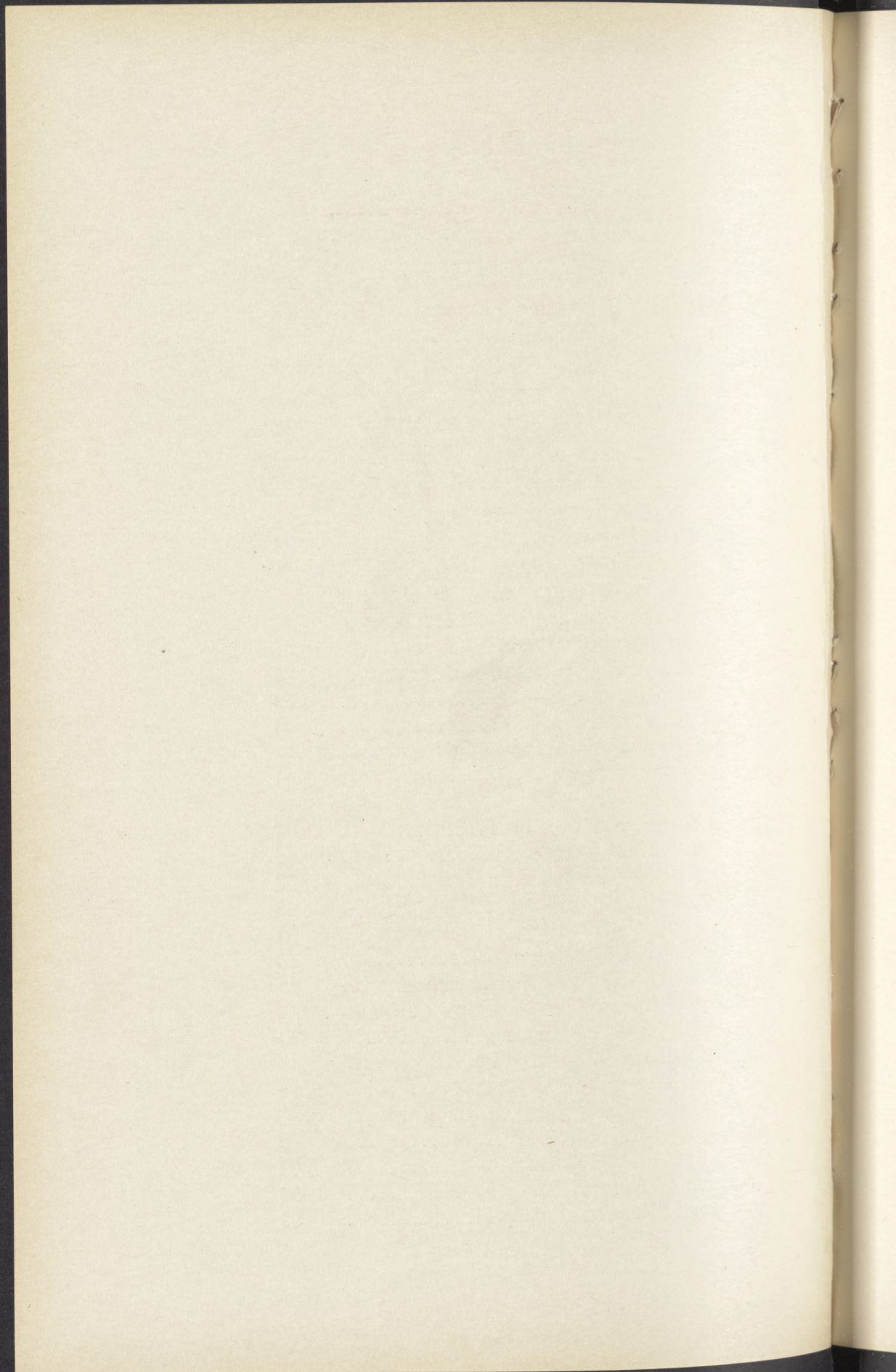


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ORDER VACATING ORDER OF APRIL
19, 1927.

United States District Court

DISTRICT OF NEW JERSEY.

		10
	<i>In Bankruptcy.</i>	
	<i>Order Vacating Order of April 19, 1927, Insofar as same Affects</i>	
In the Matter of GEORGE E. THOMAS, Bankrupt.	<i>Joseph P. Day and Pauline M. Pope Day, His Wife.</i>	20

This matter being opened to the Court by Samuel J. Kaufman, Esq., attorney for Joseph P. Day and Pauline M. Pope Day, his wife (alleged debtors of the bankrupt herein) and it appearing that on April 19, 1927, an order was entered by this court in the above-entitled cause, requiring the said Joseph P. Day (among others in said order named and mentioned) to show cause before the Honorable George W. W. Porter, Referee in Bankruptcy, why the said Joseph P. Day should not pay over to the receiver the sum of \$8,337.72 or such other amount to be found due, said order entered on April 19, 1927 aforesaid also enjoining the said Joseph P. Day (to-

Order Vacating Order of April 19, 1927.

gether with others in said order named) from disposing of such moneys alleged to be due the bankrupt, and it further appearing that on May 5, 1927 a hearing was held before the Honorable George W. W. Porter, Referee in Bankruptcy aforesaid on said order entered on April 19, 10 1927 and that said hearing was adjourned to June 3, 1927; and it appearing further that on May 28, 1927, upon motion of Samuel J. Kaufman, Esq., attorney as aforesaid, this court made an order requiring the receiver (or trustee appointed in his stead) to show cause on June 3, 1927, before the Honorable George W. W. Porter why an order should not be entered dissolving and vacating the order entered on April 19, 1927 (and herein recited) insofar as said 20 order of April 19, 1927 relates to the said Joseph P. Day and Pauline M. Pope Day, his wife, and further requiring the receiver (or trustee appointed in his stead) to show cause before said Referee why an order should not be entered expunging the claim of the bankrupt against the said Joseph P. Day and Pauline M. Pope Day; and it appearing that upon the evidence submitted to the Honorable George W. W. Porter, Referee in Bankruptcy, upon the claim of Harry 30 G. Hendricks, receiver and trustee herein against Joseph P. Day and/or Pauline M. Pope Day, and upon hearing the arguments of Alan Bruce Conlin, Esq., attorney of the receiver and trustee, and Samuel J. Kaufman, Esq., attorney of the said Joseph P. Day and Pauline M. Pope Day, that the Referee is of the opinion that the order entered herein on April 19, 1927 should be vacated, set aside and dissolved and for nothing holden insofar as said order of April 19, 1927 40 relates to and affects the said Joseph P. Day

Order Vacating Order of April 19, 1927.

and/or Pauline M. Pope Day, his wife (the Referee being of the further opinion that he has no authority to advise or enter an order expunging the claim of the bankrupt against the said Joseph P. Day and/or Pauline M. Pope Day, his wife); and upon the advice of the Honorable George W. W. Porter, Referee in Bankruptcy, it is, on this third day of June 1927, upon motion of Samuel J. Kaufman, Esq., attorney of Joseph P. Day, and Pauline M. Pope Day, his wife, 10

ORDERED that the Order entered herein on April 19, 1927, requiring the said Joseph P. Day (among others therein named) to show cause before the Honorable George W. W. Porter, why he should not pay over to the Receiver the sum of \$8,337.72, or such other amount to be found due and enjoining the said Joseph P. Day from disposing of such moneys alleged to be due from him to the bankrupt, be and the same is hereby vacated, set aside and dissolved, and for nothing holden, insofar as said Order relates to and affects the said Joseph P. Day and Pauline M. Pope Day, his wife, and that the said Joseph P. Day and Pauline M. Pope Day, his wife—and each of them be and they are both hereby discharged from complying with said order entered on April 19, 1927 and herein recited. 20 30

June 8, 1927.

WM. N. RUNYON,
Judge United States District Court,
District of New Jersey.

I have read the foregoing order and I do hereby certify and advise the entry of the foregoing order.

G. W. W. PORTER,
Referee in Bankruptcy. 40

**PETITION OF COMPLAINANT
JOSEPH P. DAY.**

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

10

In the Matter of GEORGE E.
THOMAS, Bankrupt.

*In
Bankruptcy.
Petition.*

To the Honorable, the Judges of the United
States District Court for the District of
New Jersey:

20

The petition of Joseph P. Day, respectfully
shows that:

1. Your petitioner and Pauline M. Pope Day,
his wife, are the owners of premises in the Town-
ship of Millburn, in the County of Essex and
State of New Jersey upon which certain work
was performed and materials furnished by the
bankrupt herein.

30

2. The work so performed and materials
furnished by the bankrupt were furnished and
performed prior to the said George E. Thomas
being adjudicated a bankrupt.

40

3. The materials furnished by the bankrupt
herein were obtained (so your petitioner is in-
formed and believes) from several creditors of
the said bankrupt herein, and the work so per-
formed was performed under the supervision of
the said bankrupt, said work having been per-
formed by several creditors of the said bankrupt,

Petition of Complainant Joseph P. Day.

to the best of your petitioner's information and belief.

4. Several of the individuals, firms, partnership and/or corporations which performed labor and/or furnished material in connection with the work performed and materials furnished upon the buildings on the premises owned by your petitioner and wife aforesaid, have not been paid by the said bankrupt, although monies claimed to be due to the bankrupt were paid to the bankrupt by your petitioner prior to these proceedings against the said bankrupt. 10

5. The bankrupt has listed in the schedules filed by him in this cause, the sum of eight thousand three hundred thirty-seven dollars and seventy-two cents (\$8,337.72) as the amount that is due to the bankrupt from the petitioner and/or petitioner's wife. Your petitioner denies being indebted to the bankrupt or the trustee of the bankrupt, in said sum and has not sufficient knowledge or information at this time as to what part thereof, if any, still remains due and owing to the said bankrupt, or to his duly appointed and qualified receiver and/or trustee herein. 20

6. Your petitioner and Pauline M. Pope Day, his wife (or either or both of them) have heretofore been enjoined from paying any monies due in this matter to anyone. An order to this effect was entered by this Honorable Court on April 19, 1927, but has since been vacated and dissolved, at the instance and request of your petitioner. Your petitioner therefore verily believes that he is no longer enjoined from paying any monies to anyone in connection with this matter. 30

7. Your petitioner is informed and believes it to be true that Harry G. Hendricks, is now 40

Petition of Complainant Joseph P. Day.

the qualified trustee of this bankrupt estate, and that Alan Bruce Conlin, Esq., is the duly appointed and qualified attorney for said trustee herein.

10 8. Your petitioner respectfully further shows that four suits have already been instituted against your petitioner and his wife, and said suits are still now pending under and by virtue of the provisions of an Act of the Laws of the State of New Jersey, said act being entitled "An Act to secure to mechanics and others payment for their labor and materials used in erecting any building, and in making certain improvements to lands (revision of 1898)" and the several amendments thereof and supplements thereto, said act being commonly referred to as
20 the Mechanic's Lien Law.

9. The persons who have instituted suit as alleged in paragraph 8, herein, and the amounts claimed to be due to each of them (exclusive of interest and costs) is as follows:

	Arthur E. James (painting and paper-hanging work and materials furnished) represented by Messrs. Herrigel, Lindabury & Herrigel, attorneys.....	\$1,202.45
30	Harvey J. Tiger (materials furnished) represented by Messrs. Edward M. & Runyon Colie, attorneys.....	546.50
	John D. McCollum and Aaron O. Smith, trading as McCollum & Smith (labor and materials) represented by Messrs. Herrigel, Lindabury & Herrigel, attorneys	1,697.71
40	Union County Coal & Lumber Co. (materials furnished) represented by E. A. Merrill, Esq., attorney.....	5,449.54

Petition of Complainant Joseph P. Day.

Your petitioner has not sufficient knowledge or information as to whether said above stated sums, or any part thereof, is actually due and owing to said persons in this paragraph mentioned, but avers and alleges that the materials furnished and/or labor performed, were furnished and performed at the special instance and request of the bankrupt herein, and that although the bankrupt herein is primary liable in connection therewith, yet the lands and premises owned by your petitioner and petitioner's wife, are subject to the lien of said claims under and by virtue of the act aforementioned, and by reason of the pending suits as in paragraph (8) mentioned. 10

10. In the suits mentioned and now pending, as stated in paragraphs (8) and (9) hereinabove, the said Harry G. Hendricks, as receiver or trustee herein, is a party defendant, together with petitioner and petitioner's wife. 20

11. Your petitioner has heretofore been presented with a claim against him and his lands, by the Eddy Electric Service, Inc., in the sum of \$319.38, which said sum was primarily due from the said bankrupt herein. Said petitioner has settled and adjusted said claim, and has paid \$287.50 in full settlement and release of said claim. 30

12. The total amount of the claims against your petitioner and wife (as indicated in paragraphs numbered 9 and 11 herein) aggregate the sum of nine thousand one hundred eighty-three dollars and seventy cents (\$9,183.70) exclusive of interest and costs that may be added thereto, if any.

13. Your petitioner and his wife, desire to be relieved by this court of being obliged to pay 40

Petition of Complainant Joseph P. Day.

both the said sum of \$9,183.70 to the creditors or persons aforementioned, as well as the sum of \$8,337.72 (or any amount ascertained to be actually remaining due to the bankrupt or trustee whatsoever) to the trustee in bankruptcy of George E. Thomas, bankrupt herein (or his assignee) for the reason that such monies as may be due are due either to the trustee herein or the persons mentioned in paragraphs 9 and 11 herein, and not to both. Your petitioner respectfully requests and suggests that he be permitted to pay the respective sums that may be ascertained and determined to be due to the persons mentioned in paragraphs 9 and 11 herein, so that petitioner's lands may not be subjected to their liens and lien claims, and that your petitioner may be permitted to file a claim against the bankrupt for the sum representing the difference between \$9,183.70 (or such sum as your petitioner may be obliged to pay) and the amount actually ascertained and determined to be due the bankrupt, and if no monies are due to the bankrupt then petitioner may be permitted to file claim against bankrupt in the sum of \$9,183.70 (or such sum as petitioner may be obliged to pay). Your petitioner further respectfully suggests and requests that he and his wife be not ordered to pay any sum whatsoever to the bankrupt or trustee herein and that your petitioner and his wife be relieved therefrom and the bankrupt and trustee herein be ordered and directed by this court to execute and deliver to your petitioner and wife a general release for the sum of one dollar, releasing your petitioner and his wife, as well as the said lands owned by petitioner and his wife from any lien or claim which the said trustee and/or bankrupt herein may have or claim to have as aforesaid.

Petition of Complainant Joseph P. Day.

14. Your petitioner therefore respectfully prays that an order may be entered by this court permitting your petitioner and his wife, to pay to the persons mentioned in paragraphs 9 and 11 herein, such sum as your petitioner and his wife shall ascertain to be actually due to said persons so named in said paragraphs 9 and 11, and that said order shall further direct the bankrupt and trustee herein to execute and deliver to your petitioner and his wife, a general release and mechanics' lien release as suggested in paragraph 13, herein, and that the trustee be directed to expunge his claim against the petitioner and/or his wife and to indicate upon said trustee's records the discharge and cancellation of said claim against your petitioner and his wife, and that your petitioner and his wife be relieved from paying said sum of \$8,337.72 (or any sum whatsoever) to the bankrupt and/or trustee herein, and that any order heretofore entered enjoining petitioner and/or his wife from paying out said sum be dissolved and vacated and that your petitioner be permitted to file his claim against the bankrupt herein as hereinbefore recited, and that your petitioner and his wife may have such other and further relief as may be equitable, just and necessary in the premises.

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And your petitioner will ever pray, etc.

JOSEPH P. DAY,

Petitioner.

SAMUEL J. KAUFMAN,

Attorney of Petitioner Joseph P. Day
and Pauline M. Pope Day, his wife.

40

NOTICE OF HEARING.

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

10

In the Matter of GEORGE E.
THOMAS, Bankrupt.

} *In Bank-*
ruptcy.

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NOTICE is hereby given that Joseph P. Day, an alleged debtor of the bankrupt herein, has filed his petition from which it appears that labor was performed and materials furnished at the instance and request of the bankrupt upon buildings on premises owned by the said Joseph P. Day and Pauline M. Pope Day, his wife, which labor and materials were not paid for by the bankrupt, and that mechanics' liens suits and claims aggregating the sum of \$9,183.70 have been instituted. The petition of the said Joseph P. Day, now on file in the above-entitled cause, prays to be relieved of the payment to the trustee of George E. Thomas, bankrupt, of the sum of \$8,337.72 or any amount ascertained to be actually remaining due to the bankrupt—which sum of \$8,337.72, the bankrupt claims is due him from the petitioner, Joseph P. Day, and further prays that the trustee be directed and authorized to expunge his said claim against Joseph P. Day and Pauline M. Pope Day, his wife.

