hand, he is not liable for any loss which occurs in the discharge of his duties, unless he has been guilty of negligence, malversation or fraud. 1 Story Eq. § 465; 1 Vesey Jr. 32, Wilkerson v. Stafford and cases in 1 Vesey Supplement p. 9; 6 Vesey, Jr. 488, Caffrey v. Darbey; 1 John Ch. R. 27, Green v. Winter; 6 Halst. 145, Voorhees v. Stoothoff.

A trustee is not chargeable with more than he has received, unless in a case of gross negligence amounting to wilful default. 2 John Ch. R., 1 Osgood v. Franklin; 1 Vernon 144; 1 Vesey Jr. 193; 4 John Ch. R. 619; 1 Saxton 295, St. Bank v. Marsh & Edgar; 16 Mass. R. 221, Barrett v. Joy.

A trustee will not be held liable for estimated rents when none were received, and the delay in selling the trust property was for want of purchasers. 7 Gratton 476, Griffin v. McCauley.

There is no pretence here of any fraud or negligence; on the contrary, it appears that the trustees were skilful and energetic men, and did the best that circumstances, and the precarious state of the iron business permitted; and yet, in a few years, so far from making money, they sunk over one hundred thousand dollars, as appears by their accounts, the correctness of which is not contested. Can the creditors then, whose immediate trustees the defendants are, insist, under the circumstances of this case, upon charging them with a regular annual rent ? I think not. There is no contract that requires it, and no principle of law that would justify it; and no creditor has come forward to claim it, although their claims are still unliquidated. If, then, the immediate *cestui que* trusts cannot claim of the defendants rents, when none were received, and none made, can the mere resulting *cestui que* trusts who lie behind the unpaid creditors, make the claim, in the hopes that the property may reach them by thus paying off the creditors ? I think not. The Hamburgh Company, and Edward E. Pratt, and the other stockholder complainants, have only a right of redemption or resulting right to the property, after the sixtyfive thousand dollars of debts are paid off, and they surely can have no greater power to charge the trustees than those who appointed them, and for whom they were acting. And this seems to have been the view of the complainants when they filed their bill, for they do not charge the defendants for any rent reserved by lease or agreement, or for any amount for the use and occupation of the premises, but for the profits that they had made, viz. "that defendants, after paying all expenses thereof, cleared out of the first blast upwards of fifteen thousand dollars, and out of the second blast more than ten thousand dollars, together a sum more than sufficient to pay all the debts of the Hamburgh Company;" that defendants had not accounted for "the proceeds and rents and profits," or for "the proceeds and profits of the said *blasts*, during the period they had possession of the said property," that the defendants pretended that "they had not *realized* sufficient from the said property to pay off the said creditors, &c.," the contrary whereof is charged to be true, and the prayer of the bill is for an account of "the rents, profits and produce of said real estate, and that in taking such account the defendants be charged with "interest for such *balances* as shall appear to have been in their hands from time to time," and the evidence adduced by the complainants prior to the hearing before the Master, seems to be to sustain the same view of the case.

In 1848, after this cause had been decided in the Court of Appeals, the complainants applied to the chancellor for the appointment of a receiver, which motion was refused by the chancellor, on the ground that "the works are now in operation, conducted by Edsall, a man experienced in the business, and of unquestioned responsibility." Why apply for a receiver, if the property was already at a rent for its full value, to a responsible man, or why refuse it on the ground that the trustee was "a man experienced in the business?" And the chancellor asks, in conclusion, why appoint a receiver where there is no apprehension of danger from the property remaining in the use of the trustee, and he has been ordered to account "for the rents that may *have been received?*" And again, pretty much the same view is taken by the chancellor, in 1849, on refusing a motion to appoint a new trustee. According to the evidence, during all the time the defendants held the property, it was held for rent or sale, and no offer was ever made for either, although at a time when iron commanded the highest price, and when it was offered for sale for $22,500 to $25,000. Several witnesses testify that not only the Hamburgh Iron Works, but several other works in the same part of the country, were conducted, during the time the defendants occupied this property, at heavy loss, and in fact that pretty much all who had engaged in the manufacture of iron in New Jersey, during that period, had either become bankrupts or sustained heavy pecuniary losses; and that the annnal value of iron works was little or nothing, if not absolutely worse than nothing: so that if I had any doubt of the correctness of the principle on which the Master has placed his report, looking at the present depreciated value of the property, the large amount of debts unpaid, the small *quantum meruit* return that could arise from a different principle of accounting, the satisfaction of the creditors, who are the immediate *cestui que* trusts, I should hesitate to send this matter back to the Master without some stipulation on the complainants to pay any deficiency that might eventually be coming to the creditors of the Company, for if we charge the trustees the heavy rent of $2,500 a year for the ten years they occupied the premises, and estimate their present value as high as $25,000, there will still be several thousand dollars coming to the creditors beyond the amount of rent and value, and of course that much short of reaching the complainants. But from the whole case, I entertain no doubt of the correctness of the principle adopted by the Master, and contrary to my first impression, I am constrained to recommend to the chancellor to overrule the exceptions and confirm the report.

JOS. F. RANDOLPH,
Master C. C.