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**Bill of Complaint.**

Filed Aug. 21, 1922.

**In Chancery of New Jersey.**

10

To his Honor, EDWIN ROBERT WALKER, Chancellor  
of the State of New Jersey:

Complaining, shows unto your Honor, EDWARD  
H. McCORMICK, JR., of the city of Newark, County  
of Essex and the State of New Jersey, a creditor  
and stockholder of E. H. McCormick and Sons,  
a body corporate, for and on behalf of himself and  
all other creditors of said company, and the stock-  
holders thereof, who shall come in and contribute  
to the expenses of this suit. 20

I.

Complainant is a creditor of said E. H. McCor-  
mick and Sons to the extent of five thousand dol-  
lars, (\$5,000.00) with interest thereon, which said  
indebtedness is found upon a claim for salary for  
two years, all of which said sum, with interest as  
aforesaid, is justly due and owing to the complain-  
ant from said company for the two years next pre-  
ceding this date. 30

II.

Complainant is a stockholder of said company  
and is the owner and holder of one hundred shares  
of the capital stock (all common) of the par value  
of ten thousand dollars, (\$10,000.00).

Bill of Complaint.

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## III.

Said E. H. McCormick and Sons is a corporation created and existing under and by virtue of the laws of the State of New Jersey, and was incorporated on December 23, 1902, under and pursuant to the terms and provisions of an act of the Legislature of the State of New Jersey entitled "An act  
10 concerning corporations" (Revision of 1896). Approved April 21, 1896, and the several acts amendatory thereof and supplemental thereto.

## IV.

That the authorized capital stock of said company is \$100,000.00, divided into one thousand shares of the par value of \$100.00 each of common and all issued and outstanding.  
20

## V.

That the objects for which said corporation was organized are as follows: The general manufacture of patent and enamel leather and kindred products, and the sale thereof in all branches and ratification of the industry.

## VI.

30 That after the organization of said company it purchased certain real estate in the city of Newark, and erected thereon buildings and put therein machinery suitable for the purposes of its business, and has continued to carry on the manufacture of patent and enamel leather. The real estate of said company is about the value of \$100,000.00, including the buildings erected thereon. The other assets of the company consist of machinery and fixtures and  
40 are the value of \$10,000.00, less about \$3,000.00 to

Bill of Complaint.

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be charged off into depreciation. There are no accounts receivable or other assets, and the total value of the entire assets of said company is \$110,000.00 with the depreciation hereinbefore noted.

## VII.

10

That said company is indebted upon outstanding promissory notes in the sum of \$60,000.00 secured by a second mortgage on the real estate. The company is indebted on a first mortgage to the sum of \$7,000.00 covering this real estate.

## VIII.

That the said mortgage is due and pressing for payment. It is also indebted upon outstanding promissory notes in the sum of \$60,000.00 which it secured by a second mortgage and its real estate, now due and being foreclosed. It owes accounts payable and all other current outstanding indebtedness, amounting to about forty-five thousand dollars, (\$45,000.00), making total liabilities of the said company of \$112,000.00 all of which said company has no funds to meet and satisfy.

30

## IX.

The liabilities of said company amount to about \$5,000.00, over and above the total value of all the assets of said company could the full value of said assets be realized. Said company has no money or cash assets whatever wherewith to meet its current obligations and has exhausted all its means of raising funds wherewith to carry on its business.

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Bill of Complaint.

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X.

That the said corporation is unable by realizing upon its assets, even at a great sacrifice, or by the securing of further loans to meet its current obligations which have already matured and which will mature in the near future, and in view of the present industrial depression, it would be impos-  
10 sible for the company in the near future to raise by loans or otherwise sufficient funds to enable it to prosecute its business with safety to the public and advantage to its stockholders. Complainant believes and avers the fact to be that said company is insolvent and has suspended its ordinary business for want of funds to carry on the same.

XI.

20 That the assets of said company are subject not only to judgment and executions in suit brought against the company by its creditors, but also subject to attachment at the suit of said creditors, and that unless the assets of the said corporation are properly marshaled by a receiver or receivers to be appointed for said corporation, the said corporation will be subject to vexations or costly litigation, and in the event of forced sales its said  
30 assets will bring very much less than its fair and reasonable value, all of which would be a great detriment to complainant and the other stockholders and creditors of said corporation. Complainant believes that unless this court will deal with the property of said corporation as a single trust fund, said property will be dissipated to such an extent that the creditors of said corporation will be unable to collect their claims  
40 or any substantial part thereof, and its stockhold-

Bill of Complaint.

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ers will realize little or nothing from their holdings of its stock, and that the intervention of this court is necessary to the protection of said stockholders and creditors, to the end that this property may not be dissipated by a multiplicity of suits to the detriment of the great body of creditors and stockholders thereof.

10

## XII.

Complainant is without adequate remedy without the assistance of this Honorable Court, where matters of this nature are particularly cognizable and relievable, and therefore prays,

## I.

That said company may full, true and perfect answer make to all and singular the matters and things hereinbefore stated, and that it may set forth and discover the goods and chattels, rights and credits, moneys and effects and real estate of every kind and description belonging to said corporation.

20

## II.

That complainant and the other creditors and stockholders of said company may be paid what is justly due them.

30

## III.

That the said company may be enjoined from exercising any of its franchises and from receiving any debts due to it, and from paying and transferring any of its moneys and effects, and from continuing its said business.

40

Bill of Complaint.

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## IV.

That said company may be decreed to be insolvent; and that a receiver may be appointed in accordance with the form of the statute in such case made and provided, with the usual powers;

## V.

10

That the assets of the said corporation and the rights of complainant and all other stockholders and creditors of said company may be ascertained, and that the court will fully administer the funds in which complainant is interested, being the entire assets of said corporation, and will, for that purpose marshal all of its assets, and ascertain all the liens and priorities, if any existing, on any and all parts thereof, and enforce the liens and rights  
20 of all the creditors of the said company as the same may be finally ascertained, and that complainant may have such further and other relief as may be required. That a writ of subpoena may issue, demanding said defendants to answer this Bill of Complaint, and to abide by such decree as this court may make in the premises. That a writ of injunction may issue, directed to the said defendants of the company, its officers, servants and agents en-  
30 joining them and each of them from intermeddling with its assets or carrying on its business.

Solicitor for and of Counsel with Complainant.

At a special meeting of the Board of Directors of E. H. McCormick and Sons, a body corporate, held at the office of the company on Vanderpool Street and Avenue "C", Newark, New Jersey, on Monday,  
40 August the Twenty-first, 1922, at the hour of one

Bill of Complaint.

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o'clock in the afternoon of said day, of which all the directors had notice and attended, the following resolution was adopted.

WHEREAS, this company for the past two years, by reason of general business depression, has transacted little or no business in the manufacture and sale of leather, that being its regular line, and by reason of such failure to transact its ordinary business it has become wholly unable to meet its pecuniary liabilities as they mature by means of available assets or the use of credit, and whereas, its creditors are pressing the company for the payment of their demands and thereby endangering a fair division of its assets without giving undue preference to any, now therefore, Be It Resolved, that this company believes that a receiver should be appointed to conserve the assets of the company and divide its assets among its creditors and wind up its affairs in accordance with the statute, in such case made and provided. 20

I, JOSEPH H. McCORMICK, Secretary of E. H. McCormick and Sons, a body corporate do hereby certify that the foregoing is a true copy of a resolution, passed this day as taken from the minutes of the corporation. 30

Given under my hand, and seal of office, this twenty-first day of August Nineteen Hundred and Twenty Two.

JOSEPH H. McCORMICK,  
(Secretary)

## Bill of Complaint.

STATE OF NEW JERSEY }  
 County of Essex } ss:

EDWARD H. McCORMICK, JR., being duly sworn according to law, on his oath says,—

That he is the complainant named in the foregoing Bill of Complaint; that he has read the same and knows the contents thereof and the same is true  
 10 to the best of his knowledge, information and belief; deponent further says, that he is a creditor of said E. H. McCormick and Sons, a body corporate, to the extent of five thousand dollars, (\$5,000.00) with interest thereon, that being founded upon a claim for salary for two years last past, and he is a stockholder to the extent of one hundred shares of its fully paid capital stock; said company is a corporation organized under the General Corpora-  
 20 tion Act of the State of New Jersey, (Revision of 1896) entitled "An act concerning corporations." (Approved April 21, 1896) and the several acts amendatory thereof and supplemental thereto, and was incorporated on December 23rd., 1902; that the authorized capital stock of said company is \$100,000.00, divided into one thousand shares of the par value of one hundred dollars, (\$100.00) each, all being common stock and all issued and outstanding. The object for which said company organized was  
 30 to manufacture and sell patent and enamel leather and kindred products, and that after its organization said company purchased real estate in the City of Newark and erected thereon buildings and put therein machinery suitable for the purposes of its business, and has continued to carry on the manufacture of patent and enamel leather and kindred products, up to the present time, with such interruptions as were caused by business depression.  
 40 That the real estate of the company is about the

Bill of Complaint.

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value of \$100,000.00, including buildings erected thereon and the machinery and fixtures therein as about the value of \$10,000. less the depreciation of about \$3,000.00, and it has no other assets of any kind, making the total value of the entire assets of said company about \$110,000.00, less the depreciation of \$3,000.00 before mentioned, and the said assets would hardly bring the said amount at a forced sale.

The company is indebted upon a bond secured by a first mortgage on said real estate of \$7,000.00 and upon outstanding promissory notes secured by second mortgage upon said real estate in the sum of \$60,000.00; accounts payable and all other current outstanding indebtedness about \$45,000. amounting altogether to \$112,000.00, all of which indebtedness said company has no funds to meet and satisfy, except the assets hereinbefore mentioned; and the liabilities amount to about \$5,000.00<sup>20</sup> over and above the total value of all the assets could the full value of said assets be realized, and said company has no money or cash assets whatever wherewith to meet its current obligations or its pay roll, and it has exhausted all of its means of raising funds wherewith to carry on its business. That the deponent is Treasurer of said company and he is well informed as to these matters. The company has no supplies or raw material on hand,<sup>30</sup> or has it any accounts or notes receivable, and is unable either to realize upon its assets, except at a great sacrifice, or to secure further loans to meet its obligations which have already matured and which will mature in the near future. That the note held by The National Newark and Essex Banking Company of Newark, which are secured by a second mortgage of \$60,000.00 on its real estate, are being pressed for payment and the said mort-<sup>40</sup>

Bill of Complaint.

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gage is now being foreclosed; and other creditors have begun suits and judgment will be entered, and they are pressing strenuously for payment in a few days. Owing to the present industrial depression it is, in the opinion of the deponent impossible for the company in the near future to raise by loans or otherwise sufficient funds to enable it to prosecute its business with safety to the public and advantage of its stockholders, and deponent believes and avers  
 10 the fact to be that the company is insolvent and has suspended its ordinary business for the want of funds to carry on the same.

If the rights of the corporation are not properly marshaled by a receiver or receivers the corporation will be subject to vexations and costly litigation and its assets will be forced to sale and will bring very much less than their fair and reasonable values which will be injurious to the rights of its  
 20 creditors and stockholders, including deponent. Deponent believes that a receiver should be appointed to take charge of said corporation and marshal its assets as a single trust fund for the protection of and for the said stockholders and creditors, so that its property may not be dissipated to their detriment. Attached to this is Bill of Complaint and following is a Resolution adopted by the Board of Directors of the said corporation  
 30 confessing insolvency and requesting appointment of a receiver, to which deponent begs leave to refer in support of his allegations herein.

E. H. McCORMICK, JR.

Sworn and subscribed to before  
 me at Newark, New Jersey }  
 this 21st day of August, 1922. }

HENRY R. DOLAN,

Attorney at Law

of New Jersey.

**Order Appointing Receiver.**

Filed Aug. 21, 1922.

## IN CHANCERY OF NEW JERSEY.

*Between*EDWARD H. McCORMICK, JR.,  
Complainant,

AND

E. H. McCORMICK AND SONS,  
Defendant.On Bill for receiver  
Order appointing re-  
ceiver, etc.

10

This matter being opened to the Court by MICHAEL J. TANSEY, of counsel with the complainant in the above entitled cause, and upon reading and filing the Bill of Complaint and Affidavit and Resolution thereto annexed, it appearing to the court that the said defendant is unable to meet its current obligations, or to continue its business with safety to the public or advantage to its stockholders, and is insolvent, and that a receiver for the defendant company should be appointed by this court to take charge of and administer all of its assets and property.

20

It is, thereupon, this 21st. day of August 1922, ORDERED, ADJUDGED AND DECREED as follows:

30

1. That PATRICK J. DOLAN of Newark, New Jersey, be, and he hereby is, appointed receiver of said defendant company and of its assets and property of every character and description wheresoever situated, with full power and authority to demand, sue for, collect and receive and take into his possession, all goods and chattels, rights, credits, moneys and

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Order Appointing Receiver.

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effects, lands and tenements, books, papers, choses  
in action, bills, notes and property of any and every  
description belonging to the said defendant com-  
pany, E. H. McCORMICK AND SONS, or to which it  
may be entitled to sell, convey and assign any and  
all of the real estate of the said corporation and to  
do and perform all the duties imposed upon him and  
required by law, and especially by an act entitled  
10 "An act concerning corporations (Revision of  
1896)," and the acts supplementary thereto and  
amendatory thereof.

2. And it is further ordered that the said re-  
ceiver, before entering upon the discharge of his  
duties, shall take the oath of office prescribed by  
law, and shall also enter into bond to the Chan-  
cellor of the State of New Jersey, with one or more  
20 surety or sureties, in the penal sum of Ten Thou-  
sand Dollars, conditioned for the faithful perform-  
ance of his duties, which said bond shall be ap-  
proved as to the form and security thereof by any  
one of the Special Masters of this Court.

3. And it is further ordered that the said receiver  
shall take possession of all the property and assets  
of the said defendant corporation and account for  
30 the same as this court shall hereafter direct, and  
that the said defendant corporation, its officers, di-  
rectors and agents, shall forthwith assign, transfer,  
convey and deliver to the said receiver all of the  
property and assets of the said corporation, both  
real and personal, wheresoever situated and of  
whatsoever it may consist.

4. And it is further ordered that the said de-  
40 fendant corporation, its officers and agents, and all

Order Appointing Receiver.

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persons claiming under it, shall be, and they hereby are, restrained from interfering with said receiver taking possession of and managing said property, and that all persons whosoever, and especially the creditors of the said defendant corporation, shall be, and they hereby are, restrained from bringing any action or proceeding at law or otherwise against the said corporation and from taking any further proceedings in any action or proceeding heretofore commenced. 10

5. And it is further ordered that the creditors and stockholders of the said company shall show cause before the Chancellor, at the Chancery Chambers, in the City of Newark, on the 28th day of August, at ten o'clock in the forenoon, why the appointment of the said receiver should not be continued. 20

6. And it is further ordered that the said receiver shall, within three days from the date hereof, mail to each of the creditors and stockholders of the said defendant corporation, at his last known post-office address, a copy of this Order.

Respectfully advised.

JOHN H. BACKES

V. C.

30

**Receiver's Report.**

Filed Dec. 18, 1922.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>EDWARD H. McCORMICK, JR., Complainant,</p> <p style="text-align: center;">and</p> <p>E. H. McCORMICK &amp; SONS, INC., Defendant.</p>	}	<p>On Bill, &amp;c.</p> <p>Receiver's Report.</p>
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Patrick J. Dolan, receiver of E. H. McCormick  
 20 & Sons, Inc., appointed by the Chancellor in the  
 above-stated cause and duly qualified, makes report  
 to the Court as follows:

Claims filed under oath with him as receiver, in  
 accordance with the list attached hereto marked  
 Schedule "A" and made a part hereof.

Claims filed, proven and allowed by the receiver  
 as set forth in the list hereto attached and marked  
 Schedule "B" and made a part hereof.

30 Of the claims filed in Schedule "A" hereto at-  
 tached and insofar as the same are disallowed by  
 me, I hereby report as follows.

1. The claim of J. Mackey & Sons for the sum of  
 \$234.78 has been rejected by me and notice sent  
 to them to that effect. The leather claimed in this  
 case was sent to the insolvent corporation for the  
 purpose of being japanned and is still the property  
 of the claimant and subject to its control and re-  
 40 delivery thereof has been offered to said company.

Receiver's Report.

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2. The claim of the National Leather Company for the sum of \$374,894.60, as assignees of Swift & Company, has been allowed as a general creditor for the sum of \$50,000. only, and this allowance has been conditionally accepted by the National Leather Company, in accordance with the letter attached hereto and made a part hereof. The method of arriving at that sum is set forth in 10 Schedule "C" attached hereto and made a part hereof.

3. The claim of property of Frank A. Schaeffer to a certain splitting machine, upon which it is alleged he holds a bill of sale, having made payment of \$607.31 thereon, but which machine was left in the possession of the insolvent corporation, and came into the possession and custody of the receiver upon his appointment, the bill of sale never having 20 been recorded in the Register's Office of this county, was rejected by the receiver, but the claim of Mr. Schaeffer was admitted as a general creditor of the insolvent corporation for the amount as aforesaid.

4. The claim of James J. Dooner for the sum of \$1,200. has been rejected by the receiver and notice sent to said James J. Dooner to that effect, the check set forth in said claim having been used for 30 the express benefit of the claimant, James J. Dooner, and in no way for the benefit of the insolvent corporation.

5. The claims of the National Newark & Essex Banking Company and Edward C. Moore Company are hereby allowed as unsecured claims, but the mortgage predicated thereon given to James W. Pittenger and George T. James as joint tenants and given to secure the same insofar as the same 40

Receiver's Report.

purports to be a lien upon the premises, and to secure the claims of the National Newark & Essex Banking Company and Edward C. Moore Company as aforesaid, is rejected as a prior lien, because of the fact that at the time the said mortgage was given the corporation was insolvent to the knowledge of the said George T. James, James W. Pit-

10 tenger, the National Newark & Essex Banking Company and the Edward C. Moore Company, and had suspended its ordinary business for the want of funds to carry on the same, and said mortgage was given to secure a prior indebtedness contrary to the form of statute in such case made and provided and especially contrary to Section 64 of the General Corporation Act of New Jersey, (Revision of 1896) and the Supplements and Amend-

20 ments thereto, as appears by the testimony taken before me, the receiver, which testimony is attached hereto and made a part hereof.

The receiver further reports that in accordance with the order of this Honorable Court, he has advertised the real estate and personal property of the said corporation for public sale to be held on the premises at Avenue C and Vanderpool Street, in the City of Newark, County of Essex and State of New Jersey, on Thursday, December 21, 1922, at

30 two o'clock in the afternoon of said day.

This report is respectfully submitted for the purpose of laying before the Court the progress thus far made by the receiver, and it covers all matters coming before him for adjudication up to the present time.

Respectfully submitted,

PATRICK J. DOLAN,  
Receiver.

40 Dated, December 12, 1922.

## Receiver's Report—Schedule "A".

**Schedule "A".**

## LIST OF CLAIMS AS FILED WITH THE RECEIVER.

No.		
1	Taxes. Taxes 1918, 1919, 1920, 1921 and 1922 .....	\$6,825.91
2	Eco Clock Company.....	71.11
3	Public Service Corp. ....	20.72
4	New York Telephone Co.....	77.63
5	Miller & Co.. .....	494.89
6	H. Kohnstamm & Co.....	35.80
7	Daniel Jackson .....	1,319.67 10
8	R. G. Dun & Co.....	125.00
9	J. Mackey & Sons .....	234.78
10	Arthur D. Reeve.....	1,984.29
11	Prufrock-Litton Co. ....	339.78
12	Jos. M. Byrne Co. ....	98.84
13	Thos. F. Cummings Co.....	1,548.57
14	Edward C. Moore Co.....	33,311.98
15	National Leather Co.....	374,894.60
16	Frank A. Schaeffer.....	607.31
17	Pennsylvania Railroad Co.....	178.19
18	James J. Dooner .....	1,200.00 20
19	Dooner & Smith.....	3,290.15
20	John J. Harvey Co.....	41.75
21	Rohm & Haas Co.....	35.51
22	E. H. McCormick, Jr.....	5,200.00
23	National Newark & Essex Bank- ing Co. ....	30,686.31
24	John T. McCormick.....	2,600.00
25	Joseph H. McCormick.....	2,600.00
26	Dawson Tire Co.....	127.70
27	E. H. McCormick, Sr.....	15,000.00
28	John H. Coates.....	320.00 30
29	Stone & Co.....	166.85
		<hr/>
		\$483,437.34
30	Claim of E. H. McCormick, Sr., contingent upon personal en- dorsements made by him for E. H. McCormick & Sons, Inc. <i>et al.</i> and set forth in the claims of National Newark & Essex Banking Co. and Edward C. Moore Company .....	31,204.03 40

## Receiver's Report—Schedule "B".

**Schedule "B".**LIST OF CLAIMS AS FILED WITH RECEIVER AND  
ALLOWED BY HIM.

No.		
	1 Taxes. Taxes 1918, 1919, 1920, 1921 and 1922.....	\$6,825.91
	2 Eco Clock Company.....	71.11
	3 Public Service Corp.....	20.72
	4 New York Telephone Co.....	77.63
10	5 Miller & Co.....	494.89
	6 H. Kohnstamm & Co.....	35.80
	7 Daniel Jackson. ....	1,319.67
	8 R. G. Dun & Co.....	125.00
	9 Arthur D. Reeve .....	234.78
10	10 Prufrock-Litton Co.....	1,984.29
	11 Jos. M. Byrne Co.....	339.78
	12 Thos. F. Cummings Co.....	98.84
	13 Edward C. Moore Co.....	33,311.98
	14 National Leather Co.....	50,000.00
	15 Frank A. Schaeffer.....	607.31
20	16 Pennsylvania Railroad Co.....	178.19
	17 Dooner & Smith.....	3,290.15
	18 John J. Harvey Co.....	41.75
	19 Rohm & Haas Co.....	35.51
	20 E. H. McCormick, Jr.....	5,200.00
	21 National Newark & Essex Bank- ing Co. ....	30,686.31
	22 John T. McCormick.....	2,600.00
	23 Joseph H. McCormick.....	2,600.00
	24 Dawson Tire Co.....	127.70
	25 E. H. McCormick, Sr.....	15,000.00
30	26 John H. Coates .....	320.00
	27 Stone & Co.....	166.85
		<hr/>
		\$157,107.96
	28 Claim of E. H. McCormick, Sr., contingent upon personal en- dorsements made by him for E. H. McCormick & Sons, Inc. <i>et al.</i> and set forth in the claim of National Newark & Essex Banking Co. and Edward C. Moore Company .....	31,204.03
40		

## Receiver's Report—Schedule "C".

**Schedule "C".**

The valuation of all leather belonging to the National Leather Company or Swift & Company in the warehouses and buildings of E. H. McCormick & Sons, Inc., as shown by letter to Swift & Company dated January 22, 1919, is as follows:

Metal Warehouse.....	\$27,526.00	
Brick Warehouse.....	66,225.00	
Main Frame Building..	20,075.00	
Open Shed E Japan		10
Shop .....	8,212.50	
Open Shed W Japan		
Shop .....	5,546.00	
East Japan Shop.....	2,812.50	
West Japan Shop.....	8,970.50	
	<hr/>	
	\$139,367.50	\$139,367.50
<i>Cr.</i>		
Amount of leather sold and the proceeds returned to said Swift & Company or National Leather Company, its assignees, approximately .....		20
		39,367.50
Amount of storage charges due upon said leather from May 19, 1913 to May, 1920.....		
		50,000.00
Balance due National Leather Company and allowed by the receiver .....		
		50,000.00 30
	<hr/>	
	\$139,367.50	

CLAIMS AGAINST THE REAL ESTATE OF THE INSOLVENT CORPORATION WHICH HAVE NOT BEEN FILED WITH THE RECEIVER BUT WHICH ARE A LIEN THEREON AS FOLLOWS:

1. Mortgage upon real estate of E. H. McCormick & Sons, Inc. held by the Estate of John F. Shanley .....\$7,500.00 40

## Receiver's Report—Schedule "C".

Interest thereon from November 1, 1921, to December 12, 1922, at 5%.....418.58

2. Municipal taxes due upon the real estate of E. H. McCormick & Sons, Inc. from 1913 to December 12, 1922.....10,089.79

10 COPY OF LETTER RELATING TO CLAIM OF NATIONAL LEATHER COMPANY.

LINDABURY, DEPUE & FAULKS  
PRUDENTIAL BUILDING, 763 Broad Street  
NEWARK, N. J. December 9, 1922.

PATRICK J. DOLAN, Esq., Receiver,  
E. H. McCormick & Sons, Inc.,  
Lawyers' Building, Newark, New Jersey.

20 MY DEAR JUDGE DOLAN:

I have just been informed that you have allowed the claim filed with you by the National Leather Company for \$374,894.60, to the extent of \$50,000.00 only.

I had expected to have been able to establish a claim before you for a much larger sum. I appreciate, however, the importance of having the claims against this corporation determined as expeditiously as possible, and, in view of all the circumstances, I have determined not to take an appeal from your allowance unless it should be challenged by some other creditor or interested party. I wish to be entirely free to appeal from your decision as receiver if this allowance shall be challenged by any other interested person.

Very truly yours,

(Signed) JOSIAH STRYKER

**Affidavit of Eva F. Kass.**

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i>                  EDWARD H. McCORMICK, JR.,                  Complainant,                  AND                  E. H. McCORMICK &amp; SONS, INC.,                  Defendant.</p>	}	On Bill for Receiver. In the Matter of the Examination of James W. Pitten- 10 ger, <i>et als.</i> Oath of Stenog- rapher.
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STATE OF NEW JERSEY, }  
 County of Essex. } ss:

EVA F. KASS, of full age, being duly sworn according to law on her oath deposes and says:

I will truthfully and correctly take the testimony at this hearing according to the questions and answers and a true transcript make to the best of my knowledge, skill and ability.

EVA F. KASS

Sworn and subscribed to before me this 4th day of November, 1922.

PATRICK J. DOLAN

A Master in Chancery of N. J. 30

George T. James—Direct.

**Case.**

IN CHANCERY OF NEW JERSEY.

*Between*

EDWARD H. McCORMICK, JR.,  
Complainant,

AND

E. H. McCORMICK & SONS, INC.,  
Defendant.

On Bill for Receiver.

Examination before  
Patrick J. Dolan,  
Receiver.

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In the matter of the examination of James W. Pittenger and George T. James, mortgagees, under a mortgage dated October 22, 1920, made by E. H. McCormick & Sons, Inc. to said James W. Pittenger and George T. James, as joint tenants and not as tenants in common.

Present, James W. Pittenger and J. Fred Wherry, representing said James W. Pittenger and National Newark & Essex Banking Company; George T. James and Ernest C. Lum, representing Edward C. Moore Company; and Michael J. Tansey, representing Patrick J. Dolan Receiver; and Josiah Stryker representing National Leather Company.

30 Testimony taken stenographically by Eva F. Kass after first being duly sworn.

GEORGE T. JAMES, being duly sworn, testifies as follows:

By Mr. Lum:

Q. Mr. James, you are the Treasurer of the Edward C. Moore Company? A. Yes.

40 Q. I offer in evidence two certain bonds and mort-

George T. James—Direct.

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gages made and executed by E. H. McCormick Sons, a New Jersey Corporation, to James W. Pittenger and George F. James as joint tenants and not as tenants in common. Both of the mortgages are executed of the 22nd day of October, 1920. First mortgage marked "Exhibit 1" is recorded in Book M-43 of Mortgages for Essex County, New Jersey, on pages 126-128, and was recorded on the 26th day of October, 1920. The second marked "Exhibit 3" is dated the same day as the first, recorded in S-43 of Mortgages for Essex County, on pages 31-33, on the 15th day of December, 1920. It contains a recital to secure the same sum of money and is merely made to correct the name of George T. James which in the mortgage marked "Exhibit 1" is described as George F. James. The accompanying bonds marked "Exhibit 2" and "Exhibit 4" are each executed on the respective days as the mortgages and the second one recites that it merely corrects the name from George F. James to George T. James.

I offer in evidence a declaration of trust made and executed by James W. Pittenger and George T. James for the benefit of the National Newark & Essex Banking Company of Newark and the Edward C. Moore Company marked "Exhibit 5."

Q. Mr. James, at the time of the execution of the two mortgages marked "Exhibit 1" and "Exhibit 3", how much money was due from E. H. McCormick & Sons to the Edward C. Moore Company? A. May I look at the trust agreement? \$30,637.33.

Q. And how was that indebtedness evidence? A. About eleven notes from E. H. McCormick & Sons in favor of Edward C. Moore Company.

Q. Have any of those notes been paid since the execution of those mortgages? A. No.

George T. James—Direct.

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Q. Have they been renewed from time to time?

A. They have.

Q. What notes of E. H. McCormick & Sons does the Edward C. Moore Company now hold? A. There are nine notes amounting to \$33,299.14 which includes interest up to the date the notes were due.

Q. Have you computed the interest on that? A. 10 The amount of interest on the nine notes to June 30th—\$270.24.

Q. Have all of those notes been protested? A. I think protest fees are due.

Q. Are those protest fees set forth in proof of claim that you have filed? A. Yes, they seem to be added on.

Q. At the present time, where are the original notes that you now hold? A. Four of them are in my possession here and four at the Merchants 20 Bank and one in the National Park Bank in New York.

Q. Is the present location of each of those notes set forth in the proof of claim? A. I can answer yes to that question.

Q. Mr. James, after the execution of the mortgage and the declaration of trust marked in evidence, did the Moore Company extend any new line of credit to E. H. McCormick & Sons? A. No.

30 Q. Do the notes that you now have represent the same original indebtedness then? A. Yes, the same original indebtedness, plus the interest in the meantime.

By Mr. Tansey:

Q. When did indebtedness start? A. I couldn't answer that for you.

Q. Before 1920? A. Before the date of the 40 mortgage.

George T. James—Direct.

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Q. The indebtedness had accumulated up to the time of the mortgage? It was evidenced by certain notes at the date of the mortgage? A. No, by certain notes that were in effect at the time of giving of the mortgage.

Q. The total of those notes were included in the mortgage? A. The total of those notes were included in the trust. The mortgage was given to protect those notes. 10

Q. What was the idea of giving the mortgage, at the time, besides the notes? A. Well, the mortgage was given in payment to protect the notes. I presume it would be called an extra security. The McCormick people offered us this proposition.

Q. Now, what was the condition of the McCormick Company at that time financially? A. Well, I wasn't an Officer of that Company and I do not think I would be qualified to answer that unless you put that question so that I can answer it. 20

Q. What reason besides the fact that they weren't paying the notes did you have for wanting additional security? A. I don't think there was any reason.