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A hearing will be held before the Honorable George W. W. Porter, Referee in Bankruptcy at the Bankruptcy Court Room, Post Office Building, Broad and Academy streets, Newark N. J., on

Notice of Hearing.

November 10, 1927, at ten o'clock in the forenoon and you then and there are ordered to show cause, if any you have, why the prayer of said petitioner should not be granted, and an order entered in accordance with the prayer of said petitioner.

Dated October 25, 1927.

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GEORGE W. W. PORTER,
Referee in Bankruptcy.
10-26-1t

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**ORDER DENYING APPLICATION OF
JOSEPH P. DAY FOR ORDER TO EXPUNGE
CLAIM OF TRUSTEE, ETC.**

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

10

In the Matter of GEORGE E.
THOMAS, Bankrupt.

20

*In
Bankruptcy.
Order Deny-
ing Applica-
tion of
Joseph P.
Day for
Order to
Expunge
Claim of
Trustee, etc.*

30

This matter coming on to be heard by the Court upon an order to show cause entered herein on October 25, 1927, and the Court being of the present opinion that the petitioners, Joseph P. Day and Pauline M. Pope Day, his wife, are not at present entitled to the relief prayed for in the duly verified petition of Joseph P. Day, on file in the above-entitled cause, it is on this tenth day of November, 1927, in the presence of S. J. Kaufman, attorney of Joseph P. Day and Pauline M. P. Day and F. B. Colie and E. A. Merrill, attorneys for creditors,

40

ORDERED, that the relief prayed for and requested by the petitioners, Joseph P. Day and Pauline M. Pope Day, his wife, be and the same is hereby denied, without prejudice, and the order

Order Denying Application to Expunge Claim.

to show cause hereinbefore entered in this cause,
be and the same is hereby dismissed, without
prejudice and without costs.

G. W. W. PORTER,
Referee in Bankruptcy.

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**ORDER PERMITTING COMPLAINANTS TO
MAKE TRUSTEE PARTY DEFEND-
ANT, ETC.**

Filed December 1, 1927.

10 UNITED STATES DISTRICT COURT.
DISTRICT OF NEW JERSEY.

In the Matter of GEORGE E.
THOMAS, Bankrupt.

*In Bank-
ruptcy.
Order.*

20 This matter being opened to the Court by
Samuel J. Kaufman, Esq., attorney for Joseph
P. Day and Pauline M. Pope Day, his wife, al-
leged debtors of the bankrupt herein, and it
being represented to the Court that said alleged
debtors are about to file their bill in the nature
of bill of interpleader in the Court of Chancery
of the State of New Jersey relating to the al-
leged claim of the lien claimants who have
instituted suits against said alleged debtors, and
30 the attorney for said alleged debtors having
informed the Court that said alleged debtors
deem it necessary and advisable that Harry G.
Hendricks, the Receiver and Trustee in Bank-
ruptcy of George E. Thomas, bankrupt, be made
a party defendant to said Court of Chancery
proceedings so that said Harry G. Hendricks,
Receiver and Trustee of said bankrupt, may in-
terplead and determine his rights thereunder,
and, application being made for permission to
40 make said Harry G. Hendricks, Receiver and
Trustee of George E. Thomas, bankrupt, a party

Order to Make Trustee Party Defendant.

defendant to said Court of Chancery proceedings and also for an order directing Harry G. Hendricks, Receiver and Trustee of George E. Thomas, bankrupt, to accept service of process of subpoena and such other process, orders and decrees that said Court of Chancery of the State of New Jersey may issue, make or enter in said proceedings and that said receiver and trustee do fully comply with said subpoena, or other process, orders and decrees in said cause to be issued and made; and good and sufficient reason appearing therefor; it is on this 22nd day of November, 1927, upon motion of Samuel J. Kaufman, attorney of Joseph P. Day and Pauline M. Pope Day, his wife,

ORDERED, that permission is hereby given to Joseph P. Day and Pauline M. Pope Day, his wife, to make Harry G. Hendricks, Receiver and Trustee of George E. Thomas, bankrupt, a party defendant to said proceedings to be instituted by them in the Court of Chancery of New Jersey; and it is further

ORDERED, that said Harry G. Hendricks, Receiver and Trustee of George E. Thomas, bankrupt, be and he is hereby ordered, directed and authorized to accept process of subpoena and such other process as said Court of Chancery may issue, also to accept service of such orders and decrees that the said Court of Chancery may make and also to fully comply with all orders and decrees that the said Court of Chancery of New Jersey may make or enter in said proceedings; and it is further,

ORDERED, that said Harry G. Hendricks, Receiver and Trustee, do interplead in said Court of Chancery proceedings and determine his rights thereunder.

WM. N. RUNYON,
U. S. D. J.

BILL OF COMPLAINT.

Filed November 25, 1927.

In Chancery of New Jersey

10 *To the Honorable Edwin Robert Walker, Chan-*
cellor of the State of New Jersey.

The complainants, Joseph P. Day and Pauline M. Pope Day, his wife, of the Township of Millburn, in the County of Essex, respectfully show that:

1. Complainants, at the dates and times hereinafter set forth, were and still are, the owners in fee simple, of certain premises in the Township of Millburn, in the County of Essex and
 20 State of New Jersey, which said premises are more particularly set forth and described upon the schedule annexed hereto designated as "Schedule A."

2. On or about September 1, 1925, the complainant Joseph P. Day, entered into an oral agreement with one George E. Thomas, wherein and whereby the said George E. Thomas agreed to make certain alterations to an existing building upon the premises mentioned in paragraph 1
 30 of this bill of complaint, also to make an addition to said building. It was also agreed between said parties that the said George E. Thomas should receive as and in payment of the foregoing, the actual cost of the labor and material (which labor and material was to be obtained by the said George E. Thomas), also an additional sum equal to ten per centum of said cost of said labor and material as and for payment
 40 of the services of said George E. Thomas in the supervision of said work required to be done.

Bill of Complaint.

3. In order that said George E. Thomas could comply with his said agreement with the complainant Joseph P. Day as aforesaid, the said George E. Thomas did enter into agreements with necessary laborers and material supplies dealers, for said labor and material required to be obtained in order to perform the work by the said George E. Thomas agreed to be done. Among those with whom the said George E. Thomas entered into an agreement for this purpose, are the following named: (a) Union County Coal & Lumber Co., (b) John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, (c) Arthur E. James and (d) Harvey J. Tiger. 10

4. Complainants do not know the exact dates that the said George E. Thomas entered into agreements with the parties mentioned in paragraph 3 hereinabove, except that these complainants are informed and believe it to be true, that said agreements were entered into by the said George E. Thomas prior to April 1, 1927. 20

5. Complainants are informed and believe it to be true that the Union County Coal & Lumber Co., at the request of the said George E. Thomas, did sell and deliver to the said George E. Thomas, certain materials, which said materials were used by the said George E. Thomas in the erection, alteration and construction of the buildings upon the premises owned by these complainants. 30

6. Complainants are informed and believe it to be true, that the said McCollum & Smith did sell and deliver to the said George E. Thomas, certain materials and did also perform for him labor, which said labor and materials were performed and furnished in connection with the 40

Bill of Complaint.

erection, alteration and construction of the buildings upon the premises owned by complainant.

10 7. Complainants are informed and believe it to be true that at the special instance and request of the said George E. Thomas, said Arthur E. James performed painting work and also furnished painting supplies, all in connection with the erection, alteration and construction of the buildings upon the premises owned by complainants.

20 8. Complainants are informed and believe it to be true, that Harvey J. Tiger furnished certain hardware supplies in connection with the erection, alteration and construction of the buildings upon the premises owned by these complainants, and that said supplies were sold and delivered to the said George E. Thomas, at the special instance and request of the said George E. Thomas.

30 9. On or about April 18, 1927, the said George E. Thomas was adjudicated a bankrupt in the United States District Court for the District of New Jersey. On or about said date, one Harry G. Hendricks, by an order of said court, was appointed as receiver of said George E. Thomas, bankrupt, and did qualify as such. Subsequently, by an order of said court, the said Harry G. Hendricks was appointed (and he did actually qualify) as trustee of the said George E. Thomas, bankrupt, and the said Harry G. Hendricks still continues to act as said trustee as aforesaid.

40 10. The said Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, claims that there is due to him from Joseph P. Day, one of the complainants herein, the sum of eight thousand three hundred thirty-seven dollars

Bill of Complaint.

and seventy-two cents (\$8,337.72) as and for the balance for labor performed and materials furnished (including services for supervision as hereinbefore stated), which labor was performed and materials furnished in connection with the erection, alteration and construction of the buildings upon the premises owned by these complainants. 10

11. On or about March 31, 1927, the Union County Coal & Lumber Co. instituted suit in the Essex County Circuit Court against Joseph P. Day and Pauline M. Pope Day, his wife, (these complainants) as owners, and George E. Thomas, as builder, to recover the sum of \$5,449.54 for materials furnished to and used by the said George E. Thomas in the erection, alteration and construction of the buildings upon the lands owned by complainants, which debt it is claimed is a lien upon said buildings, and lands by virtue of the provisions of an act entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting any buildings and in making certain improvements to land (Revision of 1898)" and amendments thereto and supplements thereof. Prior to the instituting of said suit, said Union County Coal & Lumber Co. caused to be filed in the Essex County Clerk's office, its lien claim against the premises owned by these complainants, pursuant to the statute in such case made and provided. 20 30

12. On April 18, 1927, John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, instituted suit in the Essex County Circuit Court against George E. Thomas (as builder), Joseph P. Day and Pauline M. Pope Day, his wife (these complainants) as owners, 40

Bill of Complaint.

- and Harry G. Hendricks, receiver of George E. Thomas, bankrupt, to recover the sum of \$1,697.-71, for materials supplied and labor performed for the said George E. Thomas, which said labor was performed and materials furnished in connection with the erection, alteration and construction of the buildings upon the premises owned by complainants, which debt it is claimed is a lien upon complainants' lands and buildings under the act in paragraph 11 of the bill of complaint mentioned. Prior to the instituting of said suit, said McCollum & Smith caused to be filed in the Essex County Clerk's office, its lien claim against the premises owned by complainants, pursuant to the statute in such cases made and provided.
- 20 13. On April 18, 1927, Arthur E. James instituted suit against George E. Thomas, builder, Joseph P. Day and Pauline M. Pope Day, his wife (these complainants), owners, and Harry G. Hendricks, receiver, in the Essex County Circuit Court, to recover the sum of \$1,202.45, for materials furnished and labor performed at the request of said George E. Thomas, which were furnished in connection with the erection, alteration and construction of the buildings upon the
- 30 lands and premises owned by complainants, and which debt it is claimed is a lien upon complainants' land by reason of the provisions of the act mentioned in paragraph 11 of this bill of complaint. Prior to the instituting of said suit, said Arthur E. James caused to be filed in the Essex County Clerk's office his lien claim against the lands and premises owned by complainants, pursuant to the statute in such cases made and provided.

Bill of Complaint.

14. On April 28, 1927, Harvey J. Tiger, instituted suit in the Essex County Circuit Court, against Joseph P. Day and Pauline M. Pope Day (complainants herein) as owners, George E. Thomas, builder and Harry G. Hendricks, receiver of George E. Thomas, to recover the sum of \$546.50, for materials sold and delivered to the said George E. Thomas, and which materials it is claimed were used in the erection, alteration and construction of the buildings upon the lands and premises owned by complainants, and which indebtedness it is claimed, is a lien upon the lands and premises owned by the complainants under and by virtue of the act in paragraph 11 of this bill of complaint mentioned. Prior to the instituting of said suit, said Harvey J. Tiger caused to be filed in the Essex County Clerk's office, his lien claim against the lands and premises owned by complainants, according to the statute in such cases made and provided.

15. The suits mentioned in paragraphs 11, 12, 13 and 14 of this bill of complaint are still pending, and lien claims in said paragraphs mentioned are uncanceled and not discharged of record.

16. The said George E. Thomas and Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, has never paid or settled the demands of said Union County Coal & Lumber Co., John D. McCollum and Aaron O. Smith (trading as McCollum & Smith), Arthur E. James and Harvey J. Tiger, or either of them.

The said Union County Coal and Lumber Co., John D. McCollum and Aaron O. Smith, trading as McCollum & Smith, Arthur E. James and

Bill of Complaint.

Harvey J. Tiger, still claim the payment of their several demands, from complainant.

10 17. The said Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, still claims the payment of his demand, from complainants, and he, the said Harry G. Hendricks, receiver and trustee aforesaid, has threatened to institute suit against complainants to enforce the payment of said demand.

20 18. The total indebtedness which said lien claimants claim to be due to them, aggregates the sum of eight thousand eight hundred ninety-six dollars and twenty cents (\$8,896.20). This said sum of \$8,896.20 less \$558.48, the said Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, claims should be paid to him, and not to said lien claimants.

19. The said Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, has demanded the aforementioned sum of \$8,337.72 from complainants and has warned complainants not to pay this sum (or any part thereof) to anyone but him.

30 20. The several lien claimants have demanded their respective amounts from complainants, and have warned complainants against paying the same (or any part thereof) to anyone but to them.

40 21 Complainants have been unable and are still unable to determine to whom of the aforesaid claimants, the said sum of \$8,896.20 rightfully belongs. Complainants, however, have always been willing and still are willing to pay said sum of \$8,896.20 to such person or persons as is or are lawfully entitled to receive the same,

Bill of Complaint.

and to whom these complainants can pay said sum with safety, and complainants hereby offer to pay said sum of \$8,896.20 into this court.

Complainants are without adequate remedy in the courts of law, and therefore pray:

1. That Hary G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, Union County Coal & Lumber Co., John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Arthur E. James and Harvey J. Tiger, who are the defendants to this suit, may answer this bill of complaint and each statement therein made, and may interplead and determine their rights to said sum of \$8,896.20. 10
2. That complainants may be ordered to pay said sum of \$8,896.20 into this court. 20
3. That said Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt may be restrained from commencing any action at law against these complainants as aforesaid (or if suit has been commenced, that the said Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, may be restrained from proceeding further in said action at law); that the said Union County Coal & Lumber Co., John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Arthur E. James and Harvey J. Tiger, and each of them, may be enjoined and restrained from proceeding further in their said actions at law heretofore commenced by them in the Essex County Circuit Court against these complainants as aforesaid, and that the said defendants, Harry G. Hendricks, receiver and trustee of George E. Thomas, 30 40

Bill of Complaint.

bankrupt; Union County Coal & Lumber Co., John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Arthur E. James and Harvey J. Tiger, and each of them, may be enjoined and restrained from commencing or instituting any action or actions, suit or suits, or other proceedings against these complainants to recover said sum of \$8,896.20 or any part thereof.

4. That complainants, upon payment into this court of said sum of \$8,896.20, and upon procuring the said defendants to interplead and settle their rights to the said sum of money, according to law and the practice of this court, may be ordered, adjudged and decreed to be discharged from all liability to said defendants or either and all of them, arising out of the transactions in this bill of complaint set forth and from all liability to said defendants or any of them in the premises.

5. That upon payment by these complainants into this court of the sum of \$8,896.20, that the said defendants Union County Coal & Lumber Co., John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Arthur E. James and Harvey J. Tiger, and each of them, may be ordered to discharge and cancel of record the respective lien claims so filed by them, and each of them, in the office of the Clerk of the said County of Essex as aforesaid; and further that said defendants may be ordered by this court to execute and deliver to complainants, proper general release, releasing complainants (jointly and severally) from any and all liability arising out of the said claims and demands submitted by them and further that the said Harry G. Hendricks, re-

Bill of Complaint.

ceiver and trustee of George E. Thomas, bankrupt, be ordered and directed to execute and deliver to these complainants, proper general release, releasing these complainants (jointly and severally) from any and all liability arising out of the claim in the sum of \$8,337.72 demanded by him, and out of the transactions in this bill of complaint set forth. 10

6. That complainants may be paid out of said fund of \$8,896.20 their taxed costs of these proceedings.

7. That a writ of subpoena may issue, commanding said defendants and each of them, to answer this bill of complaint and to abide by such decree as this court may make in the premises. 20

8. That the said defendants, and each of them, be ordered and directed by this court, to execute and deliver to these complainants, proper discontinuances of the suits instituted by them and now pending in the Essex County Circuit Court as aforesaid.