Q. They hadn't been paying the notes for a long while? A. They had been paying once in a while a little something on account. 30

Q. Would that amount pay the face of one of the notes? A. No, a fraction of the notes.

Q. They hadn't been paying as much as one note at any time? A. No.

Q. Now, you took the mortgage as security for the notes as they had been renewed from time to time? A. They gave the mortgage to us as security, as Trustees, to guarantee the payment of the notes.

Q. I think that you stated that after the giving 40

## George T. James—Direct.

of the mortgage there was no new credit extended.

A. No, no new credit.

Q. Did you know whether E. H. McCormick & Sons were paying other bills besides these notes?

A. Well, I don't know.

10 Q. According to Mr. Lum's suggestion, did you or did you not know whether they were in very bad shape at the time? A. I did not know. I think they were solvent.

Q. What led you to believe they were solvent? A. Why, I hadn't heard anybody say anything to the contrary and they seemed to be doing business.

Q. You knew at the time that there was a large bank indebtedness? A. Yes.

20 Q. And that it was held at the National Newark & Essex Banking Company? Didn't you know that the National Newark at that time was pressing them for payment? A. I couldn't say that I knew they were pressing them. I knew that they owed the National Newark & Essex Banking Company money, because Mr. McCormick came to see me and stated that he wanted to give a mortgage and a trust certificate protecting our notes and claim and the bank's claim.

Mr. James refers to Mr. E. H. McCormick, Jr.

30 Q. Did you have any conference with the bank officials about the indebtedness? A. As far as my recollection goes only when the paper was drawn up for them to sign.

Q. Didn't you make some arrangements with the bank about the paper to be signed? A. I think Mr. McCormick made some arrangements.

Q. The paper that you refer to is this trust agreement and the mortgage? A. Yes.

40 Q. Did Mr. McCormick tell you about the condi-

George T. James—Direct.

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tion of his Company at that time? A. I can't recall anything very material.

Q. What did he tell you? A. He told me that he wasn't able to pay these notes, that he would have to renew them. He told me he was trying to sell the property. That was about two years ago and I have had a great many conferences since.

Q. Did he tell you that he couldn't continue his 10  
business? A. No.

Q. Did he tell you how he could sell his property and still continue his business? A. No, I do not remember that.

Q. In actual fact he had discontinued doing business at that time? A. I don't know.

Q. Was about to discontinue business? A. No.

Q. Well, couldn't they have had done business with that arrangement? A. Well, I don't know what 20  
their situation was.

Q. What did they tell you? A. They wanted to give us this protection on our account.

Q. I understand you to say that the idea was to go on and let them continue in business and they wanted to secure you on their account. A. They wanted to secure us and the bank.

Q. What was to prevent them to do business without that security? A. I presume they couldn't pay us the money and go on in business. 30

Q. Didn't they have any money in the bank at the time? A. I don't know.

Q. If they couldn't pay you and if they couldn't pay the bank then, of course, they couldn't go on and do business? A. Well, I am not enough of an expert to answer that. I presume that lots of people can go on and owe everybody and still do business.

Q. The bank was pressing him at the time, wasn't it? A. I'm not positive. 40

George T. James—Direct.

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Q. Did you know whether the bank was pressing them for money? A. I don't know.

Q. What information, if any, did you have about the bank's claim? A. Only hearsay.

Q. From whom? A. From just exactly what we have here, that there were notes and that a trust agreement was drawn up to protect those notes.

10 Q. From whom did you get any information— from whom did you get the hearsay? A. I believe from the McCormick's and from the bank.

Q. What information did you get from the McCormick's about the bank's claim at that time? A. Just simply that they owed the bank a large amount of money.

Q. Besides that what did he say? A. McCormick say?

20 Q. Did he say the bank wanted to pay them its notes? A. I can't remember what was said about that.

Q. Did he give you any reason for wanting to secure you. A. Well, he wanted to secure us to protect us on the payment of the notes. I think he realized that we were renewing the notes from time to time and he wanted to give us every protection possible. That is as near as I can remember the conversation at the time.

30 Q. Did he tell you why this protection was necessary? A. I don't think he did.

Q. Did he tell you anything about it? A. No, I think the general conversation was with our Mr. Harrison on those points. I can't seem to get what the conversation was at that time.

Q. When you got some information from Mr. McCormick it related to his inability to pay the notes and desire to give security so that you  
40 wouldn't lose anything? You said you heard some-

## George T. James—Direct.

thing further from the bank. A. Yes, I was at the bank and signed those papers.

Q. What did you hear from the bank? A. That they were willing to take the additional security offered to protect the notes.

Q. Did they say why they wanted additional security? A. No, not that I remember.

Q. To whom were you talking to in this matter? 10  
A. Mr. Baldwin handled this matter.

Q. What position did Mr. Baldwin hold in the bank, that you know? A. I think he was Vice-President.

Q. Did the conversation with the McCormicks relate to the reason why they needed additional security? A. Why, it's very hard to answer those questions because the thing was practically a voluntary proposition. They were willing to do any- 20  
thing at the time to protect the bank and ourselves.

Q. I see it was a transaction? A. Yes.

Q. Was there anything threatened at the time which involved danger to the indebtedness of the bank and to the Moore Company? A. Not that I know of.

Q. Who is this Mr. Harrison? A. He was the President of our Company. He is dead.

Q. You say the bank was willing to take the security for their indebtedness which was offered? 30

A. I presume they would.

Q. Did you attend this conference? A. No.

Q. Who did attend these conferences?

Mr. Wherry objects saying—"I object to any questions being asked of Mr. James which would lead toward any conclusion that Mr. James can bind the bank in any way, unless he first shows that Mr. James is an Officer of the bank."

## James W. Pittenger—Direct.

By Mr. Tansey :

Q. You were not connected with the bank in any way? A. No sir.

Q. When Mr. McCormick told you that he couldn't pay the notes, did he refer also to the bank notes? A. I don't remember.

10 Q. How did you come to include the indebtedness to the Moore Company in the indebtedness of the National Newark & Essex Banking Company? A. I don't know.

Q. Did you conduct the negotiations for that purpose or did Mr. Harrison? A. I think Mr. Harrison did.

Q. Would you be better informed on the situation if you got a chance to look through your papers on it? A. There's always a chance I might.

20 Mr. Tansey requests that Mr. James appear before the Receiver after consulting his records and give further information. Agreed.

By Mr. Tansey :

Q. This trust agreement was not recorded? A. I don't know whether it was or not.

30 Q. It was not recorded. There is nothing in the mortgage as drawn to show that Messrs. Pittenger and James hold the title to these lands as Trustees. A. The mortgage speaks for itself.

JAMES W. PITTENGER, being duly sworn, testifies as follows :

By Mr. Wherry :

40 Q. Mr. Pittenger, I show you "Exhibit 1" which is a mortgage made by E. H. McCormick & Sons to you and George F. James, dated October 22, 1920,

James W. Pittenger—Direct.

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and a bond accompanying that mortgage of the same date marked "Exhibit 2", a mortgage of the same date of E. H. McCormick & Sons to you and George T. James marked "Exhibit 3", and a bond of E. H. McCormick & Sons to you and George T. James of the same date marked "Exhibit 4", and a Declaration of Trust made by you and George T. James to the National Newark & Essex Banking Company and Edward C. Moore Company dated October 27, 1920. Are you familiar with those papers in connection with this matter? A. I am. 10

Q. You know that the first bond and the first mortgage mentioned were replaced by the second bond and the second mortgage mentioned for the purpose of changing Mr. James' middle initial from F. to T. A. Yes.

Q. Looking at the Declaration of Trust, Mr. Pittenger, can you tell approximately the amount of the indebtedness of E. H. McCormick & Sons, Inc. to the National Newark & Essex Banking Company at the date of its execution? A. \$26,067.50. 20

Q. How is this indebtedness evidenced, by promissory notes or otherwise? A. By notes of E. H. McCormick & Sons and customers' notes given to McCormick & Sons and discounted by the bank.

Q. The proceeds of which were put to the credit of the account of E. H. McCormick & Sons with the bank? A. Yes sir. 30

Q. Is the National Newark & Essex Banking Company of Newark the holder and owner of all of the notes now outstanding, made either by E. H. McCormick & Sons, Inc. to the order of E. H. McCormick & Sons, Inc., and the notes made by the customers of E. H. McCormick & Sons, Inc. and endorsed by E. H. McCormick & Sons, Inc., as enumerated in the proof of claim filed by the 40

James W. Pittenger—Direct.

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bank with the Receiver of E. H. McCormick & Sons, Inc. A. Yes.

Q. Can you tell what is the total amount of the indebtedness to the bank at the date of the execution of the mortgage from the record of these notes. A. Yes.

Q. What is that indebtedness? A. \$27,666.03.

10 Q. Does that include interest or not to that date?  
A. That includes interest to the time the notes were dishonored.

Q. Has the bank extended any additional credit to E. H. McCormick & Sons since the date of these mortgages? A. Yes, according to the record.

Q. What do your records show as to such additional credit? A. There is one note that our records show was discounted on October 29, 1920. The  
20 \$2,794.77. I think there is a renewal of a former note.

Q. Except for that note, was there any other new line of credit extended to E. H. McCormick & Sons? A. Yes, one note of the Irvington Leather Company was discounted and placed to the credit of E. H. McCormick & Sons, dated June 28, 1922, and due on October 27, 1922, for \$140.31.

Q. Has that note been paid. A. No.

30 Q. Can you tell us whether any of the customers' notes of E. H. McCormick & Sons have been paid since the presentation of the bank's proof of claim in this matter on October 13, 1922. A. No.

Q. By that you mean none have been paid. A. Yes.

Q. Have all of the notes made by E. H. McCormick & Sons, Inc. to E. H. McCormick and endorsed by him, and the notes that are made by the  
40 customers of E. H. McCormick & Sons to its order

James W. Pittenger—Direct.

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and endorsed by it, which are now due, been protested for non-payment? A. Yes, they have been protested to the best of my knowledge.

Q. What is the total indebtedness at this time on the claim of the bank against E. H. McCormick & Sons founded on the evidences of indebtedness to the bank and held by the bank on the date of these mortgages. A. \$27,666.03. 10

Q. In addition to that, there is interest on these various notes that have been protested from the dates of their respective maturities in all cases but one, is there not? A. Well, there is interest due on all of them from the date of their last maturity.

Q. That is the case, is it not, in respect to all of the notes except that made by the Irvington Leather Company? A. The figures I gave you of \$27,666.03, the interest is included in that. 20

By Mr. Tansey:

Q. Mr. Pittenger, what position do you hold in the bank? A. Assistant cashier.

Q. Did you hold that position at the time of the giving of that mortgage. A. Yes.

Q. And you were Assistant Cashier at the time that this Declaration of Trust was made. A. Yes.

Q. What was the occasion for the giving of that mortgage by E. H. McCormick & Sons to the bank? 30  
A. Indebtedness to the bank for credit extended.

Q. You said something about default in payments. A. There was no default there at that time.

Q. Had there been payments on account of the notes? A. I couldn't answer that without consulting the records. It was a running account over a great number of years.

Q. Haven't you that account with you here? A. I have not that record here. 40

## James W. Pittenger—Direct.

Q. You have some record of the note transactions of E. H. McCormick & Sons with the bank with you now, haven't you? A. Yes.

Q. How many years approximately have the E. H. McCormick & Sons their account with the bank, that you know. A. Over ten years.

Q. How many years are you with the bank? A.  
10 Twenty-five years.

Q. Were they with the bank when you first came with the bank? A. I can't recollect.

Q. How far back does that record extend? A. I have a record here under the date of August 1, 1918—there was a liability of E. H. McCormick & Sons to the bank direct and indirectly amounting to \$47,632.90.

By Mr. Wherry:

20 Q. That is the first item of a record that you have with you? A. That is the earliest assured date of the record that I have with me.

Q. How far does that record cover? A. That covers from August 1, 1918, up to the time of the maturity of the obligations.

Q. What is your final date. A. August 14, 1922.

Q. Will this record show the payments on the McCormick notes from its date until the time of the  
30 giving of the mortgage? A. Yes.

Q. Can you determine from looking at the record which you have whether the McCormick firm was making payments on the notes just prior to the time of giving the mortgage? A. The record I have here are the notes made previous to the execution of the mortgage.

Q. Do your records show whether payments were made on account of notes? A. Our records show the  
40 whole transaction.

## James W. Pittenger—Direct.

Q. Will the record which you have with you show the whole transaction? A. Yes, up to those periods.

Q. It covers all the note transactions with the E. H. McCormick Corporation and the bank between the dates specified? A. Yes sir.

Q. Can you not tell from reference to that record, without any other research, whether the McCormick's were paying their notes that fell due just prior to the giving of the mortgage, could you tell? A. We have a balance outstanding at every transaction showing that the line remained pretty nearly the same. 10

Q. It remained pretty nearly the same all through these years? A. All through these years.

Q. There was no reduction on the notes? A. Not to any extent.

Q. Now when the McCormick Company were not reducing their notes, the bank required more security, didn't it? A. That matter was taken up by 20 one of our senior Vice-Presidents.

Q. You had nothing to do with it? Did you have anything to do with the mortgage transaction further than signing the trust agreement? A. No sir.

Q. What was the name of the senior Vice-President? A. Albert H. Baldwin.

The records of the bank consisting of fourteen commercial sheets of loose leaf type beginning with the sheet upon the top of which is carried forth the balance of \$49,569.39 dated July 19, 1918, and ending with the sheet upon which the balance carried forth is \$30,858.53 dated August 14, 1922, indexed as liability ledger, were offered in evidence, and marked "Exhibit 6." 30

Q. I think you have stated, Mr. Pittenger, to a former question that these notes were renewals up 40

## James W. Pittenger—Direct.

to the date of the giving of the mortgage. A. These notes are renewals at the time of giving the mortgage up to the time the claim was filed.

Q. The original notes came in existence prior to the giving of the deed of trust? A. At the time of giving the deed of trust the consideration of the deed of trust represented the amount of the renewal notes up to that time.

10 Q. Represented the amount the E. H. McCormick Company owed to the National Newark & Essex Banking Company at that time? A. At that time.

Q. Was there any money advanced by the bank at the time of the giving of the mortgage? A. Not to my knowledge.

Q. How many of these notes were under a contingent liability? A. Thirteen.

Q. Will your list show those notes, Mr. Pittenger? A. Yes.

20 Q. Can we discover those notes from your list without your giving direct testimony? A. There are thirteen customer's notes. They are scheduled in the proof of claim.

Q. Do you know whether or not demand was made by the bank for payment from the persons primarily liable on the note? A. Demand was made and evidenced by protest.

30 Q. Notices of protest were sent. A. They were protested in the regular course.

Q. Was no offer made to the bank by persons primarily liable? A. Not to my knowledge.

Q. Who would know about the offer made to collect from the persons primarily liable? A. Mr. Spencer S. Marsh or Mr. Albert H. Baldwin.

40 Mr. Tansey—"I would like the Receiver to arrange to have the attendance of both Mr. Marsh and Mr. Baldwin at some day convenient, reasonably near."

George T. James—Direct.

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MR. JAMES re-examined—

By Mr. Tansey:

Q. Do you know whether or not the Moore Company advanced any additional money at the time of giving this mortgage. A. Yes, they did. I know the exact note that covers that situation. The amount was covered by this note is \$3,444.86. 10

Q. By reference to your records the actual sum? A. It was a note of October 22, 1920. The note was due February 22, 1921, for \$3,122.81.

Q. Was a new note given on the day of October 22, 1920? It was not a renewal of the former note? A. No.

Q. What was that money paid for? A. That was part of a fund that was advanced E. H. McCormick & Sons to clean up all their outstanding indebtedness with the exception of the first mortgage on their property. 20

Q. Do you know whether it was used for that purpose? A. I cannot answer that.

Q. Why did you contribute to that fund to pay off other indebtedness? A. Well, that was part of the arrangement that was entered into at the time the trust agreement and mortgage were taken up.

Q. Then, they weren't able to pay their own indebtedness? A. They evidently had people pressing them and wanted to take care of everybody. 30

Q. Do you know the amount of the fund that was raised? A. It bears in the same proportion as the National Newark & Essex Banking Company's gross amount to our amount. In other words, we put up money *pro rata* as to McCormick's indebtedness to us to take care of their outstanding obligations.

Q. That would mean that the bank advanced ap- 40

Albert H. Baldwin—Direct.

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proximately the same amount as you did *pro rata*.

A. The bank advanced about \$2500.00 additional, if I remember correctly.

Q. Then, there was an arrangement for the giving of that mortgage and trust agreement? A. Yes, it was an arrangement, but as my recollection goes it was fixed up with our Mr. Harrison.

10 Q. Will you have full information at the next hearing? A. I will, as far as I can give it.

Q. Who said there were any persons pressing them at that time? A. I can't remember any particular person. My information is general.

Meeting adjourned with the understanding that Mr. Wherry would produce before the Receiver, at 3 o'clock on Monday, the 6th inst., Mr. Spencer S. Marsh and Mr. Albert H. Baldwin, Vice-Presidents  
20 of the National Newark & Essex Banking Company of Newark, New Jersey.

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Continuation of Hearing.

Present—Messrs. J. Fred Wherry, Ernest C. Lum, Josiah Stryker, James E. M. Tams, Patrick J. Dolan, George T. James and Albert H. Baldwin.

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ALBERT H. BALDWIN, being duly sworn, testifies as follows:

By Mr. Dolan:

Q. What is your position with the National Newark & Essex Banking Company, Mr. Baldwin? A. Vice-President.

Q. How long have you been connected with the  
40 bank? A. Thirty-six years.

## Albert H. Baldwin—Direct.

Q. How long have you been connected as Vice-President? A. Fully ten years.

Q. Are you acquainted with the account of E. H. McCormick & Sons? A. Yes.

Q. Do you know how long that account has been in the National Newark & Essex Banking Company? A. Many years. I don't remember the exact number.

10

Q. Do you remember if it was with the bank when you first came with it? A. I should say about twenty-five years.

Q. What was the average credit extended to E. H. McCormick & Sons during that time? A. About \$30,000. That doesn't go back twenty-five years but in the last few years the average has been \$30,000.

Q. What has been their highest? A. \$60,000.

Q. What was the amount of their obligations at the time this mortgage dated October 22, 1920, was given Messrs. Pittenger and James? A. Their single line paper was \$27,620.

20

Q. Did that constitute all the paper that they owed the bank at the time? A. There was some other paper of their customers—bills receivable.

Q. About how much was that? A. I haven't got the figures, but it was not over \$2,000. or \$3,000.

Q. So that the whole amount was under \$30,000? A. About \$30,000.

30

Q. How did you come to take the mortgage from E. H. McCormick & Sons, or order it taken from E. H. McCormick & Sons, if you did, to Mr. Pittenger and Mr. James for \$60,000., as set forth in said mortgage. A. The business of the concern seemed to be falling off. Their obligations were not very materially reduced and the line was very continuous and we asked the Company to pay their notes.

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Albert H. Baldwin—Direct.

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Q. When was that, Mr. Baldwin? A. That was early in October.

Q. Of 1920? A. Yes.

Q. What did the Company, through its Officers, say to you? A. They said their business was practically at a standstill, that they couldn't pay the notes and that about the only asset they had was the real estate. Mr. McCormick told me he valued it  
10 about \$300,000. and that it was mortgaged for \$7500., and in the course of our discussion regarding his line we suggested that he give us a mortgage on the property as security and in consideration of that we would continue to carry the notes for a reasonable time. We then learned of the indebtedness to the Edward C. Moore Company and it was suggested that if a mortgage was given to us it should include them.

20 Q. He suggested then, Mr. Baldwin? A. It came from the other side because I didn't know at that time just what they owed the Moore Company.

Q. They suggested that if they were going to give the bank a mortgage to secure its paper which was then outstanding, that they wanted to include the Edward C. Moore Company in the mortgage so that its paper would also be secured? A. Yes.

Q. Did you know how much they owed Edward  
30 C. Moore Company at that time? A. I don't think I knew the amount until we discussed it in connection with the giving of the mortgage.

Q. Did they tell you at that time, Mr. Baldwin, that they were unable to continue with their business? A. I am trying to think of the words said. They said that the business was practically at a standstill and they seemed discouraged as to their prospects.

40 Q. Did they tell you that they had suspended

## Albert H. Baldwin—Direct.

business? A. They said that they had practically suspended, that they were not doing anything. They discharged pretty much all their help.

Q. Did they say that they would be unable to pay both the bank and Moore Company at that time?

A. They did not represent themselves as insolvent but they said they did not have liquid assets and could not pay, and they felt that in order to do so 10 it would be necessary to fall back on their real estate and they also told me that they were trying to sell it.

Q. They were in hope then of getting enough money out of their real estate to pay their debts?

A. Yes.

Q. But so far as the actual running of the business was concerned they had no hope of paying their debts from that? A. Yes. 20

Q. After the giving of that mortgage, did the bank make any further advancements to E. H. McCormick & Sons other than the renewing of the notes which were already in existence at the time the mortgage was given? A. Yes.

Q. And what additional consideration did they give, Mr. Baldwin? A. On October 29, 1920, we discounted a Company note for \$2708.81 with interest. The arrangements to discount this note was made before the mortgage was given and the mort- 30 gage was made a little larger than the amount they owed at that time to cover it.

Q. Why was that advancement made? A. Because he needed some funds for some purposes of his own and he felt if he secured it we should be willing to give him this specific help.

Q. Was there any statement made as to whether or not Edward C. Moore Company were to be advanced any money by the bank in this connection? 40

Albert H. Baldwin—Direct.

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A. I remember very distinctly that at the time the mortgage was given sufficient money was to be advanced to enable them to pay all of their other creditors according to the statement of McCormick. We advanced our share and evidently the other share was to be advanced by the other party.

10 By Mr. Tams:

Q. Mr. Baldwin, you said that this money was advanced by you and the Moore Company pursuant to a statement that was rendered. Was there a statement rendered to you by the Company? A. In my answer to the question to which you refer, I mean the verbal statement made by McCormick at the time the mortgage was being discussed.

Q. Made by Mr. McCormick personally? A. Yes.

20 Q. And what was that statement, Mr. Baldwin?

A. It was a statement that he needed about \$60,000. to take care of the bank's and Moore's claims and to take care of his other creditors.

Q. Did that include your claim? A. Yes.

Q. Do you remember whether or not he gave you the names of the creditors at that time. A. No.

Q. Did you request him to furnish a written statement of those claims? A. Not at that time.

30 By Mr. Stryker:

Q. Do you know, Mr. Baldwin, who these other creditors were? A. No.

Q. Did you receive any statement of assets and liabilities of the McCormick Company before you took this mortgage? A. We had a statement in our files dated January 1, 1919. That is the last written statement we have.

40 Q. Do you know what the McCormick Company did with the money which you advanced to it at the

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time you took the mortgage? A. Only what they told us.

Q. That's all? You don't know except what they told you? A. No, I did not verify it.

By Mr. Wherry:

Q. Mr. Baldwin, you say you have a financial statement as of January 1, 1919, which is the last 10 written statement of E. H. McCormick & Sons which had been filed with the bank. A. Yes.

Q. And is this that statement? A. Yes.

Statement presented and marked "Exhibit 7".

Q. Showing you "Exhibit 7"—was it used at the time of the making of the mortgage? A. Yes.

Q. At that time did you know or hear of any 20 other indebtedness of E. H. McCormick & Sons other than set forth on this financial statement? A. No, no other indebtedness.

Q. Had you heard of any indebtedness to the National Leather Company? A. No.

Q. Do I understand that Edward C. Moore Company and you, that is the bank, together, advanced additional credit to E. H. McCormick & Sons, Inc. for the purpose of taking care of all their other 30 creditors? A. Yes.

By Mr. Stryker:

Q. I understand, Mr. Baldwin, whether or not they actually did take care of their other creditors with that money, you don't know except what they told you? A. No.

Q. Did you mean to say, Mr. Baldwin, in response to Mr. Wherry's question that neither the 40

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assets nor the liabilities of this Company had changed between January 1, 1919, and October, 1920? A. I didn't understand the question that way. I think he asked me if they referred to that statement at the time the mortgage was given.

10 Q. You knew, Mr. Baldwin, or had reason to believe that this statement as of January 1, 1919, did not show the financial condition of the Company in October, 1920. A. Yes.

Q. Had your bank had transactions with the Company between January 1, 1919, and October, 1920. A. Yes.

Q. And you had no other statement before you in October of assets and liabilities other than this statement? A. No, no other statement except a verbal statement.

20 By Mr. Wherry:

Q. In relation to those verbal statements, what was said, if anything, leading you to believe that the financial condition of the Company had been changed one way or the other. A. The verbal statements indicated that the indebtedness was practically the same but there was a falling off in the assets.

30 Q. When this financial statement of January 1, 1919, was referred to at the time the mortgage was given, or about that time, was there anything other than you have spoken of in your answer to my last question, indicating that there was any material change in the situation of the Company? A. The use of this statement in October, 1920, was for verification of the verbal statement made by McCormick which showed his indebtedness to be practically the same as at this time.

40 Q. And what was the use of the statement on

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October 22, 1920, or about the time the mortgage was made? A. I didn't feel as though we needed a new statement as this statement represented practically the amount of the indebtedness.

Q. Did Mr. McCormick say anything that led you to believe that that represented the liabilities of the Company at that time? A. Yes, he represented that at the time.

10

By Mr. Stryker:

Q. Did you have any knowledge whether the Company had the assets in October, 1920, which that statement showed? A. No, I didn't. I was only interested in the real estate at that time.

Q. Did Mr. McCormick indicate in any way that there had been a diminution of the assets since January 1, 1919? A. He made no such statement except through the inference that I got from his statement that the Company was unable to pay the notes.

20

Q. Did he say why he was unable to pay the notes? A. I don't remember his words but he didn't have the money—he didn't have the means to do it.

Q. What is the situation, Mr. Baldwin, in regard to the contingent liability of the McCormick Company as endorser upon its customers' notes, upon which its customers were primarily liable?

30

A. The amount of the customers' notes is \$2859.98.

Q. Is that in October, 1920, or now? A. Now.

Q. What, if anything, has been done towards collecting those notes? A. They are included in our proof of claim. After the proof has been filed with the Receiver and the notes are returned to the bank, active efforts will be taken to collect from the makers and any collections will be

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credited on the claim; the idea being that every effort is being made to collect from the persons primarily liable.

By Mr. Dolan:

Q. Why was this mortgage required by the bank to protect the notes that were then outstanding in  
10 the name of the McCormick Company taken by Mr. Pittenger and Mr. James, personally? A. It's customary when the bank receives a mortgage to have it taken personally by one of the officers. One reason for this is the effect on the credit of the man giving the mortgage is less likely to be injurious if it were given to an individual than to a bank. Another reason is that it is unusual for a bank to  
20 feel called upon to take mortgage security for a loan and it is not thought desirable to make it a matter of particular prominence.

By Mr. Stryker:

Q. Banks don't usually take mortgages unless there's some danger of a loss? A. No.

Mr. Lum objects, saying—"I object to this as it must be confined to this case. The ques-  
30 tion is too general. It has no reference to this particular case."

By Mr. Dolan:

Q. Mr. Baldwin, has Mr. Marsh, to your knowledge, any additional information that would be of assistance to us in this connection? A. Mr. Marsh, to my knowledge, has no information whatever regarding this transaction which I have not given,  
40 as I transacted the entire business myself.

George T. James—Direct.

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Q. Is there anyone present who wishes Mr. Marsh produced to be examined in this connection?

A. No.

MR. JAMES RECALLED AND RE-EXAMINED.

By Mr. Stryker :

Q. Do you remember, Mr. James anything more  
about the negotiations for this mortgage than you  
remembered last Saturday? A. I remember now  
that I was ill at the time and our Mr. Harrison took  
charge of most of the proceedings whatever they  
were at the time. 10

Q. Did your illness prevent you from having any  
discussions with the McCormick's at the time the  
mortgage was taken concerning their financial con-  
dition? A. I had a telephone conversation with Ed.  
McCormick. 20

Q. Jr.? A. Yes.

Q. When? A. Well, about that time and I can't  
remember particularly what was said at that time  
except he said they owed about \$2300. paper outside  
of ours.

Q. And also of the bank's? A. Yes and outside  
of the bank's, I should say.

Q. Did he tell you anything about the general  
condition of his business? A. Not at that time. 30

Q. At any time in October? A. No, I hadn't been  
in touch with him that I can remember particularly.

Q. Did you make an effort to collect these notes  
at any time prior to the date when the mortgage  
was given. A. Yes.

Q. When? A. Every time a note came due we  
tried to insist on a partial payment and payment  
in full, if possible. 40

George T. James—Direct.

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Q. Did notes fall due in October prior to October 22nd? A. I don't remember.

Q. Did they fall due in September, 1920? A. I don't remember.

10 Q. You were asked to get these facts, Mr. James. Have you looked up your records? A. I was asked to get information that would refresh my memory as to my connection with the drawing of this trust agreement. I did not understand that I was to bring a schedule of the old notes that were perhaps paid and renewed.

Q. Well, the only information then which you have secured since Saturday was information which enabled you to show that you were sick at the time this negotiation was made, is that true?

20 A. Well, on refreshing my memory on the entire matter in the short space of time,——

Q. I think that's all.

By Mr. Lum:

Q. Mr. James, in the course of refreshing your recollection, did you go through papers in your file? A. Yes.

30 Q. Did you discover any statement of any kind submitted to your Company by E. H. McCormick & Sons, at or about that time? A. Yes.

Q. Have you such statements with you? A. Yes.

Q. Will you let me have them. A. Yes.

Q. I show you undated statement on the letter-head of E. H. McCormick & Sons and ask you what that is? A. This is a list of their accounts payable amounting to \$3261.10.

40 Q. Is there anything from which you can identify the date you received that statement from McCor-

George T. James—Direct.

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mick & Sons? A. There is a memorandum of mine October 19th.

Q. Which year? A. It was 1920.

Mr. Lum offers it in evidence. Mr. Stryker objects saying—"I object to the offer of that as proof of the accounts payable of the Company. I don't object to it if it is offered merely as proof that Mr. McCormick told Mr. James <sup>10</sup> that it represented these accounts payable."

Received and marked "Exhibit 8".

Q. I show you two other statements on the letter-head of E. H. McCormick & Sons and ask you to identify them as to what they show. A. One represents a statement of loans from National Newark & Essex Banking Company amounting to \$23,375., and the other represents outstanding notes given <sup>20</sup> Edward C. Moore Company—\$24,317.89, and also outstanding checks of \$3121.70, making a grand total of \$27,439.59.

Q. And do you know when those statements were furnished to your Company? A. These were furnished on or about October 19, 1920.

Q. Do you know by whom they were prepared? A. They were prepared by E. H. McCormick & Sons' bookkeeper.

Received and marked "Exhibits 9 and 10." <sup>30</sup>

Q. I show you note in handwriting on foot of "Exhibit 8"—"Ed says, will send statement". A. I put that note there.

Q. Who was Ed.? A. Ed. McCormick, Jr.

Q. And do the two items taken together of bills payable shown as \$3261.10 and \$2300. represent the amounts which E. H. McCormick & Sons owed on outside notes other than those in the banks and bills <sup>40</sup>

George T. James—Direct.

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payable as they were represented to you? A. That's what they told us.

By Mr. Stryker:

Q. Did Mr. McCormick tell you whether he was able to pay those accounts payable, bills payable represented by these statements—Exhibits 8, 9 and  
 10 10? A. Why, I don't think he had any occasion to tell me. I never asked him that direct question.

Q. I think that's all.

Hearing adjourned to Wednesday, November 8, 1922, at two o'clock.

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IN CHANCERY OF NEW JERSEY.

20 *Between*

EDWARD H. McCORMICK, JR.,  
 Complainant,

AND

E. H. McCORMICK & SONS, INC.,  
 Defendant.

On Bill for Receiver  
 Examination before  
 Patrick J. Dolan.

Continuation of Hearing.

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Present—Messrs. J. Fred Wherry, Ernest C. Lum, Josiah Stryker, Patrick J. Dolan, George T. James, Albert H. Baldwin, Michael Tansey, E. H. McCormick Jr.

GEORGE T. JAMES being recalled and examined by Mr. Lum, testified as follows:

Q. I show you what purports to be a financial  
 40 statement on a letter-head of E. H. McCormick &

## Albert H. Baldwin—Direct.

Sons, Inc. Do you recall the date of securing this statement signed by E. H. McCormick as Treasurer of the Company? A. Yes.

Q. When did you receive that statement? A. About October, 1920.

Mr. Lum: I offer that statement and ask to have it marked Exhibit 11.

Q. I show you a statement marked Exhibit 8, to which you testified that the memorandum at the bottom was in your handwriting, saying "Ed says, will send statement"; is this Exhibit marked 11, the statement supplied? A. Yes.

Q. That is all.

ALBERT H. BALDWIN, recalled, testified as follows:

Q. Mr. Baldwin, upon page 3 of your testimony in this case you testify in answer to a question by Mr. Tansey—did they tell you they had suspended business—yes, they said they had practically suspended business, they were not doing anything, they discharged pretty much of the help.

Q. What did you mean by the words "they had practically suspended"? A. I did not understand that they had discontinued business entirely but there had been a very great falling off in their business as compared with the normal. I understood this was due not entirely to their financial condition, but to the general business conditions which similarly affected the other concerns.

Q. Do you know whether they continued to do some business? A. Yes, they did.

Q. I call your attention to a further answer upon page 6 of your testimony in which you were asked if you knew or had reason to believe

Albert H. Baldwin—Direct.

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that this statement as of January 1, 1919, did not show the financial condition of the company in October, 1920—yes. A further question—Had your bank had transactions with the company between January 1, 1919 and October, 1920—yes. And you had no other statement before you in October of Assets and Liabilities, than this statement? No, 10 no other statement except a verbal statement.

Q. You were then asked by Mr. Wherry—In relation to those verbal statements, what was said, if anything, leading you to believe that the financial condition of the Company had been changed one way or the other? A. The verbal statement indicated that the indebtedness was practically the same but there was a falling off in the assets.

Q. To what assets did you refer? A. I referred to the assets which were called liquid assets, embracing items of cash, merchandise and accounts, 20 and I understood that there had been a material falling-off in these items. The fixed assets, plant and machinery, had not fallen off in value.

By Mr. Tansey:

Q. You said, aside from the general depression in the leather trade, it was general, and a lot of concerns within your knowledge were feeling the depression around that time? A. They were feeling 30 it in the volume of business they were doing.

Q. They were not doing much business? A. No.

Q. Their financial ability was decreasing very rapidly? A. Yes, their liquid condition.

Q. And you meant by liquid, the assets that could be used for quick returns? A. Yes.

Q. It was by reason of this drop or depression that you asked for security? A. Yes.

40 Q. You found in 1920 that the cash, merchandise

Albert H. Baldwin—Direct.

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and accounts had fallen off a great deal more than in 1919? A. I did not have a copy of the statement of 1920. The information which I had was obtained by verbal statements. The liquid assets had fallen off materially.

Q. It would be rather hard to realize on them quickly, would it? A. They could realize pretty quickly if they wanted to sell. 10

Q. By reason of their uncertainty in their condition you wanted security, and you took mortgage? A. Yes.

Q. They were at a stand-still, but not entirely so, I think you said? A. Temporarily so, yes.

Q. How did you know it was temporary? A. They told me they expected better times to develop.

Q. At that time they were at a stand-still? A. Not entirely.

Q. They were doing business, were they? A. 20  
Some business.

Q. But not the volume which even half time would mean? A. No.

Q. Nor quarter time would mean? A. I do not know about quarter time, about one-half.

Q. About one-half at any rate was very nearly at a stand-still, to your knowledge? A. Well, I do not know how to answer that question. I would answer by saying that judging from their former 30  
activity, at a stand-still, but not entirely.

Q. That was the condition which moved you to seek security? A. That was one of the conditions.

Q. What were other conditions? A. The condition of the assets.

Q. The quick falling-off of the business moved you to look for security? A. Yes.

Q. You stated in your last examination, I think, that efforts would be immediately made to collect 40

## E. H. McCormick—Direct.

from the endorser some of the notes? A. No, the makers of the merchandise notes, and there are \$2500. or \$2600. worth of those notes, which might be collected.

Q. What has been done? A. We have made some collections, and have been waiting until the claims were proved in bankruptcy, and notes returned to us, but active steps will be taken now, and I think there will be a considerable amount collected.

Q. Has a report been issued, to your knowledge, showing the amount which has been collected? A. No.

MR. E. H. McCORMICK, being first duly sworn, was examined by Mr. Lum, and testified as follows:

Q. You are Treasurer of E. H. McCormick & Sons, Inc.? A. Yes.

Q. Were you such Treasurer in 1920? A. Yes.

Q. For how long had you been Treasurer? A. From the time we incorporated, possibly twelve years.

Q. I show you a statement which has been offered in evidence, marked Exhibit 8—do you recognize that as a statement prepared by you? A. Prepared by the Corporation.

Q. Did you furnish that statement to the Edward C. Moore Co.? A. Yes.

Q. At the time of the execution of the mortgage by your Company, did the National Newark Banking Company, and Edward C. Moore Company, advance any sum or sums of money to your Company? A. I think, jointly, about \$5300. or \$5400.

Q. Was that money or part of it used for the purpose of paying the accounts payable named in that statement? A. Yes.

Q. Was the balance of that money used for pay-

## E. H. McCormick—Direct.

ing certain other notes due by your Company to others than the National Newark and Essex Banking Co., and the Edward C. Moore Co.? A. No.

Q. For what was it used? A. To clean up the creditors of the Corporation.

Q. By that, do you mean those creditors shown in the list, Exhibit 8? A. Yes. 10

Q. You owed at that time certain notes didn't you, for approximately \$2300.? A. To whom?

Q. I am asking you. A. We owed the bank for approximately \$23,000.

Q. Do you mean the National Newark & Essex? A. Yes.

Q. Were there any other merchandise creditors to whom you owed small notes? A. A few.

Q. And do you recall the amount of them? 20  
A. No.

Q. The amount shown due for accounts payable on Exhibit 8 is shown as \$3261.10. You have testified that the bank, and the Moore Company advanced you around \$5500. or \$5600. You said further that you paid these accounts payable shown on this list, marked Exhibit 8. What was the remaining \$2300. used for? A. To pay up creditors shown on that list.

Q. Did you not tell the bank, or the Moore Com- 30  
pany that that was what you wanted the money for—for paying up those creditors? A. I told the bank and the Edward C. Moore Company that we had to have the money to use to pay the smaller creditors.

Q. That money received for them was actually so used? A. Yes.

Q. I think that is all. 40

## E. H. McCormick—Cross.

## CROSS-EXAMINATION BY MR. TANSEY:

Q. Did you pay Dooner & Smith their note? A. It had some time to mature.

Q. Dooner & Smith were creditors? A. They were at that time.

Q. The note was not paid? A. It had some time to run and when it matured, some other expenses  
10 occurred. Some accounts were omitted, and we paid Dooner & Smith about \$700. to \$800. I think the account is in the list for about ten or twelve—I think the only account not fully paid.

Q. Why did you give those statements to the bank and to the Moore Company? A. When Mr. Baldwin asked for the mortgage, I told him about the condition, about the outstanding creditors, and before consenting, they would have to give us sufficient  
20 money to pay our creditors.

Q. Before consenting to what? A. To any mortgage.

Q. It was a question of your consenting to mortgage? A. It might come under the heading of consent.

Q. From what source? A. From the bank.

Q. How did the matter come up and what was the object in view? A. I was in bank on a business  
30 day, and Mr. Baldwin called me in the office and asked me to sit down, and he approached the question of mortgage.

Mr. Lum objects, on the ground that this is not cross-examination.

Q. Tell us why the subject was approached—what did he say? A. He asked me for a mortgage on the plant.

Q. Did he tell you why he wanted it? A. To se-  
40 cure the corporation's indebtedness. I told him

## E. H. McCormick—Cross.

that if I consented I would have to consult with our Directors and also with the Edward C. Moore Company—I did not want them shut out, and injure my credit. He said, you have no credit and we cannot do anything to injure you. I said it is immediately known by commercial agencies when a mortgage is given and will get in the mouth of every business man in Newark. That injured our credit and practically closed our shop. 10

Q. Did Mr. Baldwin discuss business conditions with you? A. No other than if I give him a mortgage he would take our notes. Then our worries started.

Q. Did you tell him that your business was practically at a stand-still? A. It was, yes.

Q. Did you tell him so? A. I told him we were doing some little commission work.

Q. And why did you tell him you were doing 20 commission work? A. I think he knew we were.

Q. You told him that this mortgage might interfere with your credit, *i. e.* when he said you have no credit, we cannot do you any harm? A. Yes.

Q. Go ahead and tell us what you know about Mr. James. A. I think I consulted with Mr. James and told him what the bank had asked me to do, and I refused, and Mr. James thanked me for it, and we gave a joint mortgage as security, and filed it, I believe. 30

Q. Did you do any business about that time? A. We did commission business—tanned hides for butchers.

Q. How long did that take? A. Two or three months.

Q. After that? A. We were about shut up—no means; no money.

Q. You were then practically at a stand-still? A. Practically. 40

E. H. McCormick—Cross.

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By Mr. Wherry:

Q. How long were you doing business before you gave the mortgage? A. Well, during the period of the war, all leather men's business was about at a stand-still.

Q. It was about two years before that, before you  
10 gave the mortgage, when your business became very much less in volume? A. It was; the Government put us under what you might call non-essential.

Q. Was that 1915, 1916, or 1917? A. From that period on we were going the other way.

Q. Shortly after the war began? A. It was the beginning of that period.

Q. From the time that the Government inter-  
fered with your business on account of the war,  
20 your volume of business decreased very materially, the general condition of business? A. The general condition of all leather companies decreased in like manner—it was due to that depression at that time.

Q. When did you begin this commission business you speak of, tanning hides on commission? A. I believe after we had given that mortgage.

Q. Not before? A. We had been doing commis-  
sion work too before; I mean, at the time I issued  
30 that statement, we were doing a little commission business.

Q. I am referring to the time your company executed the mortgage. A. I refer to that.

Q. What business had you been doing prior to that? A. We were manufacturing automobile leather.

Q. Right up to that time? Until it was inter-  
fered with by the war? A. The war was over at  
40 that time.

E. H. McCormick—Cross.

Q. Had times gotten better in the leather business? A. They were just about on a start.

Q. Just about beginning? A. Yes.

Q. Did you continue the manufacturing of any automobile leather? A. No.

Q. You just continued business of some kind didn't you? A. The reason we stopped, we had no money to go ahead with.

Q. You had none prior to the giving of the mortgage to go ahead with had you? A. We were running business at that time, but when we tried to purchase further material, we had no means.

Q. You had no cash? A. No.

Q. At that time? A. No.

Q. Some time before that? A. Not much.

Q. Any credit? A. Well, I believe, we had.

Q. To get cash? A. No.

Q. How long before that had you had no credit? A. I did not discover until the mortgage was given.

Q. Did you get goods on credit any time before that? A. We always had—not on commission; for purchase outright.

Q. Any refusals to deliver? A. No.

Q. Your financial condition at the time of the placing of that mortgage was just about the same as it had been about six months before, was it not?

A. Well, about.

Q. Did you continue after the mortgage was executed, the commission business which you had engaged in prior to that? A. No.

Q. None at all? A. The only thing we did was what we acquired after that stage.

By Mr. Stryker:

Q. How many people did you have employed in the plant at the time of giving this mortgage?

Mr. Lum: Objections still runs as to not proper cross-examination.

## E. H. McCormick—Cross.

A. I cannot recall, we had not very many.

Q. Had you been paying expenses? A. No, our overhead is pretty heavy, *i. e.* our overhead was not so heavy, but we were not doing sufficient to carry our overhead.

Q. As a matter of fact, there was no way to pay bills other than by selling the plant? A. The only means I saw for paying our creditors was the sale  
10 of the plant.

Q. There was no other way that you could think of? A. No.

Q. When you gave this statement of creditors to the bank, Mr. McCormick, I understand that it did not include all of your creditors, did it; only those you thought should be taken care of out of the proceeds of the notes? A. At that time, I believe, it probably included most of them.

Q. Dooner & Smith you did not pay out of the  
20 proceeds. A. I paid about 75% on \$1000. or \$1200. total, probably 75% paid.

Q. You paid 75% of the Dooner & Smith claim? A. Yes.

Q. Before this mortgage was given, Mr. McCormick, the National Leather Company had advised you of a claim against you? A. Yes.

Q. You knew, did you not, that there was a shortage of leather of the National Leather Company  
30 which had been left with you? A. Yes, we knew it.

Q. And you knew that the National Leather Company had made a claim against you for this shortage, didn't you? A. Yes.

Q. And you told the bank and the Moore Company nothing about that, of course? A. No.

Q. Do you know what the amount of the shortage was, Mr. McCormick? A. No.

Q. You do not know now? A. No, and I did  
40 not know at that time.

## E. H. McCormick—Cross.

Q. You knew what your books showed it was, didn't you? A. No.

Q. Had you made up statements each month showing the amount of leather you had on hand?

A. We sent them an accounting or statement of the book inventory each month.

Q. You know what the shortage was, didn't you? 10

A. No, I know some existed, but I did not know the extent of the shortage.

Q. Where are your books, Mr. McCormick? A. In the factory safe.

Q. Who was your bookkeeper? A. Mr. Coates.

Q. Where is he now? A. Somewhere in Newark, but I do not know where. He has not been with us for a few years.

Q. When was the leather from the National Leather Company removed from your plant? A. I 20 believe, in 1920.

Q. March, 1920, was it? A. I am not positive.

Q. It was before the mortgage was given, wasn't it? A. It would be a matter of record for me to find out.

Q. They notified you very promptly of their claim didn't they? A. I know they did notify us of the shortage.

Q. And the claim they made was for a very large 30 amount, was it? A. Yes.

Q. Do you remember the amount of claim? A. Yes.

Q. The claim the Receiver has, corresponds with the claim they made at that time? A. They never made a claim—they claimed shortage and asked us to account.

Q. Subsequently suit was commenced? A. Yes, sir.

## E. H. McCormick—Cross.

Q. You made an offer to settle? A. Yes.

Q. That was after the date of the execution of the mortgage?

A. To my knowledge, Mr. Stryker, there was no actual settlement made.

Q. Who represented you at that time, Mr. McCormick? A. Mr. Nugent.

10 Q. He represented you in this suit until shortly before the Receiver was appointed, didn't he? A. Yes.

Q. And you at that time were trying to sell your plant, were you not? A. Yes.

Q. You represented your company in consulting with Mr. Nugent? A. I know that Mr. Nugent had our case; Mr. Anderson was associated with him.

20 Q. Did you consult with Mr. Anderson? A. Yes.

Q. Did you not know that Mr. Anderson offered to pay the National Leather Company \$75,000. if the sale had been effected? A. No.

Q. Did you know he offered to settle the case when the sale was effected? A. I knew of some discussion between the National Leather Company and Mr. Anderson.

Q. You know Mr. Kitchell? A. Yes.

30 Q. What is Mr. Kitchell's connection with the National Leather Company? A. Vice President or General Manager.

Q. You talked with him? A. I had a little talk with him.

Q. When? A. Two or three months ago.

Q. Shortly before the Receiver was appointed? A. Yes.

Q. Did you tell him how much you owed his Company for shortage of leather? A. No, I did  
40 not.

## Case.

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Mr. Tansey: So far as the credit of the National Leather Company is concerned, we examined the claim both for and against. The evidence which was presented to the Receiver, as to the accounts of creditors, and the E. H. McCormick & Sons, Inc., and Swift & Company, we found that there was an admitted shortage of leather between the E. H. McCormick & Sons, Inc., who had leather for tannage and on storage for Swift & Company, and National Leather Company, which was some thousands of hides, which was admitted on the part of Mr. McCormick, and an offer made to settle all shortages and accounts between the National Leather Company and the E. H. McCormick & Sons, Inc., for 140 odd thousand dollars. This was not accepted by the National Leather Company, but later, after some more leather had been disposed of by McCormick & Sons, Inc., and settled with the National Leather Company for the return, the National Leather Company removed its leather and subsequently an offer of settlement was made for \$50,000. on the part of E. H. McCormick & Sons, Inc. This was in 1918 and 1920. In 1920, after they removed the leather, the E. H. McCormick & Sons, Inc. offered to settle with the National Leather Company, who had taken over the Swift interests, for \$50,000., which offer was not accepted by the National Leather Company, but they were considering the question involved, and later started suit. Subsequent to the termination of the contract for tannage and sale of their hides, which was in 1913, the leather of the National Leather Company remained on the premises of E. H.

## Case.

McCormick & Sons Company, until it was removed finally in 1920, from which claim of storage against the National Leather Co. amounting to about \$63,000.00. Taking the admitted shortage of leather and setting off against it the storage, and a certain claim which they owed to McCormick & Sons for balance due on tanning, left an approximate balance due the National Leather Company, of \$50,000. Approximate balance as shown by the correspondence and books of the McCormick & Sons Co., and the Receiver, after going over all these accounts and correspondence, decided to allow the National Leather Company claim, which they put in for the amount of \$374,894.60, to the extent of \$50,000. That has been done by the Receiver, and the matter is in that shape at the present time. I make this statement for the purpose of showing the progress which has been made on the part of the National Leather Company.

Mr. Stryker: We believe that our claim should be allowed for very much more than the \$50,000. We, however, desire to avoid the expense and the interminable delay of the sort of accounting that would be necessary in order to definitely establish the amount of our claim. We are particularly anxious to avoid this expense and delay, because of the doubt as to the amount of the assets that would subsequently be available for distribution. It is a question if it would be good business in view of all circumstances, to incur this expense of accounting. Under these circumstances, we will not take an appeal. If, of course, it should become necessary to go through with

## Case.

this accounting, we desire to be in position to put in claim for the full amount. We think we can establish very much more. If the counsel who are interested in this matter want to inform themselves as to the character of our claim, I would be very glad to show them. I have a lot of data in the office if you wish to go to the office. I would be glad to have 10 you do so.

Mr. Wherry: Date of mortgage given to George T. James and James W. Pittenger is October 22, 1920. One recorded October 26, 1920; one recorded December 15, 1920. The latter mortgage was merely given to correct the name of George T. James which in the earlier mortgage was given as George F. James, so that the date of the recording of 20 the first mortgage would be the date which should be taken into account as to the giving of the bond and mortgage.

## LIST OF CLAIMS

1. Claim of John Howe, Receiver of Taxes, for taxes for the years 1918, 1919, 1920, 1921 and 1922, amounting in all to \$6825.91, the taxes for the year 1918 being \$1160, upon which 30 interest and costs have been added, making the amount due on June 5th, 1922, \$1520.14. The taxes for the year 1919 are \$1360., which, with interest and costs, due June 5th, 1922, now amounts to \$1741.68. The taxes for the year 1920 are \$1875., which with interest and costs, make the amount due on June 5th, 1922, \$2228.45.

2. Claim of Echo Clock Company is for 40

## Case.

\$71.11 for labor on or about the 21st day of July, 1921.

3. Public Service Gas Company for \$20.72, for gas consumed, beginning with Sept. 20th, 1921.

10 4. N. Y. Telephone Co. for telephone service beginning Feb. 1st, 1922 to July 7th, 1922.

5. Miller & Co., \$494.89, from April 30th, 1921 to Aug. 9th, 1921.

6. H. Kohnstamm & Co., for \$35.80 from October 28, 1921 to October 29, 1921.

7. Daniel Jackson for labor from Dec. 11, 1920 to Apr. 17, 1921, \$1319.67.

8. R. G. Dun & Co., \$125. July 1, 1921.

9. J. Mackey & Son for the year 1921.

20 10. Arthur D. Reeve for \$1984.29 on notes dated from July 26th, 1922 forward.

11. Prufock-Litton Furniture Co. on note dated June 1, 1922, \$339.78.

12. Jos. M. Byrne Co., \$98.84 from Apr. 1922.

13. Thomas F. Cummings on promissory notes of \$1548.57, the earliest of which is July 7th, 1922.

14. Claim of Edward C. Moore Company amounting to \$3311.99.

30 15. National Leather Company prior to October 26th, 1920, for \$374,894.60.

16. Frank A. Shafer, claim of property arising Apr. 1922.

17. Pa. R. R. Co. for \$178.19, August 26, 1921.

18. James J. Dooner for \$1200., check dated May 26, 1922.

40 19. Dooner & Smith for \$3290.15 on note of July 22, 1922.

## Case.

20. John J. Harvey Co. for \$41.75 for items beginning April, 1921.

21. Rohm & Hass Co., Inc., for \$35.51 for merchandise delivered April 26, 1921.

22. E. H. McCormick Jr., \$5200.00 for services from October 1, 1920 to October 1, 1921.

23. National Newark & Essex Banking Co., one of the claimants included in the mortgage, 10 \$30,686.31.

24. John T. McCormick for work done between Oct. 1, 1920 and Oct. 1, 1921, \$2600.00.

25. Jos. H. McCormick for work done between Oct. 1, 1920 and Oct. 1, 1921, \$2600.00.

26. Dawson Tire & Supply Co., \$110. from May 1920—total of \$127.70.

27. E. H. McCormick Sr. for labor October 1, 1920 to October 1, 1922, \$15,000.

28. John H. Coates, \$320.00, balance of wages<sup>20</sup> due to Feb. 8, 1921, \$220. and writing up books for 1921, \$100., making a total of \$320.

29. Stone & Co. for \$166.85 for merchandise sold between July 1921 and August 1921.

30. E. H. McCormick claim as an endorser on notes to E. H. McCormick & Sons, Inc., as shown in claims of National Newark and Essex Banking Company and Edward C. Moore Co. for continued liability. 30

Mr. Lum: As to the foregoing list of claims, the following became wholly due after the execution of the mortgage on October 22, 1920:

Echo Clock Company, \$71.11.

Public Service Corp., \$20.72.

N. Y. Telephone Co., \$77.63.

H. Kohnstamm & Co., \$35.80.

Daniel Jackson, \$1319.67.

## Case.

R. G. Dun & Co., \$125.00.

J. Mackey & Sons, arose after mortgage and is now disputed.

Prufock-Litton Fur. Co., \$339.78.

James J. Dooner, \$1200. and is disputed.

John J. Harvey Co., \$41.75.

10 Rohm & Hass Co., \$35.51.

E. H. McCormick Jr., as to all but \$150.

John T. McCormick, as to all but a possible three weeks at \$25. a week.

Joseph H. McCormick as to all but a possible three weeks at \$25. per week.

E. H. McCormick, Sr., as to all but a possible three weeks at the rate of \$7500. per year.

John H. Coates, \$320.

20 Stone & Co., \$166.85.

The following claims may or may not have accrued prior to the making of the mortgage, as to some part at least:

Miller & Co., \$494.89.

Jos. M. Byrne Co., \$98.84.

Arthur D. Reeve, \$1984.29.

Dooner & Smith, \$3290.15.

30 The following claims, there was unqualifiedly something due upon at the time of the execution of the mortgage in October, 1920:

City of Newark Taxes, on personal property, 1918, 1919, but the taxes of 1922 were not due, excepting first half, and also the real estate taxes.

Dooner & Smith, about \$500.00.

Dawson Tire & Supply Co., \$110, the claim being filed for \$110. plus interest to date of the Receivership.

40

**Exhibit 1.**

This INDENTURE, Made the twenty second day of October, in the year of our Lord One Thousand Nine Hundred and Twenty, Between E. H. McCORMICK & SONS, a New Jersey Corporation, formerly E. H. McCORMICK & SONS' Patent & Enameled Leather Co., of the City of Newark in the County of Essex and State of New Jersey of the First Part; And JAMES W. PITTENGER and GEORGE F. JAMES, both of the City of Newark in the County of Essex 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 SIXTY THOUSAND DOLLARS, lawful money of the United States of America, to it in hand well and truly paid by the said party 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, has given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, enfeoff, convey and confirm to the said party of the second part, and to their heirs and assigns forever as joint tenants and not as tenants in common All those tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark in the County of Essex and State of New Jersey:

FIRST TRACT: BEGINNING in the Southerly line of Miller Street at a point therein distant one hundred (100) feet Westerly from the Southwest corner of the same and Avenue C; thence running South thirty-two degrees twenty-three minutes (32 deg. 23') West and at right angles with Miller Street two hundred and sixty (260) feet; thence North fifty-

## Exhibit 1.

seven degrees thirty-seven minutes (57 deg. 37')  
West and parallel with Miller Street fifty (50)  
feet; thence South thirty-two degrees twenty-three  
minutes (32 deg. 23') West and at right angles with  
Miller Street two hundred feet; thence south fifty-  
seven degrees thirty-seven minutes (57 deg. 37')  
East and parallel with Miller Street one hundred  
10 and fifty (150) feet more or less to land conveyed  
to L. D. H. Gilmour by deed recorded in Book A 29  
of Deeds for said County, page 528; thence along  
the same and along the Northerly line of the right  
of way of the Waverly and Passaic Branch of the  
New York Bay Railroad four hundred and twenty-  
two (422) feet more or less to where the same is  
intersected by the Southerly line of East Vander-  
pool Street as the same is laid out on a Map of  
20 Property of Theodore Coe; thence running along  
the said Southerly line of East Vanderpool Street  
North fifty-seven degrees thirty-seven minutes (57  
deg. 37') West two hundred and forty-eight (248)  
feet more or less to an angle in the same; thence  
still along East Vanderpool Street North no de-  
grees thirty-seven minutes (0 deg. 37') East thirty  
(30) feet more or less; thence still along the same  
North twelve degrees six minutes (12 deg. 6')  
East one hundred (100) feet more or less; thence  
30 still along the same and at right angles with Miller  
Street North thirty-two degrees twenty-three min-  
utes (32 deg. 23') East one hundred and seven  
(107) feet more or less to the Southerly line of  
Miller Street and thence running along the same  
North fifty-seven degrees thirty-seven minutes (57  
deg. 37') West one hundred and fifty-one (151) feet  
to the place of BEGINNING. Including herein all  
rights and interests in the streets bounding and  
40 abutting upon the premises above described. SEC-

## Exhibit 1.

OND TRACT: BEGINNING at the Northeast corner of East Vanderpool Street as laid out on a map of property of Theodore Coe; said point of Beginning being also distant thirty-eight (38) feet Easterly from the Easterly line of Avenue C; thence running along the Northerly side of East Vanderpool Street South fifty-seven degrees thirty-seven (57 deg. 37') East sixty-two (62, feet; thence North thirty-two degrees twenty-three minutes (32 deg. 23') East 10 and at right angles with East Vanderpool Street fifty feet; thence North fifty-seven degrees thirty-seven minutes (57 deg. 37') West and parallel with East Vanderpool Street eighty and fifty one-hundredths (80.50) feet to Easterly line of East Vanderpool Street and thence running along the same South twelve degrees six minutes (12 deg. 6') West fifty-three and thirty one-hundredths (53.30) feet to the place of Beginning. Being lot Number 20 Fourteen (14) on the aforesaid map.

EXCEPTING THEREOUT AND THEREFROM such portions thereof as have been conveyed or taken for the opening of streets and avenues.

Being the same premises conveyed to the said party of the first part by deed of Edward H. McCormick and Catherine McCormick, his wife, dated December 18, 1902, recorded in the Office of the Register of Essex County in Book B 36 of Deeds 30 for said County, page 204, etc.

Together with all and singular the profits, privileges and advantages, with the 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 tract or lot 40

## Exhibit 1.

of land and premises, with the appurtenances, unto the said party of the second part their heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever, as joint tenants and not as tenants in common. Provided always, and it is agreed by and between the parties to these presents, that if the said E. H. McCormick & Sons, its successors and assigns, do and shall well and truly pay or cause  
10 to be paid, to the said party of the second part, or to their certain attorney or attorneys, heirs, executors, administrators or assigns, the sum of SIXTY THOUSAND DOLLARS on demand from the date hereof, with lawful interest for the same, at the rate of six per centum per annum, payable quarterly according to the condition of a certain bond bearing even date herewith, in the penal sum of ONE HUNDRED TWENTY THOUSAND DOLLARS, with-  
20 out any deduction or defalcation for taxes, assessments, or any imposition whatsoever; then and from thenceforth, these presents and said obligation, and everything herein and therein contained, shall cease and be void; anything herein and therein contained, to the contrary in anywise notwithstanding. And the said party of the first part, its successors and assigns, does covenant and grant to and with the said party of the second part, their heirs and assigns, that the said party of the first part its  
30 successors and assigns, shall not nor will claim or demand or be entitled to receive any credit or credits on the interest payable hereon or on the moneys to secure payment of which this mortgage is made, for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount due on this mortgage or any part thereof; and that the said party of the second part, their heirs and assigns, shall and may, from time  
40 to time, and at all times after default shall be made

## Exhibit 1.

in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, its successors or assigns, or of any other person or persons whatsoever. And it is also agreed by and between the parties to these presents, that the said party of the first part shall and will 10 keep the buildings erected and to be erected upon the lands above conveyed, insured against loss or damage by fire, in some safe and responsible Insurance Company or Companies, to an amount satisfactory to the party of the second part and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof it shall be lawful for the said party of the second part, to effect such insur- 20-21  
ance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand with legal interest.

In Witness Whereof, the said party of the first part has caused these presents to be signed by its President and its corporate seal to be hereto affixed, attested by its Secretary, the day and year first 30 above written.

Signed, Sealed and Delivered }  
in the presence of }  
E. H. McCORMICK & SONS,  
By EDWARD H. McCORMICK (SEAL)  
President.

Attest:

JOSEPH H. McCORMICK  
Secretary.

## Exhibit 1.

STATE OF NEW JERSEY, }  
 County of Essex, } ss.