9. That these complainants may have such other and further relief as may be equitable and just in the premises. 30

SAMUEL J. KAUFMAN,
Solicitor for and of Counsel
with Complainants,
24 Commerce St., Newark. N. J.

Bill of Complaint—Schedule A.

“SCHEDULE A.”

All that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Millburn, in the County of Essex and State of New Jersey, described as follows:

- 10 “BEGINNING at a point where the southerly side line of South Orange avenue intersects the easterly side line of Old Short Hills Road, running thence (1) along the easterly side line of Old Short Hills Road following the several courses thereof 5114 feet more or less to the northerly corner of property owned by R. Renwick; thence (2) in a general easterly direction binding on Renwick 1650 feet more or less to property owned by the Essex County Park Commission;
- 20 thence (3) in a general northerly direction and binding on said park property 4830 feet more or less to the southerly side line of South Orange avenue; running thence (4) in a general westerly direction 910 feet to the point and place of BEGINNING.”

- All that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Millburn, in the County of Essex and State of New Jersey, fronting on the road leading from Millburn to Northfield and bounded and described as follows:
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- BEGINNING at a point in the easterly side of said road being the southwesterly corner of land now or formerly belonging to John Denman, and running thence along said Denman’s land south 87 degrees 31 minutes east 688 feet; thence still along the same south 88 degrees 27 minutes east 721 feet; thence south 88 degrees 8 minutes east 439 feet and 8 tenths of a foot more or less
- 40

Bill of Complaint—Schedule A.

to the northwesterly corner of land conveyed by Christian Feigenspan and wife to Essex County Park Commission by deed dated January 23, 1899 and recorded in Book D-32 of deeds for Essex County on page 100; which said corner is distant westerly 700 feet from the northeasterly corner of the tract of lands conveyed to Christian B. Feigenspan by August Noel and wife by deed dated November 23, 1888 and recorded in Book M-24 of Deeds for Essex County on page 45; thence in a southerly direction along the westerly line of said land conveyed to Essex County Park Commission as aforesaid 1620 feet and 36 hundredths of a foot more or less to the line of land now or formerly belonging to Samuel Campbell at a point therein distant 100 feet westerly from the southeasterly corner of the land conveyed to Christian B. Feigenspan by August Noel and wife as aforesaid; thence along said land, now or formerly of said Campbell north 75 degrees 42 minutes west 363.14 feet; thence still along the same north 76 degrees 59 minutes west 1018 feet and 76 hundredths of a foot; thence along the same north 89 degrees 36 minutes west 317.86 feet to the easterly side of the aforesaid road; thence along the same north 18 degrees 43 minutes east 343 feet; thence still along the same north 12 degrees 45 minutes east 493 feet and fifty one hundredths of a foot; thence still along the same north 4 degrees 25 minutes west 511 feet and 20 hundredths of a foot to the place of BEGINNING. Being part of the premises set off to the said Christian W. Feigenspan by decree in partition dated October 11, 1901, and recorded in the Register's Office of Essex County, October 25, 1901, in Book V-34 of Deeds for said County on pages 168-195.

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AFFIDAVIT OF JOSEPH P. DAY.

Filed December 9, 1927.

IN CHANCERY OF NEW JERSEY.

66/249.

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Between

JOSEPH P. DAY and PAULINE
M. POPE DAY, his wife,
Complainants,

and

HARRY G. HENDRICKS, Receiver
and Trustee of George E.
Thomas, Bankrupt, *et als.,*
Defendants.

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*On Bill in
Nature of
Bill of
Interpleader.
Affidavit.*

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } *ss.*

JOSEPH P. DAY, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am one of the complainants in the above-entitled cause. The other complainant is Pauline
30 M. Pope Day, my wife.

2. I have read the bill of complaint and say that the matters and things therein contained, so far as they are within my own knowledge, are true, and as to such matters as are in the knowledge of other persons, I believe them to be true. Said bill of complaint has been filed in the office of the Clerk in Chancery of New Jersey.

3. To my knowledge the Union County Coal
40 & Lumber Co., John D. McCollum and Aaron O.

Affidavit of Joseph P. Day.

Smith trading as McCollum & Smith, Arthur E. James and Harvey J. Tiger, have instituted suit against me and my wife, as in said bill of complaint alleged (and these suits are still pending) and the total amounts which they claim to be due to them is eight thousand eight hundred ninety-six dollars and twenty cents (\$8,896.20). They have also filed mechanics' liens against the premises owned by my wife and myself, which lien claims are not cancelled or discharged of record. 10

4. The said Harry G. Hendricks, Receiver and Trustee of George E. Thomas, claims \$8,337.72 of the said sum of eight thousand and eight hundred ninety-six dollars and twenty cents (\$8,896.20). The said \$8,337.72 is a part of said indebtedness of \$8,896.20 referred in paragraph 3 of this affidavit and is also included in said aforementioned claims of \$8,896.20. 20

5. I have been unable to determine to which of the aforesaid defendants the said sum of eight thousand eight hundred ninety-six dollars and twenty cents (\$8,896.20), (or any part thereof) rightfully belongs and have paid the said sum of \$8,896.20 into this court for the purpose of having the same paid to whoever is lawfully entitled thereto. 30

6. I have filed said bill in nature of bill of interpleader against the defendants therein named without any fraud or collusion between us and said defendants or either of them; and we have not exhibited our said bill at the request of the said defendants or either of them and have not been indemnified by the said defendants or either of them. 40

Affidavit of Joseph P. Day.

7. I, together with my wife, Pauline M. Pope Day (we being the complainants in the above-entitled cause), have filed our said bill of complaint with no other intention than to avoid being sued further or molested further by said defendants touching the matters in said bill of complaint contained and for the purpose of obtaining the relief in said bill of complaint prayed for, as well as for the purpose of having the said sum of eight thousand eight hundred ninety-six dollars and twenty cents (\$8,896.20) paid to whoever is lawfully entitled thereto.

JOSEPH P. DAY.

Subscribed and sworn to before me
this 30th day of November, 1927.

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M. V. CORNELL,
Notary Public, Kings County.

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**ORDER TO SHOW CAUSE WITH AD
INTERIM RESTRAINT.**

Filed December 9, 1927.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH P. DAY and PAULINE
M. POPE DAY, his wife,
Complainants,

and

HARRY G. HENDRICKS, Receiver
and Trustee of George E.
Thomas, Bankrupt, *et als.,*
Defendants.

*On Bill in
Nature of
Bill of
Interpleader.*

*Restraining
Order and
Order to
Show Cause.*

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Upon reading and filing the affidavit of Joseph P. Day, one of the complainants in the above-entitled cause, and it appearing that the bill of complaint in this cause has been filed with the clerk of this court and that the solicitors for all defendants herein have acknowledged service in behalf of the respective defendants of subpoena and the bill of complaint filed herein; and it further appearing that the complainants, Joseph P. Day and Pauline M. Pope Day, his wife, have paid to the clerk of this court the sum of \$8,896.20 mentioned in their said bill of complaint; it is on this 3rd day of December, 1927, on motion of Samuel J. Kaufman, Esq., solicitor for and of counsel with the complainants,

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ORDERED that the defendants Union County Coal & Lumber Co., John D. McCollum and Aaron O. Smith, trading under the firm name of

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Order to Show Cause with Ad Interim Restraint.

McCollum & Smith, Arthur E. James and Harvey J. Tiger, and each of them, be and they are hereby enjoined and restrained from proceeding further in the action at law heretofore commenced by them in the Essex County Circuit Court against the said complainants and that

10 the said defendants Union County Coal & Lumber Co., John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Arthur E. James and Harvey J. Tiger, and each of them, be and they are hereby enjoined and restrained from commencing or instituting any action or actions, suit or suits, or other proceedings, against these complainants to recover said sum of eight thousand eight hundred ninety-six dollars and twenty cents (\$8,896.20)—or any part thereof—mentioned in the

20 bill of complaint filed herein, until the further order of this court; and it is further

ORDERED that the defendant Harry G. Hendricks, Receiver and Trustee of George E. Thomas, Bankrupt, be and he is hereby enjoined and restrained from commencing or instituting any action or actions, suit or suits, or other proceedings, against the said complainants to recover the sum of eight thousand three hundred

30 thirty-seven dollars and seventy-two cents (\$8,337.72) and/or eight thousand eight hundred ninety-six dollars twenty cents (\$8,896.20) (or any part thereof) mentioned in the bill of complaint filed herein, until the further order of this court; and it is further

ORDERED that service of this order and the affidavit this day filed herein (which copies may be certified to by the solicitor of the complainants) be served upon the said defendants Union

40 County Coal & Lumber Co., John D. McCollum

Order to Show Cause with Ad Interim Restraint.

and Aaron O. Smith, trading as McCollum & Smith; Harvey J. Tiger and Arthur E. James by serving same on the attorney appearing for them in the suit instituted in the Essex County Circuit Court; and that service of this order and affidavit hereinbefore referred to (which copies may be certified to by the solicitor of the complainants) be served upon Harry G. Hendricks, Receiver and Trustee of George E. Thomas, Bankrupt, by personal service or by leaving at his usual place of abode, or by serving same upon his attorney, Alan Bruce Conlin, Esq.; said service on all defendants to be made within five days from and after the date hereof; and it is further

ORDERED that said defendants and each of them show cause before the Chancellor at the Chancery Chambers, 1060 Broad street, Newark, New Jersey, on Tuesday, December 20, 1927, at ten o'clock in the forenoon, why the restraint prayed for in the bill of complaint shall not be granted.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,

V.-C.

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NOTICE OF MOTION TO DISMISS.

Filed December 9, 1927.

IN CHANCERY OF NEW JERSEY.

10 *Between*

JOSEPH P. DAY and PAULINE
M. POPE DAY, his wife,
Complainants,

and

HARRY G. HENDRICKS, Receiver
and Trustee of George E.
Thomas, Bankrupt, *et als.,*
Defendants.

On Bill, &c.
Notice of
Motion to
Dismiss.

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TAKE NOTICE that at ten o'clock in the morning on Tuesday, December 13, 1927, I shall move before the Chancellor at Chancery Chambers, Industrial Building, Newark, New Jersey, to dismiss the bill of complaint filed in this cause so far as same affects the defendant Harry G. Hendricks, as Trustee of George E. Thomas, Bankrupt, on the following grounds:

30 1. The Court of Chancery has no jurisdiction in the matter.

A. B. CONLIN,
Solicitor of the Defendant,
Harry G. Hendricks, as Trustee, etc.

To Mr. Samuel J. Kaufman, 24 Commerce street,
Newark, N. J., solicitor of complainants.

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**ORDER CONTINUING AD INTERIM
RESTRAINT.**

Filed December 10, 1927.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH P. DAY and PAULINE
M. POPE DAY, his wife,
Complainants,

and

HARRY G. HENDRICKS, Receiver
and Trustee of George E.
Thomas, Bankrupt, *et als.*,
Defendants.

*On Bill in
Nature of
Bill of
Interpleader.*

*Order
Continuing
Restraint.*

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This matter being opened to the Court by Samuel J. Kaufman, Esq., solicitor of the complainants herein, and it appearing that on December 3, 1927, a restraining order and order to show cause was entered by this court in the above-entitled cause wherein (among other matters therein contained) the defendants herein were Ordered to show cause on December 20, 1927, why the restraint prayed for in the bill of complaint shall not be granted (as by reference thereto will more particularly appear); and it further appearing that the solicitor of the complainants and the respective solicitors of the respective defendants herein are desirous that said defendants may be permitted to show cause as aforesaid, on December 13, 1927, instead of on December 20, 1927; it is on this 10th day of December, 1927, upon motion of Samuel J. Kauf-

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Order Continuing Ad Interim Restraint.

man, Esq., solicitor of the complainants herein, and upon the written consent hereunder of the solicitors of the respective defendants herein

10 ORDERED that the said defendants Union County Coal & Lumber Co., John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Arthur E. James, Harvey J. Tiger and Harry G. Hendricks, Receiver and Trustee of George E. Thomas, bankrupt, and each of them, do show cause before the Chancellor at the Chancery Chambers, 1060 Broad street, Newark, New Jersey, on Tuesday, December 13, 1927 (instead of on December 20, 1927), at ten o'clock in the forenoon, why the restraint prayed for in the bill of complaint shall not be granted; and it is further

20 ORDERED, that in all other matter and things in said restraining order and order to show herein entered on December 3, 1927, the said restraining order and order to show is hereby continued and in full force and effect, until the further order of this court.

E. R. WALKER,
C.

Respectfully advised,

30 ALONZO CHURCH,
V.-C.

Order Continuing Ad Interim Restraint.

We hereby consent to the making and entry of the foregoing order.

SAMUEL J. KAUFMAN,
Solicitor of Complainants.

E. A. MERRILL,
Solicitor of Union County Coal & Lumber Co., 10
Defendant.

HERRIGEL, LINDABURY & HERRIGEL,
Solicitors of John D. McCollum and Aaron O.
Smith, trading under the firm name of Mc-
Collum & Smith—Defendants.

HERRIGEL, LINDABURY & HERRIGEL,
Solicitors of Arthur E. James—Defendant.

EDWARD M. AND RUNYON COLIE,
Solicitors of Harvey J. Tiger—Defendant. 20

ALAN BRUCE CONLIN,
Solicitor of Harry G. Hendricks, Receiver and
Trustee of George E. Thomas, Bankrupt—
Defendant.

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STIPULATION.

Filed January 9, 1928.

66/249

IN CHANCERY OF NEW JERSEY.

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*Between*JOSEPH P. DAY and PAULINE
M. POPE DAY,*Complainants,**and*HARRY G. HENDRICKS, Receiver
and Trustee of George E.
Thomas, Bankrupt, *et als.*,

20

*Defendants.**On Bill in
Nature of
Bill of
Interpleader.
Stipulation.*

It is hereby stipulated and agreed by and between all counsel in the above-entitled cause as follows:

1. That the Union County Coal & Lumber Company shall receive the sum of \$5,449.54, together with lawful interest thereon from March 25, 1927, to November 30, 1927, together with actual disbursements in the Essex County Circuit Court lien action.

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2. That Harvey J. Tiger shall receive the sum of \$546.50, with lawful interest thereon from March 25, 1927, to November 30, 1927, together with actual disbursements in the Essex County Circuit Court lien action.

3. That Arthur E. James shall receive the sum of \$1,202.45, with lawful interest thereon from November 15, 1926, to November 30, 1927, to-

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Stipulation.

gether with actual disbursements in the Essex County Circuit Court lien action.

4. That McCollum & Smith shall receive the sum of \$1,697.71, with lawful interest thereon from November 1, 1926, to November 30, 1927, together with actual disbursements in the Essex County Circuit Court lien action. 10

5. In the event that the solicitor for the complainant should receive a counsel fee and taxed costs in the said Court of Chancery, that the said counsel fee and taxed costs will be deducted pro rata from the respective amounts set forth above.

6. Each of the solicitors for the respective defendants agrees to notify the solicitor of the complainant, within five days from the date hereof, of the amount due their respective clients for interest to November 30, 1927, and actual disbursements as herein provided. 20

SAMUAL J. KAUFMAN,
E. A. MERRILL,
ALAN BRUCE CONLIN,
HERRIGEL, LINDABURY & HERRIGEL,
EDWARD M. and RUNYON COLIE.

Dated Newark, N. J., January 3, 1928. 30

ORDER OF REFERENCE.

Filed January 9, 1928.

IN CHANCERY OF NEW JERSEY.

66/249.

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*Between*JOSEPH P. DAY, *et al.*,
*Complainants,**and*HARRY G. HENDRICKS, Re-
ceiver, *et als.*,
*Defendants.**On Bill, &c.**Order of
Reference.*

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This matter being opened to the Court by Herrigel, Lindabury & Herrigel, solicitors of Arthur E. James and of John D. McCollum and Aaron O. Smith, defendants in the above cause, and it appearing that Samuel J. Kaufman, solicitor of the complainants; Alan Bruce Conlin, solicitor of the defendant Harry G. Hendricks, Receiver and Trustee; E. A. Merrill, solicitor of the defendant Union County Coal & Lumber Company; E. M. and Runyon Colie, solicitors of the defendant Harvey J. Tiger, and Herrigel, Lindabury & Herrigel, solicitors of the defendants John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, and Arthur E. James, have consented hereto, as appears by their consents endorsed hereon:

It Is, on this 9th day of January, 1928, on motion of Herrigel, Lindabury & Herrigel, solicitors as aforesaid, ORDERED that the above-entitled cause be referred to Honorable Maja Leon

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Order of Reference.