Be it Remembered, That on this twenty fifth day of October the year of our Lord One Thousand Nine Hundred and Twenty before me, the subscriber, A Notary Public for the State of New Jersey personally appeared Joseph H. McCormick who being by me duly sworn, doth depose and make proof to my satisfaction, that he well knows the corporate seal  
 10 of E. H. McCORMICK & SONS, a corporation the grantor mentioned in the within Mortgage; that the seal thereto affixed is the proper corporate seal of the said company; that the same was so affixed thereto and the said mortgage signed and delivered by Edward H. McCormick who was at the date and execution thereof, the President of said company, in the presence of the said deponent, as the voluntary act and deed of the said company, and that  
 20 the said deponent thereupon signed the same as subscribing witness.

JOSEPH H. McCORMICK

Sworn and subscribed before me on the day and year aforesaid. }

FRED H. CARL  
 Notary Public

Ex. 1 (Endorsed)—MORTGAGE. E. H. McCORMICK & SONS, a corporation, to JAMES W. PIT-  
 30 TINGER and GEORGE F. JAMES. Dated October 22 1920. Received in the Register's Office of the County of Essex, N. J. on the 26th day of October A. D., 1920, at 1:57 o'clock in the afternoon, and Recorded in Book M-43 of Mortgages for said County, on pages 126-128. WALTER A. EVANS Register.

RECEIVED REGISTER'S OFFICE Oct 26 1 57 PM 1920

40 ESSEX COUNTY

**Exhibit 2.**

Know All Men by these Presents, That E. H. McCORMICK & SONS, a New Jersey Corporation, is held and firmly bound unto JAMES W. PITTENGER and GEORGE F. JAMES, as joint tenants and not as tenants in common, in the sum of ONE HUNDRED TWENTY THOUSAND DOLLARS, lawful money of the United States of America, to be paid to the said JAMES W. PITTENGER and GEORGE F. JAMES, as joint tenants and not as tenants in common, or to their certain Attorney, Executors, Administrators or Assigns; To which payment well and truly to be made, the said corporation binds itself, its successors and assigns, firmly by these presents. Sealed with its Seal and dated the twenty second day of October in the year of Our Lord One Thousand Nine Hundred and Twenty.

The Condition of this Obligation is such, That if the above bounden E. H. McCORMICK & SONS, a corporation, its successors, assigns, or any of them, shall and do well and truly pay, or cause to be paid, unto the above mentioned JAMES W. PITTENGER and GEORGE F. JAMES, as joint tenants and not as tenants in common, or to their certain Attorney, Executors, Administrators, or Assigns, the just and full sum of SIXTY THOUSAND DOLLARS lawful money aforesaid upon demand with interest for the same at the rate of six per cent. per annum, payable quarterly, without any fraud or other delay, then

Exhibit 3.

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this obligation to be void, or else to be and remain  
in full force and virtue.

Sealed and Delivered }  
in the presence of }

E. H. McCORMICK & SONS,

By EDWARD H. McCORMICK

President.

10

(SEAL)

Attest:

JOSEPH H. McCORMICK,

Secretary.

\$30.

Stamps

20 Ex. 2 (Endorsed)—E. H. McCORMICK & SONS, a  
corporation, to JAMES W. PITTENGER and  
GEORGE F. JAMES Dated October 22, 1920.  
Amount \$60,000. Date October 1920, Due  
On demand Interest Payable Quarterly Inter-  
est Rate 6%.

Exhibit 3.

30 THIS INDENTURE, Made the twenty-second day of  
October, in the year of our Lord One Thousand  
Nine Hundred and Twenty, Between E. H. Mc-  
CORMICK & SONS, a New Jersey corporation, for-  
merly E. H. McCormick & Sons' Patent & Enameled  
Leather Co., of the City of Newark in the County of  
Essex and State of New Jersey, of the First Part;  
And JAMES W. PITTENGER and GEORGE T. JAMES,  
both of the City of Newark in the County of Essex  
and State of New Jersey, of the Second Part; Wit-  
40 nesseth, That the said party of the first part, for

## Exhibit 3.

and in consideration of the sum of SIXTY THOUSAND DOLLARS, lawful money of the United States of America, to it in hand well and truly paid by the said party 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, has given, granted, bargained, sold,<sup>10</sup> aliened, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, enfeoff, convey and confirm to the said party of the second part, and to their heirs and assigns forever as joint tenants and not as tenants in common; All those tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark in the County of Essex and State of New Jersey: 20

FIRST TRACT: BEGINNING in the Southerly line of Miller Street at a point therein distant one hundred (100) feet Westerly from the Southwest corner of the same and Avenue C; thence running South thirty-two degrees twenty-three minutes (32 deg. 23') West and at right angles with Miller Street two hundred and sixty (260) feet; thence North fifty-seven degrees thirty-seven minutes (57 deg. 37') West and parallel with Miller Street fifty <sup>30</sup> (50) feet; thence South thirty-two degrees twenty-three minutes (32 deg. 23') West and at right angles with Miller Street two hundred feet; thence South fifty-seven degrees thirty-seven minutes (57 deg. 37') East and parallel with Miller Street one hundred and fifty (150) feet more or less to land conveyed to L. D. H. Gilmour by deed recorded in Book A 29 of Deeds for said County, page 528; thence along the same and along the Northerly line 40

## Exhibit 3.

- of the right of way of the Waverly and Passaic Branch of the New York Bay Railroad four hundred and twenty-two (422) feet more or less to where the same is intersected by the Southerly line of East Vanderpool Street as the same is laid out on a map of Property of Theodore Coe; thence running along the said Southerly line of East Vanderpool Street North fifty-seven degrees thirty-seven minutes (57 deg. 37') West two hundred and forty-eight (248) feet more or less to an angle in the same; thence still along East Vanderpool Street North no degrees thirty-seven minutes (0 deg. 37') East thirty (30) feet more or less; thence still along the same North twelve degrees six minutes (12 deg. 6') East one hundred (100) feet more or less; thence still along the same and at right angles with Miller Street North thirty-two degrees twenty-three minutes (32 deg. 23') East one hundred and seven (107) feet more or less to the Southerly line of Miller Street and thence running along the same North fifty-seven degrees thirty-seven minutes (57 deg. 37') West one hundred and fifty-one (151) feet to the place of BEGINNING. Including herein all rights and interests in the streets bounding and abutting upon the premises above described.
- 30 SECOND TRACT: BEGINNING at the Northeast corner of East Vanderpool Street as laid out on a map of property of Theodore Coe; said point of Beginning being also distant thirty-eight (38) feet Easterly from the Easterly line of Avenue C; thence running along the Northerly side of East Vanderpool Street South fifty-seven degrees thirty-seven minutes (57 deg. 37') East sixty-two (62) feet; thence North thirty-two degrees twenty-three minutes (32 deg. 23') East and at right angles with
- 40

## Exhibit 3.

East Vanderpool Street fifty feet; thence North fifty-seven degrees thirty-seven minutes (57 deg. 37') West and parallel with East Vanderpool Street eighty and fifty one-hundredths (80.50) feet to Easterly line of East Vanderpool Street and thence running along the same South twelve degrees six minutes (12 deg. 6') West fifty-three and thirty one-hundredths (53.50) feet to the place of Beginning. Being lot number fourteen (14) on the aforesaid map. <sup>10</sup>

EXCEPTING thereout and therefrom such portions thereof as have been conveyed or taken for the opening of streets or avenues.

BEING the same premises conveyed to the said party of the first part by deed of Edward H. McCormick and Catherine McCormick, his wife, dated December 18, 1902, recorded in the Office of the Register of Essex County in Book B 36 of Deeds for said County, page 204, etc. <sup>20</sup>

This mortgage is executed and delivered for the purpose of correcting a mortgage bearing even date herewith covering the same lands and premises hereinabove described, made by the within mentioned mortgagor to James W. Pittenger and George F. James, which said mortgage was recorded in the Office of the Register of Essex County on October 26, 1920, and which should have been made to James W. Pittenger and George T. James as herein; this mortgage being given only for the purpose of such correction and being intended to secure the same sum of money mentioned in the aforesaid mortgage and not any other or further sum. <sup>30</sup>

Together with all and singular the profits, privi-

## Exhibit 3.

leges and advantages, with the 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 tract or lot of land and premises, with the appurtenances, unto the said party of the second part their heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever, as joint tenants and not as tenants in common. Provided always, and it is agreed by and between the parties to these presents, that if the said E. H. McCormick & Sons, its successors and assigns, do and shall well and truly pay or cause to be paid, to the said party of the second part, or to their certain attorney or attorneys, heirs, executors, administrators or assigns, the sum of SIXTY THOUSAND DOLLARS on demand from the date hereof, with lawful interest for the same, at the rate of six per centum per annum, payable quarterly, according to the condition of a certain bond bearing even date herewith, in the penal sum of One Hundred Twenty Thousand Dollars, without any deduction or defalcation for taxes, assessments, or any imposition whatsoever; then and from thenceforth, these presents and said obligation, and everything herein and therein contained, shall cease and be void; anything herein and therein contained, to the contrary in anywise notwithstanding. And the said party of the first part, its successors and assigns, does covenant and grant to and with the said party of the second part,

## Exhibit 3.

their heirs and assigns, that the said party of the first part its successors and assigns, shall not nor will claim or demand or be entitled to receive any credit or credits on the interest payable hereon or on the moneys to secure payment of which this mortgage is made, for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount due on this mortgage or any part thereof; and that the said party of the second part, their heirs and assigns, shall and may, from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, its successors or assigns, or of any other person or persons whatsoever. And it is also agreed by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss or damage by fire, in some safe and responsible Insurance Company or Companies, to an amount satisfactory to the party of the second part and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof it shall be lawful for the said party of the second part, to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the

## Exhibit 3.

amount of the said bond or obligation, and secured by these presents, and payable on demand with legal interest.

In Witness Whereof, the said party of the first part has caused these presents to be signed by its President and its corporate seal to be hereto affixed, attested by its Secretary the day and year first  
10 above written.

E. H. McCORMICK & SONS (SEAL)  
By EDWARD H. McCORMICK  
President.

Attest:

JOSEPH H. McCORMICK  
Secretary.

20 STATE OF NEW JERSEY, }  
County of Essex } ss:

Be it Remembered, That on this 30th day of November, in the year One Thousand Nine Hundred and Twenty, before me, the subscriber, a Notary Public in and for said County and State personally appeared JOSEPH H. McCORMICK known to me to be the Secretary of the E. H. McCORMICK & SONS, a Corporation, the Grantor within named, who be-  
30 ing by me duly sworn on his oath said and made proof to my satisfaction that he is such Secretary, and that he well knows the Common Seal of said Corporation, and that the Seal affixed to the within mortgage is such Common Seal and was thereto affixed by EDWARD H. McCORMICK the President of said Corporation, and that the said mortgage was by the said President also signed and delivered as and for the voluntary act and deed of said Corpora-  
40 tion in the presence of said Deponent, who there-

Exhibit 4.

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upon subscribed his name thereto as attesting witness.

JOSEPH H. McCORMICK

Sworn and subscribed before }  
 me, at Newark, N. J., this 30 }  
 day of November A. D. 1920. }

FRED H. CARL

(SEAL)            Notary Public

Ex. 3 (Endorsed) MORTGAGE E. H. McCORMICK <sup>10</sup>  
 & SONS, a corporation, to JAMES W. PITTENGER  
 and GEORGE T. JAMES Dated October 22nd,  
 1920. Received in the Register's Office of the  
 County of Essex, N. J. on the 15th day of De-  
 cember A. D., 1920, at 2:35 o'clock, in the after-  
 noon, and Recorded in Book S. 43 of Mort-  
 gages for said County, on pages 31-33 HOWARD  
 S. DODD REGISTER

RECEIVED REGISTER'S OFFICE DEC 15 2 35 P M 1920 <sup>20</sup>  
 ESSEX COUNTY

**Exhibit 4.**

Know all Men by these Presents, That E. H. McCORMICK & SONS, a New Jersey Corporation, is held and firmly bound unto JAMES W. PITTENGER and GEORGE T. JAMES, as joint tenants and not as tenants in common, in the sum of ONE HUNDRED <sup>30</sup> TWENTY THOUSAND DOLLARS, lawful money of the United States of America, to be paid to the said JAMES W. PITTENGER and GEORGE T. JAMES, as joint tenants and not as tenants in common, or to their certain Attorney, Executors, Administrators or Assigns; To which payment well and truly to be made, the said corporation binds itself, its successors and assigns, firmly by these presents. Sealed with its Seal and dated the twenty-second day of <sup>40</sup>

## Exhibit 4.

October in the year of Our Lord One Thousand Nine Hundred and Twenty.

The Condition of this Obligation is such, That if the above bounden E. H. McCORMICK & SONS, a corporation, its successors, assigns, or any of them, shall and do well and truly pay, or cause to be paid, unto the above mentioned JAMES W. PITTINGER and GEORGE T. JAMES, as joint tenants and not as tenants in common, or to their certain Attorney, Executors, Administrators, or Assigns, the just and full sum of SIXTY THOUSAND DOLLARS lawful money aforesaid upon demand with interest for the same at the rate of six per cent. per annum, payable quarterly, without any fraud or other delay, then this obligation to be void, or else to be and remain in full force and virtue. This bond is executed and delivered for the purpose of correcting a bond which bears even date herewith, conditioned for the payment of a like sum of money and made by the within mentioned obligor to James W. Pittenger and George F. James. It should have been payable to James W. Pittenger and George T. James as herein; this bond being given only for the purpose of such correction and not to secure any other or further sum of money.

E. H. McCORMICK & SONS,  
By EDWARD H. McCORMICK  
President. (SEAL)

30 Attest:

JOSEPH H. McCORMICK  
Secretary.

40 Ex. 4 (Endorsed)—BOND. E. H. McCORMICK & SONS, a corporation, to JAMES W. PITTINGER and GEORGE T. JAMES Dated October 22nd, 1920. Amount \$60,000. Date October 1920. Due On Demand. Interest Payable quarterly. Interest Rate 6%.

**Exhibit 5.**

KNOW ALL MEN BY THESE PRESENTS, WHEREAS on the day and date hereof E. H. McCormick & Sons, a New Jersey corporation, has executed and delivered to us a bond conditioned for the payment of \$60,000. on demand, with interest at six per cent., payable quarterly, and a mortgage securing the same covering lands in the City of Newark, Essex County, New Jersey, about to be recorded: 10

NOW THEREFORE, we JAMES W. PITTINGER and GEORGE T. JAMES, of the City of Newark, Essex County, New Jersey, do hereby make known and declare for ourselves, and the survivor of us, and our respective executors, administrators and assigns, in consideration of One Dollar to each of us in hand paid by The National Newark and Essex Banking Company of Newark, a national bank association organized under the laws of the United States of America and transacting business in said City of Newark, hereinafter called the banking company, and by Edward C. Moore Co., a New Jersey corporation transacting business in said City of Newark, hereinafter called the Moore Company, that the said bond and mortgage have been delivered to us and are held by us in trust for the said banking company and the said Moore Company to hold the same for the benefit of said companies and to receive payment thereof, or on account thereof, and to apply the proceeds thereof when received or realized in payment so far as the same shall extend upon the indebtedness of the said E. H. McCormick & Sons to said banking company, now amounting approximately to \$26,067.50, and the indebtedness of the said E. H. McCormick & Sons to said Moore Company, now amounting approximately to \$30,637.33, and to any and all notes 40

## Exhibit 5.

or other commercial paper evidencing the same and to any and all renewals, extensions or substitutes therefor, together with the interest thereon, ratably between the said banking company and the said Moore Company without preference of one over the other, according to the respective amounts of such indebtedness remaining due, with the interest thereon at the time of the receipt of all or any portion of the proceeds of such bond and mortgage.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 27th day of October, 1920.

JAMES W. PITTENGER [SEAL]

GEORGE T. JAMES [SEAL]

Signed, sealed and delivered }  
 20 in the presence of: }  
 FRED H. CARL

STATE OF NEW JERSEY }  
 County of Essex } SS:

BE IT REMEMBERED That on this 27th day of October, in the year of our Lord One Thousand Nine Hundred and Twenty, before me, the subscriber, a Notary Public for State of New Jersey, personally appeared JAMES W. PITTENGER and GEORGE T. JAMES, who, I am satisfied are the grantors mentioned in the within Declaration of Trust, and to whom I have first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

FRED H. CARL  
 Notary Public

## Exhibit 7.

**Exhibit "6"**—The records of the bank consisting of fourteen commercial sheets of loose leaf type beginning with the sheet upon the top of which is carried forth the balance of \$49,569.39 dated July 19, 1918, and ending with the sheet upon which the balance carried forth is \$30,858.53 dated August 14, 1922, indexed as liability ledger.

Because of this fact it could not be left with the Receiver and no copy thereof could be obtained. 10

**Exhibit "7"**—Financial statement dated January 1, 1919.

This statement is in the possession of the National Newark & Essex Banking Company.

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**Exhibit 7.**

E. H. McCORMICK, President  
 Jos. H. McCORMICK, Secretary 20  
 JOHN T. McCORMICK, Vice-President  
 E. H. McCORMICK, JR., Treasurer

E. H. McCORMICK & SONS, INC.

Manufacturers of  
 Patent and Enameled Leather  
 For the Automobile, Carriage and Furniture Trade  
 Avenue C and Vanderpool Street  
 Newark, N. J. 30

## FINANCIAL STATEMENT

AS OF

JANUARY 1st, 1919

## ASSETS

Cash value Mdse on hand.	101,430.19	
Accounts receivable.....	31,665.21	
Cash in bank.....	3,789.44	
Machinery & fixtures.....	51,559.22	\$188,444.06
		40

## Exhibit 7.

## LIABILITIES

Notes payable for Mdse..	27,335.63	
Notes payable (Negotiated with bank).....	28,450.00	
Accounts payable.....	1,805.79	57,591.42
		<hr/>
10 Surplus in business.....		\$130,852.64

## REAL ESTATE.

Value of Real Estate.....	96,705.04	
Mortgage there-on.....	7,500.00	89,205.04
		<hr/>

Total worth in and out  
of business..... \$220,057.68

Signed

20 E. H. McCORMICK JR. Treasurer

E. H. McCORMICK &amp; SONS, INC.

Newark, N. J.  
JAN. 18TH, 1919.

NATIONAL NEWARK & ESSEX BANKING Co.  
Newark, N. J.

30 GENTLEMEN:

As per your request we are enclosing our yearly  
statement.

Yours very truly,

E. H. McCORMICK &amp; SONS

EHMcCJR/C

40

**Exhibit 8.**

E. H. McCORMICK &amp; SONS, INC.

Avenue C and Vanderpool Street  
Newark, N. J.

## ACCOUNTS PAYABLE

The Turner Tanning Mach'y Co.....	12.00	10
Dooner & Smith Chemical Co.....	252.98	
Standard Embossing Plate Co.....	184.24	
Roe & Conover.....	60.62	
United States Grate Bar Co.....	17.50	
Millington & Bradshaw.....	2.50	
Alex Traud & Co.....	132.71	
John H. Yocum.....	17.50	
C. G. Winans Co.....	24.64	
Miller & Co.....	133.60	
Stone & Co.....	24.25	
Hugh C. Barrett.....	194.20	20
Blevney Machine Co.....	2.00	
Miner Edgar Co.....	267.60	
Janos Asbestos Co.....	4.00	
Baker Printing Co.....	6.50	
Grasselli Chemical Co.....	544.50	
R. G. Dun & Co.....	250.00	
Geo. H. Gardner.....	5.00	
Lueddele's Express Co.....	182.50	
John Howe.....	66.50	
P. L. Bryce.....	187.50	
American Dist. Tel. Co.....	46.50	30
New York Telephone Co.....	43.80	
Public Service Elec. Co.....	44.85	
Penna. R. R. Co.....	67.89	
D. Jackson.....	175.00	
Dawson Tire Co.....	110.22	
Louis Handler.....	200.00	

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 Total..... 3261.10

Outside notes payable \$2300

10/19 Ed says will send us a statement

**Exhibit 9.**

E. H. McCORMICK &amp; SONS, INC.

Avenue C and Vanderpool Street  
Newark, N. J.

## OUTSTANDING NOTES GIVEN EDWARD C. MOORE CO.

10	Due Date	Amount
	Oct. 29 .....	4439.45
	Nov. 13 .....	2357.39
	“ 29 .....	2694.12
	Dec. 19 .....	2755.33
	“ 24 .....	2761.98
	Jan. 10 .....	1041.25
	“ 17 .....	1315.70
	“ 29 .....	2595.93
20	Feb. 4 .....	1040.74
	“ 18 .....	3316.00
		<hr/>
		24317.89
	Outstanding checks .....	3121.70
		<hr/>
	Total .....	27439.59

30

40

**Exhibit 10.**

E. H. McCORMICK &amp; SONS, INC.

Avenue C and Vanderpool Street  
Newark, N. J.

## LOANS FROM NAT'L NEWARK &amp; ESSEX BANKING CO.

Due Date of Note	Amount
Oct. 20 .....	1775.00
Nov. 1 .....	225.00
15 .....	1200.00
22 .....	5500.00
29 .....	1700.00
Dec. 9 .....	3900.00
Jan. 3 .....	3350.00
13 .....	4650.00 20
Feb. 10 .....	700.00
11 .....	375.00
Total .....	<u>23375.00</u>

10

30

40

**Exhibit 11.**

E. H. McCORMICK &amp; SONS, INC.

Avenue C and Vanderpool Street  
Newark, N. J.

FINANCIAL STATEMENT AS OF SEPTEMBER 1ST, 1920.

10

## ASSETS

Mdse. on hand .....	6543.17	
Accounts receivable ..	690.46	
Cash in bank.....	762.00	
Machinery & Fixtures.	26011.42	
Real Estate plant...	225000.00	
		<hr/>
	\$259,007.05	\$259,007.05

20

## LIABILITIES

Notes payable for Mdse	29958.30	
Notes payable Bank..	23250.00	
Accounts payable ....	3261.10	
		<hr/>
	\$56,469.40	\$56,469.40

Total worth ..... \$202,537.65

30

E. H. McCORMICK, JR. Treas.

40

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 IN CHANCERY OF NEW JERSEY.
 

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*Between*

EDWARD H. McCORMICK, JR.,  
Complainant,

AND

EDWARD H. McCORMICK &  
SONS, INC.,  
Defendant.

} 10

Transcript of testimony taken in the above entitled cause before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Monday, December 18, 1922.

20

APPEARANCES:

MR. PATRICK J. DOLAN, Receiver.

MR. MICHAEL J. TANSEY, for Receiver.

MR. JOHN R. HARDIN, MR. J. FRED WHERRY and  
MR. ERNEST C. LUM for the mortgagees,  
James W. Pittenger and George T. James.

MR. ERNEST C. LUM, for Edward C. Moore &  
Co., the beneficiary of the mortgage.

MR. JOSIAH STRYKER (LINDABURY, DEPUE &  
FAULKES), for 30

Court: The mortgage, for which Mr. Hardin, Mr. Lum and Mr. Wherry appear, by the report of the receiver, filed today, has been disallowed in whole, on the ground that at the time of its execution and delivery the corporation was insolvent, and the parties represented by Mr. Hardin, Mr. Lum and Mr. Wherry have appealed from that determina- 40

## Case.

tion of the receiver, and filed notice of such appeal, which has been marked filed today.

Mr. Stryker, of Lindabury, Depue & Faulks, appears for the National Leather Company, claimant as a general creditor of the insolvent corporation under an assignment.

10 Do you appeal from the determination of the receiver refusing your claim?

Mr. Stryker: No, unless some of the other interested parties do——

Court: In view of the statement of Mr. Hardin, I want to reserve to all parties in interest the right to take further exception or appeal from other items mentioned in the receiver's report, but not now directly involved in this hearing.

Mr. Stryker: Then I wish to have that reservation.

20 Court: All of you will have the benefit of it.

By consent of all parties this matter is brought on at this time for a summary disposition, in order that the mortgagees and parties interested in the mortgage may, if possible, be placed in a position to determine what action to take in relation to the receiver's sale, advertised to be held on December 21st. The receiver has engaged in an extensive advertising of the insolvent corporation's property, and at an expense of approximately \$1,000, and it is desired by all parties that the benefit of that expense should not be lost, if possible, by a postponement of the sale on the date for which it is advertised.

How much is the mortgage?

Mr. Lum: \$60,000, with accumulated interest, which makes it approximately \$67,000.

40 Court: As I understood from remarks made by counsel at an informal conference we had here

last week, there was something like \$7,000 included in the principal of that mortgage.

Mr. Lum: About \$5600, which with interest now brings it in excess of \$6,000.

Court: And it was included in the disallowance by the receiver. I understood, from what counsel told me, that that amount of \$5600 and some odd was a loan made at the time of the execution of the mortgage and for a debt then contracted, and not to secure a pre-existing debt of that amount. 10

Mr. Lum: That is correct.

Mr. Tansey: I would request permission to read into the record the testimony already taken, without having to take it over again.

Court: I am passing on it now; it is a matter of appeal, and the record that I am now passing on.

The reasons assigned by the receiver, as I understand it, for refusing to allow the mortgage as a claim against the estate are that the corporation was insolvent at the time of the execution of the mortgage, and for some time prior thereto, and that the mortgage was given to secure past due indebtedness. 20

Mr. Dolan: The principal amount.

Court: With the possible exception of the \$5,600 mentioned that the receiver finds as a fact from the evidence before him, that the corporation was not only insolvent at the time of the execution of the mortgage, and for some time prior thereto, but was insolvent to the knowledge of the mortgagee and other parties claiming interest in the mortgage. 30

Mr. Hardin: That is what they find; there is no evidence of that kind.

Court: It seems to me that that is what you will have to find.

Mr. Stryker: And that the company had at that 40

Edward H. McCormick, Jr.—Direct.

---

time, or shortly prior to the giving of the mortgage, actually suspended business.

Court: For the special purpose of this appeal, the entire record in the cause is offered and available for the use of any or all parties.

Mr. Hardin: I want to refer to the inventory.

10 Mr. Stryker: We object to the inventory as not relevant proof of the value of the assets, unless it appears how that value was arrived at.

Court: It is a circumstance, however, to be taken into consideration in connection with the receiver's conclusion. If his inventory should contradict his conclusion, so that instead of insolvency, solvency existed, on the face of the record, his own conclusion would be contradicted by his own appraisal. How far that will be binding on others, I will not  
20 say at the present time, but it is a circumstance that should be in the case.

Mr. Tansey: On behalf of the receiver, and supporting the receiver's conclusion, I will read the testimony and proceedings before the receiver.

(Reading same)

EDWARD H. McCORMICK, JR., being duly sworn according to law, on his oath says:

30

EXAMINATION BY THE COURT:

Q. I show you a paper that has been marked Exhibit 7 in the hearing before the receiver, purporting to be a financial statement of your company, as of January 1, 1919; was such a statement rendered by you? A. Yes.

Q. I show you another exhibit before the receiver, Exhibit 11, purporting to be a financial statement  
40 of your company as of December 1, 1920; was that

Edward H. McCormick, Jr.—Direct.

---

a financial statement presented by your company?

A. Yes.

Q. To the bank? A. To the bank.

Q. And Messrs. Moore & Company? A. Yes.

Q. I notice on Exhibit 7 that you value the real estate at \$96,705, owned by the corporation; is that correct, at that time? A. At that time it was 10  
correct.

Q. I notice on Exhibit 11, a year and nine months later, that you valued the real estate at \$225,000, a difference of \$208,000. A. We carried that eighty-nine as the worth on our books for years.

Q. Ninety-six? A. Yes, for years.

Q. How do you explain the difference in valuation? A. Property had increased in value. 20

Q. Had it? A. Yes, considerably.

Q. Had the corporation added to its holdings between January 1, 1919, and September 1, 1920, or was the difference in value merely represented by the appreciation in the property? A. That is it.

Q. To appreciation? A. Yes.

Q. On what did you base that appreciation; how did you ascertain that there was a difference of \$208,000 increase between January 1— A. It wasn't two hundred and eight. 30

Q. That is the difference I have between ninety-six and two hundred and twenty-five. A. That would be about one hundred and twenty-five.

Q. One hundred and eight I mean, not two hundred and eight. A. The property having railroad frontage had greater valuation, and the values of the buildings, the cost of erecting them at that time.

Q. Do you think that truly represented the value 40

## Edward H. McCormick, Jr.—Direct.

on September 1, 1920, as you show it, \$225,000? A. I do.

Q. You think that is an honest, fair estimate of the value of the property? A. I do.

Q. What does the property consist of? A. Of six brick buildings and frame buildings, and about forty-six lots.

10 Q. Located—— A. On the Passaic Valley Railroad; Pennsylvania Railroad in Newark.

Q. Was your concern solvent or insolvent, so far as you know, the twenty-second of October, 1920, the day you gave this mortgage? A. We were insolvent in the point of view of cash, but I think we were solvent in our real estate.

20 Q. Was there anything to prevent you increasing the mortgage from \$7500.00 to such a sum as would pay off all your debts on the real estate? A. We didn't try.

Q. Was there anything to prevent you from getting a loan sufficiently large to pay your indebtedness, if you desired to do it at that time? A. No.

Q. Aside from not having ready the money to pay those notes then, that is the sense in which you claim you were insolvent? A. I wish you would repeat it.

30 Q. Aside from having any money—the ready money to pay the notes and your indebtedness, that was the only sense in which you mean you were insolvent? A. That is all.

Q. In all other respects you were solvent? A. Yes.

Q. You had enough assets to pay all your debts? A. Our assets consisted of our real estate.

Q. You had machinery? A. Yes.

40 Q. And some stock on hand, \$6500, which was true, when you made that statement? A. Yes, it was.

## Edward H. McCormick, Jr.—Direct.

Q. Then you had assets to pay all your debts at that time? A. If we could raise the money.

Q. If you could sell them? A. Yes.

Q. Did you make any effort to sell them? A. Yes.

Q. With what success? A. We had no success; we had several real estate men.

Q. What was the trouble; were you asking too much for them? A. I don't know; we never could get a proper offer. 10

Q. What price did you fix? A. \$250,000.

Q. Did you get an offer for anything? A. No, never. We had one offer for one building for \$35,000.

Q. Which you refused? A. Which we refused.

Q. At about what time was that? A. That was during 1918. That building consisted of a three story brick building, 100 x 200, and the offer was made by DuPont & Company to me, \$35,000 cash. 20

Q. Until you filed the bill of complaint in this case to secure the appointment of a receiver, had you actually closed the factory? A. We were practically closed.

Q. Had you actually closed it? A. Yes.

Q. When did you discharge your last employee prior to filing the bill in this cause? A. All we had there at the time we filed the bill was the night watchman. 30

Q. How long had that been true, for how many weeks or months was it that you only had a night watchman employed there prior to filing the bill? A. And a bookkeeper—about two months.

Q. And before the two months had you other people working for you? A. Yes, we had about a dozen.

Q. And when business was active, how many did 40

Edward H. McCormick, Jr.—Direct.

---

you employ? A. When we were actively engaged, running full, about 120 to 140.

Q. During 1921 how many did you employ, on the average? A. About twelve or fourteen.

Q. And during 1920? A. About a similar amount.

Q. And 1919? A. Possibly 25.

10 Q. Then it was largely due to the general slump of the leather business? A. Yes.

Q. And that was partly due to the war? A. We can attribute it largely to that.

Q. Up to the time of giving this mortgage had you ever had any difficulty to meet your matured and maturing debts and obligations by the proper exercise of your credit in the use of your assets?

A. Just prior to giving that mortgage we had no  
20 assets to realize on, outside of the real estate.

Q. And you had \$6500 in stock? A. Yes.

Mr. Tansey: What did that consist of?

Witness: Tanning materials.

Q. It was salable, wasn't it? A. No.

Q. Why did you list them? A. They were valuable; they consisted of some twenty large vats that would cost approximately a couple of hundred dollars each; they were valuable at that time.

30 Q. Were they not salable? They are not salable.

Q. Why did you put a value on them of \$6500? A. I didn't put it on those. Then I had some tanning materials; some coal; that is about all.

Q. Enough to make up \$6500? A. Yes.

Examination by Mr. Stryker:

Q. What part of that was salable? A. About  
40 two or three thousand dollars.

Edward H. McCormick, Jr.—Direct.

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Q. What was that? A. Tanning materials.

Q. Was that salable? A. Yes, it was in barrels.

Court: I notice in this statement you list your merchandise on hand as \$6500; your accounts receivable at \$690; your cash in bank at \$762; and about \$8000 in round figures. Under the liabilities, you list your accounts payable at \$3,261. Did that correctly state <sup>10</sup> your situation in respect to those items?

Witness: At that time, yes, sir.

Examination by Mr. Tansey:

Q. Did your accounts payable include your indebtedness to the bank? A. No.

Court: There are two separate items.

Q. If you had attempted to raise the money, owing the notes that you did at the bank, to Mr. <sup>20</sup> James, from outside sources, would they object—

Court: How does he know what they would have done, unless he asked them?

Q. The bank and Moore? A. I don't know.

Court: We can safely assume that they would have complained, at least, if they didn't object.

Q. If you had borrowed your full limit on the <sup>30</sup> loans, what would have become of it, do you expect?

Court: That is a mere speculation. I don't care about that; I want to know what the situation was on October 22nd.

A. It would have gone to the bank.

Court: I don't know about that. Someone might come along and pay a large amount for the equity.

Edward H. McCormick, Jr.—Direct.

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Aside from the result of the receivership, in your judgment are the buildings and property worth any less today than you thought they were in September, 1920, when you gave a statement to the bank; aside from what effect the receivership has?

10      Witness: I believe the property is worth more money than we have listed them for.

Court: More than \$200,000?

Witness: I think so.

Examination by Mr. Stryker:

Q. This merchandise, you said you had about \$2,000 worth of that \$6000 merchandise which is salable; what was that \$2,000 that was salable?

A. That consisted of some tanning extracts.

20      Q. And in what shape was it? A. They were in barrels and in bales.

Q. Was it salable for anything except barrels?

A. No.

Q. Have you since sold it? A. We have used it for tanning after we filed the statement.

Court: Was there a market for such material in the tanning trade?

30      Witness: There would have been a market if we desired to sell it.

Q. Isn't it a fact that at that time the tanning business was so dead that there wasn't any market for that sort of stuff, in 1920; isn't that true? A. No, there was a market for it in 1920; there was someone using some of it.

Q. You show on that statement, in Exhibit 11, cash in bank \$762; how much cash did you have in bank on October 20, 1920? A. That was the time  
40 we gave that mortgage? \*

Edward H. McCormick, Jr.—Direct.

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Q. Yes. A. I think we had less than \$25 or \$100.

Q. Isn't it a fact that your books showed an overdraft of some \$3,000? A. On November 1, I think, when we struck a balance, our books showed an overdraft of \$3,000.

Q. Isn't it a fact that that overdraft existed on October 20? A. Yes.

Mr. Hardin: That didn't show on the books<sup>10</sup> of the bank, because the checks hadn't been presented.

Q. How was that overdraft occasioned; what occasioned that overdraft? A. When the E. C. Moore Company's notes matured, at their request we gave them a check, a dated check, and they would hold it until such time as we would have the means to pay it.

Q. And when did that practice begin of giving<sup>20</sup> them a check to pay their notes, with a request that they hold the check? A. Several months prior to the giving of that mortgage.

Q. Did you tell them why you wanted them to hold the check? A. Yes, I told them that and they suggested giving \$500 or \$200, or whatever payments we could make.

Q. How many checks of that kind did you give them, with the information that you didn't have<sup>30</sup> the money to meet the checks?

Court: This is when during——

Mr. Stryker: Before the mortgage was given, and is offered not only for the purpose of showing the condition of the company, but for the purpose of showing that to that extent the Moore Company had knowledge of that condition.

Edward H. McCormick, Jr.—Direct.

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Q. Will you turn to that account and state how many of those checks you gave, with the knowledge that you had no money to meet them?

Mr. Lum: Aren't they all listed in one of the exhibits?

Mr. Stryker: The total amount is given, but not the number of checks.

10

A. There are eight checks.

Court: And the amount is what; from what date to what date?

Witness: That probably covered a period of—I don't know positively.

Q. Doesn't it appear on the books? A. No, it just shows in here when we gave that. It says "To cancelled checks given Moore & Company, which were given on note of this date."

20

Q. What date is this? A. October 22, 1920. At the time that we gave the mortgage the E. C. Moore Company held these checks. In order to bring about a settlement, they returned the checks and we gave them a note instead.

Q. Do you know how long before you gave the mortgage you commenced the giving of these checks? A. Several months before.

30 Q. Might it have been six months? A. Six months.

Q. Might it have been a year? A. No, I think a period of six months.

Q. And then, as I understand it, whenever a note came due, you gave E. C. Moore & Company a check, telling them you hadn't the money to meet the check? A. Not all notes; some of the notes.

Q. Then on October 22, you had practically no  
40 money in bank, is that right? A. I believe so.

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Q. Do you know how much you had exclusive of the amount covered by these checks? A. I don't think we had any money. All business transactions would be with the bank during that period, renewals—

Q. Now, Mr. McCormick, do you know what taxes were due on your plant in October, 1920? A. Yes, about six years, I think.

Q. That is, you hadn't paid taxes for the year 1913? A. No. 10

Q. And you hadn't paid for any year subsequent to that, except 1914? A. 1914.

Q. Do you know what those taxes amounted to? A. The entire taxes?

Court: Yes, for those six years.

Witness: About \$10,000.

Q. That is up to the present time? A. Up to date. 20

Q. About \$8,000 at the time you gave the mortgage? A. About \$9,000.

Mr. Stryker: I think he is wrong; I think it amounts to about six or seven thousand at the time he gave the mortgage, covering five or six years. The claim filed by the receiver of taxes shows the taxes for 1918, 1919 and the first half of 1920.

Q. The taxes on personal property had been paid 30 up to what time? A. Probably the last four years; there hasn't been any personal taxes in about four years.

Q. Then in 1920 the taxes for 1918, 1919 and first half of 1920, personal taxes were due? A. Yes.

Q. Do you know what they amounted to? A. In the year 1918, 1919 and 1920, we had our personal taxes reduced from \$40,000 to \$10,000; that wouldn't amount to much in the last three years. 40

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Q. When did you start to make an effort to sell this property? A. Prior to the war.

10 Court: I show you a copy of the advertisement and diagram printed thereon, which the receiver has issued in connection with the sale of the property advertised on the twenty-first; does that correctly delineate your buildings and property?

Witness: Yes.

Court: I will put that in as an exhibit on the part of the court.

(Marked Exhibit C-1, December 18, 1922.)

Q. How many men were you employing at that time when you commenced to make an effort to sell your property? A. About 100 men.

20 Q. When did you commence to employ about twelve men? A. During the last year of our business.

Q. What was your business? A. Manufacturer of automobile leather and furniture leather.

Q. What business did you do when you employed twelve men? A. Commission tanning.

Court: Can you tell me the amount of your business in 1921, the volume about?

30 Witness: I don't think it exceeded \$25,000 or \$30,000.

Court: And what did it amount to in 1920, can you recall, approximately?

Witness: Approximately \$90,000.

Court: And 1919 what would you say?

Witness: We did about the same.

Court: And prior to the war had it exceeded that amount?

40 Witness: Prior to the war it did exceed that amount.

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Court: To what extent; what was the largest year that you recall? \*

Witness: About \$200,000.

Court: What year would that be, about?

Witness: About 1914 or 1915.

Examination by the Receiver:

Q. When did you stop tanning automobile and furniture leather; when did you stop that business? A. Tanning for our own purposes. 10

Q. Yes. A. About 1918.

Q. This leather that you did on commission, was that for the same purpose? A. For the same purpose.

Q. Furniture and tops? A. Yes.

Q. When you tanned on commission, the hides would be sent you? A. They were furnished to us and we charged for our labor and material. 20

Q. Formerly you bought hides and did the work? A. Yes, we bought hides and did the work on them.

Q. Why did you discontinue doing business on your own account? A. Our means were such that we couldn't buy.

Q. You lacked the money to buy leather and hides with? A. Yes.

Q. And that was when? A. 1918 or 1919.

Court: Completely stopped? 30

Witness: Yes, completely.

Q. Did you tell Mr. Baldwin and Mr. James, or either of them, the character of the business that you were doing in October, 1920, when this mortgage was discussed? A. No.

Q. What did you tell them you were doing? A. They never asked me what I was doing?

Q. Isn't it a fact that you told them what you were doing? A. At the time I gave the mortgage? 40

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Q. Yes, or just before that time. A. At the time I gave the mortgage it didn't come up for discussion what we were doing.

Q. But shortly before that it didn't come up either? A. No.

Q. Yes testified at this hearing that you told them that you were doing a commission business,  
10 as I recall your testimony.

Mr. Hardin: No, he didn't say so; he said he was doing commission business, but he didn't testify that he told them that.

Court: Mr. McCormick said he was practically at a standstill, but he doesn't remember that he disclosed that to them.

Examination by the Court:

20 Q. Did you continue to do this commission business from October, 1920, to about August, 1922, when you filed your bill in this case? A. Yes.

Q. Up to within a month or two? A. Up to within a month or two prior to that; that is, before or after.

Q. You gave the mortgage on October 22, 1920? A. Yes.

Q. Did you continue to do business, either on  
30 commission or your personal account, or both, or in any other way, up to about the time you filed your bill of complaint in this cause in August, 1922? A. Yes.

Mr. Stryker: Were you doing business in 1922, in April?

Witness: We did a little tanning this year.

Mr. Stryker: Whom did you have employed there in April?

40 Witness: Myself and my brothers.

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Mr. Stryker: Do you remember the occasion when I visited the tannery in March?

Witness: No, it was 1921; we did some in 1921.

Q. Collect your mind, and think a moment; when did you do your last work in the factory, either for yourself or on commission or both, or in any other way? A. I think in 1922 early, probably March or April, we were finishing a little tanning, a commission job we had. <sup>10</sup>

Q. That was about the time that Mr. Stryker refers to? A. When I recall Mr. Stryker, when he was there, we still had a few hides running through.

## Examination by Mr. Stryker:

Q. Did you have any employees there? A. Myself and my brothers, and during that period I was the tanner, the last year, engineer, everything that goes with the business. <sup>20</sup>

Q. Where were your brothers when I was there? A. They were around the factory.

Q. How did you manage to carry on business during the period of about a year and a half from the time you gave the mortgage? A. We did a little tanning on commission, business like japanning and tanning. <sup>30</sup>

Q. You had no money and had no credit; how did you get along? A. We made our collections promptly and we would pay our labor.

Q. You did enough to carry that part? A. Yes.

Q. Did you pay the interest on your first mortgage of \$7500? A. Not this year.

Q. In 1922? A. No.

Q. You did in 1920 and 1921? A. Yes. <sup>40</sup>

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Q. You didn't pay your taxes? A. No.

Q. You didn't pay the salary of your officers, did you? A. No.

Q. You paid just the labor? A. That is all.

Court: Why did you file a bill in this case; was it because the bank threatened to foreclose?

10 Witness: When the bank threatened to foreclose, I did it in the interest of our general creditors.

Court: Was it because the bank threatened to foreclose, or demanded the payment of its mortgage, or would foreclose in case you didn't pay; was that the primary reason for your filing the bill in this cause?

Witness: Yes.

20 Court: To protect your general creditors?

Witness: Yes.

Court: Had your other creditors been bothering you from October, 1920, up to the time you filed your bill?

Witness: No.

Q. The National Leather Company had been communicating with you rather regularly? A. Yes, they were.

30 Q. And in the meantime they had filed a bill in the Court of Chancery against you and secured a decree for an accounting before you filed your bill? A. Yes.

Court: When was that decree?

Mr. Stryker: April of this year.

Examination by Mr. Hardin:

Q. You paid your bank interest, didn't you?

40 A. Not all times.

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Q. As the notes were renewed? A. Prior to the giving of the mortgage we paid our bank interest.

Q. After you gave the mortgage? A. After we gave the mortgage, in some instances we paid interest on some of the notes.

Q. As the notes were renewed, wasn't the interest paid? A. No.

Q. Customarily to the bank, I mean. A. Some. 10  
On quite a number, the interest was added.

Q. Part of the time, at least, you paid the interest? A. Yes.

Q. And occasionally you paid a small sum on account? A. Not after they secured the mortgage.

Q. Just renewed the notes? A. Just renewed the notes.

Examination by Mr. Tansey:

Q. You say in your testimony you continued 20  
business only two or three months after giving the mortgage? A. Yes.

Court: You told me a little while ago that you continued it up to February or March.

Witness: After we gave the mortgage we continued to do some commission business several months after.

Court: You mean you didn't continue in the 30  
same extensive way that you had been doing prior to giving the mortgage?

Witness: Yes.

Q. You only had one job on commission business from your jobbers? A. Yes.

Q. And after that job was finished, what did you do? A. We were finished.

Q. And it took how many months after you gave the mortgage to finish that job? A. The mortgage 40

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was given in October, 1920; we discontinued our business about March or April or May, 1922.

10 Court: Mr. Tansey is calling your attention to the fact that when you were before the receiver you made a statement from which they gathered the impression that your commission work, aside from your other work, ceased about two or three months after you gave the mortgage, and that from that time on you did nothing; is that right or wrong?

Witness: In one sense; the commission work we secured, we secured and was probably finished two or three months after we gave that mortgage, and there was a balance which we carried along ourselves and didn't incur any heavy expenses, working on ourselves.

20 Court: So your statements are both correct and consistent.

Q. You continued your work with yourself and your two brothers? A. Yes.

Q. You had no help beyond that? A. No.

Q. That was the way you continued? A. Yes.

Examination by Mr. Stryker:

30 Q. You say for about two or three months after the mortgage was given you were working on this commission work for this butcher? A. We received commission work after the mortgage.

Q. What was the butcher's name? A. Joseph Fell & Co., of Garfield.

Q. When you took that work in, two or three months after the mortgage was given, that took you up to about the first of the year 1921; is that true? A. We carried it along ourselves, but not  
40 with very heavy expense.

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Q. Did you continue the work on contract? A. I was working on that up to that time.

Q. When did you finish that? A. About in March or April, 1922.

Q. You said it took or three months to finish that contract; what do you mean? A. I said we worked on that contract two or three months; we received the contract after we filed the mortgage to the bank, and we worked on it several months, and then somewhere along March or April, we finished it ourselves.

Q. Of this year? A. Of this year.

Q. When did you discharge all of your men except yourself and your two brothers?

Court: He said about two months before filing the bill.

Q. Then what did you mean when you testified before the receiver, as follows: "Did you do any business about that time (referring to the day the mortgage was given)? A. We did commission business and tanned hides for butchers. Q. How long did that take? A. Two or three months. Q. After that? A. We were shut up; no means, no money. Q. You were then practically at a standstill? A. Practically."

Court: The witness has clearly stated, as I understand him—if I am in error, correct me, Mr. McCormick—two or three months after you gave this mortgage you secured a contract from Fall, the butcher, to do some work on commission, and it took you several months to finish the bulk of that contract with your men; then you continued, you and your brothers, to finish that work, or some other

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work, which took up to about March, April or May, 1922; when you stopped absolutely?

Witness: Yes.

LOUIS SCHLESINGER, sworn for National Leather Co., testified as follows:

10 DIRECT-EXAMINATION BY MR. STRYKER:

Mr. Stryker: I suppose Mr. Schlesinger's qualifications are admitted?

Court: The witness's qualifications are admitted by all counsel.

Q. Did you make an examination of the plant of the E. H. McCormick Company, which is shown on this map Exhibit C 1, December 18, 1922? A. I did.

Q. When did you make that examination? A. I  
20 have sent for my file, to be sure; it was either on Saturday afternoon—I don't know whether Saturday was April 2nd or April 4th, 1922; it was the first Saturday in April.

Q. And for what purpose did you make that examination? A. At your request, to give you an opinion as to the value of that real estate.

Q. And what conclusion did you reach as to its value? A. Shall I read the letter?

30 Q. I show you the letter, if you wish it to refresh your memory (witness shown letter). A. That is the letter.

Q. Can you state by reference to the letter what value you placed upon the property? A. Yes; I valued the property at that time at \$60,000, as of April 4, 1922.

Q. Did you see the property on October 22, 1920?  
A. I never was in the property, that I can recall,  
40 except that time; I knew Mr. McCormick forty

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years ago, but I don't recall visiting the plant until I went there at your request.

Q. Of course you were familiar with the value of factory property in Newark in October, 1920? A. I sold property in that vicinity around that time.

Q. If the buildings on this property had been in the same condition in October, 1920, with regard to repair and other circumstances as you found 10 them in April, 1922, just what would you say in regard to their value in October, 1920, assuming that they were in the same condition with regard to repair as you found them in, in April, 1922? A. They might have been from 25 to 50 per cent more value at that time, based upon the peak of building and everything was reached about April, 1920, and then there was a decline, and particularly in the leather industry there was a sharp decline in 20 values; I don't recall just what tanneries were on the market at that time, but factory property in general.

Examination by the Court:

Q. You say the peak was in April, 1920? A. Yes.

Q. When did the decline in business, and particularly with regard to tanneries, occur; at what part of 1920? A. I have no recollection of knowing that 30 there was—it occurred after July, in the latter half of 1920, to my recollection.

Q. You say it occurred after July; do you know how long after July? A. I don't know; I don't propose to say I specialize on tanneries or on the leather industry, but I know many people engaged in that industry, and I know there was a decline in 1920.

Q. What I am getting at is, there was a decline 40

## Louis Schlesinger—Cross.

in business or in property values in 1920? A. There were a number of properties that were on the market at the peak prices, and they were offered at considerably less, but I do not recall any tannery property at this moment.

Q. Was this property ever listed with you for sale? A. Not that I recall.

10

CROSS-EXAMINATION BY MR. HARDIN:

Q. You have given us the figure of \$60,000 as the value of this property in April, 1922, and you expressed the opinion that it might be worth how much more in October, 1920? A. Based upon the assumption that the property was in about the same condition—it was very much dilapidated when I saw it—it might have had a value of 25 to  
20 50 per cent more

Q. And that would make it about what? A. \$75,000 to \$90,000.

Court: Even in its dilapidated condition?

Witness: Yes.

Q. In October, 1920? A. Yes.

Q. How do you separate the values? You have given us a round figure, part building and part land. A. I have just sent for my file. The facts  
30 are, it comprises about forty city lots; it is paved, and I average that property, the land value, at about \$40,000, and the buildings,—which you consider in some instances a liability, and still they have some value,—I thought had a maximum value of \$20,000.

Q. And in October, 1920, you still regarded the land value as the larger element in the value? A. Absolutely.

40 Q. You think the land was worth considerably

## Louis Schlesinger—Cross.

more in October, 1920, than it was in April, 1922?

A. No, not the land particularly; I don't think land value had changed much. That was fairly fixed down there, with railroad connections and one thing and another. There isn't any material increase in land value there.

Court: Mr. McCormick said there were forty lots. 10

Witness: I think there were about forty—the dimensions I got.

Q. What I am trying to get at—we seem to be a little bit at cross purposes—you say that this property was worth from \$75,000 to \$90,000 in October, 1920, as compared with \$60,000 in April, 1922.

A. Mr. Stryker asked me if the buildings—I don't recall the property as of October, 1920, having ever been in it. 20

Q. On the assumption the buildings were in the same condition. A. I would say they were worth from about twenty to fifty per cent more, as far as the whole plant was worth, and the whole difference between sixty and ninety that you are talking about is in the buildings? A. Practically.

Court: It must be actually, from what you said, because the value was permanent as to the land. 30

Q. About a thousand dollars a lot? A. Yes, that is right.

Q. That would leave the depreciation entirely on the buildings? A. I think so.

Q. Do you know how much these buildings cost? A. I haven't the remotest idea.

Q. Do you know how much was paid for the land? A. I do not.

Q. What is the nearest land to this property 40

## Louis Schlesinger—Cross.

that you are actually familiar with by a change of price around 1920, if there were any sales; do you know of any sales around that time? A. Yes, I sold for Harry Kinnard to a dye concern down there.

Q. What date? A. I cannot tell without sending for my salesbook. I have been out of town for  
10 ten days and hadn't the remotest idea until I came to the office today that this matter was on. I haven't been able to fortify myself with any information.

Q. Where was this Kinnard property? A. Avenue B and on Vanderpool street, running through to Poinier street.

Q. That is to the west of this property? A. Yes.

Q. Did it adjoin this property? A. No.

Q. This property is Avenue C and Miller street?  
20 A. Yes.

Court: I notice, by the way, on this map, that there is a lot apparently 53 x 80.62 on the northeasterly corner of Vanderpool; is that part of this property?

Witness: Yes.

Mr. Dolan: Yes.

Q. Did the Kinnard property have any railroad siding? A. No, but it was contemplated.

30 Q. Did it touch the railroad? A. No, there was an extension to be made of the property along Avenue B, which was to be used by the Cawley Clark people and some other contiguous properties.

Q. Involving some sort of an arrangement? A. Yes.

Q. It had no direct contact with the railroads?

A. No.

Q. You know that this particular property now  
40 has a railroad siding on it? A. Oh, yes.

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Q. Don't you regard that as of a great advantage to the property? A. Very valuable. I have taken that all into consideration. I have my file now. I went down April first.

Q. Have you got the date of the Kinnard sale? A. No, I would have to send for some papers on that.

Q. Can you tell us how you arrived at this \$60,000; whether you apportioned it among the land and various buildings and siding? A. I have taken the siding into account, about 40 lots at an average value of \$1,000 a lot.

Q. Did you put a valuation on each building? A. Oh, no, the buildings are so dilapidated. In some the floors were in an awful condition; it was merely an opinion of my own as to their actual value.

Court: There seems to be a great many buildings. At the rate of \$1,000 a lot, it only leaves \$14,000 for the buildings.

Witness: My value was based upon an appraisal of forty lots.

Court: That would be \$20,000?

Witness: Yes.

Q. What frontage have these lots on streets? A. Which, the McCormick lots?

Q. Yes, this tract. From what streets can you have access? A. One building is known as 289-291 Vanderpool street; that has a frontage of 150 feet on Vanderpool street and runs back 200 feet to Poinier street, which is not open.

Q. Is Vanderpool street open? A. To the west line of Avenue C; one of the McCormick buildings is right on the street there.

Q. Is Avenue C opened? A. Up to the north side of Vanderpool street.

## Louis Schlesinger—Cross.

Q. You have got frontage here on Miller street, Vanderpool street and Avenue C; how much frontage on the railroad? A. About 422 feet.

Mr. Tansey: My records show 422 from the south side of Poinier street, which is not open, to a point east of Avenue C.

10 Q. What do you make the distance? A. About 422 feet.

Q. Have you made any other sale except the Kinard sale in that neighborhood since 1920? I am only asking about sales in 1920. A. I sold last year for the Pennsylvania Railroad, the United Railroad of New Jersey and Canal Company, the block formerly the Emmet street station, which had good railroad connection, which is in that vicinity, within two blocks of it.

20 Q. Did that land sell at the same rate as the Kinard and the other? A. At considerably less; it brought \$17,500, and some people thought it was worth at least thirty. The whole city block, bounded by—

Q. That Emmet street property you spoke about, the old Pennsylvania station, couldn't have a railroad siding? A. No.

30 Q. The elevated track is alongside of it? A. Yes. The people that bought it knew they couldn't get a siding; it is built up by the New York Pie Baking Company.

Q. The Railroad Company had it a good while, hadn't they? A. Yes.

Q. And it was no use to the Railroad Company and they were trying to get rid of it for a good while? A. Yes.

40 Q. No buildings on it? A. No, the old station was torn down a few years ago.

## Louis Schlesinger—Cross.

Q. It has a right of way across it? A. I don't know; I haven't the adjoining plate here.

Q. Any other recent sales that you know about?  
A. I cannot tell without my books. I sold the Tea Tray plant on the northeast corner of Mulberry and Murray street—it might have been in 1920—to the National Chamois and Sponge Company; that was \$200,000 sale, and had no railroad connection. 10

Q. Where was that? A. That was the northeast corner of Mulberry street and Murray street, a plot about 200 x 400, with a series of buildings on it.

Q. That is close to the Emmet street station? A. Right opposite the South Street yard station.

## Examination by the Court:

Q. How much more would these buildings have been worth in October, 1920, that McCormick plot, if they had been in fair condition and were used for manufacturing purposes at that time, or were in such condition of repair that they could be and were actually used for manufacturing purposes? 20  
A. I said from twenty-five to fifty per cent.

Q. We assume that they were in the same condition in October, 1920, that you found them in, in April, 1922. Now, assuming that they were in such good condition at least that you could do work in them and use them for manufacturing purposes in October, 1920, how much more would you say they were worth than in April of this year? A. They might have been worth twice as much. 30

Q. That would be \$120,000? A. I mean this—

Q. That would be \$100,000? A. It would be, yes.

Q. Now assuming, not that they were in first class condition, but in condition to be used and were actually used for manufacturing purposes as 40

## Louis Schlesinger—Cross.

a tannery, what would you say they were worth in October, 1920? A. I don't know whether I stated that as clear as I might when I was asked as to the value of the property and I said sixty; you asked me what was it worth in 1920, and I said from twenty to fifty; I didn't mean that to apply to the \$60,000, although I had that in—

10 Mr. Hardin: I asked you especially what that meant, and you said seventy-five to ninety thousand.

Witness: Yes.

Q. That was in the dilapidated condition. Now, I want value in the condition in which they were used actually for manufacturing purposes of the tannery? A. Then I would like to correct that statement by saying that \$20,000 of that, which  
20 would be my opinion of the value of the building in the dilapidated condition, in the same condition in October, 1920, would represent a value of about \$30,000, and if they were in first class condition—

Q. No, in condition to be occupied and used as a tannery in October, 1920? A. This is merely a matter of opinion—I don't pose as a building expert on these things—I should think they repre-  
30 sented a value of over \$45,000.

Q. And is that based on the theory of insufficient repair for use, at reproduction cost, or what is your basis of appraisal? A. What they would probably be worth in that condition. I didn't take into account the area on that, what it would cost to replace them in a sound condition, or in a good condition.

Q. Your appraisal of this property had no refer-  
40 ence to its use as a tannery at all? A. It was

## Louis Schlesinger—Cross.

practically abandoned; there wasn't anything going on when I was there.

Q. You didn't examine it; there was no going worth in your appraisal at all? A. No.

Q. And you are not giving any going worth in the figures of October, 1920? A. No.

Q. Taking going worth, wouldn't that enhance its value as an asset of McCormick & Sons business, assuming that they were in active business, and with their buildings in good repair, in 1920, and suitable for their use; wouldn't this plant have some additional value as going value, in active use, as compared with its convertible value? A. It would.

Q. If you were called upon to appraise this property as an asset of a going concern in October, 1920, treating McCormick sound at that time as a going concern, with their buildings in bad repair and everything, you wouldn't value their real estate, this tract with railroad frontage and everything, as an asset of that going business, an appraisal of its worth on the basis that you have told here? A. Hardly; I would appraise it as a going leather concern.

Q. And you would make the property worth more under such conditions? A. The buildings, yes.

Q. What would you add, assuming that condition to exist? A. I don't think I could testify to it at this time; I cannot go into the value of the buildings, on what their capacity was or what they were doing there; it would mean a replacement value. I usually employ builders to go into the values of those things; mine was the land.

Q. You do recognize the difference between what might be called a going worth of an active plant and a deserted plant? A. Absolutely.

## Louis Schlesinger—Cross.

Q. There is a difference, sometimes, too, between the worth of property and what you could sell it for on a quick turn? A. Oh, yes, those figures vary at times.

Q. Would you be surprised if you knew that this property cost \$96,000? A. No, I wouldn't be surprised at all.

10 Q. Assuming that it cost \$96,000 and was in good repair in October, 1920, would you think that was an out of the way value for it as a going concern? A. I should not.

Q. Did you notice the artesian well on this property? A. Yes.

Q. Did you give any consideration to that in your value? A. No, I did not at that time.

20 Q. Don't you think you should have done so? A. Well, I say I did not. When I have taken \$40,000 for that land value, I believe I am covering everything as far as the cost of the railroad track which might have cost in those days two or three thousand dollars and couldn't be put in today for five thousand, and the artesian well, I remember the watchman telling me about it; I don't recall its depth.

30 Q. Do you know or do you not know that it is rather difficult to find water in that neighborhood, and that efforts on adjoining properties to procure water have failed? A. I do not.

Q. Wouldn't that increase the value of a well, if you assume that fact that I have just told you?

A. Yes, I really think that \$40,000 would cover the market value of that land in October, 1920, and it hasn't got any less now, and when you tell me that it cost \$96,000, how is that amount divided?

40 Q. I don't know how it is divided; the land and buildings was the assumption I asked you to make;

## Louis Schlesinger—Cross.

you have gotten almost as high as that in your own estimate. A. Yes, while I didn't at the time analyze the question of the value, I think the \$40,000 land valuation would be good value for the proposition.

Q. You don't consider the well worth anything?

A. Yes, I do, in connection with it; I knew of it at that time. 10

Q. If you value the property at \$40,000 without the well, and you still value it at \$40,000 with the well, how can you consider the well worth anything? A. I say I didn't go into it in my letter, but I knew the well was there; I took it into consideration along with the railroad connection, which is very valuable.

Q. How deep was the well? A. Several hundred feet deep, I was told. 20

Q. Did you get all the particulars about the well, —how deep it was; what the flow of water was; what it cost? A. No.

Q. And none of those were of importance in ascertaining the price and value of this land? A. They were given to me by the watchman who was employed there for a number of years, and showed me everything about the plant.