Berry, one of the Vice-Chancellors of this court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER,

C.

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We hereby severally consent to the making and entry of the foregoing order of reference.

SAMUEL J. KAUFMAN,
Solicitor of Complainants.

ALAN BRUCE CONLIN,
Solicitor of the Defendant,
Harry G. Hendricks, Receiver.

E. A. MERRILL,
Solicitor of the Defendant,
Union County Coal & Lumber Co.

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EDWARD M. & RUNYON COLIE,
Solicitors of the Defendant,
Harvey J. Tiger.

HERRIGEL, LINDABURY & HERRIGEL,
Solicitors of the Defendants,
John D. McCollum and
Aaron O. Smith, and
Arthur E. James.

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**RESTRAINING ORDER AND ORDER DENY-
ING MOTION TO DISMISS BILL.**

Filed January 9, 1928.

IN CHANCERY OF NEW JERSEY.

10

Between

JOSEPH P. DAY and PAULINE
M. POPE DAY, his wife,
Complainants,

and

HARRY G. HENDRICKS, Receiver
and Trustee of George E.
Thomas, Bankrupt, *et als.,*
Defendants.

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*On Bill in
Nature of
Bill of
Interpleader.*

*Restraining
Order and
Order Deny-
ing Motion to
Dismiss.*

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This matter being opened to the Court by Samuel J. Kaufman, Esq., solicitor and counsel with the complainants Joseph P. Day and Pauline M. Pope Day, his wife, in the presence of Alan Bruce Conlin, Esq., solicitor for Harry G. Hendricks, Receiver and Trustee of George E. Thomas, bankrupt, also in the presence of E. A. Merrill, Esq., solicitor of Union County Coal & Lumber Co.; Herrigel, Lindabury & Herrigel, solicitors of McCollum & Smith, also solicitors for Arthur E. James, and no one appearing for the defendant Harvey J. Tiger, and it appearing that the complainants have paid to the clerk of this court the sum of eight thousand eight hundred and ninety-six dollars and twenty cents (\$8,896.20) mentioned in their said bill of complaint; and upon hearing the arguments of counsel aforesaid and good and sufficient reason appearing therefor; it

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Order Denying Motion to Dismiss Bill.

is on this 9th day of January, Nineteen Hundred and Twenty-eight, on motion of Samuel J. Kaufman, Esq., solicitor and counsel with the complainants, Joseph P. Day and Pauline M. Pope Day, his wife,

ORDERED that the defendants Union County Coal & Lumber Co., John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Arthur E. James and Harvey J. Tiger, and each of them, be and they are hereby enjoined and restrained from proceeding further in their actions at law heretofore commenced by them in the Essex County Circuit Court against the said complainants; and it is further

ORDERED that the defendants Harry G. Hendricks, Receiver and Trustee of George E. Thomas, bankrupt, Union County Coal & Lumber Co., John D. McCollum and Aaron O. Smith trading under the firm name of McCollum & Smith, Arthur E. James and Harvey J. Tiger, and each of them be and they are hereby enjoined and restrained from commencing or instituting any action or actions, suit or suits, or other proceedings against these complainants to recover the said sum of eight thousand eight hundred and ninety-six dollars and twenty cents (\$8,896.20), or any part thereof; and it is further

ORDERED that the motion of the defendants, Union County Coal & Lumber Co., and Harry G. Hendricks, Receiver and Trustee of George E. Thomas, bankrupt, to dismiss the bill of complaint filed by the complainants in this cause, be and the same is hereby denied with costs against said defendants Union County Coal & Lumber Co., and Harry G. Hendricks, Receiver and Trus-

Order Denying Motion to Dismiss Bill.

tee of George E. Thomas, bankrupt, in favor of
the complainants herein.

E. R. WALKER,

C.

Respectfully advised,

10 MAJA LEON BERRY,
V.-C.

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INTERLOCUTORY DECREE.

Filed January 9th, 1928

IN CHANCERY OF NEW JERSEY.

*Between*JOSEPH P. DAY and PAULINE
M. POPE DAY, his wife,
*Complainants,**and*HARRY G. HENDRICKS, Receiver
and Trustee of George E.
Thomas, Bankrupt, *et als.*,
Defendants.

*On Bill in
Nature of
Bill of
Interpleader.**Interlocutory
Decree.*

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This cause being opened to the Court by Samuel J. Kaufman, Esq., solicitor for and of counsel with the complainants herein, and it appearing that process of subpoena has been duly acknowledged in behalf of Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, Union County Coal & Lumber Co., John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Arthur E. James and Harvey J. Tiger, being all of the defendants herein, and that the said defendants and each of them have wholly failed and neglected to answer said bill within the time limited by law, but have wholly failed and neglected so to do; and the Court having examined the pleadings and having heard and considered the argument of counsel in connection therewith, and having also read and considered the briefs submitted by respective counsel in connection therewith, and the Court being satisfied

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Interlocutory Decree.

and being of the opinion that the complainants held the aforementioned fund in the bill of complaint mentioned, for the true owner thereof, or the person or persons entitled thereto, without having or claiming any lien or interest thereon; and it appearing that the complainants have paid
 10 to the clerk of this court the sum of \$8,896.20 being the fund mentioned in their bill of complaint filed therein (and that all of the defendants herein have heretofore admitted that they have knowledge and notice that said sum has been so deposited) and the Court being further of the opinion that said bill in nature of bill of interpleader is properly brought by the complainants in this cause, and that the said complainants are entitled to the relief in their said
 20 bill of complaint prayed; it is thereupon on this 9th day of January, nineteen hundred and twenty-eight on motion of Samuel J. Kaufman, Esq., solicitor for and of counsel with the complainants herein,

ORDERED, ADJUDGED AND DECREED, that the said bill of complaint be and the same is hereby taken as confessed against the said defendants Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, Union County Coal & Lumber Co., John D. McCollum and Aaron O.
 30 Smith, trading under the firm name of McCollum & Smith, Arthur E. James and Harvey J. Tiger, and each of them; that the said bill in nature of bill of interpleader is properly brought by the complainants in this cause, and that the said complainants are entitled to the relief in their said bill of complaint prayed; and it is further

ORDERED, ADJUDGED AND DECREED, that the said
 40 complainants, Joseph P. Day and Pauline M.

Interlocutory Decree.

Pope Day, his wife, are hereby dismissed from the further prosecution of this suit, allowance of counsel fee to complainant's solicitor and complainants taxed costs to await filing and entry of final decree herein; and it is further

ORDERED, ADJUDGED AND DECREED, that the defendants Union County Coal & Lumber Co., John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Harvey J. Tiger and Arthur E. James, and each of them, be and they are hereby severally directed to cancel and discharge of record their respective lien claims filed by them and each of them in the office of the Clerk of the County of Essex, as in the bill of complaint mentioned, against the lands and premises of the complainants in the bill of complaint particularly described; and it is further

ORDERED, ADJUDGED AND DECREED, that the said defendants Union County Coal & Lumber Co., John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Harvey J. Tiger and Arthur E. James, and each of them do, and they are hereby severally directed to execute and deliver to these complainants proper and effectual discontinuances of the suits instituted by said defendants against the complainants and now pending in the Essex County Circuit Court, as more particularly set forth in said bill of complaint filed herein; and it is further

ORDERED, ADJUDGED AND DECREED, that the said defendants Union County Coal & Lumber Co., John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Harvey J. Tiger and Arthur E. James, and Harry G. Hendricks, receiver and trustee of

Interlocutory Decree.

George E. Thomas, bankrupt, be and each of them are hereby directed to severally execute and deliver to these complainants valid, proper and effectual general releases, releasing said complainants (jointly and severally) from any and all liabilities arising out of their said respective
 10 claims and demands submitted by them and each of them and as in said bill of complaint more particularly set forth; and it is further

ORDERED, ADJUDGED AND DECREED, that the said complainants Joseph P. Day and Pauline M. Pope Day, his wife, be and they are hereby released, acquitted and discharged from all claims by or liability to all of the defendants in this cause and each of them, for, upon or by reason of said fund or any part thereof, both in law
 20 and in equity; and it is further

ORDERED, ADJUDGED AND DECREED, that the said defendants Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, Union County Coal & Lumber Co., John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Harvey J. Tiger and Arthur E. James, and each of them, be and they are hereby each directed to interplead, settle and adjust their several claims, demands, and matters
 30 in controversy in this suit as between themselves.

E. R. WALKER,

C.

Respectfully advised,

MAJA LEON BERRY,
 V.-C.

FINAL DECREE.

Filed January 9, 1928.

IN CHANCERY OF NEW JERSEY.

66/249.

Between

JOSEPH P. DAY and PAULINE
M. POPE DAY,

Complainants,

and

HARRY G. HENDRICKS, Receiver
and Trustee of George E.
Thomas, Bankrupt, *et als.*,

Defendants.

On Bill in

*Nature of
Bill of
Interpleader.*

*Final
Decree.*

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This matter being opened to the Court by Samuel J. Kaufman, solicitor for and of counsel with the complainants, in the presence of Alan Bruce Conlin, solicitor for Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt; E. A. Merrill, solicitor for and of counsel with Union County Coal & Lumber Co.; Edward M. and Runyon Colie, solicitors for and of counsel with Harvey J. Tiger; Herrigel, Lindabury & Herrigel, solicitors for and of counsel with John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, and solicitors for and of counsel with Arthur E. James, being all of the defendants in the above entitled cause, and it appearing to the satisfaction of the court that there was deposited on November 30, 1927, the sum of \$8,896.20 in the Court of Chancery, being the amount set forth in the bill of complaint in the above entitled cause; and it

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Final Decree.

10 appearing further that all of the defendants herein were heretofore ordered to interplead as to the said fund so deposited with the Clerk of this Court in this cause by the complainants; and the Court having examined the pleadings and heard and considered the arguments of respective

10 counsel thereon; and it appearing to the satisfaction of the Court that the defendants, Harvey J. Tiger, Arthur E. James, John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, and Union County Coal & Lumber Co. are entitled to receive the respective amounts due them upon mechanic's lien claims heretofore filed by them in the Essex County Circuit Court;

20 It is, thereupon, on this 9th day of January, 1928, ORDERED, ADJUDGED AND DECREED that there be paid out of the said funds on deposit in this court the following amounts:

To Harvey J. Tiger

Edward M. & Runyon Colie, Solrs. \$ 546.50

To Arthur E. James

Herrigel, Lindabury & Herrigel,
solrs. 1202.45

To John D. McCollum & Aaron O. Smith,

30 Trading under the firm name of McCollum & Smith, Herrigel, Lindabury & Herrigel, solrs. 1697.71

To Union County Coal & Lumber Co.

E. A. Merrill, solr. 5449.54

and that these respective defendants do execute discharges of mechanic's liens and discontinuances of their respective suits in the Essex County Circuit Court.

40 And it is further ORDERED, ADJUDGED AND DECREED that the defendant, Harry G. Hendricks,

Final Decree.

receiver and trustee of George E. Thomas, bankrupt, is not entitled to any of the moneys on deposit with this court, and that the said Harry G. Hendricks, receiver and trustee of George E. Thomas, do execute a valid and effectual release, releasing the complainants herein from all claims up to and including the amount of moneys paid under this order. 10

And it is further ORDERED, ADJUDGED AND DECREED that out of the sum of \$8,896.20 now on deposit with this court that there first be paid the lawful commissions of the Clerk of this Court, if any are due him, out of said sum paid to this Court, as aforesaid and now remaining deposited therein, and that there then be paid to Samuel J. Kaufman, solicitor for and of counsel with the complainants, the sum of two hundred fifty as and for counsel fee, together with complainants taxed costs in this matter, and that thereafter there be paid to the defendants, as hereinbefore set forth, the respective amounts designated to be paid to them after said deductions shall have first been made. No costs hereunder in this court shall be allowed to either or any of the defendants herein. 20

E. R. WALKER,

C. 30

Respectfully advised,

MAJA LEON BERRY,
V.-C.

Final Decree.

We hereby consent to the making and entry of
the above order.

EDWARD M. & RUNYON COLIE,
Solicitors for Harvey J. Tiger.

10 HERRIGEL, LINDABURY & HERRIGEL,
Solicitors for Defendants,
McCollum & Smith and Arthur E. James.

ALAN BRUCE CONLIN,
Solicitor of Receiver and Trustee,
Harry G. Hendricks.

E. A. MERRILL,
Solicitor of Union County Coal & Lumber Co.,
Lienor.

20 SAMUEL J. KAUFMAN,
Solicitor and Counsel with Complainants.

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**FIRST RELEASE EXECUTED BY HARRY
G. HENDRICKS, TRUSTEE.**

Filed January 17, 1928.

IN CHANCERY OF NEW JERSEY.

66/249.

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Between

JOSEPH P. DAY and PAULINE
M. POPE DAY,

Complainants,

and

HARRY G. HENDRICKS, Receiver
and Trustee of George E.
Thomas, Bankrupt, *et als.*,

Defendants.

*On Bill in
Nature of
Bill of
Interpleader.*

Release.

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In and by a certain final decree made and filed in the above-entitled cause on January 9, 1928, it appears that the sum of \$8,896.20 was deposited in the Court of Chancery on November 30, 1927, by said complainants, Joseph P. Day and Pauline M. Pope Day, for distribution to and between the defendants Harvey J. Tiger, Arthur E. James, John D. McCollum & Aaron O. Smith, trading under the firm name of McCollum & Smith, and Union County Coal & Lumber Company.

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And in and by said decree it was "ORDERED, ADJUDGED AND DECREED that there be paid out of the said funds on deposit in this court the following amounts:

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First Release Executed by Trustee.

To Harvey J. Tiger
 Edward M. & Runyon Colie, solrs.\$ 546.50
 To Arthur E. James
 Herrigel, Lindabury & Herrigel,
 solrs. 1,202.45
 10 To John D. McCollum & Aaron O. Smith,
 trading under the firm name of Mc-
 Collum & Smith, Herrigel, Lindabury
 & Herrigel, solrs. 1,697.71
 To Union County Coal & Lumber Co.
 E. A. Merrill, solr. 5449.54

and that these respective defendants do execute discharges of mechanic's liens and discontinuances of their respective suits in the Essex County Circuit Court."

20 And it was "further ORDERED, ADJUDGED AND DECREED, that the defendant, Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, is not entitled to any of the moneys on deposit with this court, and that the said Harry G. Hendricks, receiver and trustee of George E. Thomas, do execute a valid and effectual release, releasing the complainants herein from all claims up to and including the amount of moneys paid under this order."

30 In compliance with the terms and conditions of said above mentioned decree the said Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, hereby releases and forever discharges, and by these presents does for himself, and his successors, release and forever discharge the said Joseph P. Day and Pauline M. Pope Day, complainants herein, from all claims by or on behalf of said defendants Harvey J. Tiger, Arthur E. James, John D. McCollum and
 40 Aaron O. Smith, trading under the firm name of

First Release Executed by Trustee.

McCollum & Smith, and Union County Coal & Lumber Company, up to and including the amount of moneys paid to said defendant under this order from any and all manner of actions or cause or causes of action, or suit for any debts, or accounts, or contracts, or agreement, or claims, or demands whatsoever which the said Harry G. Hendricks, receiver and trustee of said George E. Thomas may or might have against said Joseph P. Day and Pauline M. Pope Day, or either of them, for the said fund, or any part thereof, paid into this court as aforesaid for distribution among the said defendants named. 10

IN WITNESS WHEREOF, the said Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, has hereunto set his hand and seal the 13th day of January, 1928. 20

HARRY G. HENDRICKS,
Receiver and Trustee of
George E. Thomas, Bankrupt.

Signed, sealed and delivered in
the presence of

PEARL N. ROSECRANS.

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**AMENDED FINAL DECREE AND ORDER
FOR DISTRIBUTION.**

Filed February 7, 1928.

IN CHANCERY OF NEW JERSEY.

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66/249.

Between

JOSEPH P. DAY and PAULINE
M. POPE DAY,
Complainants,

and

HARRY G. HENDRICKS, Receiver
and Trustee of George E.
Thomas, Bankrupt, *et als.*,
Defendants.

*On Bill in
Nature of
Bill of
Interpleader.*

*Amended
Final Decree
and Order of
Distribution.*

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This matter being opened to the Court by Samuel J. Kaufman, solicitor for and of counsel with the complainants, in the presence of Alan Bruce Conlin, solicitor for Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt; E. A. Merrill, solicitor for and of counsel with the Union County Coal & Lumber Co.; Edward M. and Runyon Colie, solicitors for and of counsel with Harvey J. Tiger; Herrigel, Lindabury & Herrigel, solicitors for and of counsel with John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, and solicitors for and of counsel with Arthur E. James, being all of the defendants in the above-entitled cause, and it appearing to the satisfaction of the Court that there was deposited on November 30, 1927, the sum of \$8,896.20 in

Amended Final Decree and Order for Distribution.

the Court of Chancery, being the amount set forth in the bill of complaint in the above-entitled cause; and it appearing further that all of the defendants herein were heretofore ordered to interplead as to the said fund so deposited with the clerk of this court in this cause by the complainants; and the Court having examined the pleadings and heard and considered the arguments of respective counsel thereon; and it appearing to the satisfaction of the Court that the defendants, Harvey J. Tiger, Arthur E. James, John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, and Union County Coal & Lumber Co. are entitled to receive the respective amounts due them upon mechanic's lien claims, heretofore filed by them in the Essex County Circuit Court;

It is, thereupon, on this seventh day of February, 1928, ORDERED, ADJUDGED AND DECREED that there be paid out of the said funds on deposit in this court the following amounts:

To Harvey J. Tiger, Edward M. and Runyon Colie, solrs.	\$ 525.33	
To Arthur E. James, Herrigel, Lindabury & Herrigel, solrs.	1,155.60	
To John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Herrigel, Lindabury & Herrigel, solrs.	1,631.43	30
To Union County Coal & Lumber Co., E. A. Merrill, solr.	5,236.83	

and that these respective defendants do execute discharges of mechanic's liens and discontinuances of their respective suits in the Essex County Circuit Court.

Amended Final Decree and Order for Distribution.

And it is further ORDERED, ADJUDGED AND DECREED that there also be paid out of the funds on deposit in this court, the following amounts:

10	To Samuel J. Kaufman (counsel fee allowed on final decree entered January 9, 1928)	\$ 250.00
	To Samuel J. Kaufman (taxed costs allowed on final decree entered January 9, 1928)	84.39
	To Clerk in Chancery (commissions)...	12.62
	To Joseph P. Day and Pauline M. Pope Day, his wife (complainants), Samuel J. Kaufman, solicitor (accrued interest on fund deposit)	33.30

20 (If said accrued interest exceeds \$33.30 then and in that event the entire sum representing the accrued interest on the fund deposited shall be paid to the said Joseph P. Day and Pauline M. Pope Day, his wife.)

30 And it is further ORDERED, ADJUDGED AND DECREED that the defendant, Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, is not entitled to any of the moneys on deposit with this court, and that the said Harry G. Hendricks, receiver and trustee of George E. Thomas, do execute a valid and effectual release, releasing the complainants herein from all claims up to and including the amount of moneys paid under this order.

And it is further ORDERED, ADJUDGED AND DECREED that no costs hereunder in this court shall

Amended Final Decree and Order for Distribution.

be allowed to either or any of the defendants herein.

E. R. WALKER,
C.

Respectively advised,

MAJA LEON BERRY, 10
V.-C.

We hereby consent to the making and entry of the foregoing above order.

EDWARD M. & RUNYON COLIE,
Solicitors for Harvey J. Tiger.

HERRIGEL, LINDABURY & HERRIGEL,
Solicitors for John D. McCollum and Aaron
O. Smith, trading under the firm name of Mc- 20
Collum & Smith.

HERRIGEL, LINDABURY & HERRIGEL,
Solicitors for Arthur E. James.

E. A. MERRILL,
Solicitor of Union County Coal & Lumber
Company as Lienor.

ALAN BRUCE CONLIN,
Solicitor of Harry G. Hendricks, Receiver and
Trustee of George E. Thomas, Bankrupt. 30

SAMUEL J. KAUFMAN,
Solicitor for and of Counsel with Joseph P.
Day and Pauline M. Pope Day, Complainants.

**SECOND RELEASE EXECUTED BY HARRY
G. HENDRICKS, TRUSTEE.**

Filed April 27, 1928.

10 TO ALL TO WHOM THESE PRESENTS SHALL COME
OR MAY CONCERN, GREETING:

KNOW YE, THAT I, Harry G. Hendricks, Receiver and Trustee of George E. Thomas, bankrupt, for and in the consideration of the sum of One Dollar lawful money of the United States of America, to me in hand paid by Joseph P. Day and Pauline M. Pope Day, his wife, have remised, released and forever discharged, and by these presents do, for myself, my successors and assigns remise, release and forever discharge the
20 said Joseph P. Day and Pauline M. Pope Day, his wife, and each of them, and their respective heirs, executors and administrators, of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever in law or in equity, which
30 against the said Joseph P. Day and Pauline M. Pope Day, his wife, and each of them, I, the said Harry G. Hendricks, Receiver and Trustee of George E. Thomas, bankrupt, ever had, now have or which I, my successors and assigns hereafter can, shall, or may have, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of these presents. Particularly, but not in limitation hereof, do I release and forever discharge the said Joseph P. Day and Pauline M.
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Second Release Executed by Trustee.

Pope Day, his wife (and each of them) from the claim in the sum of \$8,337.72 which George E. Thomas (now bankrupt) and I, the said Harry G. Hendricks, Receiver and Trustee of George E. Thomas, bankrupt, have or may claim to have against the said Joseph P. Day and/or Pauline M. Pope Day, his wife (and each of them), arising out of the agreement heretofore made between said Joseph P. Day and/or Pauline M. Pope Day, his wife (or one or both of them) with George E. Thomas (now bankrupt) relating to the labor and material performed and furnished in connection with the buildings upon the premises owned by the said Joseph P. Day and/or Pauline M. Pope Day, his wife (or both or either of them) located in the Township of Millburn, County of Essex and State of New Jersey, which premises are more particularly described in the mechanics' lien filed and suits thereon instituted by the Union County Coal & Lumber Company, John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Arthur E. James and Harvey J. Tiger; the failure of the said George E. Thomas to pay said mechanics' lien claimants having resulted in said mechanics' lien claimants filing lien claims and instituting suit thereon. This release is executed by order of the Court of Chancery of New Jersey, order being entered February 7, 1928.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the eighth day of February in the year of Our Lord One Thousand Nine Hundred and Twenty-eight.

HARRY G. HENDRICKS,
Receiver and Trustee of George E. Thomas,
Bankrupt.

Second Release Executed by Trustee.

Signed, sealed and delivered in the
presence of

ANTHONY P. LAPORTA.

Endorsed:

10 Approved as to form,
 MAJA LEON BERRY,
 V.-C.

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**NOTICE OF MOTION TO DISSOLVE
RESTRAINT.**

Filed April 5, 1928.

IN CHANCERY OF NEW JERSEY.

66/249.

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Between

JOSEPH P. DAY and PAULINE
M. POPE DAY,

Complainants,

and

HARRY G. HENDRICKS, Receiver
and Trustee of George E.
Thomas, Bankrupt, *et als.*,

Defendants.

*On Bill in
Nature of
Bill of
Interpleader.*

Notice.

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To Samuel J. Kaufman, 24 Commerce street,
Newark, New Jersey, solicitor of complain-
ants.

TAKE NOTICE that on Tuesday, April 3, 1928, at
ten o'clock in the forenoon, or as soon thereafter
as counsel may be heard, I shall appear specially
before the Chancellor, in the person of Vice-
Chancellor Berry, at Chancery Chambers, In-
dustrial Building, Newark, New Jersey, for the
purpose of requesting the Court to make an order
dissolving the restraint imposed, or intended to
be imposed, upon Honorable Harry G. Hen-
dricks, receiver and trustee of George E. Thomas,
bankrupt, dated December 3, 1927, if in the opin-

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Notice of Motion to Dissolve Restraint.

ion of the Court it shall seem necessary or desirable to make such order.

E. A. MERRILL,
Solicitor of Union County Coal & Lumber Co.,
a general creditor of George E. Thomas,
bankrupt.

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**ORDER PERMANENTLY RESTRAINING
TRUSTEE.**

Filed April 12, 1928.

IN CHANCERY OF NEW JERSEY.

66/249.

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Between

JOSEPH P. DAY and PAULINE
M. POPE DAY,
Complainants,

and

HARRY G. HENDRICKS, Receiver
and Trustee of George E.
Thomas, Bankrupt, *et als.*,
Defendants.

*On Bill in
Nature of
Bill of
Interpleader.*

*Order Deny-
ing Motion to
Dissolve
Restraint*

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*Imposed
upon Harry
G. Hendricks,
Receiver and
Trustee of
George E.
Thomas,
Bankrupt.*

This matter being opened to the Court by E. A. Merrill, Esq., solicitor of Union County Coal & Lumber Company, a general creditor of George E. Thomas, bankrupt, in the presence of Alan Bruce Conlin, Esq., solicitor of Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, and in the presence of Samuel J. Kaufman, Esq., solicitor of the complainants herein, and it appearing that notice of this motion has been served by the said solicitor of the said Union County Coal & Lumber Company,

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Order Permanently Restraining Trustee.

upon Alan Bruce Conlin, Esq., solicitor for Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, and upon Samuel J. Kaufman, Esq., solicitor for Joseph P. Day and Pauline M. Pope Day, his wife, complainants, and upon hearing the arguments of counsel appearing before this court and the Court being of the opinion that the request of the said Union County Coal & Lumber Company for an order dissolving the restraint imposed, or intended to be imposed, upon Honorable Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, should be refused and the motion of the said Union County Coal & Lumber Company should be denied, and good and sufficient reason appearing therefor, it is on this tenth day of April, 1928, on motion of Samuel J. Kaufman, Esq., solicitor and counsel with the complainants, Joseph P. Day and Pauline M. Pope Day, his wife,

ORDERED, that the motion and request of the Union County Coal & Lumber Co., an alleged general creditor of George E. Thomas, bankrupt, to dissolve the restraints imposed or intended to be imposed upon Harry G. Hendricks, the receiver and trustee of George E. Thomas, bankrupt, in connection with the book account claim of said receiver and trustee against Joseph P. Day and Pauline M. Pope Day, his wife (or either of them), in the sum of eighty-three hundred thirty-seven dollars and seventy-two cents (\$8,337.72), be and the same is hereby denied, with costs taxed against the said Union County Coal & Lumber Co.; and it is further

ORDERED, that the said restraints and injunctions imposed or intended to be imposed upon the said Harry G. Hendricks, receiver and trustee

Order Permanently Restraining Trustee.

of George E. Thomas, bankrupt, enjoining said receiver and trustee from enforcing his said book account claim against Joseph P. Day and Pauline M. Pope Day, his wife (or either of them), is continued and ordered to remain operative and in full force and effect, and it is further

ORDERED, that the said Harry G. Hendricks, receiver and trustee of George E. Thomas, bankrupt, be and he is hereby permanently enjoined and restrained from commencing or instituting any action or actions, suit or suits or other proceedings against Joseph P. Day and Pauline M. Pope Day, his wife, or either of them, to recover the sum of eighty-three hundred and thirty-seven dollars and seventy-two cents (\$8,337.72), or any part thereof on the said book account claim as aforesaid.

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E. R. WALKER,
C.

Respectively advised,

MAJA LEON BERRY,
V.-C.

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CONCLUSIONS OF VICE-CHANCELLOR.

Filed November 7, 1928.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">JOSEPH P. DAY, <i>et al.</i>, Complainants,</p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">HARRY G. HENDRICKS, trustee <i>et als.</i>, Defendants.</p>	<p><i>On Bill, &c.</i></p> <p><i>On Motion to</i> <i>Vacate</i> <i>Restraint</i> <i>against</i> <i>Harry G.</i> <i>Hendricks,</i> <i>Trustee in</i> <i>Bankruptcy.</i></p> <p><i>Conclusions.</i></p>
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E. A. Merrill, Esq., for the motion.
Samuel J. Kaufman, Esq., contra.

BERRY, V.-C.

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This suit arises out of a building contract between the complainants and George E. Thomas, contractor, who was adjudicated a bankrupt on April 18, 1927. Under the terms of this contract there became due to the bankrupt the sum of \$8,896.20, and prior to the bankruptcy adjudication the Union County Coal & Lumber Company filed a mechanics' lien claim against the premises in the sum of \$5,449.54. On the day of such adjudication two other mechanics' lien claims were filed, and on April 28th another lien claim was filed, all of said claims aggregating more than the amount due from complainants to the contractor. The trustee in bankruptcy claimed the full amount of the balance due the bankrupt less certain credits, whereupon this bill was filed, and the sum due paid into court. By

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Conclusions of Vice-Chancellor.

order of the United States District Court for the District of New Jersey the trustee in bankruptcy was directed to interplead in this suit. The appellant moved to strike out the bill of complaint, which motion was denied. The bankrupt's claim against the complainants was on book account and it subsequently appeared, and in fact was admitted by all parties, that the charges on the book account represented exactly the same items comprising the four lien claims filed, and no others. A stipulation respecting the distribution of the fund paid into court was entered into by the solicitors of all parties in interest, including the solicitor of the trustee in bankruptcy. Following this, a final decree carrying out the terms of the stipulation was entered by consent of the solicitors of all the parties. Prior to the entry of this decree objection had been made on behalf of the appellant that this court had no jurisdiction over the trustee in bankruptcy and it was claimed that all questions concerning this fund should be disposed of in the bankruptcy courts. As the principal lien claim was filed prior to the proceedings in bankruptcy, and two others on the date of the adjudication, and as the trustee in bankruptcy had been specifically directed by the bankruptcy court to interplead in this suit and abide by whatever decree this court might make, that objection was overruled. It was then suggested by counsel for the Union County Coal and Lumber Company that notwithstanding any decree made by this court, the trustee in bankruptcy would be obliged upon demand by that company, as a general creditor of the bankrupt, to proceed at law against the complainants for the collection of the amount of the bankrupt's book account

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Conclusions of Vice-Chancellor.

against complainants. It having already been admitted that the items of the book account were identical with those of the various lien claimants, and the correctness of the claims of said lien claimants being conceded, I stated that if the trustee in bankruptcy attempted to collect the

10 book account by any proceedings against the complainants I would, by order of this court, restrain him from so doing. Such restraint was accordingly imposed upon the trustee and pursuant to a direction contained in the final decree the trustee in bankruptcy executed and filed in this court a release of all claims against the complainant for the items covered by the claims of the various mechanics' lien claimants, and up to the amount of the moneys deposited in this court

20 in this suit. Subsequently, the Union County Coal and Lumber Company moved to dissolve the restraint imposed upon the trustee in bankruptcy as above mentioned. It should be noted that this motion is not made on behalf of the trustee in bankruptcy, but is made by a creditor who has already received out of the fund deposited in this cause the full amount of its claim. It having conclusively appeared that the claim of the trustee in bankruptcy, if any, is for exactly

30 the same items covered by the various mechanics' lien claims which have been paid in full in this suit, as hereinbefore stated, I conceive there is no equity in this application. It is plainly an attempt to compel the complainants to pay the same debt twice. Aside from that fact this motion is made on behalf of a party which has already consented to the entry of a final decree herein and has participated in the distribution of the fund in hand, and therefore has no standing to press this motion. The motion is, there-

40 fore, denied.

Petition of Creditors for Permission to Appeal.

PETITION OF CREDITORS FOR PERMISSION TO APPEAL, ETC.

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

<p>In the Matter of GEORGE E. THOMAS, Bankrupt.</p>	}	<p><i>Petition.</i></p>	10
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To the Honorable William N. Runyon, Judge of the United States District Court for the District of New Jersey:

The petition of Charles Quinzel, of Springfield, Union County, Millburn Builders Supply & Lumber Co., of Millburn, Essex County, Newark Glass Co., of Newark, Essex County, Alex Thomson & Son of Summit, Union County, Max L. Rosenstein, Trustee in Bankruptcy of Jeakens & Doeries, bankrupts, of Springfield, Union County, and Kenneth Brenn, of Summit, Union County (all of the State of New Jersey) respectfully shows that: 20

(1) Your petitioners are general and unsecured creditors of said George E. Thomas, adjudicated a bankrupt on or about April 18, 1927, and indebted to your several petitioners, among other creditors, in the following sums, no part of which has been paid: 30

Petition of Creditors for Permission to Appeal.