Q. Did he tell you about the depth and flow of water and cost? A. No, he knew nothing about the flow of water and cost. About the depth, I know he said it was several hundred feet; I think it was a thousand feet. 30

Q. You didn't pay any attention to the well when you made your appraisal? A. Merely in a general way.

Q. Any more than it had been a dug well with a bucket and swing on it? A. Yes, I knew the kind of water in the vicinity, and knew that some streets 40

## Louis Schlesinger—Cross.

had water and some hadn't; sewers went into that; I have got that data.

Q. Miller street has water? A. No; Avenue C has a six inch pipe and there are two fire hydrants on the property.

Q. There is no access to the city water system on a part of this property? A. Not that I know of.  
10 There are sewers in the adjoining street there. Miller street is sewerred and has two six-inch connections with the property in question. Vanderpool street and Avenue C have no sewer.

Q. Do you consider the presence of the artesian well is of advantage to this property? A. It would for a leather concern.

Q. Most any manufacturing concern, wouldn't it, any manufacturing business? A. I don't know  
20 about that. I am not certain; I should think it would be almost an advantage for any purpose.

Q. According to your opinion? A. I should think it would be of some advantage.

Q. Has there been any decrease in values in that neighborhood since 1914? A. I should say there was; the Cawley Clark plant has been bought by the Dupont people, which adjoins this plant.

Q. Do you know what the Dupont people paid for that land? A. I do not.

30 Q. When did they buy it? A. I don't know. Prior to 1919; between 1914 and 1919.

Q. Don't you know about when they bought it? A. I could look it up.

Q. Wasn't it during the war? A. It probably was between 1914 and 1919, but I don't know whether it was 1914, 1915 or 1916; I have got to look up my files.

40 Q. Did the Dupont people acquire it in support of their activities on government contracts, or

## Louis Schlesinger—Redirect.

whether they got the plant before that? A. I don't recall that. It was the Cawley Clark paint property and they continued making paint or colors; I know Mr. Al told me that he objected to the smoke from there at one time and spoke to me about it, but what they actually made there, I don't know personally.

10

REDIRECT-EXAMINATION BY MR. STRYKER:

Q. I understand, Mr. Schlesinger, you value the land at \$40,000 as of April 1, 1922?

Court: He valued the land on the assumption there were 40 lots instead of 46.

Witness: Yes.

Q. If you had known that there were 46, as Mr. McCormick testified, you would make your land 20 valuation \$46,000 and increase your total appraisal by \$6,000? A. I think I would.

Court: It would be \$66,000, then?

Witness: Yes.

Court: Mr. McCormick swears there are 46.

Witness: I didn't take in the street.

Court: Where did you get your idea there were only 40? I don't think you need take up a whole lot of time on this phase of it. 30

Witness: The deed which was given by McCormick & Sons to Pittenger and James.

Q. The mortgage? A. The mortgage that I had locked up and the city map shows a plot 200 x 200, that is 32 lots, and there is another plot 100 x 200, that is 8 lots; that is where I got my data from.

Mr. Dolan: It is plainly more than that.

Mr. Hardin: You haven't taken the corners. 40

## Louis Schlesinger—Redirect.

Witness: If there are 46 lots, it is worth \$6000 more.

Q. That value, as I understand it, is of what date?

Court: April first, he said.

Q. Was there any difference in the value of the  
10 land between October, 1920, and April first? A. No, not in my opinion.

Q. Then you took the land at either \$40,000 or \$46,000, and depending upon the number of lots, what was the value of the buildings in October, 1920?

Court: Assuming them to be in the condition that you found them in April, 1920.

20 A. You are asking now in dollars?

Q. Yes. A. I should say \$30,000.

Court: And in April what value did you put on the buildings?

Witness: \$20,000, assuming that the buildings were in such condition that they could be used as a tannery, as a going concern.

Q. I don't mean a going concern, but assuming  
30 that the buildings were in such condition that they were capable of being used,—

Court: And now used in fact.

Q. —what would the value be? A. I said \$45,000. I add fifty per cent to my value of October, 1920.

Q. Do you know whether there was a demand for tanneries in October, 1920, in this vicinity?

Court: What difference would that make?

## Louis Schlesinger—Redirect.

Examination by Mr. Tansey:

Q. What was the liability on that property in April, 1922?

Mr. Hardin: Objected to.

Court: Did anybody make a mortgage loan on any basis of value, either in October or April?

Mr. Hardin: Nobody tried to. 10

Court: Objection sustained.

A. I haven't seen the property and I cannot express an opinion on that. If you want to know whether this property was ever listed, I can look up my files and give you any information.

Court: I don't care for it, unless counsel wants it.

Mr. Stryker: I understand that the claim of the National Leather Company which has been allowed by the receiver at \$50,000 was due prior to and at the time the mortgage was given. 20

Mr. Hardin: But without the knowledge of even the bank or Moore.

Mr. Stryker: I will concede that.

Mr. Hardin: We don't know what the amount was.

Mr. Lum: We admit it has been allowed by the receiver and are not going to appeal from the finding. 30

Mr. Hardin: Another thing I should be in evidence is the date of your accounting.

Mr. Stryker: I offer our proof of claim.

Court: It will be considered as offered and received.

Mr. Stryker: It was February, 1922, we got our decree and the bill was filed. 40

Court: I am going to dispose of this matter, and if desired, I will file a formal memorandum in the cause, setting forth my views more in detail than I intend to express them now.

10 I am satisfied from the proofs before me, that the mortgage held by the bank and the Moore Company is not invalid under the provisions of Section 64 of the Corporation Act, and the construction placed thereon by the Chancellor, when Vice Chancellor, in the case of *Cope v. Walton*, in 79 Eq., and affirmed in the Court of Errors and Appeals, in 79 Eq., page 165.

20 I do not find the evidence to show that the McCormick Company was insolvent on the twenty-second of October, 1920, the time the mortgage in question was given; and while I do find that their business had materially fallen off, that they had very little, if any, cash, and only about five or six thousand dollars in stock on hand, yet the company owned real estate which they appraised on January 1, 1919, at \$96,000 or more, and appraised in a statement made under date of September 1, 1920, but actually delivered to Mr. Baldwin for the bank on the day in October, 1920, when the mortgage in question was executed, in which statement the value of the real estate is stated to be \$225,000, and that this real estate was then encumbered by a mortgage of \$7,500. It appears from the testimony of Mr. McCormick that this was the valuation he placed upon the property at that time, and according to his testimony and the statements that I referred to of January 1, 1919, and of September 1, 1920, the corporation was indebted to the bank and to Moore & Com-

30

40

pany, and on all other accounts and claims to the extent of \$56,469.40; that it claimed assets of \$259,007.05, and claimed a total net worth of \$202,537.65, and there was nothing in either statement furnished by the representative of the McCormick Company to the Bank to show or in any way to indicate that the corporation was then insolvent. Furthermore, there is nothing to show that the corporation was in- 10 solvent up to the time when the bank began foreclosure proceedings, sometime in the latter part of July or first part of August of this year, which action on the part of the bank induced Mr. McCormick to file the bill in this cause for the appointment of a receiver, in order, as he states, to protect the general creditors of the company. According to Mr. McCormick's statement to the bank and to Moore & Com- 20 pany, the total indebtedness of the corporation outside of what was owing the bank and Moore, did not exceed \$4,000. He suppressed from the bank and from Moore & Company all knowledge of the claim of the National Leather Company, which has been allowed by the receiver for \$50,000, and which originally amounted, or was claimed to amount, to \$370,000.

It is also apparent from the record, that while this concern had very little money and 30 very little liquid assets, if any, it still had credit enough and was able to carry on its business from the date of the mortgage in October, 1920, up to April or May, 1922, and I use the expression as Mr. McCormick employs it, in their tanning in the ordinary way or tanning hides on commission for others. It also appears that after the execution of the mortgage as many as twenty-five men were employed as a 40

## Case.

force in the tannery. During 1920 that force was reduced to about twelve, and finally a few months before the bill was filed in this case, sometime in the first part of 1922, these twelve men were discharged, and Mr. McCormick and his brothers and some other continued to carry on business until April or May of 1922.

10 I find therefore that the company was not insolvent at the time it gave the mortgage in question. I find that if it were, there is absolutely no proof to show that either the representatives of the bank or of Messrs. Moore & Company, or any one representing either or both of them, had any knowledge of any such insolvency. I also find that at the time the mortgage was given, the company had not suspended business; that it had and continued to have sufficient credit to carry on its business  
20 and to meet its current obligations or most, if not all, of them. It paid interest on its first mortgage of \$7,500; it had ample assets to pay all its indebtedness due the bank, due Moore & Company and due all other creditors, but not, of course, to pay in full the claim of the National Leather Company, although it would seem it also had ample assets to do that, if the claim of the National Leather Company had  
30 amounted then to only the \$50,000 allowed by the receiver.

The exceptions filed will be sustained and the receiver will have to be reversed in disallowing this mortgage.

I will put my conclusions in a more formal way if counsel desire, in case you appeal, but I make the announcement of my conclusions now, to put all of you in proper position in connection with the sale of the company's property which is advertised to take place this week.  
40

**Proof of Claim.**

Filed

## IN CHANCERY OF NEW JERSEY

<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">EDWARD H. McCORMICK, JR., Complainant,</p> <p style="text-align: center;">AND</p> <p style="text-align: center;">E. H. McCORMICK &amp; SONS, INC., a body corporate, Defendant.</p>	}	<p>10</p> <p>On Bill, etc. Proof of Claim.</p>
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TO PATRICK J. DOLAN, Esq.,  
Receiver of E. H. McCormick & Sons, Inc. 20

PLEASE TAKE NOTICE that E. H. McCormick & Sons, Inc., a body corporate, of which company you are receiver, is indebted to National Leather Company, a corporation organized and existing under and by virtue of the laws of the State of Maine in the sum of Three Hundred Seventy-Four Thousand, Eight Hundred Ninety-Four Dollars and Sixty Cents—(as nearly as said National Leather Company can ascertain) for leather 30  
which Swift & Company, a body corporate, left with the said E. H. McCormick & Sons, Inc. for sale as the agent of and for the account of the said Swift & Company which said leather was sold by the said E. H. McCormick & Sons, Inc. or applied by said company to its own use without accounting to the said Swift & Company or to the National Leather Company for the proceeds of said sale or the value of said leather. 40

Proof of Claim.

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The said leather was sent to the said E. H. McCormick & Sons, Inc. by said Swift & Company between the 23rd day of May, 1906 and the 31st day of March, 1913 in the form of hides to be tanned and finished by the said E. H. McCormick & Sons, Inc. pursuant to a certain contract made between said E. H. McCormick & Sons, Inc. and said Swift  
10 & Company bearing date May 23, 1906. After tanning said leather said E. H. McCormick & Sons, Inc. pursuant to a certain contract, made between said E. H. McCormick & Sons, Inc. and said Swift & Company bearing date August 22, 1906 from time to time and until the 1st day of October, 1919 sold as the agent of said Swift & Company and for its account, portions of the finished leather and rendered accounts to said Swift & Company showing  
20 that sales had been made of said leather and paid to the said Swift & Company the amounts shown to be due by said accounts; that on the 1st day of October, 1919 said Swift & Company assigned all its interest in said contracts and also all the hides and leather belonging to said Swift & Company then in possession of the said E. H. McCormick & Sons, Inc. to the National Leather Company to which assignment said E. H. McCormick & Sons, Inc. duly consented and thereafter said E. H.  
30 McCormick & Sons, Inc. sold portions of the said finished leather for account of the said National Leather Company and rendered accounts to said National Leather Company showing that sales had been made of said leather; that on the 18th day of March, 1920, the said E. H. McCormick & Sons, Inc. delivered to complainant, the following pieces of leather: 3183 hand buffed grains, 3785 machine buffed grains and 7426 first splits and  
40 failed to account for or deliver to said National

Proof of Claim.

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Leather Company, the balance of said leather, viz: 3687 hand buffed grains, 8982 machine buffed grains, 2279 first splits, 1450 second splits, in all 16,398 pieces of leather.

On the 3rd day of November, 1921, said National Leather Company filed its Bill of Complaint in the Court of Chancery of this State against said E. H. McCormick & Sons, Inc. praying for an accounting for said pieces of leather and the amounts received from the sale thereof and on the 27th day of February, 1922 a decree for accounting was entered in said suit by said court a copy of which said decree is hereto annexed and marked "Schedule 1." 10

The details of said indebtedness showing, as nearly as said National Leather Company can ascertain the same, the numbers and value of the various pieces of leather for which said E. H. McCormick & Sons, Inc. has failed to account as aforesaid, appears in the itemized statement of the said indebtedness annexed hereto. 20

Yours Respectfully,

(SEAL) NATIONAL LEATHER COMPANY  
By A. H. HANDY  
Assistant Treasurer

Attest:

FRANK W. CROCKER  
Secretary.

30

STATEMENT

E. H. McCORMICK & SONS, INC.

— to —

NATIONAL LEATHER COMPANY, *Dr.*

3,687	H. B. Grs.	Avg. Meas.	48.39	178,414	Ft.	.60	\$107,048.40	
8,982	M. B.	"	"	47.68	428,262	"	.50	214,131.00
2,279	1st splits	"	"	42	95,718	"	.40	38,287.20
1,450	2nd	"	"	28	40,600	"	.38	15,428.00
								\$374,894.60
								40

Proof of Claim.

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STATE OF MASSACHUSETTS }  
 County of Suffolk } ss

Arthur H. Handy being duly sworn according to law on his oath says that he is assistant Treasurer of the National Leather Company, a corporation organized and existing under and by virtue of the laws of the State of Maine; that he has read  
 10 the foregoing statement of claim; that the matters and things therein stated are true; that the itemized statement annexed to said statement of claim is true to the best of deponent's knowledge, information and belief; that the said E. H. McCormick & Sons, Inc. is indebted to the said National Leather Company in the sum of Three Hundred Seventy-Four Thousand Eight Hundred Ninety-Four Dollars and Sixty Cents as nearly as deponent  
 20 can ascertain as appears by the above statement of claim and itemized statement thereto annexed.

ARTHUR H. HANDY

Sworn and subscribed before me this 16th day of October, 1922.

EDGAR P. HOWES

[SEAL] Notary Public

30 Certificate of F. W. Cook, Secretary of the Commonwealth, regarding qualifications of Notary.

**“Schedule 1.”**

IN CHANCERY OF NEW JERSEY.

*Between*

NATIONAL LEATHER COMPANY,  
a body corporate,  
Complainant,

and

E. H. McCORMICK & SONS, INC.,  
a body corporate,  
Defendant.

On Bill etc. 10  
Decree for  
Accounting

This cause being opened to the court by Messrs. Lindabury, Depue & Faulks, Solicitors for and of counsel with the complainant, in the presence of James R. Nugent, Esq., Solicitor and of counsel with the defendant, and it satisfactorily appearing to the court that on the 23rd day of May, 1906, the defendant made a contract in writing with Swift & Company, a body corporate, under the terms of which said Swift & Company agreed to deliver to the said defendant certain hides, which the defendant agreed to tan and finish into leather, a copy of which said agreement is annexed to the bill of complaint in this cause;

That on the 22nd day of August, 1906, said defendant made a contract in writing with said Swift & Company in and by which said defendant agreed to sell the leather tanned by it for said Swift & Company pursuant to the contract first above mentioned, at prices and on terms authorized by said Swift & Company, to keep the accounts, collect all moneys accruing from all sales and remit same to

## "Schedule 1."

said Swift & Company as fast as paid, a copy of which said agreement is annexed to said bill of complaint;

That pursuant to the agreement first above mentioned the said Swift & Company shipped hides to the said defendant, which said hides the defendant tanned and finished into leather;

10 That pursuant to the agreement secondly above-mentioned the said defendant proceeded to sell said leather for account of said Swift & Company;

That on or about the 1st day of October, 1919, said Swift & Company sold, assigned and transferred to complainant its entire hide and leather business, including the hides and leather belonging to Swift & Company and then held by the said defendant for account of the said Swift & Company  
20 under the above mentioned contract and at said time sold and transferred to complainant all of its interest in both of its contracts, to which assignment the defendant duly consented;

And it further satisfactorily appearing to the court that defendant is liable to account to the complainant for all hides received by it from Swift & Company pursuant to the terms of the agreement first above mentioned, for the leather made from the said hides and for the moneys received from  
30 the sale or other disposition of said leather:

IT IS, on this 27th day of February, 1922, ORDERED and DECREED that it be referred to Randolph C. Barrett, one of the Special Masters of this court, to take an account of the hides shipped by the said Swift & Company to defendant under the said agreement dated May 23, 1906, of the pieces of leather made by the said defendant from said hides, of all sales or other disposition made by defend-  
40 ant of said pieces of leather or any of them, the

“Schedule 1.”

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time when sold, the price at which sold, quantity so sold and the moneys received therefor, for the better taking of which account the said defendant is to produce before the said Master upon oath or affirmation, if required, and leave with him all books and writings in its power relating thereto, and is to be examined as the Master shall direct, and said Master is also to have power to examine 10 other witnesses in relation to said account, and in the taking of said account he is to make both parties all just allowances, and is to report what, if anything, upon such accounting appears to be due from the complainant to the defendant on account of the price of \$7. per hide for tanning each hide as set out in said contract of May 23, 1906, on account of the commission for sale of hides as provided in contract dated August 22, 1906 and also 20 what appears to be due from the defendant to the complainant and also the balance which, upon the said account appears to be due from either party to the other.

Respectfully advised,

JOHN H. BACKES,  
V. C.

E. R. WALKER,  
C.

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**Decree on Appeal from Receiver's  
Disallowance.**

Filed Dec. 19, 1922.

IN CHANCERY OF NEW JERSEY.

10 *Between*

EDWARD H. McCORMICK, JR.,  
Complainant,

and

E. H. McCORMICK & SONS, INC.,  
Defendants.

On Appeal from the decision of Receiver disallowing the claims of the National Newark and Essex Banking Company of Newark and Edward C. Moore Company as claims secured by mortgage.

Decree on Appeal from Receiver's Disallowance.

20

This matter coming on to be heard in a summary manner upon an appeal from the determination of the receiver wherein and whereby he determined that the mortgage heretofore given by the above named defendant company to James W. Pittenger and George T. James as joint tenants for the benefit of the National Newark and Essex Banking Company and Edward C. Moore Company was not a valid and subsisting lien because of the fact that

30 at the time the said mortgage was given the corporation was insolvent to the knowledge of the said George T. James and James W. Pittenger, the National Newark and Essex Banking Company of Newark and the Edward C. Moore Company, and had suspended its ordinary business for the want of funds to carry on the same, and that said mortgage was given to secure a prior indebtedness contrary to the form of the statute in such case made

40 and provided, and especially contrary to Section 64

Decree on Appeal from Receiver's Disallowance.

of the General Corporation Act of New Jersey (Revision of 1896) and the supplements and amendments thereto; and the matter coming on to be heard upon the testimony attached to the report of said receiver, and further proofs taken in open court, and Ernest C. Lum, Esquire, appearing on behalf of George T. James and the Edward C. Moore Company aforesaid, and John R. Hardin and J. Fred-<sup>10</sup>eric Wherry, Esquires, appearing on behalf of the appellant, James W. Pittenger and National Newark and Essex Banking Company of Newark and Michael J. Tansey, Esquire, appearing on behalf of the receiver, and Josiah Stryker, Esquire, appearing on behalf of the National Leather Company, a creditor, and Patrick J. Dolan, receiver appearing *pro se*, and the argument of counsel having been heard and it now appearing to the<sup>20</sup> court that the said corporation was not insolvent, nor had suspended its ordinary business at the time of the making, execution and delivery of the said bond and mortgage and that the said mortgage was and is a good, valid and subsisting lien upon the premises of the defendant corporation therein described to the extent of the moneys thereby secured and intended to be secured;

It is thereupon on this 19th day of December, A. D., Nineteen Hundred and Twenty-two, on<sup>30</sup> motion of Ernest C. Lum and John R. Hardin, of counsel as aforesaid, ORDERED that the aforesaid determination of the receiver be and the same is hereby reversed.

And it is further ORDERED, ADJUDGED and DECREED that the bond and mortgage made, executed and delivered by the defendant corporation to the said James W. Pittenger and George T. James bearing date the twenty-second day of October 1920 for the<sup>40</sup>

Notice of Appeal.

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benefit of the said Edward C. Moore Company and the National Newark and Essex Banking Company of Newark was and is a good, valid and subsisting lien upon the real estate of the defendant company therein described to the extent of the moneys secured and intended to be secured thereby.

E. R. WALKER

Chancellor

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Respectfully Advised,

JOHN E. FOSTER  
V. C.

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**Notice of Appeal.**

Filed Jan. 25th, 1922.

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IN CHANCERY OF NEW JERSEY.

*Between*

EDWARD H. McCORMICK, JR.  
Complainant

and

30 E. H. McCORMICK & SONS, INC.  
Defendant.

} On Bill, etc.

NOTICE OF APPEAL.

The National Leather Company, a corporation of the State of Maine and an unsecured creditor of the defendant, E. H. McCormick & Sons, Inc., being a person aggrieved by the decree made in this cause  
40 on the 19th day of December, 1922, reversing the

Notice of Appeal.

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determination of the receiver appointed in said cause in which said receiver found that the mortgage heretofore given by the above named defendant company to James W. Pittenger and George T. James as joint tenants for the benefit of the National, Newark & Essex Banking Co. and Edward C. Moore Co. was not a valid and subsisting lien and which decree found that said bond and mortgage was and is a good valid and subsisting lien upon the real estate of the defendant company therein described to the extent of the money secured and intended to be secured thereby, hereby appeals from the whole and every part of said decree to the Court of Errors and Appeals in the last resort in all causes. 10

LINDABURY, DEPUE & FAULKES,  
Solicitor of Appellant,  
National Leather Company. 20

I conceive there is good cause for appeal in the above stated cause.

JOSIAH STRYKER,  
Of Counsel with Appellant.

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**Petition of Appeal.**

Filed Jan. 30, 1923.

TO THE HONORABLE, THE COURT OF ERRORS AND AP-  
PEALS IN THE LAST RESORT IN ALL CAUSE :

The petition of National Leather Company, a  
10 corporation of the State of Maine, the appellant in  
the above stated cause respectfully shows :

1. Your petitioner is an unsecured creditor of  
the defendant, E. H. McCORMICK & SONS, INC., and  
finds itself aggrieved by a decree made in the Court  
of Chancery by his Honor Edwin Robert Walker,  
Chancellor of the State of New Jersey, bearing date  
the 19th day of December, 1922, in a cause wherein  
the said Edward H. McCormick, Jr. is complainant  
20 and E. H. McCormick & Sons, Inc. is defendant.

2. Said decree was made on appeal from the deter-  
mination of Patrick J. Dolan, Esq., Receiver by  
appointment of the said Court of Chancery of the  
defendant, E. H. McCormick & Sons, Inc., which  
said determination found that a certain mortgage,  
made, executed and delivered by the defendant cor-  
poration to James W. Pittenger and George T.  
James as joint tenants for the benefit of the Na-  
30 tional, Newark & Essex Banking Co. and Edward  
C. Moore Co., was not a valid and subsisting lien  
because of the fact that at the time the said mort-  
gage was given the said defendant corporation was  
insolvent to the knowledge of the said George T.  
James and James W. Pittenger, the National, New-  
ark & Essex Banking Company of Newark and the  
Edward C. Moore Company and had suspended its  
ordinary business for want of funds to carry on the  
40 same and that said mortgage was given to secure a

## Petition of Appeal.

prior indebtedness contrary to the form of the statute in such case made and provided and especially contrary to Section 64 of the General Corporation Act of New Jersey (Revision of 1896 and the Supplements and Amendments thereto) and which said decree ordered, adjudged and decreed that the said bond and mortgage was and is a good valid and subsisting lien upon the real estate of the defendant company therein described to the extent of the moneys secured and intended to be secured thereby. 10

3. Appellant is aggrieved by said decree in the following respects, to wit: that said decree orders, adjudges and decrees that the said bond and mortgage made, executed and delivered by the defendant corporation to the said James W. Pittenger and George T. James, bearing date the 22nd day of October, 1920 for the benefit of the said Edward C. Moore Company and the National, Newark & Essex Banking Company of Newark, was and is a good valid and subsisting lien upon the real estate of the defendant company therein described to the extent of the moneys secured and intended to be secured thereby; that the said E. H. McCormick & Sons, Inc. as aforesaid was not insolvent nor had suspended its ordinary business at the time of the making, execution and delivery of the said bond and mortgage and your petitioner humbly appeals from all and every part of the said decree of the Chancellor upon the following grounds: 20 30

1. That said decree is erroneous for that the Chancellor should have ordered, adjudged and decreed that the mortgage made, executed and delivered by the defendant corporation to the said James W. Pittenger and George T. James bearing date the 22nd day of October, 1920, for the benefit 40

## Petition of Appeal.

of the said Edward C. Moore Company and the National Newark and Essex Banking Company of Newark was not and is not a good valid and subsisting lien upon the real estate of the defendant company therein described to the extent of the moneys secured or intended to be secured thereby.

10 2. That said decree is erroneous for that the Chancellor should have ordered, adjudged and decreed that the mortgage made, executed and delivered by the defendant corporation to the said James W. Pittenger and George T. James bearing date the 22nd day of October, 1920 for the benefit of the said Edward C. Moore Company and the National Newark & Essex Banking Company of Newark was not and is not a good valid and subsisting lien upon the real estate of the defendant  
20 company therein described to the extent that it was given to secure the respective pre-existing debts of said mortgagor corporation to said Edward C. Moore Company and to the said National, Newark & Essex Banking Company of Newark or either of them.

3. That said decree is erroneous for that the Chancellor should have found and determined and ordered, adjudged and decreed that the said de-  
30 fendant corporation was insolvent at the time of the making, execution and delivery of the said bond and mortgage and that said bond and mortgage was not a good valid and subsisting lien upon the real estate of the defendant corporation to the extent that it was given to secure the respective pre-existing debts of the said mortgagor corporation to said Edward C. Moore Company and to the said National, Newark & Essex Company of Newark  
40 or either of them.

Petition of Appeal.

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4. That said decree is erroneous for that the Chancellor should have found and determined and ordered, adjudged and decreed that the defendant corporation executed and delivered the said mortgage to the said James W. Pittenger and George T. James for the benefit of the National, Newark & Essex Banking Company of Newark and Edward C. Moore Company, in contemplation of insolvency 10 of the said defendant corporation and that said mortgage was not and is not a good valid and subsisting lien upon the real estate of the defendant company therein described to the extent that it was given and intended to secure the respective pre-existing debts of the mortgagor corporation to the said Edward C. Moore Company and the said National, Newark & Essex Banking Company of Newark or either of them.

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5. That said decree is erroneous for that the Chancellor should have found and determined and ordered, adjudged and decreed that the said defendant corporation had suspended its ordinary business for want of funds to carry on the same at and prior to the date of the execution and delivery of the said mortgage and that said mortgage was not and is not a good valid and subsisting lien upon the real estate of the defendant company therein 30 described to the extent of the moneys secured or intended to be secured thereby.

6. That said decree is erroneous for that the Chancellor should have found and determined and ordered, adjudged and decreed that the said defendant company was insolvent at and before the date of the execution and delivery of the said mortgage to the said George T. James and James W. Pittenger for the benefit of the National, Newark 40

Petition of Appeal.

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& Essex Banking Company of Newark and the Edward C. Moore Company and that said James W. Pittenger, George T. James and National, Newark & Essex Banking Company of Newark and Edward C. Moore Company had notice of such insolvency and that said mortgage was not and is not a good valid and subsisting lien upon the real  
10 estate of the defendant company therein described to the extent of the moneys secured and intended to be secured thereby.

Your petitioner therefore prays that the whole and every part of said decree of the said Chancellor may be reversed, set aside and for nothing holden upon the grounds aforesaid and in the particulars aforesaid and that your petitioner may have such relief in the premises as to this Honorable Court  
20 may seem meet.

LINDABURY, DEPUE & FAULK ;  
Solicitors for and of counsel with  
the Appellant, National Leather  
Company.

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M7961

**Inventory and Account of Receiver.**

Filed September 19, 1922

IN CHANCERY OF NEW JERSEY.

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*Between*EDWARD H. McCORMICK, JR.,  
Complainant,

and

E. H. McCORMICK & SONS, a  
body corporate,  
Defendant.

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On Bill for Receiver.

Inventory and  
Account of Receiver.To his Honor, EDWIN ROBERT WALKER, Chancellor<sup>20</sup>  
of the State of New Jersey:

I, Patrick J. Dolan, the receiver heretofore appointed in the above-stated cause, respectfully report to the Chancellor, pursuant to the statute in such case made and provided, that I have made and herewith lay before the Court of Chancery a full and complete inventory (which is hereto annexed) of all the estate, property and effects of E. H. McCormick & Sons, Inc., above named, its<sup>30</sup> nature and probable value; and an account of all the debts due from the said company and of all the debts due to it, as near as I can ascertain the same at this date, September 19, 1922.

Respectfully submitted,

PATRICK J. DOLAN,  
Receiver.

Dated, September 19, 1922.

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## Inventory and Account of Receiver.