	(a) Charles Quinzel.....	\$11,903.80
	(b) Millburn Builders Supply & Lum- ber Co.	1,513.85
	(c) Newark Glass Company.....	233.32
	(d) Alex Thomson & Son.....	2,117.55
10	(e) Jeakins & Doeries, subsequently adjudicated bankrupts, Max L. Rosenstein, Trustee	6,885.45
	(f) Kenneth Brenn	1,117.05

(2) Your petitioners Charles Quinzel, and Jeakens & Doeries, with claims aggregating \$18,789.25, were two of the three creditors who petitioned said George E. Thomas into involuntary bankruptcy.

20 (3) Among the assets of the said bankrupt estate, title to which is vested in the Trustee, Harry G. Hendricks, is a claim against one Joseph P. Day in the sum of \$8,337.72 on an open book account. This open account was on an oral contract by and between said bankrupt and said Day for certain additions and alterations to the residence of said Day in Millburn. Four of the general creditors of said bankrupt (but not including any of these petitioners) who claimed to have furnished some of the labor and material
30 used in said additions and alterations filed liens to secure their claims, and instituted suits thereon in the Essex County Circuit Court.

(4) On or about June 3, 1927, upon the argument before Honorable George W. W. Porter, referee, of a rule to show cause why, among other matters, "an order should not be entered expunging the claim of the bankrupt (referring to the claim for \$8,337.72) against the said Joseph P. Day and Pauline M. Pope Day," said referee
40 was "of the further opinion that he has no

Petition of Creditors for Permission to Appeal.

authority to advise or enter an Order expunging the claim of the bankrupt against the said Joseph P. Day and/or Pauline M. Pope Day, his wife."

(5) Subsequently, and upon the petition of said Day, this matter was further argued both before Your Honor and before Honorable George W. W. Porter, referee, and on November 10, 1927, an Order was made and entered denying to said Day the relief prayed in his said petition. In effect Day claimed the right to set-off the open account against the lien claims. 10

(6) Your petitioners, together with other of the general creditors of the bankrupt, filed written objection to the "expunging" of the claim on the open account. They were represented by counsel at the hearing upon said petition, and in open court asserted that until the lien claims were reduced to judgment, and paid by Day in exoneration of his lands there was no liquidated sum to set off against the open account. The validity of said lien claims was denied by Day, and, upon the trial of the issue, it might appear that the claims were invalid and unenforceable in whole or in part. The denial of the relief prayed by Day indicates that both Your Honor and Referee Porter concurred with the argument of counsel. 20 30

(7) Notwithstanding that under the statute and the cases these matters raised issues within the exclusive jurisdiction of this court, said Day being dissatisfied with the action of this court in repeatedly denying the motion to expunge the claim on the open account, attempted to remove these issues from the jurisdiction of this court to the jurisdiction of the Court of Chancery of New Jersey, and thereupon filed in the Court of 40

Petition of Creditors for Permission to Appeal.

Chancery of New Jersey "a bill in the nature of a bill of interpleader" in which the four lien claimants and the Trustee in Bankruptcy of said Thomas were made party defendants.

10 (8) Said Trustee denied the jurisdiction of the Court of Chancery in the premises, and moved that the bill be dismissed for lack of jurisdiction, so far as same affected said Trustee, but the motion was denied.

(9) Subsequently, and on April 10, 1928, an Order was entered by the Court of Chancery of New Jersey permanently restraining said Trustee from suing on said open account, and the Trustee was thereby prevented from reducing said claim to judgment and collecting same for the benefit
20 of the general and unsecured creditors of said bankrupt.

(10) On March 14, 1929, upon an *ex parte* application by counsel for said Day, and without notice to or the knowledge of any of the parties interested, including your petitioners and other general creditors, an Order was made and entered in this court permanently restraining the Trustee of said bankrupt from appealing from said Order of the Court of Chancery of New
30 Jersey made April 10, 1928, and from instituting any action upon said open account. Notwithstanding said *ex parte* order was made and entered on March 14th it was not served upon, or otherwise brought to the attention of, the attorney of the Trustee, or to the attention of the creditors of said bankrupt until March 25th, 1929.

(11) Said Trustee of said George E. Thomas, bankrupt, has been requested by your petitioners to take such action as may be necessary to have
40 the orders of this court, and in particular the

Petition of Creditors for Permission to Appeal.

order of March 14, 1929, so far modified as shall permit said Trustee to appeal from said order of the Court of Chancery of New Jersey, and thereupon to institute such appeal, but has failed and refused so to do. Said Trustee has also been served with notice of this application.

(12) The failure and refusal of said Trustee to act in the premises is prejudicial to the rights of your petitioners, and to all of the general creditors of said bankrupt, and gives to your petitioners, on behalf of themselves and all other general creditors similarly situated, the right to themselves act in the premises. 10

Your petitioners respectfully show that the said Order of March 14, 1929, was improvidently entered for the following reasons: 20

(1) Jurisdiction is fundamental and vital, and your petitioners cannot be deprived of their right to be heard in a forum having jurisdiction both of parties and subject matter.

(2) Jurisdiction over the subject matter herein not being vested in the Court of Chancery of New Jersey jurisdiction cannot be conferred upon, or acquired by, that court by the order of this court, or by the consent of said Court of Chancery, or by the consent of counsel or parties. 30

(3) The issue of jurisdiction cannot be decided upon an *ex parte* application, and the order of March 14, 1929, was made without notice to, or hearing by, the parties affected thereby.

(4) The Trustee of said bankrupt could not waive the jurisdictional rights of petitioners and other creditors of the bankrupt over their objection. 40

Petition of Creditors for Permission to Appeal.

(5) Your petitioners, being aggrieved, cannot be deprived of their constitutional right of appeal without notice or hearing, and upon the *ex parte* application of respondent. The right of appeal is vested solely in the person aggrieved by the order or decree appealed from, and this court
10 has no jurisdiction to bar an appeal from the said Order of the Court of Chancery.

(6) Neither the Trustee in bankruptcy nor his attorney has any authority to force upon your petitioners, and other objecting creditors, by consenting thereto or acquiescing therein, an order of the said Court of Chancery adversely affecting their rights, and rendered in a proceeding where they were not represented as general
20 creditors.

Your petitioners therefore pray that so much of the said order of March 14, 1929 as restrains the Trustee in Bankruptcy from appealing from the decree of the Court of Chancery of New Jersey made on April 10, 1928, be vacated, and that your Petitioners have leave, on behalf of themselves and all other creditors similarly situated and without expense to said bankrupt estate, to
30 appeal in the name of Harry G. Hendricks, Trustee in Bankruptcy of George E. Thomas, Bankrupt, to the Court of Errors and Appeals of New Jersey from so much of the decree of the Court of Chancery of New Jersey in the interpleader suit between Joseph P. Day, et al., complainants, and said Harry G. Hendricks, Trustee of George E. Thomas, Bankrupt, et als., defendants, as asserts the jurisdiction of said Court

Petition of Creditors for Permission to Appeal.

over said Trustee in the administration of the estate of said bankrupt.

Respectfully submitted,

SMITH & SLINGERLAND,
Attorneys of Petitioners.

Dated March 28th, 1929.

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VERIFICATION

STATE OF NEW JERSEY }
COUNTY OF ESSEX } ss:

ARCHIBALD F. SLINGERLAND being duly sworn according to law upon his oath deposes and says that he is a member of the firm of Smith & Slingerland, the attorneys for the above named petitioners; and that the matters and things set forth in the foregoing petition are true to the best of his knowledge, information and belief.

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ARCHIBALD F. SLINGERLAND.

Subscribed and sworn to before
me this 28th day of March,
1929.

ETHEL A. KANN,
A Notary Public of New Jersey.

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ORDER TO SHOW CAUSE.

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

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In the Matter of GEORGE E.
THOMAS, Bankrupt.

*Order to
Show Cause.*

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This matter being opened to the court by Mr. A. F. Slingerland, of Smith & Slingerland, attorneys of the petitioners herein, and the court having read the petition and heard counsel thereon, but being of the opinion that a further hearing should be had thereon:

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IT IS, on this 28th day of March, 1929, ORDERED: that Harry G. Hendricks, trustee of George E. Thomas, bankrupt, and Joseph P. Day and Pauline M. Pope Day, his wife, show cause before this court, at 10 o'clock in the forenoon of April 3rd, 1929, at 24 Branford Place, Newark, New Jersey, why the prayer of Charles Quinzel, Millburn Builders Supply & Lumber Co., Newark Glass Co., Alex Thomson & Son, Max L. Rosenstein, trustee in bankruptcy of Jeakens & Doeries, bankrupts, and Kenneth Brenn, general creditors of said George E. Thomas, as appears in and by their petition dated March 28, 1929, should not be granted.

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And it is further ORDERED: that a copy of said petition and of this rule, to be marked "True Copy" by the attorney of said petitioners, be served upon the attorneys of said Harry G. Hen-

Order to Show Cause.

dricks, trustee, and of said Joseph P. Day and Pauline M. Pope Day, within three days from the date hereof.

WILLIAM N. RUNYON,
Judge.

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**ORDER AUTHORIZING APPEAL IN NAME
OF TRUSTEE.**

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

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In the Matter of GEORGE E.
THOMAS, Bankrupt.

}

*On Creditors'
Petition.*

Order.

20 This matter being opened to the Court by A. F. Slingerland, of Smith & Slingerland, attorneys of the petitioners, Charles Quinzel, Millburn Builders Supply & Lumber Co., Newark Glass Co., Alex Thomson & Son, Max L. Rosenstein, Trustee in Bankruptcy of Jeakens & Doeries, bankrupts, and Kenneth Brenn, general creditors of George E. Thomas, bankrupt, and on behalf of all creditors of said bankrupt similarly situated; and in the presence of Samuel J. Kaufman, attorney, appearing specially in behalf of Joseph P. Day, alleged debtor of said bankrupt; and the Court having read the petition of said petitioners, and

30 heard counsel thereon, and having considered the matters and things therein set forth, and having reviewed and reconsidered the order of the court made in this matter on March 14, 1929; and the Court being of the opinion that the said order of March 14, 1929, should be modified so as to permit the petitioners, in the name of Harry G. Hendricks, trustee of George E. Thomas, bankrupt, to appeal to the Court of Errors and Appeals from an order of the Court of Chancery

40 made April 10, 1928.

Order Authorizing Appeal in Name of Trustee.

It is, on this 8th day of April, 1929, on the motion of Smith & Slingerland, attorneys of the petitioners in said petition named, ORDERED: that said petitioners have leave, on behalf of themselves and all other creditors of said George E. Thomas, bankrupt, similarly situated, and without expense to the bankrupt estate, to appeal in the name of Harry G. Hendricks, trustee in bankruptcy of George E. Thomas, bankrupt, to the Court of Errors and Appeals of New Jersey from the said decree of April 10, 1928, of the Court of Chancery of New Jersey in the interpleader suit between Joseph P. Day, et al., complainants, and Harry G. Hendricks, Trustee of George E. Thomas, bankrupt, et als., defendants. 10

And it is further ORDERED: that any and all orders heretofore made by this court in the matter of George E. Thomas, bankrupt, enjoining this appeal shall be, and hereby are, modified so far as shall be necessary to the end that such appeal, as aforesaid, may be prosecuted. 20

WILLIAM N. RUNYON,
Judge.

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NOTICE OF APPEAL.

Filed April 9, 1929.

IN CHANCERY OF NEW JERSEY.

66/249.

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*Between*JOSEPH P. DAY, *et al.*,
*Complainants,**and*HARRY G. HENDRICKS, Trustee
*et als.,**Defendants.**On Bill, &c.*
Notice of
Appeal.

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To Mr. Samuel J. Kaufman, 24 Commerce street,
Newark, New Jersey, solicitor of com-
plainants.

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Charles Quinzel, Millburn Builders Supply &
Lumber Co., Newark Glass Co., Alex Thomson &
Son, Max L. Rosenstein, Trustee in Bankruptcy
of Jaekens & Doeries, and Kenneth Brenn hav-
ing petitioned the United States District Court
for the District of New Jersey for permission
to appeal in the name of Harry G. Hendricks,
Trustee in Bankruptcy of George E. Thomas,
bankrupt, to the Court of Errors and Appeals
from a certain decree of the Court of Chancery
of New Jersey made by the Chancellor on the
advice of Vice-Chancellor Berry, April 10, 1928,
in the interpleader action between Joseph P. Day,
et al., complainants, and said Harry G. Hen-
dricks, Trustee of George E. Thomas, bankrupt,
et als., defendants, where and whereby your peti-
tioner was permanently enjoined and restrained

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Notice of Appeal.

from commencing or instituting any action or actions, suit or suits or other proceedings against Joseph P. Day and Pauline M. Pope Day, his wife, or either of them, to recover the sum of eighty-three hundred and thirty-seven dollars and seventy-two cents (\$8,337.72), or any part thereof on a certain book account claim of said George E. Thomas against said Joseph P. Day, and said petition having been granted, you will please take notice that said Harry G. Hendricks, Trustee in Bankruptcy of said George E. Thomas, bankrupt, hereby appeals therefrom to the Court of Errors and Appeals in the Last Resort in All Causes. 10

SMITH & SLINGERLAND,
Of Counsel with Appellant.

I conceive there is good cause for appeal in the above stated cause. 20

ARCHIBALD F. SLINGERLAND,
Of Counsel with Appellant.

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PETITION OF APPEAL.

Filed April 17, 1929.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

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Between

JOSEPH P. DAY, *et al.*,
Complainants,

and

HARRY G. HENDRICKS, Receiver
and Trustee of George E.
Thomas, Bankrupt, *et als.*,
Defendants.

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On Appeal.

*Petition of
Appeal of
Harry G.
Hendricks,
Receiver and
Trustee of
George E.
Thomas,
Bankrupt.*

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The petition of Harry G. Hendricks, Receiver and Trustee of George E. Thomas, Bankrupt, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, dated April 10, 1928, in this respect, to wit:

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That the said decree adjudges that petitioner be permanently enjoined and restrained from commencing or instituting any action or actions, suit or suits, or other proceedings against Joseph P. Day and Pauline M. Pope Day, his wife, or either of them, to recover the sum of eighty-three hundred and thirty-seven dollars and seventy-two cents (\$8,337.72), or any part thereof on a certain book account claim of said George E. Thomas against said Joseph P. Day.

Petition of Appeal.

And your petitioner humbly appeals from so much of said decree as qualifies, limits, or restrains petitioner in the administration of the estate of George E. Thomas, bankrupt, upon the ground that the same is erroneous for that:

(1) The Court of Chancery was without jurisdiction to make any order affecting assets of George E. Thomas, bankrupt, within the jurisdiction of the bankruptcy court, or to make any order affecting the authority of petitioner over such assets. 10

(2) The Court of Chancery was without jurisdiction to restrain petitioner from the due administration of the bankrupt estate and the collection of debts owing the bankrupt.

(3) The Court of Chancery was without jurisdiction to change the status of general creditors in the bankruptcy court to that of preferred creditors. 20

(4) The Court of Chancery was without jurisdiction to order petitioner to release all claims, or any claim, of the bankrupt estate against Joseph P. Day.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be reversed, set aside and for nothing holden, insofar as it affects the administration of the estate of said George E. Thomas, bankrupt, by petitioner, and that your petitioner may have such further or other relief in the premises as to this Honorable Court shall seem meet. 30

SMITH & SLINGERLAND,
Of Counsel with Appellant-Petitioner.

ANSWER TO PETITION OF APPEAL.

Filed May 15, 1929.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10	<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">JOSEPH P. DAY, <i>et al.</i>, Complainants,</p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">HARRY G. HENDRICKS, Receiver and Trustee of George E. Thomas, Bankrupt, <i>et als.</i>, Defendants.</p>	}	<p><i>On Appeal from Court of Chancery.</i></p> <p><i>Answer of Joseph P. Day and Pauline M. Pope Day, Complain- ants, to Petition of Appeal.</i></p>
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The Answer of Joseph P. Day and Pauline M. Pope Day, his wife, complainants-respondents in the above-entitled cause to the petition of appeal of Harry G. Hendricks, Receiver and Trustee of George E. Thomas, Bankrupt, defendant-appellant.