## PERSONAL PROPERTY.

		Amount.
	1. <i>Re</i> Tan Yard Building and Splitting Room.	
10	1. Twelve drums standard make fully equipped, shafting and pulleys, belting and mach'ry complete to run same.....	\$1200.00
	2. One ten horse power motor...	150.00
	3. One American Tool Belting Mach., full size.....	1500.00
	4. One Quiring Ringer, full size machine .....	1500.00
	5. One Stoning Jack.....	50.00
	6. One twelve horse power motor.	200.00
	7. One ten foot mill.....	25.00
	8. One roller.....	50.00
20	9. Five hundred feet of one inch steam pipe.....	5.00
	2. Tan Yard and Drying Room.	
	1st. Floor:	
	1. Four Tables.....	50.00
	2. Ten wooden horses.....	20.00
	3. Two hundred feet of one and one half inch poles.....	2.00
30	4. Two hundred feet of two and one half inch pipe.....	2.00
	5. One Brass liquor pump.....	25.00
	6. Belting, two and one half inch clutch and mach'ry to run same .....	25.00
	7. One Bower Jack.....	50.00
	8. One Buffing wheel, regular size	25.00
	9. One ten horse power motor....	150.00
40	10. Twenty four rockers and equipment .....	1000.00

## Inventory and Account of Receiver.

	Amount.
11. One five horse power motor...	75.00
12. One ten horse power motor....	150.00
13. One three inch brass liquor * pump .....	50.00
14. Three paddle wheels.....	9.00
15. Fifty six cypress planks, three inches by sixteen ft.....	56.00
16. Two hundred feet of 3in inch galvanized pipe .....	6.00 10
17. One hundred feet of one inch galvanized pipe .....	1.00
18. Seventy five feet of suction hose	25.00
19. Thirty vats. (Valueless if re- moved) .....	
20. One grinder wheel .....	5.00
2nd Floor.	
1. One Shaving machine .....	175.00
2. One Buzzel Buffer.—Turner...	50.00 20
3. Seven and one half power motor, shaftings & pulleys.	75.00
4. One leather softening machine.	10.00
5. One Buffing wheel .....	25.00
6. Two Bower jacks .....	100.00
7. Five Union stripping machines	250.00
8. One thousand feet of one and one half inch pipe .....	10.00
3rd Floor. <span style="float: right;">30</span>	
1. Seven hundred dry frames ...	700.00
2. Six hundred feet of four by six inch spruce timber .....	60.00
3. Twelve hundred feet of one and one half inch pipe .....	12.00
3. Beam House.	
1. Twenty five horse power motor	200.00
2. Two Turner unharing and flesh- ing machines .....	1000.00 40

## Inventory and Account of Receiver.

		Amount.
	3. Fifty limes. (Valueless if removed) .....	
	4. Four soaks. (Valueless if removed) .....	
	5. Three paddle wheels .....	9.00
	6. One hundred feet of galvanized pipe, two inch .....	3.00
	4. Engine Room.	
10	1. One hundred horse power boiler	500.00
	2. Eighty horse power boiler ....	500.00
	3. One hundred horse power Hewes & Philip Engine....	600.00
	4. Five horizontal steam and water pumps .....	100.00
	5. One hot water heater .....	25.00
	6. One seven foot lathe .....	50.00
	7. One hand drill .....	10.00
20	8. One thousand feet of eight inch pipe .....	10.00
	5. Japan Shop (1).	
	1. Fourteen drying crates .....	140.00
	2. Two hundred four inch pipe..	8.00
	6. Japan Shop (2).	
	1. Twenty two drying crates....	220.00
	2. Two thousand frames .....	500.00
30	3. Two hundred feet of one inch pipe .....	2.00
	7. Wareroom Building.	
	(1st Floor)	
	1. One Turner measuring machine .....	500.00
	2. One ton Scale platform .....	10.00
	3. One desk .....	5.00
	4. Three wooden tables .....	15.00
40	5. Five hundred feet of two inch pipe .....	5.00

## Inventory and Account of Receiver.

	Amount.
(2nd Floor)	
1. Two cement tables. Twelve feet by fourteen feet .....	20.00
2. Two wooden Tables. Twelve feet by six feet .....	4.00 10
3. Five hundred feet of two inch pipe .....	5.00
(3rd Floor)	
1. Two hundred and forty seven dry frames .....	247.00
2. One hundred feet of two and one half inch pipe .....	2.00
3. Four hundred and fifty running feet of planks 3" by 6' .....	45.00 20
8. Bark Shed.	
1. One hundred and fifty feet of one inch pipe .....	1.50
9. Office.	
1. Five chairs .....	5.00
2. One roller desk .....	5.00
3. Two clocks .....	1.00
4. One Remington Typewriter and Desk .....	25.00 30
5. One large standing desk .....	10.00
6. One large company safe .....	50.00
7. One mirror .....	(no value)
8. One medicine chest " "	
9. One switchboard " "	
Forty fire extinguishers in the entire plant .....	45.00
	\$12750.50 40

## Inventory and Account of Receiver.

Real Estate.	Value.
1. <i>Re</i> Tan Yard Building & Splitting Room. 35 feet by 120 feet. 1 story brick .....	6300.00
2. Tan Yard & Drying Building. 36 feet by 150 feet. 3 story frame .....	8100.00
10 3. Beam House. 50 feet by 75 feet. 1 story brick .....	7500.00.
4. Engine Room. 36 feet by 40 feet. 2 story brick .....	4320.00
5. Japan Shop #1 36 feet by 115 feet. 2 story brick .....	12420.00
20 6. Japan Shop #2 36 feet by 115 feet. 2 story brick .....	12420.00
7. Wareroom Building. 44 feet by 100 feet. 3 story brick .....	30000.00
8. Bark Shed. 30 feet by 50 feet.....	1500.00
	\$82560.00
30 500 feet of land bordering on the Passaic Branch of the N. Y. Bay R. R., including R. R. siding to said railroad, and 1000 feet of 8 inch Artesian Well in plant. 300 feet at \$200.00 per foot.... 200 feet at \$150.00 per foot.... 8 city lots upon which, Building #7 is built .....	60000.00 30000.00 10000.00
	\$182560.00
Personal Property .....	12714.65
40 Total .....	\$195274.65

## Inventory and Account of Receiver.

## LIABILITIES.

MORTGAGES.	Amount.
Estate of John F. Shanley.....	\$7500.00
James W. Pettenger and George F. James, Trustees, to secure accounts of National Newark & Essex Banking Company and Edward C. Moore Company, amounting to approximately .....	56704.83
Taxes upon real estate approximately..	\$000.00 <sup>10</sup>
Taxes upon personal property.....	6825.91

## ACCOUNTS PAYABLE.

Joseph M. Byrne & Company.....	343.18
H. Constam & Company.....	35.80
Arthur D. Reeve.....	1975.77
Miller & Company.....	425.23
Eichhorn & Foley.....	281.50
Eco Clock Company.....	71.11 <sup>20</sup>
Thomas F. Cummings.....	1688.70
Dooner & Smith Chemical Company...	3238.02
F. A. Schaeffer.....	593.61
Rohm & Hass Company.....	33.00
Prufrock & Littom Furniture Company.	341.46
John J. Harvey Company.....	41.75
S. J. Mountz.....	154.00
R. G. Dun & Company.....	125.00
Jay & Jay, Inc.....	75.00 <sup>30</sup>
Stone & Company.....	166.85
Roe & Conover.....	23.03
L. S. Plaut & Company.....	575.00
National Leather Company (amount of claim in dispute)	
Pennsylvania Railroad .....	125.00
New York Telephone Company.....	120.00

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\$89463.75<sup>40</sup>

Inventory and Account of Receiver.

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STATE OF NEW JERSEY, }  
 County of Essex. } ss.

PATRICK J. DOLAN, receiver for E. H. McCormick & Sons, Inc., being duly sworn according to law, on his oath says that the foregoing is a full and complete inventory of all the estate, property and effects of said company, its nature and probable  
 (10) value, and an account of all the debts due to it, as near as the said receiver can ascertain as of this date, September 19, 1922.

PATRICK J. DOLAN,  
 Receiver.

Sworn and subscribed to }  
 before me this 19th day }  
 of September, 1922. }

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EVA F. KASS

Notary Public of N. J.

We, George J. Motzenbecker, and Frank J. Tansey, hereby certify that we have made the appraisal of the property of E. H. McCormick & Sons, Inc., as set forth in the schedules herewith attached.

GEORGE J. MOTZENBECKER

FRANK J. TANSEY

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## New Jersey Court of Errors and Appeals

*Between*

EDWARD H. McCORMICK, JR.,  
*Complainant,*

*and*

E. H. McCORMICK & SONS, INC.,  
*Defendant.*

NATIONAL LEATHER COMPANY,  
*Appellant,*

*and*

JAMES W. PITTENGER, National New-  
ark and Essex Banking Com-  
pany of Newark, GEORGE T. JAMES  
and EDWARD C. MOORE Co.,  
*Respondents.*

*On Appeal  
from Chancery.*

### BRIEF FOR RESPONDENTS,

George T. James and Edward C. Moore Company.

#### I.

The defendant company was solvent at the time the mortgage was given.

At the time the mortgage was given, E H. McCormick, Jr., was treasurer of the defendant company and had held the office for about twelve years prior thereto. (Case p. 54, l. 20). He prepared and presented to the National Newark & Essex Banking Company and to the Edward C. Moore Company a paper purporting to be a financial statement of the defendant company as of September 1, 1920 (Case pp. 96 and 97). This statement is Exhibit 11 and is found on page 92 of the printed case. The principal item of assets in this statement is designa-

ted "real estate plant," which is set down at the value of ~~\$225,000.00~~ \$96,705.04. Mr. McCormick was referred to Exhibit No. 7 (Case p. 87), wherein the value of the real estate was set down at \$96,705.04. His attention was called to the difference and he stated that the real estate had been carried at \$96,000.00 on the books for years prior to the making of Exhibit No. 7. Mr. McCormick states that the value placed upon the real estate by him on September 1, 1920, was an honest fair estimate of the property (Case p. 98, l. 1).

The appellant claims that the valuations placed upon the real estate were fictitious. In order to support this contention the appellant produced Mr. Louis Schlesinger who proceeded to testify as a real estate expert. Mr. Schlesinger testifies that he first saw the property on April 4, 1922 (Case p. 114). He admits that there was a sharp decline in the values of factory property and particularly tanneries after July 1, 1920 (Case p. 115, l. 30). He further states "I don't propose to say I specialize on tanneries or on the leather industry." Upon cross examination Mr. Schlesinger admits that even in the condition in which he found the property in April, 1922, it would be probably worth from twenty-five to fifty per cent. more in October, 1920. Grounded on his own testimony, we thus attain the valuation from \$75,000.00 to \$90,000.00 for the property (Case p. 116, l. 20). It will thus be seen that Mr. Schlesinger has not taken into consideration the value of the premises as they actually existed in October, 1920. In other words, he does not even suggest the extent of the deterioration that may have taken place in nearly two years, during which there was a diminishing activity in the leather business. Upon examination by the Court, Mr. Schlesinger admits that if the buildings were in good condition in October, 1920, they would have been worth twice as much as the value he placed upon them.

Furthermore, Mr. Schlesinger admits that his appraisal of the property had no reference to its use as a tannery (Case p. 122, l. 40).

The witness was then asked this question:

“Q Taking going worth, wouldn't that enhance its value as an asset of McCormick & Sons business, assuming that they were in active business, and with their buildings in good repair, in 1920, and suitable for their use; wouldn't this plant have some additional value as going value, in active use, as compared with its convertible value?

“A It would.” (Case p. 123, ll. 9-15).

The witness admits that if he was appraising the property in October, 1920, he would appraise it as a going leather concern and would make the buildings worth more under such conditions (Case p. 123, ll. 20-30). The witness admits that he cannot go into the value of the buildings and that he usually employs builders to go into the values of such things and states that he recognizes a difference between what might be called a going worth of an active plant and a deserted plant (Case p. 123, ll. 30-40).

The witness further admits that he noticed an artesian well on this property, but that he did not give any consideration to that in making his estimate of value (Case p. 124, ll. 15-20). The witness further admits that the presence of the artesian well was of advantage to this property and considers that it was an advantage for any purpose (Case p. 126, ll. 15-20).

The inventory filed by the receiver in this cause places a valuation upon the real estate of \$182,560 (Case p. 154). In addition to the real estate plant, the defendant company had on hand about the time the mortgage was made other assets set forth in Exhibit 11, making total assets as at that time of \$259,000.00.

It is very apparent from the testimony of Mr. Schlesinger that it was impossible for him to make a satisfactory estimate of the value of the real estate in October, 1920. He admits that he was not an expert on building construction and could not estimate the value of the buildings of a going concern as of October, 1920. His specialty was land valuation. Furthermore he admits that the prop-

erty would have much greater value as a going concern and operating plant than it had when he inspected it. Further he admits that the artesian well on the property was a matter of value but that he did not attempt to compute the same in any way. It therefore becomes apparent that Mr. Schlesinger was unable to give an expert opinion as to the value of this plant in October, 1920.

When the receiver came to make his inventory and to fix a value on the premises, he approximates the values placed upon the same by the corporation in September, 1920. Mr. McCormick, the treasurer of the company, had been active in its business affairs for twelve years prior to the giving of the mortgage and the making of the statement and he insists that the sum of \$225,000.00 was a fair value of the real estate in October, 1920.

It now remains to consider the indebtedness of the company at the time that the mortgage was given.

By reference to the testimony of Mr. James (Case pp. 47-50) it appears that outside the paper held by the bank and the Moore Company, the defendant owed about \$2,300.00 on other paper and also accounts payable amounting to \$3,261.10. The treasurer of the defendant company presented to Mr. James the statements showing the indebtedness to the bank, to Edward C. Moore Company and the other indebtedness of the company, all of which is set out in Exhibits Nos. 8, 9 and 10 on pages 89-91 of the printed case. These statements were furnished on or about October, 1920. At the time of the making of the mortgage, therefore, outside of the indebtedness secured by the mortgage, the company represented that it owed only the amounts indicated in Exhibit 8, amounting in the aggregate to a little more than \$5,500.00.

When the mortgage was given sufficient moneys were advanced by the bank and the Edward C. Moore Company to pay off the other creditors according to the statement which had been rendered by Mr. McCormick. The bank advanced its share and the Moore Company advanced its share (Case p. 42, l. 1).

Mr. James in his testimony (Case p. 37, l. 20) says that the Moore Company at the time of the giving of the mortgage advanced certain funds to the defendant "to clean up all their outstanding indebtedness with the exception of the first mortgage on their property."

Furthermore Mr. McCormick states that the bank and the Moore Company advanced the moneys to pay the other creditors of the corporation (Case p. 55, l. 20).

The appellant now contends that it had a claim against the defendant corporation at the time of these transactions resulting in the mortgage. Mr. E. H. McCormick when cross examined on behalf of the appellant stated that the appellant had advised him of its claim before the mortgage was given but he states, however, that he did not inform the bank or the Moore Company about it (Case p. 60, ll. 20-46).

It thus appears that the appellant had made a claim against the defendant corporation but not for any certain or fixed amount and that the same was wholly unliquidated at the time that it was brought to Mr. McCormick's attention, and in fact did not become liquidated and fixed until after the receiver was appointed in this cause and the amount thereof settled between the receiver herein and the claimant. What the extent or value of the claim of the appellant was at the time the mortgage was executed is in no way made to appear.

The appellant refers to the form of the transactions between the Edward C. Moore Company and the McCormick Company. It appears that at the time of the execution of the mortgage, the Edward C. Moore Company held certain checks which were returned to the McCormick Company at the time and a note given in their stead (Case p. 104, ll. 20-30). Mr. McCormick in his testimony (Case pp. 103-104) explains the nature of their dealings. His testimony on this subject is as follows:

"When the E. C. Moore Company's notes matured, at their request we gave them a check, a dated check, and they would hold it until such time as

we would have the means to pay it" (Case p. 103, ll. 15-20).

"Q Did you tell them why you wanted them to hold the check? A Yes, I told them that and they suggested giving \$500 or \$200 or whatever payment we could make" (Case p. 103, l. 25).

Mr. McCormick was then questioned with respect to the record of these transactions on the books and his testimony is as follows:

"Q Does it appear on the books? A No, it just shows in here when we gave that. It says 'To cancelled checks given Moore & Company which were given on note of this date'. Q What date is this? A October 22, 1920. At the time that we gave the mortgage, the E. C. Moore Company held these checks. In order to bring about a settlement, they returned the checks and we gave them a note instead" (Case p. 104, ll. 17-26).

From this testimony then, it appears that these checks were nothing more than memoranda of indebtedness of the McCormick Company to the Moore Company. The form used was merely a matter of convenience and had been agreed upon by both parties. The checks were never intended to be presented to the bank for payment and in fact were not presented. The testimony quoted above shows that the parties agreed that the checks should be held and that the McCormick Company should have the privilege of paying the same at their convenience. It is perfectly apparent that the Moore Company was not pressing the McCormick Company for payment and when the mortgage was given, the checks they still held were surrendered to the McCormick Company and a note given by that company to the Moore Company. It appears therefore that the Moore Company was extending credit throughout the whole transaction and was not at any time disposed to limit the same.

The law applicable to the facts of this case is most fully set forth in the brief filed on behalf of the respondents James W. Pittenger and the National Newark and

Essex Banking Company of Newark, to which we would most respectfully refer.

Finally, it is respectfully submitted that at the time the mortgage was given, the McCormick Company was not insolvent and had not suspended its business and that the mortgage was not given in contemplation of insolvency; and further, that the entire indebtedness of the McCormick Company to the bank and to the Moore Company should be paid before the indebtedness to the general creditors, from the proceeds of the receiver's sale.

Respectfully submitted,

LUM, TAMBLYN & COLYER,  
*Solicitors for and of Counsel with Re-*  
*spondents, George T. James and Edward C.*  
*Moore Company.*

RALPH E. LUM,  
*Of Counsel.*



## New Jersey Court of Errors and Appeals

*Between*

EDWARD H. McCORMICK, JR.,  
*Complainant,*

*and*

E. H. McCORMICK & SONS, INC.,  
*Defendant.*

NATIONAL LEATHER COMPANY,  
*Appellant,*

*and*

JAMES W. PITTENGER, NATIONAL  
NEWARK AND ESSEX BANKING COM-  
PANY OF NEWARK, GEORGE T.  
JAMES and EDWARD C. MOORE Co.,  
*Respondents.*

*On Appeal  
from Chancery.*

### BRIEF FOR RESPONDENTS JAMES W. PITTENGER AND NATIONAL NEWARK AND ESSEX BANK- ING COMPANY OF NEWARK.

This appeal brings before this Court a decree advised by Vice-Chancellor Foster sustaining, after summary hearing, on appeal from the receiver's decision, a mortgage by E. H. McCormick & Sons to James W. Pittenger and George T. James, dated October 22, 1920, for the benefit of Edward C. Moore Co., and National Newark and Essex Banking Company, as a good, valid and subsisting lien upon the real estate described therein to the extent of the moneys secured or intended to be secured thereby.

The mortgage was challenged by National Leather Company (the appellant here), a creditor of the mortgagor,

as void against creditors because made when the mortgagor corporation was in fact insolvent.

Not being in entire agreement with the statement of facts contained in the brief of appellant we deem it necessary to state the facts as we find them in the record.

The E. H. McCormick & Sons Company, a corporation of this state, had for many years been a customer of the National Newark and Essex Banking Company, and it had also borrowed money from the bank. In October, 1920, it owed the bank on notes about \$23,375.00 (Case p. 49, l. 18). This amount of indebtedness had been stable for some time past, that is, the McCormick Company had been asked to reduce its indebtedness but had failed to do so and the notes had been renewed from time to time. As the McCormick Company failed to pay off the notes as they matured, Mr. Albert H. Baldwin, a Vice President of the bank, requested that the company give security by a mortgage on its real estate (Case p. 35, ll. 10-21; Case p. 39, l. 31 to p. 40, l. 17). The business was known to the bank officers to have fallen off to some extent (Case p. 39, l. 36).

At the time when the mortgage was under discussion, Mr. McCormick suggested that if a mortgage were given to the bank it should include a certain indebtedness to the Edward C. Moore Company (Case p. 40, ll. 17-20). This indebtedness amounted to \$30,637.33 (Case p. 23, l. 35).

The McCormick Company was willing to execute the mortgage, but stipulated that both the bank and the Moore Company should lend additional money to take care of some few creditors whose unpaid bills against the McCormick concern amounted to about \$5,400 at that time, according to Mr. McCormick (Case p. 54, l. 36). The bank and the Moore Company contributed ratably in making up this sum of new money to be advanced, that is, they contributed in proportion to the debt owed by the McCormick Company to each (Case p. 37, ll. 33-39). The bank thus advanced at the time of the giving of the mortgage \$2,500 (Case p. 38, l. 2; p. 49, l. 37). This was evi-

denced by a new note, which the bank discounted for the McCormick Company on October 29, 1920 (Case p. 41, ll. 25-33).

At the same time the Moore Company advanced new money to the McCormick Company in the sum of \$3,261.10 (Case p. 49, l. 37). This was evidenced by a note given October 22, 1920 (Case p. 37, ll. 11-22).

This matter having been arranged, a bond and mortgage to secure \$60,000 were given to the respondent James and the respondent Pittenger as joint tenants. These are printed as Exhibits 2 and 1, respectively, in the State of Case, pp. 69-76. Mr. Pittenger was an Assistant Cashier of the bank, and Mr. James was Treasurer of the Moore Company. The mortgage was placed on record in the Register's office of Essex County on October 26, 1920 (Case p. 74, l. 39).

It was later discovered that the middle initial of Mr. James' name as written in the bond and mortgage was incorrect, and a new bond and mortgage were given to correct the error (Exhibits 3 and 4, Case pp. 76-84). These instruments were dated October 22, 1920, the same date as the previous instruments, and the corrective mortgage was recorded on December 15, 1920. For an explanation of the correction made, see State of Case p. 65, ll. 12-24.

Mr. Pittenger and Mr. James executed a Declaration of Trust in favor of the bank and of the Moore Company, by which they declared that they had no beneficial interest in the bond and mortgage (Exhibit 5, Case pp. 85, 86).

Nearly two years later, bill was filed by Mr. Edward H. McCormick, Jr., a creditor and stockholder, against the McCormick Company, for a receiver, and with consent of the board of directors (Case p. 6, l. 36 and p. 7), an order was made on August 21, 1922, reciting but not decreeing insolvency and appointing a receiver.

The Moore Company and the bank proved their respective claims with the receiver, relying upon their joint mortgage as security. The receiver admitted the claims

as general claims, but rejected the security of the mortgage as a prior lien against general creditors, declaring that the McCormick Company was insolvent at the time that the mortgage was given and had suspended its ordinary business for want of funds, and, further, that the mortgage was given to secure an antecedent indebtedness (Case p. 16, ll. 6-22).

The bank and the Moore Company took an appeal from the receiver's decision to the Court of Chancery. Vice-Chancellor Foster heard the case and reversed the receiver's decision, holding that the mortgage was a valid lien. For the opinion of the Court below, see Case pp. 130-132.

The facts bearing on the question of insolvency, as developed in the hearings before the receiver and the Vice-Chancellor will be dealt with in detail during the argument and need not be here recited.

By its decree the Court of Chancery found that the mortgage was and is a good, valid and subsisting lien upon the real estate of the defendant company to the extent of the moneys intended to be secured thereby (Case p. 141, l. 36 to p. 142, l. 8).

The National Leather Company, another claimant against the McCormick Company, with a general claim allowed in the sum of \$50,000, has taken the present appeal to this Court from Vice-Chancellor Foster's decision. The grounds alleged are substantially the same as those upon which the receiver rejected the claim of respondents as a prior lien.

We will consider the grounds of appeal urged in the same order as they are discussed in appellant's brief.

## I.

The McCormick Company was solvent at the time the mortgage was given.

Appellant's chief insistence appears to be that the McCormick Company was insolvent at the time the bond and mortgage were given, and that, therefore, to the extent that the mortgage was given to secure pre-existing indebtedness, it is not a valid prior lien.

There can be no dispute that where a corporation is insolvent a pre-existing indebtedness will not constitute a valuable consideration for a transfer of the corporation property under section 64 of the corporation act, even to one who would otherwise be a bona fide purchaser.

The solvency or insolvency of the McCormick corporation therefore in October, 1920, is the most important question in the case.

The Court below found as a matter of fact that the corporation was not insolvent (Case p. 132, ll. 8-10). This finding of the Court is amply supported.

The definition of insolvency under section 64 of the corporation act, was stated by this Court in *Empire Trust Company v. Fisher*, 67 N. J. Eq. 602, at 604, to be "a general inability to meet pecuniary liabilities as they mature, by means of either available assets or the honest use of credit."

The test is not that followed in the bankruptcy courts and in some other jurisdictions, namely, Does the sum total of debts of the corporation exceed its assets? However, this second test is often useful in connection with and as supplementing the former. See the important case *infra* in this brief, *Regina Music Box Co. v. Otto & Sons*, 65 N. J. E. 582 (Stevens, V.-C., 1903); affirmed *per curiam* by this Court, 68 N. J. E. 80.

It will, we think, be apparent that under either rule the McCormick Company was solvent in October, 1920.

It is true that the business of the McCormick Company, which was manufacturing automobile and furniture leather (Case p. 106, ll. 22-23) had been materially reduced, but this condition had prevailed for two years before the mortgage was given (Case p. 58, ll. 9-11). Through 1917 the business had been good, but from that period on the Government, under war exigencies, declared the business of the concern a non-essential and its volume decreased very materially. This was true in general of all leather companies in like lines of manufacture at that time (Case p. 58, ll. 11-24).

In 1918 the McCormick Company made an effort to sell its plant asking a price of \$250,000. This effort was unsuccessful (Case p. 99, ll. 1-19).

When business had been at its best, about one hundred men were employed in the McCormick plant (Case p. 106, l. 18). Sometimes as many as one hundred and twenty to one hundred and forty were employed (Case p. 100, l. 2). Through 1919 about twenty-five men were employed. In 1920 about twelve or fourteen were employed and through 1921 a similar number (Case p. 100, ll. 3-8).

Prior to the giving of the mortgage the McCormick concern had been doing commission work for others on hides, as well as purchasing hides of its own and tanning same (Case p. 58, ll. 28-29).

From lack of funds, the concern ceased to purchase hides in 1918 (Case p. 59, l. 12, and p. 107, l. 12), but it nevertheless continued tanning hides on commission through March or April, 1922, up to within a month or so before the receivership (Case p. 108, ll. 20-26). In April, 1922, only Mr. McCormick and his brothers worked in the plant (Case p. 108, ll. 39-40).

The situation as to what work was being done is well summarized in the Court's question to the witness McCormick (Case p. 113, l. 31 to p. 114, l. 3) as follows:

*"The Court.* The witness has clearly stated, as I understand him—if I am in error, correct me, Mr. McCormick—two or three months after you gave

this mortgage you secured a contract from Fall, the butcher, to do some work on commission, and it took you several months to finish the bulk of that contract with your men; then you continued, you and your brothers, to finish that work, or some other work, which took up to March, April or May, 1922, when you stopped absolutely."

To this the witness replied "Yes."

At the time the mortgage was given the effect of the war was becoming remote and times were starting to get better in the leather business (Case p. 58, l. 39 to p. 59, l. 3).

Right through the period when the commission work was going on in the plant, namely, to April, 1922, the company had no difficulty as to money or credit. Mr. McCormick (Case p. 109, ll. 32-34), in answer to Mr. Stryker's question on cross examination as to the lack of money or credit, said "We made our collections promptly and we would pay our labor."

It further appears that in 1920 and 1921 the company paid its interest on a first mortgage of \$7,500 on the real estate (Case p. 109, ll. 36-40).

It was only because the bank threatened to foreclose its mortgage that Mr. McCormick filed his bill for the appointment of a receiver (Case p. 110, ll. 6-12). Other creditors had not been bothering McCormick at any time from October, 1920, to the time of filing the bill (Case p. 110, ll. 22-25).

All the sundry small creditors of the concern were paid off in October, 1920, at the time the mortgage was given; at least money sufficient for that purpose was furnished. Possibly a few hundred dollars of the then indebtedness owed to Dooner & Smith was not paid (Case p. 56, ll. 1-14, and p. 68, at the bottom).

After October, 1920, the concern incurred considerable new indebtedness in running the business. See list of claims as allowed by the receiver (Case p. 18, Schedule B) eliminating, of course, for present consideration the

claims for taxes, of the bank, of the Moore Company and of the National Leather Company. See also the explanation of the list of claims in State of Case, pages 65 to 67, line 30. See also the supplemental list of claims which accrued or became wholly due after the execution of the mortgage (Case p. 67, l. 31 to p. 68, l. 20).

These lists show that the company certainly was able to obtain credit after October, 1920, sufficient to run the business upon the commission basis upon which it had been running for two years previous.

In October, 1920, the McCormick Company under the test stated in the Empire Trust Company case, was meeting its pecuniary liabilities as they matured, was able to obtain such credit as it required and was not insolvent.

Counsel for the appellant further contends in his brief that the company, at the time of the mortgage, had discontinued its ordinary business within the meaning of Section 64 of the Act, and remarks that this was in 1918, referring to Case p. 107, l. 12. A change to a commission business is not a discontinuance. It is, on the contrary, a continuation of the same business and the same corporate purpose. The question was asked Mr. McCormick, "This leather that you did on commission, was that for the same purpose?" The answer was, "For the same purpose" (Case p. 107, ll. 13-15). Counsel would, therefore, have us believe that this corporation had been insolvent since 1918, two years prior to the giving of the mortgage, although for four years it kept on with the manufacture of leather for furniture and automobile tops. This assuredly was the exact contrary of a discontinuance of the business or a suspension of the business. Even assuming that the definition of "ordinary business" could possibly be changed by operating on a commission basis, the change was in 1918 and for two years prior to the mortgage the "ordinary" business was a commission business. During the period, when tanning was done solely on commission, the Company did a gross business in 1919

of \$90,000, and in 1920 of the same amount. Not until 1921 did it fall off to \$25,000 or \$30,000 (Case p. 106, ll. 27-36). Prior to the war a much larger business had been done it is true—the largest amount in any year being \$200,000 (Case p. 107, ll. 1-3). Certainly a gross business, which was one-half as large in 1919 and 1920 as it had been in the largest previous year, 1914 or 1915, affords no basis for the claim of discontinuance or suspension of the Company's business. Such condition in October, 1920, contradicts the idea of discontinuance of business and defeats the claim of insolvency for that reason.

Counsel for the appellant further argues that when the mortgage was given there was no hope that the business would continue. This argument is not supported by the evidence, which affirmatively shows hope that the business would continue. Undoubtedly it was in the minds of all concerned that eventually the plant would feel the effect of returning prosperity. See Mr. Baldwin's testimony in which he states that Mr. McCormick told him they expected better times to develop (Case p. 53, l. 18). There was no suggestion of a discontinuance of the business. The very object in paying off the \$5,400 of small creditors, all there were at the time the mortgage was given, was to enable the Company to keep going. The Company did not need a lot of new cash to continue on the commission basis, because the overhead was not heavy (Case p. 60, ll 4 and 5). It was prospering on a commission basis and had all the credit that it needed to continue.

The lending of the additional cash at the time the mortgage was given was, therefore, a sufficient refinancing of the Company, through available credit, to permit it to continue in business on the current scale. Interest on the first mortgage of \$7,500 had been regularly paid (and continued to be paid through 1920 and 1921). Taxes were in arrears, but their payment was not pressing or being pressed.

The National Leather Company, the present appellant, was not considered as a creditor when the outside creditors, other than the Bank and Moore Company, were paid by moneys advanced on the mortgage security, and for the very good reason that neither the Bank nor the Moore Company had knowledge of any such creditor (Case p. 129, ll. 27 to 30). Both believed that the new money they were advancing would clean up all the indebtedness except their own, the first mortgage and taxes.

The McCormick Company itself had no definite knowledge of this creditor's claim. While some claim for a shortage of leather had been made by the appellant against the McCormick Company prior to the giving of the mortgage, McCormick did not know the amount of the shortage (Case p. 60, l. 37, to p. 61, l. 12). The claim was entirely unliquidated. Mr. McCormick says, "They never made a claim—they claimed shortage and asked us to account" (Case p. 61, ll. 37-38). The amount never was ascertained (Case p. 129, l. 28). The suit brought by the National Leather Company was not for a definite amount, but was for an accounting merely, and the decree in that suit, which was dated February 27, 1922, and was entered by counsel for the appellant, merely directed that it be referred to a special master to take an accounting (Case, p. 138, ll. 31-34). It was recognized that the McCormick Company was entitled to allowances, and the master was directed "to make both parties all just allowances" (Case p. 139, l. 13).