30 These respondents not admitting the truth of all or any of the matters in said petition of appeal contained for answer thereto, nevertheless, admit that an order or decree was on April 10, 1928, made and entered in the Court of Chancery of New Jersey in the above entitled cause for the purposes in said petition mentioned and as therein set forth, but as to the substance and form of said decree, these respondents beg leave to refer thereto when the same shall be produced.

40 And these respondents are advised and believe

Answer to Petition of Appeal.

that the said decree or order is agreeable to equity and they pray that the same may be affirmed with costs to be taxed in favor of these respondents.

And these respondents reserve the right to move to dismiss said appeal upon the record in this Court in this cause on the following grounds: 10

(a) The appellant consented to the entry of the order or decree entered April 10, 1928, by the Court of Chancery, and therefor has no right to now appeal therefrom.

(b) The Court of Errors and Appeals of New Jersey has heretofore determined that no appeal will lie by this appellant, from the order or decree entered by the Court of Chancery of New Jersey on April 10, 1928.

(c) The grounds of appeal set forth in the petition of appeal of the present appellant, have heretofore been determined by the New Jersey Court of Errors and Appeals not to be grounds which would sustain an appeal by this appellant. Appeal has heretofore been dismissed by said New Jersey Court of Errors and Appeals. 20

(d) None of the grounds of appeal set forth in appellant's petition of appeal are grounds which would sustain said appeal.

(e) The order or decree complained of, was the product of the suggestion of the appellant and was entered in open court in the presence of appellant and with the knowledge and consent of appellant. Appellant cannot have a decree moulded into a form suggested by him and then have it reversed because of the form so imparted to it. Appellant is, therefore, estopped from taking inconsistent positions with reference to the order entered April 10, 1928, by the Court 30
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Answer to Petition of Appeal.

of Chancery of New Jersey, and is bound by the said order or decree.

10 (f) Prior to the entry of the order or decree appealed from, the bill of complaint had been taken as confessed against all of the defendants in this cause—including this appellant—and that no appeal will lie from an order or decree made after a decree pro confesso has been entered.

(g) The decree or order appealed from is an interlocutory decree or order and the appeal is not taken in due time.

(h) The injunction or restraint order issued out of the Court of Chancery entered January 9, 1928, and unappealed from, in itself constitutes a bar to this appeal.

20 (i) That the decree of interpleader, and also the final decree and order of distribution subsequently carried into execution, were entered in open court in the presence of appellant and with the written consent and knowledge of appellant. This consent is binding on this appellant and no appeal will lie from an order or decree entered by consent.

30 (j) That the appellant has failed to include and join as respondents in these appeal proceedings, the Union County Coal and Lumber Company, John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Harvey J. Tiger and Arthur E. James (the said Union County Coal and Lumber Company, John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Harvey J. Tiger and Arthur E. James, as lien claimants, having been parties defendants in the above cause before the Court of Chancery) these defendants being as much interested in the

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Answer to Petition of Appeal.

above-entitled cause and these appeal proceedings as are the complainants herein.

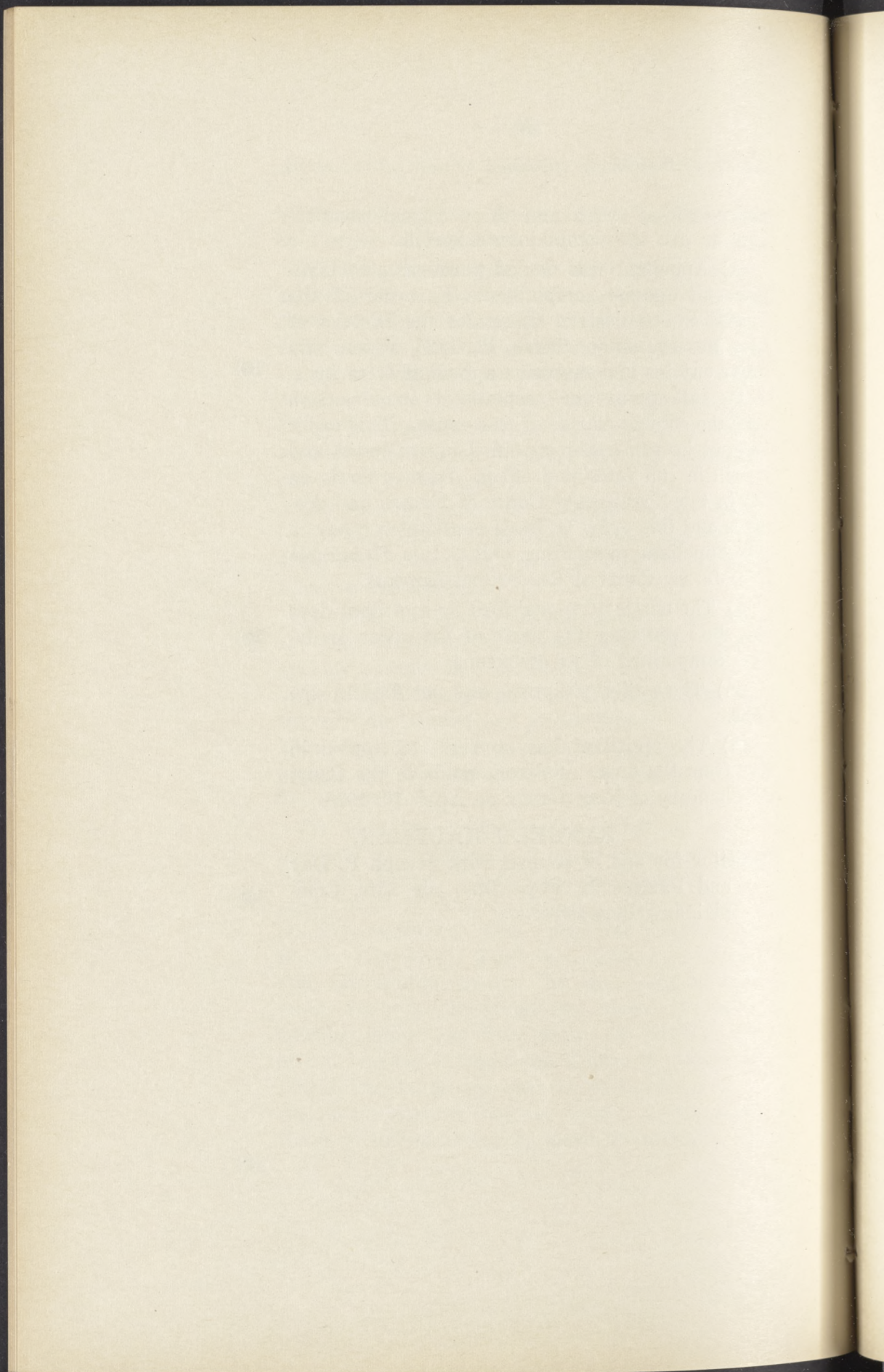
(k) Appellant was denied permission to institute suit against complainants by order of the United States District Court for the District of New Jersey, made March 12, 1928, which said order enjoins and restrains appellant from instituting suit against the complainants in connection with the subject matter of this cause. This order has not been vacated, modified or rescinded and is still in full force and effect. Said order is on file in the New Jersey Court of Errors and Appeals and this order in itself constitutes a bar to this appellant proceeding before this Honorable New Jersey Court of Errors and Appeals. 10

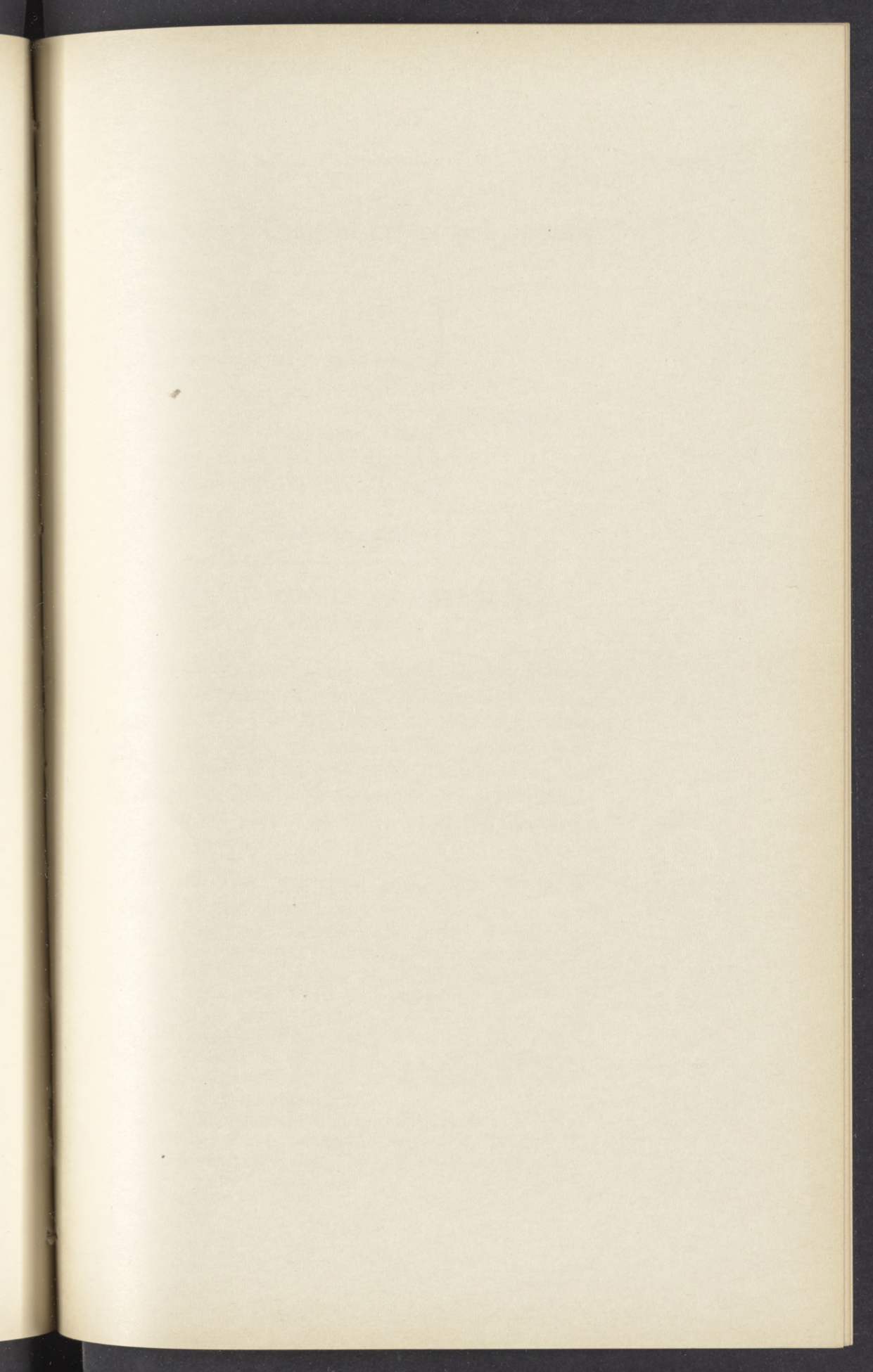
(l) The notice of appeal filed by appellant does not state concisely the parts of the order or decree complained of as erroneous. 20

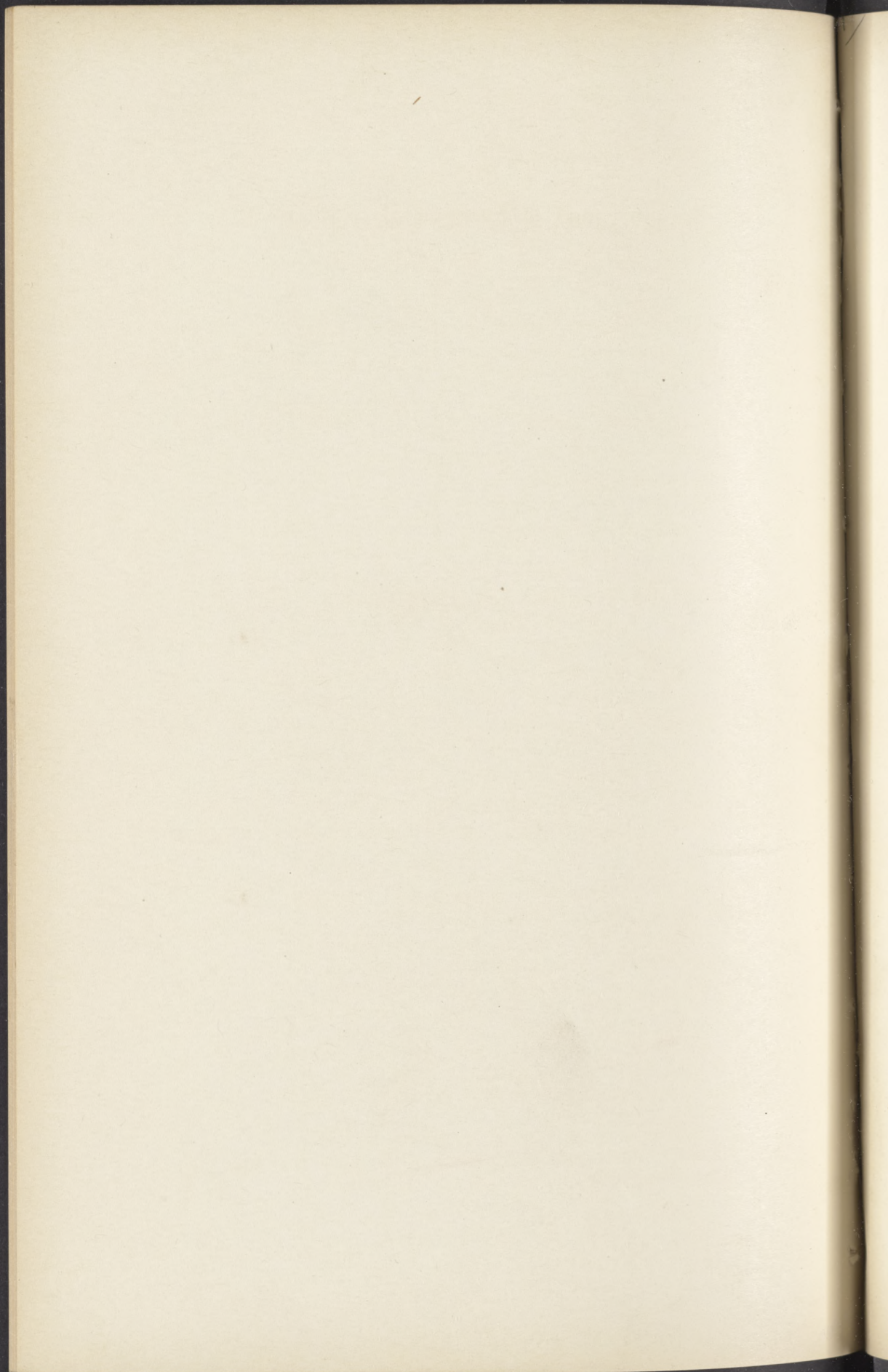
(m) The notice of appeal was not filed in due time.

(n) The appellant has no right of appeal in law from the order or decree made in the Court of Chancery of New Jersey on April 10, 1928.

SAMUEL J. KAUFMAN,
Solicitor for and of counsel with Joseph P. Day
and Pauline M. Pope Day, his wife, Com- 30
plainants-Respondents.







New Jersey Court of Errors and Appeals

Between

JOSEPH P. DAY, *et al.*,
Complainants-Respondents,

and

HARRY G. HENDRICKS, Re-
ceiver and Trustee of
George E. Thomas, Bank-
rupt,

Defendant-Appellant.

On Appeal.

BRIEF ON BEHALF OF DEFENDANT- APPELLANT.

This is an appeal by Harry G. Hendricks, trustee in bankruptcy of one George E. Thomas, from an order of the Court of Chancery made April 10, 1928, permanently restraining said trustee from bringing suit, for the benefit of the creditors of said bankrupt, upon a book account claim in the sum of \$8,337.72 owed the bankrupt by one Joseph P. Day.

For the entire order see Case, p. 65. So much thereof as is appealed from is as follows:

“ORDERED that the said restraints and injunctions imposed or intended to be imposed upon the said Harry G. Hendricks, Receiver and Trustee from enforcing his said book account claim against Joseph P. Day and Pauline M. Pope Day, his wife (or either of them), is continued and ordered to remain operative and in full force and effect, and it is further

“ORDERED that the said Harry G. Hendricks, Receiver and Trustee of George E. Thomas, bankrupt, be and he is hereby per-

manently enjoined and restrained from commencing or instituting any action or actions, suit or suits, or other proceedings against Joseph P. Day and Pauline M. Pope Day, his wife, or either of them, to recover the sum of Eighty-three hundred and thirty-seven dollars and seventy-two cents (\$8,337.72), or any part thereof on the said book account claim as aforesaid" (Case, p. 66, l. 37).