According to the decree it was not even known which party would owe the other a balance, and the decree in the usual form concludes that the master is to report "also the balance which, upon the said accounting appears to be due from either party to the other" (Case p. 139, ll. 22-24).

As a matter of fact the claim presented by the National Leather Company to the receiver in this case was for \$374,894.60. It's original amount is of no present importance. Counsel for the receiver stated at the hearing

that the leather of the National Leather Company remained on the premises of the McCormick Company from 1913 until it was finally removed in 1920; that this resulted in a claim of storage against the Leather Company amounting to about \$63,000 (Case p. 63, l. 39, to p. 64, l. 4). Furthermore, the Leather Company owed McCormick & Sons a balance due on tanning, the amount of which was not stated (Case p. 64, ll. 9 and 10). The receiver came to the conclusion that the approximate balance due to the National Leather Company was \$50,000, allowed the claim for that amount, and this amount has been accepted by the appellant as the figure upon which its claim should be compromised.

It thus appears that in October, 1920, this claim of the National Leather Company was naturally out of mind by the McCormick Company as a debt which it owed. Of course the claim had been made, and must now be considered as established in the amount of \$50,000. It however, was not liquidated, or pressing for liquidation in 1920, and was and is no factor in determining whether or not the business of the corporation had been suspended in October, 1920, and could not be continued. Taken at \$50,000, as allowed herein by the receiver, it is no factor against solvency on the balancing of assets and liabilities in October, 1920.

The National Leather Company could very readily years before have turned its claims, if any, into a liquidated debt by appropriate action. Instead of that it let the matter rest in ephemeral form until long after the mortgage in controversy was given.

We find no reason to believe that the matter of the National Leather claim was in Mr. McCormick's mind at the time the mortgage was given. Certainly his attitude was not that of one endeavoring to prefer the Bank at the expense of the National Leather Company. His whole idea was to keep on running his business. At any rate he told the Bank and the Moore Company nothing about the claim (Case p. 60, l. 36). Mr. Baldwin had never

heard of any indebtedness to the National Leather Company (Case p. 43, l. 26). And counsel for the appellant conceded that neither the Bank nor the Moore Company had any knowledge of appellant's claim (Case p. 129, ll. 25-27).

The record shows that the Bank and the Moore Company, at the time of the giving of the mortgage, lent additional cash to take care of all the debts of the Company known to them, except first mortgage and taxes. The McCormick Company thereafter had no current obligations to meet except those to the Bank and to the Moore Company.

On a balance of assets and liabilities the Company showed abundantly solvent, and the mortgage could be prudently taken as against a present sacrificed liquidation of a valuable plant. Under the conditions there was reasonable hope that the return to normalcy in the business would enable the Company to thrive to the advantage of its creditors and stockholders.

The mortgage transactions completed, the McCormick Company was clear of all pressing creditors, had such credit as it needed, and was entirely solvent.

Furthermore, as appeared under the questioning of the Vice-Chancellor, the Company could readily have obtained such credit as it needed by a mortgage of its real estate (Case p. 98, ll. 17-36). No effort was made to raise money by mortgage and the only attempt made by the McCormick Company was to sell its plant. Counsel for the appellant makes a great point in his brief of the supposition that money could not have been raised by mortgage. Why not, and why further could the Company not then have paid the Bank and Moore Company from the mortgage money? It appears that in 1918 an offer of \$35,000 was made for the purchase of only one of the six buildings of which the plant consisted, which offer was refused. The Company had it in mind that \$250,000 should be realized for the whole plant on sale (Case p. 99, l. 13). This

may have been too high a figure and may explain why the plant was not sold. If, on the other hand, Mr. McCormick's attention had been confined to raising money by mortgage, which apparently did not occur to him, there is nothing to show that a considerable sum over the \$60,000, which would have paid off the Bank and the Moore Company, could not as the Vice-Chancellor suggests, have been obtained.

One and a half or two years subsequent to the giving of the mortgage the McCormick Company met failure from continued business depression. Even if we grant, for the purpose of argument, that the giving of the mortgage had the result of lessening the credit formerly obtainable by the McCormick Company from others, as Mr. McCormick himself urged, that cannot affect the situation. At the time the mortgage was given and as a result of the new cash put into the Company, the latter had money enough to pay off every current creditor in the ordinary course of business, and it certainly was not insolvent at that time. And the fact actually was, as we have seen, that it did thereafter obtain credit from others as theretofore.

It therefore appears that the Company not only had available assets to meet its current pecuniary liabilities, and credit to keep up its commission work, but that it had not suspended and had no intention of suspending its business.

If we turn to the other test of insolvency, namely, the comparison of debts with assets, to which comparison counsel for the appellant has devoted some attention in his brief, we reach the same result.

The last financial statement rendered to the Bank prior to the giving of the mortgage was on January 1, 1919 (Exhibit 7, Case pp. 87 and 88). This statement showed surplus in the business, exclusive of real estate (and ex-

cluding the claim of the National Leather Company as a liability) .....	\$130,852.64
The real estate was valued at its cost	\$96,705.04
Deducting the mortgage thereon amounting to .....	7,500.00
	<hr/>
An equity remains .....	89,205.04
	<hr/>

The total excess of assets over liabilities, as shown by this statement, was.....\$220,057.68

Nothing was included in the statement for good will. Accounts receivable were listed at \$31,665.21, and all other items were tangible assets.

Mr. McCormick, on the January 1, 1919, statement, had valued the real estate at approximately \$96,000, because that was the cost, and the figure at which it had always been carried. However, he believed that the real estate, as a part of a going concern, was worth in October, 1920, at least \$225,000. He further explained this by the increase in values during the war. The \$96,000 figure had been carried on the books of the Company for years (Case p. 97, ll. 7-35). Mr. McCormick further explained that the property at the time the mortgage was given, having a railroad frontage, had a greater valuation, and he pointed out that the cost of erecting the buildings at that period would be large (Case p. 97, ll. 35-39).

In the affidavit annexed to the bill of complaint, which was sworn to by Mr. McCormick in August, 1922, two years later, he valued the real estate at \$100,000, exclusive of machinery and fixtures (Case p. 9, l. 1). The receiver's inventory (Case p. 154, ll. 1-38), which was sworn to by the receiver himself and by George J. Motzenbecker and Frank J. Tansey, lists the real estate as worth \$182,560.

The real estate consisted of six brick buildings and frame buildings and forty-six lots (Case p. 98, ll. 6-9). The plot has a frontage on Vanderpool street of 150 feet and runs back 200 feet to Poinier street. There is also a

frontage on Miller street and Avenue C, and a frontage of 422 feet on the Pennsylvania Railroad (Case p. 119, l. 30, to p. 120, l. 11). The property now has a railroad siding, a very valuable advantage (Case p. 118, ll. 39, to p. 119, l. 4).

Mr. Louis Schlesinger, a real estate expert sworn on behalf of the appellant, commenced his testimony by placing a value of \$60,000 on the real estate as of April 4, 1922 (Case p. 114, ll. 35-37). He valued the lots at \$1,000 each (miscounting the lots at forty instead of forty-six, however), and the buildings at \$20,000 (Case p. 119, ll. 10-26). Later he added \$6,000 for the other six lots (Case p. 127, l. 23), making \$66,000.

He said that the property in October, 1920, if in the same dilapidated condition as when he saw it in April, 1922, would have had a value of from seventy-five thousand to ninety thousand dollars (Case p. 116, l. 22, and p. 122, ll. 10-15).

If the buildings had been in condition to be occupied and used as a tannery in October, 1920, he would have placed their value at \$45,000 (Case p. 122, ll. 26-30). Adding to this Mr. Schlesinger's figure of \$46,000 for the land by lot appraisal as above, would give a total, in October, 1920, for the plant in a usable, but not a first-class, condition of \$91,000.

He further stated that in this figure of \$45,000 for the buildings in October, 1920, he was not including anything for going worth (Case p. 123, ll. 6 and 7), and he stated that going worth would enhance the value (Case p. 123, l. 4, to p. 124, l. 13), and he considered that \$96,000 was not an out-of-the-way value for the real estate as a going concern.

Mr. Schlesinger, while he noticed the artesian well on the property, did not give it any consideration in his valuation (Case p. 124, ll. 17 and 18). Nor did he obtain any particulars about the depth of the well or the flow of water (Case p. 125, ll. 21-36). He further admitted

that the presence of the artesian well was of advantage to the property for a leather concern (Case p. 126, ll. 14-16).

A surprising confirmation of Mr. Schlesinger's valuation of the property as of the present time, but at a forced sale price merely, will be found in the result of the receiver's sale, duly approved by the Court. By the receiver's report, filed in this cause December 26, 1922, it appears that the lands, buildings and fixed machinery comprised in the mortgage brought \$80,000, leaving little doubt that Mr. Schlesinger's figure of \$96,000 as a fair value for the mortgaged premises, under the conditions above stated in October, 1920, was too low rather than too high. Mr. Schlesinger increased his estimates by adding percentages and not by absolute additions (Case p. 116, ll. 19-25). In other words, if he was too low in his valuation as of April, 1922, by a certain amount, he would be too low in his valuation as of October, 1920, not by that same amount alone, but by an amount at least 50 per cent. greater.

The plant had cost \$96,000 years before, and the Court is asked to take judicial notice of the fact that prices of dwellings and factory buildings and all other construction in 1920 were at least double, and in many cases three or four times as much as they had been before the war.

At the time the mortgage was given Mr. Baldwin had before him Mr. McCormick's statement of January 1, 1919. Mr. McCormick gave him no other written statement but told him verbally that the indebtedness was practically the same (Case p. 44, l. 21, to p. 45, l. 10).

If we turn to Exhibit 11 (Case p. 92), a financial statement as of September 1, 1920, which was furnished to the Moore Company in October, 1920 (Case p. 50, l. 39, to p. 51, l. 10), we find that the assets (exclusive of real estate, which was listed at \$225,000) were as follows:

Merchandise on hand.....	\$6,543.17
Accounts receivable.....	690.46
Cash in bank.....	762.00
Machinery and fixtures.....	26,011.42

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\$34,007.05

If we add to this a valuation for  
the real estate, not of \$225,000 but  
at cost and Schlesinger.....

96,000.00

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We have a total of.....\$130,007.05

This would give an amount greater than required to meet every obligation including first mortgages, taxes, National Leather Company, Bank and Moore Company. Counsel for the appellant is able in the table of liabilities in his brief to fix the amount of the National Leather Company claim in October, 1920, at exactly \$50,000, so that on his own figures the total "*debts*" (we quote from his brief), of the Company at that time were, according to his figures, \$126,603.71.

This latter statement, Exhibit 11, was the basis on which the parties acted in October, 1920, and more nearly reflects conditions at the time the mortgage was given than any other. *Large fluctuation in the real estate item does not destroy the then solvency of the Company.*

On a mere comparison of the Company's indebtedness with its assets it had ample assets to pay all debts.

If the plant is valued in October, 1920, at \$180,000 or \$190,000 (which as a going concern we believe it to have been worth), the excess of assets over debts is pronounced.

Counsel for the appellant in his brief gives a table of the supposed "*debts*" of the Company at the time the mortgage was given totaling \$126,603.71. In this he includes an item of personalty taxes amounting to \$3,457.50 as well as an item of realty taxes of \$9,000. The latter

figure evidently includes the personalty taxes (see Case, p. 105, ll. 8-22).

“Q Now, Mr. McCormick, do you know what taxes were due on your plant in October, 1920?

A Yes, about six years, I think.

Q That is, you hadn't paid taxes for the year 1913? A No.

Q And you hadn't paid for any year subsequent to that, except 1914? A 1914.

Q Do you know what those taxes amounted to? A The entire taxes?

*Court.* Yes, for those six years.

*Witness.* About \$10,000.

Q That is up to the present time? A Up to date.

Q About \$8,000 at the time you gave the mortgage? A About \$9,000.”

At the bottom of the same page the witness goes on to answer questions as to personal taxes also, but it is evident that the former figure of \$9,000 was intended to be all inclusive.

This also explains the difficulty of counsel for the appellant at the hearing in understanding the witness' statement as to the \$9,000. See State of Case, p. 105, ll. 23-29, as follows:

“*Mr. Stryker.* I think he is wrong; I think it amounts to about six or seven thousand at the time he gave the mortgage, covering five or six years. The claim filed by the receiver of taxes shows the taxes for 1918, 1919 and the first half of 1920.”

In other words, if the personalty taxes were included with the \$6,000 of realty taxes referred to by Mr. Stryker, it would give the total of \$9,000.

Counsel for the appellant further in the list of the “debts” of the McCormick Company in October, 1920, includes \$50,000 as due to the National Leather Company. As evidence that this was an indebtedness in October, 1920, counsel refers to the report of the receiver in this cause filed in December, 1922.

Concede, for the purpose of argument, that the \$50,000 was then a debt, and the total assets were more than sufficient to meet all liabilities and the Company had means sufficient to carry on its business as it had been conducting it for two years previous.

A case almost on all fours with the present as to the general situation of the McCormick Company is *Regina Music Box Co. v. Otto & Sons*, 65 N. J. E. 582 (Stevens, V.-C., 1903); affirmed *per curiam* by this Court 68 N. J. E. 804. In this case Vice-Chancellor Stevens held that a corporate mortgage was not made while the corporation was insolvent nor in contemplation of insolvency. The mortgage was made on April 1, 1900, and was for \$115,000. In the spring of the year previous the company had become involved in losses through the failure of a subsidiary. Prior to the giving of the mortgage the directors of the corporation passed resolutions to the effect that in view of the fact that notes were coming due shortly which could not be taken up, proceedings should be taken according to the laws of New Jersey for the dissolution of the corporation. These proceedings, however, were dropped, and the company continued to go on with its business in a small way.

Among the existing creditors at the time of the giving of the mortgage was the East River National Bank to whom it was liable on paper which it had endorsed. It was liable in an additional sum to the president of the bank on notes made by it or endorsed by it.

At the time the mortgage was given the president of the bank agreed to lend and did lend the Company \$40,000 additional of his own money, and to take 40 bonds of \$1,000 each to be secured by the mortgage. The remaining \$75,000 of the mortgage secured pre-existing indebtedness.

The Company continued to prosecute its business until May, 1903, when the trustees under the mortgage took possession.

Vice-Chancellor Stevens says at page 585:

“The first question to be considered is whether the mortgage of \$115,000 was made when the company was insolvent or contemplated insolvency.”

He then quotes section 64 of the Corporation Act in full and continues at page 586:

“This section is identical with section 2 of the old act to prevent frauds by incorporated companies and must receive the same construction. *Frost v. Barnert*, 11 Dick. Ch. Rep. 291. It forbids the preference of any creditor after insolvency, known or contemplated (*Wilkinson v. Bauerle*, 14 Stew. Eq. 635, 641), but does not invalidate a bona fide purchase for value, made before the company had actually suspended its ordinary business by a person not having notice.

“Complainant’s contention is that at the time the mortgage was made insolvency existed, or was contemplated. Of the \$115,000 secured, \$40,000 was for cash paid at the time; \$75,000 was for pre-existing indebtedness. As to these there is this distinction: If a company be in fact insolvent, or if it contemplate insolvency, it cannot secure a pre-existing debt, whether the mortgagee have or have not notice. But if the mortgagee advance money to an insolvent company, or to a company contemplating insolvency, and take a mortgage at the time of the making of the advance, then, if he has no notice, his security will stand. In the case at bar, it is perfectly manifest that the president of the bank had no notice of insolvency, if we give to the word ‘insolvency’ its ordinary meaning. The carefully prepared Yalden statement showed that the assets were more than double the liabilities, and if to those liabilities we add \$55,000, representing the company’s liabilities on the Paillard notes, not included in that statement, and deduct the items treasury stock, \$21,300, and experimental work, \$11,306.27, the statement still shows that the assets exceeded the liabilities by over \$200,000. So that the company did not appear to be insolvent in the sense that its assets were insufficient to pay its debts. Nor was it insolvent in the sense that it had suspended its ordinary business of manufacturing,

for it was then actually engaged in manufacturing, and it continued to be so engaged for three years thereafter. It is clear, then, that the president had no notice of actual insolvency in either of the senses I have mentioned. It is also clear, as it seems to me, that the president of the bank had no notice that the company contemplated insolvency in either of these senses. To contemplate insolvency within the meaning of the act, is to have in mind something more than the mere possibility of insolvency. The failure of his debtors to make prompt payment, the occurrence of some unexpected event, the stringency of the money market, may create an apprehension in the mind of the manufacturer that he may be unable to meet his obligations as they mature. *He may, for the moment, be doubtful whether he will or will not be able to go on. If he succeeds in borrowing enough money to pay his obligations and goes on, he cannot be said to have contemplated insolvency at the time he borrows the money, merely because he had in mind at some former time the possibility of becoming insolvent in case he failed to borrow it.* This is the language of common sense, no less than of the authorities. In Webster's dictionary, it is said 'we contemplate a design when the means are at hand and our decision is nearly or quite made.' In Burrill's Law Dictionary, contemplation is defined as 'having in view; consideration of an act or course of conduct with the intention of doing or adopting it.' In *Buckingham v. McLean*, 13 How. (U. S.) 167, contemplation of insolvency is spoken of as a contemplation of an inability to pay, as debts should become payable—'whereby a man's business is broken up.' In *Belcher v. Prittie*, 10 Bing. 423, Justice Bosanquet says: 'The more important part of the case is whether this was done in contemplation of bankruptcy;' in other words, 'whether Mr. M., at the time he assented to this proposal of his son (a proposal to secure certain indebtedness) expected that bankruptcy would take place; \* \* \* whether he knew, or believed, upon the 1st of July that his affairs would end in bankruptcy.' To illustrate: When Gustave Otto found that the Pailard failure had made it necessary for his company to raise money, he probably said to himself: 'My

company must either borrow \$40,000 in cash or suspend business.' He was then contemplating insolvency on a contingency; but when he was informed that Mr. Jenkins was willing to lend the money, the contingency on which he had contemplated it not having happened, the idea of insolvency ceased to be present to his mind and he no longer contemplated it. When his company executed the mortgage he contemplated, not insolvency, but the reverse.

"Any other construction of the statute would make it impossible for a corporate manufacturer, temporarily in need of money, to procure it by pledge of his property, although by procuring it he would terminate his embarrassment. The lender's security would always be open to attack, and to successful attack, if at any time in the future the borrower failed. Section 64 does, indeed, make a distinction between the case of an antecedent debt and the case of a bona fide purchase for valuable consideration paid at the time by a person without notice. In the former case, if the company be, in fact, insolvent, or if it contemplate insolvency, the ignorance of the creditor is immaterial (*Brower v. Harbeck*, 9 N. Y. 594), while in the latter want of notice will protect him. But this protection would not go very far if contemplation of insolvency meant contemplation by the lender of its mere possibility on a contingency which does not happen. The present case presents both phases of the question, for Mr. Jenkins paid \$40,000 in cash and his bank took seventy-five bonds as security for an antecedent debt. The statement handed to Mr. Jenkins, and on which he acted, showed that the company had only \$755.63 in cash and he must have thought it possible that if he, or someone else, did not lend the company money it would be forced to suspend; in other words, he must have contemplated insolvency as an alternative possibility. As he did not contemplate it when he took the mortgage and made the loan, I think that, as to the forty bonds, they are clearly within the proviso of section 64."

(Italics ours.)

The foregoing quotation, while containing a most valuable discussion of insolvency in general, is also important

on the question of notice to the bank and to the Moore Company, discussed in point II, *infra*.

At the bottom of page 588 the Vice-Chancellor then goes on to consider the situation as to the \$75,000 bonds taken as security for the antecedent indebtedness. As to these he notes that the question is not of notice brought home to the lender, but whether or not the company was in fact insolvent or was contemplating insolvency.

The Vice-Chancellor calls attention to the corporate minutes above noted which referred to the notes shortly coming due which could not be taken up, and which called for action to dissolve the corporation. At page 589 the Vice-Chancellor says:

“Standing alone, this resolution would be evidence that the corporation contemplated insolvency in the sense that it would be obliged to suspend and go out of business for want of funds.

“Now, it seems to me very plain that if in February the company contemplated insolvency, in the sense of suspension, as the result of a failure to procure additional capital, in March they contemplated proceeding with the business, because of their successful negotiation for a loan.”

The Court next notices the contention of counsel for the complainant that because the company's paper had gone to protest, it had suspended business, and had thus experienced “an inability to presently pay indebtedness.” The Vice-Chancellor quickly brushed aside this alleged ground of insolvency.

At page 590 the Vice-Chancellor continues:

“And I do not think it could be said that if the company did not pay in cash but had sufficient credit to renew its notes, and did, in fact, renew them and went on with its business, it should be regarded as insolvent, if it also appeared that its assets exceeded its liabilities. It is obvious that the whole situation would have to be considered. Speaking of the principle which should guide a Court in appointing receivers for insolvent corporations,

Vice-Chancellor Van Fleet, in *Atlantic Trust Co. v. Consolidated Electric Storage Co.*, 4 Dick. Ch. Rep. 402, in a passage quoted by the chancellor in the case I have just mentioned, said: 'The principle which I think should control the Court in the exercise of this power is this—never to appoint a receiver unless the proof of insolvency is clear and satisfactory and unless it also appears that there is no reasonable prospect that the corporation, if let alone, will soon be placed, by the efforts of its managers, in a condition of solvency.' If this be the true principle where the appointment of a receiver is concerned, certainly *a fortiori* must it be the true one where the dispute is over the validity of a mortgage, taken by a creditor in good faith, in the ordinary course of its business, a considerable period of time before its failure."

At the bottom of page 591 the Vice-Chancellor says:

"Now, it seems to me that on these facts the insolvency of the company at the time the mortgage was given is far from being clearly and satisfactorily established. Its assets were greater than its liabilities. It had never ceased to conduct its ordinary business in the ordinary way. The evidence is that up to May, 1902, it had never defaulted in its weekly pay roll of from \$1,400 to \$2,000. There are a great many solvent companies, I imagine, which at some period or another of their existence have been pressed for money, and have, because of such pressure, been obliged to ask for time. If the test be present inability to pay in cash all maturing claims, then a successful effort to obtain further time, by a pledge of their property, is a demonstration of their insolvency.

"By section 42 of the act of 1849, it was enacted that in case of the insolvency of any company formed under its provisions the laborers in the employ thereof should have a lien upon the assets thereof for the wages due them, respectively, which should be paid prior to any other debt, &c. It was held by Chancellor Green, in *Bedford v. Newark Machine Co.*, 1 C. E. Gr. 117, that the company was to be deemed to be insolvent when it suspended business, and that the lien should be deemed to attach as of that time. He said: 'The act respec-

ting insolvent corporations under which these proceedings were instituted looks to the suspension of the ordinary business of the company or some overt act by which its insolvency can be ascertained and declared. The Court cannot, upon an inquiry of this nature, undertake to investigate the financial ability of the company at previous periods, founded upon a mere failure to meet its engagements or upon the actual state of its finances, after its business has been suspended.' This language has been quoted with approval in subsequent cases. *Delaware, Lackawanna and Western Railroad Co. v. Oxford Iron Co.*, 6 Stew. Eq. 193; *Wright v. Wyanockie Iron Co.*, 3 Dick. Ch. Rep. 29. If these decisions do not govern the construction of section 64, they at least suggest caution in undertaking to avoid securities given a considerable time before suspension of business.'

As above suggested the *Regina Music Box Company* case is a striking parallel to the present. Practically all that the Court said there as to the acts of companies which experience some financial difficulties, and as to the need of caution in undertaking to avoid securities given some time before and in undertaking to make investigations involving financial ability at previous periods, could be said of the present case.

We would also call attention to *Hoover Steel Ball Co. v. Schafer Ball Bear. Co.*, 89 N. J. E. 433 (Lane, V. C., 1918), where the Court held that the corporation at the time a pledge was made was insolvent to the knowledge of the pledgee. The security was therefore invalidated.

The Court, nevertheless, uses at the bottom of page 436 the following very pertinent language:

"Actual suspension of business as used in this section imports more than a mere failure to meet maturing obligations as they accrue. The reasoning which induced the Court to hold that the words 'resume its business' in the sixty-fifth section referred to a resumption of meeting maturing obligations does not apply. The statute contemplates an interruption of ordinary business operation evidenced by some objective features. In the case of

banks a failure to meet maturing obligations would be an actual suspension of business because it would result in the immediate closing of the doors. In the case of manufacturing concerns, a cessation of manufacture. In any event there is required an interruption of the ordinary course of business other than a mere failure to meet maturing obligations."

The Court continues at the bottom of page 437:

"Nevertheless, a corporation may, if temporarily in need of funds, pledge its assets if, by the pledge of such assets, moneys may be raised which will relieve it of its embarrassment and permit it to continue," citing the *Regina Music Box Co.*, case *supra*, and other cases.

## II.

Assuming for the purpose of argument that the McCormick Company was insolvent in October 1920, neither the bank nor the Moore Company had any knowledge of such insolvency.

Counsel for the appellant argues in his brief that the Bank and the Moore Company knew that the company had actually suspended its ordinary business, that the Company was insolvent, and that the mortgage was given in contemplation of such insolvency.

We have already shown that the ordinary business of the Company for two years previous had been the tanning of leather on the commission basis. The gross business had amounted in 1919 to \$90,000 and to the same amount in 1920. Mr. McCormick stated that there was practically no change between January 1, 1919, and October, 1920, except that there had been some falling off in the liquid assets that is items of cash and accounts payable (Case p. 52, ll. 18-24).

Counsel for the appellant quotes isolated portions of the testimony to the effect that Mr. McCormick told Mr. Baldwin that the business was practically at a standstill.

On cross-examination counsel for the appellant questioned Mr. Baldwin as follows (State of Case p. 45, ll. 17-27):

Q (*By Mr. Stryker*). Did Mr. McCormick indicate in any way that there had been a diminution of the assets since January 1, 1919? A He made no such statement except through the inference that I got from his statement that the company was unable to pay the notes.

Mr. Baldwin, at p. 51, l. 29, distinctly said "I did not understand that they had discontinued business entirely but that there had been a very great falling in their business as compared with the normal," viz., as compared with their business in 1918. Counsel in his brief makes a great point of the alleged statement of Mr. Baldwin to Mr. McCormick to the effect that McCormick had no credit and that nothing the bank could do could injure him. From this counsel deduce that the mortgage was given in contemplation of insolvency and with the knowledge on the part of the bank and the Moore Company that it would necessarily be but a question of time before the affairs of the company would be wound up.

Mr. Baldwin, however, after stating that he knew that the liquid assets had fallen off, was asked:

Q They were at a standstill but not entirely so I think you said. A Temporarily so, yes.

Q How did you know it was temporary? A They told me they expected better times to develop.

Q At that time they were at a standstill? A Not entirely.

Q They were doing business were they? A Some business.

Q But not the volume which even half time would mean? A No.

Q Nor quarter time would mean? A I do not know about quarter time, about one-half.

See State of Case p. 53, ll. 14-26.

This estimate of one-half confirms in most accurate fashion the facts as later developed through Mr. McCormick's testimony that the gross business, then at \$90,000

per year, was about one-half of the business for the best previous year (Case p. 106, l. 31, to p. 107, l. 5).

Mr. McCormick's statement to Mr. Baldwin: "They told me they expected better times to develop," certainly shows that it was fully expected that the Company would be able to survive the period of depression and that thereafter it would prosper again.

On this whole question of notice the first quotation from *Regina Music Box Co. v. Otto, supra*, is closely in point.

The unfounded assumption is made by counsel for the appellant in his brief that "the McCormick Company had abandoned the idea of continuing its business before the mortgage was given," and the only basis which counsel finds for this is that for a number of years previous the Company had been endeavoring to sell its business. Of course, it would sell if it got its price; but the fact that it turned down an offer of \$35,000 for one of its six buildings indicates that the object was not to sell merely to pay the debts of the business, which could evidently have been readily liquidated, but to sell out at somewhere near the figure which the officers believed the business was worth.

It is true that the company did not enjoy any very large credit in the business world, but on the other hand, it is equally true that in Mr. McCormick's view he had sufficient credit to get along. See the testimony at p. 59, l. 16, *et seq.*, where Mr. McCormick when asked if he had any credit at the time the mortgage was given said, "Well, I believe we had," though not to borrow cash. He was then asked whether he could get goods on credit before that time and he answered, "We always had."

Q Any refusals to deliver? A No.

Q Your financial condition at the time of the placing of that mortgage was just about the same as it had been six months before, was it not? A Well, about.

It thus appears that neither Mr. McCormick nor the Bank nor Moore regarded the business as having sus-

pended, or regarded the mortgage as given in contemplation of insolvency, but, on the other hand, from the paying off of sundry creditors in full at that time, that it was expected to keep the business going and enable it to weather the period of depression.

On this issue of knowledge on the part of the bank and the Moore Company, Mr. McCormick's testimony (Case p. 107, l. 32, to p. 108, l. 5) is significant:

Q Did you tell Mr. Baldwin and Mr. James, or either of them, the character of the business that you were doing in October, 1920, when this mortgage was discussed? A No.

Q What did you tell them you were doing? A They never asked me what I was doing.

Q Isn't it a fact that you told them what you were doing? A At the time I gave the mortgage?

Q Yes, or just before that time. A At the time I gave the mortgage it didn't come up for discussion what we were doing.

Q But shortly before that it didn't come up either? A No.

It thus appears that even if the Company was insolvent when the mortgage was given or had suspended its ordinary business, the mortgage was at least good as securing a prior lien to the bank and to the Moore Company for the moneys advanced at that time. The language of section 64 of the corporation act is to the effect that a bona fide purchase for a valuable consideration "by any person without notice of such insolvency" shall not be invalidated.

See *Cope v. Walton*, 79 N. J. E. 165, in this Court, where, however, apparently it was not seriously disputed that the assignee had notice.

See also *Agnew v. Paterson Board of Education*, 83 N. J. E. 49 at 59 (*V. C. Stevenson*, 1914), where it was held that an assignment by an insolvent corporation to a party who has no notice of such insolvency may be held good as to so much of the consideration as was paid at the time the assignment was made. The earlier case of

*Frost v. Barnert*, 56 N. J. E. 290, decided by Vice-Chancellor Stevens is cited.

See also *Regina Music Box Co. v. Otto*, *supra*.

Of course, in discussing this claim of appellant, there is no admission that the McCormick Company was insolvent or had actually suspended its business.

It is respectfully submitted that at the time the mortgage was given the McCormick Company was not insolvent and had not suspended its business, and that the decree under appeal sustaining the mortgage should be affirmed.

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