The appeal challenges the jurisdiction of the Court of Chancery to impose such restraint, or any restraint, upon the trustee in the administration of the bankrupt estate; it is brought by the trustee, at the instance of certain general creditors of the bankrupt, for the benefit of all the creditors, and with the consent and approval of the United States District Court for the District of New Jersey.

A brief resume of the facts leading to the order appealed from and pertinent to this appeal is subjoined:

One George E. Thomas entered into an *oral* contract, on a "cost plus" basis, with one Joseph P. Day (one of the complainants herein) to make certain additions *and alterations* to a building erected on lands of said Day and Pauline M. Pope Day, his wife (Case, p. 16; l. 25).

Thereafter Thomas abandoned the work, and was subsequently adjudged a bankrupt (Case, p. 18, l. 23).

At the time of the abandonment of the work Day owed Thomas \$8,337.72. This debt was not only an asset of the bankrupt estate but it was a very substantial part of the total assets available for distribution among Thomas' numerous creditors.

Among the general creditors of the bankrupt were four who, in addition to filing their claims

with the trustee as general creditors, filed mechanics' liens against the lands of Day and his wife (Case, p. 19 *et seq.*) aggregating \$8,896.20 (Case, p. 22, l. 14).

While these inchoate liens were still undetermined (Case, p. 21, l. 23), and notwithstanding they might be proved invalid in whole or in part, Day asserted a right to have his debt to Thomas "expunged" by setting off the liens against the debt.

To that end counsel for Day obtained in the United States District Court a rule "to show cause before said Referee (Honorable George W. W. Porter) why an order should not be entered expunging the claim (referring to the book account for \$8,337.72) of the bankrupt against the said Joseph P. Day and Pauline M. Pope Day" (Case p. 2, l. 23). In an order advised by said referee (Case, p. 1,) and entered by Judge Runyon after the argument of the rule, it was stated that the referee was "of the further opinion that he has no authority to advise or enter an order expunging the claim of the bankrupt against the said Joseph P. Day and/or Pauline M. Pope Day, his wife" (Case, p. 3, l. 4).

Subsequently the same matter was argued again upon petitions presented to the court by said Day (Case, p. 4), and upon the order of the referee a hearing was had thereon on November 10, 1927 (Case, p. 10). That part of the petition in which the general creditors were interested was the prayer "that the trustee be directed to expunge his claim against the petitioner and/or his wife and to indicate upon said trustee's records the discharge and cancellation of said claim against your petitioner and his wife, and that your petitioner be relieved from paying said

sum of \$8,337.72 (or any sum whatsoever) to the bankrupt and/or trustee herein" (Case, p. 9, l. 15).

At the hearing, which was duly advertised (Case, p. 10), a majority in interest of the creditors was represented and caused to be filed written objections to expunging the claim in question.

After argument by counsel an order was entered denying the application to "expunge" the claim (Case, p. 12), but without prejudice to raising the issue again when the matter should be ripe for final decision.

Thereupon counsel for Day sought to oust the jurisdiction of the United States District Court, and to bring the very same issue within the jurisdiction of the Court of Chancery of New Jersey in an action in the nature of interpleader.

Prior to filing the bill in the Court of Chancery an *ex parte* application was made to the bankruptcy court for an order making the trustee a party defendant, and requiring him to "interplead in said Court of Chancery proceedings and determine his rights thereunder" (Case, p. 15, l. 36), and directing him "to accept process of subpoena * * * and also to fully comply with all orders and decrees that the said Court of Chancery of New Jersey may make or enter in said proceedings" (Case, p. 15, l. 28). The order was allowed November 22, 1927, upon the representation of counsel for Day that the bill which Day was "*about to file*" was one "*relating* to the alleged claim of the bankrupt herein and to the several claims of the lien claimants" (Case, p. 14, l. 25), and that Day and his wife "*deemed it necessary and advisable*" that the trustee be made a party defendant.

The bill was filed on November 25, 1927 (Case, p. 16).

On December 3, 1927, an *ex parte* rule was made restraining the trustee, "until the further *order* of this court," from bringing suit to recover this indebtedness of \$8,337.72 (Case, p. 31). By an order made December 10, 1927, because of a change in the date of the argument, the restraint was continued "until the further order of this court" (Case, p. 35).

On December 13, 1927, the trustee, disclaiming any interest in the lien actions, moved that the bill be dismissed, as to himself, for lack of jurisdiction (Case, p. 34), but the motion was denied (Case, p. 43, l. 34).

Day having actually deposited with the Clerk in Chancery the aggregate of the liens (Case, p. 42, l. 34), the trustee having disclaimed any interest in the liens or in the deposit, the lienors having no adverse interests as between themselves, but some sort of order being necessary to release the deposit from the custody of the Clerk in Chancery, a voluntary agreement was made out of court, and embodied in a stipulation dated January 3, 1928, for a division of the deposit between the several lienors in proportion to their several claims (Case, p. 38).

On January 9, 1928, an interlocutory decree was entered (Case, p. 45). This decree makes no reference to the claim of Thomas against Day on open account; it imposes no restraint upon the trustee; and "the said complainants, Joseph P. Day and Pauline M. Pope Day, his wife, are hereby dismissed from the further prosecution of this suit, allowance of counsel fee to complainant's solicitor and complainants' taxed costs to await

filing and entry of final decree herein" (Case, p. 46, l. 40).

On the same date a final decree and order of distribution, incorporating the terms of the stipulation, was made and filed. This final decree, like the interlocutory decree, makes no reference to the indebtedness of Day to Thomas, and imposes no restraint upon the trustee. Preliminary to the decree there was no hearing, no witnesses gave testimony, and no evidence was introduced. The decree merely gave effect to the agreement embodied in the stipulation, and subsequently the deposit made by Day was distributed in accordance with the terms of the decree.

On January 13, 1928, the trustee executed a release releasing the complainants "from all claims by or on behalf of said defendants Harvey J. Tiger, Arthur E. James, John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, and Union County Coal & Lumber Company" (Case, p. 54, l. 37), but not from any claim the trustee might have.

It appearing that the amounts agreed to be paid the several lienors were incorrectly computed an "Amended Final Decree and Order of Distribution" was made on February 7, 1928. This decree is a counter-part of the "Final Decree" except for the necessary changes in the sums to be paid out thereunder (Case, p. 56).

On April 3, 1928, counsel for Day having asserted that the *ad interim* restraint imposed by the Chancery orders of December 3, 1927, and January 10, 1928, was still in effect, counsel for one of the lienors moved for a ruling by the court thereon, and on April 10, 1928, this order was made continuing that restraint, and making it permanent (Case, p. 65).

On April 27, 1928, a further release by the trustee was filed (Case, p. 60). It is dated back to February 8, 1928, and recites that it "is executed by order of the Court of Chancery of New Jersey, order being entered February 7, 1928" (Case, p. 61, l. 30), and is endorsed: "Approved as to form. Maja Leon Berry, V.-C."

Appellant trustee appeals from so much of said decree as qualifies, limits, or restrains him in the administration of the estate of George E. Thomas, bankrupt, upon the ground that the same is erroneous for that:

(1) The Court of Chancery was without jurisdiction to make any order affecting assets of George E. Thomas, bankrupt, within the jurisdiction of the bankruptcy court, or to make any order affecting the authority of the trustee over such assets.

(2) The Court of Chancery was without jurisdiction to restrain trustee from the due administration of the bankrupt estate and the collection of debts owing the bankrupt.

(3) The Court of Chancery was without jurisdiction to change the status of general creditors in the bankruptcy court to that of preferred creditors.

(4) The Court of Chancery was without jurisdiction to order trustee to release all claims, or any claim, of the bankrupt estate against Joseph P. Day.

POINT I.

The Court of Chancery was without jurisdiction to make any order affecting assets of the bankrupt, title to which had vested in the trustee.

Day owed Thomas \$8,337.72 on a contract to which Day and Thomas alone were parties. When Thomas was adjudicated a bankrupt that indebtedness became an asset of the bankrupt estate, and title vested in the trustee as the representative of all the creditors of the bankrupt and for their sole benefit. Not only was jurisdiction over that asset vested exclusively in the Bankruptcy Court, but such jurisdiction carried with it jurisdiction over *all* controversies affecting that asset,

The jurisdiction of the Bankruptcy Court is exclusive.

“so that subsequent liens could not be given or obtained thereon (upon assets of the bankrupt), nor proceedings had in other courts to reach the property, the court of original jurisdiction having acquired the full right to administer the estate under the bankrupt law.” *Lazarus v. Prentice*, 234 U. S. 263; 58 L. Ed. 1305.

“If a court of competent jurisdiction, Federal or State, has taken possession of property, or by its procedure has obtained jurisdiction over the same, such property is withdrawn from the jurisdiction of the courts of the other authority as effectually as if the property had been entirely removed to the territory of another sovereignty”

Palmer v. Texas, 212 U. S. 118; 53 L. Ed. 435.

“The possession of the *res* vests the court which has first acquired jurisdiction with the power to hear and determine all controversies relating thereto, and for the time being disables other courts of co-ordinate jurisdic-

tion from exercising a like power. This rule is essential to the orderly administration of justice, and to prevent unseemly conflicts between courts whose jurisdiction embraces the same subjects and persons."

Farmers' L. & T. Co. v. Lake St. Elev. R. Co., 177 U. S. 51; 44 L. Ed. 667.

"We think the result of these cases (citing cases) is * * * that when the property has become subject to the jurisdiction of the Bankruptcy Court as that of the bankrupt, whether held by him or for him, jurisdiction exists to determine controversies in relation to the disposition of the same, and the extent and character of liens thereon or rights thereunder."

Whitney v. Wenman, 198 U. S. 539; 49 L. Ed. 1157.

"It is clear that as to property within the custody of the bankruptcy courts its exclusive jurisdiction over the general administration of the bankrupt's estate carried with it the *exclusive authority* to determine, not only the claims of creditors, but also adverse claims, whether by way of ownership or paramount liens." *Orinoco Iron Co. v. Metzger*, 230 Fed. 40 (Circuit Court of Appeals).

Text book writers follow the cases. Thus Remington, in his work on Bankruptcy, states the rule to be that:

"The trustee, in the exercise of his discretion, as well as in the carrying out of orders of the bankruptcy court in the administration of the estate, is not to be interfered with nor controlled by proceedings brought in other courts." Vol. II, Sec. 1116.

"Nor may the trustee be controlled in his discretion in the administration of the estate, by proceedings brought in another court. Thus the bankrupt will not be permitted to enjoin the trustee by a suit in equity in the state court from carrying out a compromise of a controversy with the bankrupt's wife." Vol V, Sec. 2343.

“Attempts to control the bankruptcy court in its disposition of assets, allowance of claims, etc., by injunctions or other orders in other suits will not be permitted.” Vol. V, Sec. 2363.

Such has hitherto been the attitude of the courts of this State:

“Of course, if the case is one in which the Federal District Court has jurisdiction this court will, *under no circumstances*, put, or permit to be put, any obstruction in the way of the exercise of that jurisdiction.”

Cavagnaro v. Indian Tire & Rubber Co., 90 N. J. E. 532-536.

POINT II.

The Court of Chancery was without jurisdiction to change the status of **GENERAL** creditors in the Bankruptcy Court to that of **PREFERRED** creditors.

As to Thomas the four lienors of the lands of Day were simply *general* creditors, and as general creditors they filed with the trustee in bankruptcy their claims against Thomas. They never acquired any other status than that of general creditors because it was never proved that their *inchoate* liens upon the lands of Day were valid. On the contrary there was substantial reason to doubt their validity, at least in part. The contract between Day and Thomas was *oral* (Case, p. 16, l. 26); the contract was, in part, for “certain *alterations* to an existing building” (Case, p. 16, l. 29); the labor and material furnished was asserted by Day to have been, in part, for *alterations* (Case, p. 17, l. 31; p. 18, l. 3; p. 18, l. 12; p. 18, l. 17); and by the statute (3 C. S. 3301, Sec. 10) a lien by a material man “for work done or materials furnished in and for the repairing and *alteration* of any such building” will lie only

“for debts contracted * * * with the consent of the owner or owners *in writing.*” To the extent, then, that the labor and material furnished by the lienors was for *alterations* to Day’s building the lien claims were invalid and unenforceable, and to that extent the lienors were limited to their claims against Thomas as *general* creditors. Only to the extent the liens were fixed as valid and enforceable against the lands of Day, and only after Day had paid such liens in exoneration of his lands, and then only to the extent of such payment, could Day assert any right to a set-off or counter-claim against his indebtedness to Thomas, and such assertion of right of set-off *could be made only in the Bankruptcy Court.*

This was a matter of vital interest and importance to the general creditors, and to the trustee as the representative of the creditors. If all the lien claims should be established in full by judgment, and if they should be paid by Day in exoneration of his lands, and if such payments should be allowed by the trustee as valid set-offs against Day’s indebtedness to Thomas, that indebtedness would be wiped out as an asset of the bankrupt estate, and the general creditors, excepting only the four who were lienors, would get nothing therefrom.

On the other hand, if the liens were declared invalid and unenforceable, or to the extent they were declared invalid and unenforceable (and it was almost certain that very substantial parts of the claims were unenforceable as liens) general creditors would benefit by this addition to the assets of the bankrupt estate available for distribution among them; of course, in such distribution the general creditors who had been lienors would share equally with other general creditors.

But so long as the inchoate liens against the lands of Day remained undetermined the lienors had no other status than that of *general creditors* of Thomas, and as their lien claims never were reduced to judgment they never did acquire any status other than that of general creditors, and questions as to what *might* have happened had their lien suits in the Circuit Court not been discontinued are *moot questions* and neither proper nor profitable for discussion or argument. So far as the trustee in bankruptcy is concerned the lienors were, and still are, merely general creditors of Thomas. Day's payments to the lienors were not in settlement of any claim he was *obligated* to pay either by way of exoneration of his lands from valid and enforceable liens or because of any *personal* liability; the debts were the debts of Thomas for the payment of which Day was not, and could not be made, personally liable, and for the payment of which not even an *indirect* liability was imposed upon him by any judgment affecting his lands.

Day's payments, therefore, can be regarded by the trustee in bankruptcy in no other light than as voluntary purchases by Day of the claims of certain general creditors of Thomas, entitling him to no other status than that of the general creditors whose claims he thus acquired. Day had the right to negotiate with creditors for the purchase of their claims upon any terms agreeable to the parties concerned, and with those negotiations the trustee neither interfered nor attempted to interfere. The "consent" of the trustee to the terms of the stipulation entered into (Case, p. 18) was no more than an expression of his willingness to recognize Day as the assignee of these claims. The consent was voluntary, was given out of the court, and in no way

affected his denial of the jurisdiction of the court over him.

The Court of Chancery had no jurisdiction to determine the validity of either the inchoate liens or Day's alleged debt to Thomas. These were issues triable only in a common law court.

"The common law courts have exclusive jurisdiction to hear and determine controversies resting upon a purely legal basis and determined by the principles of the common law, such as a money claim or a simple debt and the like, whether due or not. The jurisdiction of the equity courts cannot be conferred over this class of subjects by consent of counsel or acquiescence of a Vice-Chancellor. * * * The first requisite to constitute jurisdiction is, the court must have cognizance of the class of cases to which the one to be adjudged belongs." *San Giacomo v. Oraton Invest. Co.*, 143 Atl. 329 (not officially reported.)

Nor did the Court of Chancery have jurisdiction to pass upon the right of Day to set-off these inchoate liens against a chose-in-action title to which was in the trustee. That jurisdiction was vested in the Bankruptcy Court. In Sec. 68 of the bankruptcy act, jurisdiction over mutual debts and credits is given the Bankruptcy Court:

a. In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set-off against the other, and the balance only shall be allowed or paid.

The Court of Chancery may not oust that jurisdiction, and itself assume that right, especially over the objection of the trustee in bankruptcy and of the creditors.

Nor did the Court of Chancery, *or even the trustee*, have jurisdiction to compromise these claims, or to recognize any agreement of compromise, without notice to *all* the creditors. Sec. 58

of the Bankruptcy Act provides that "a. Creditors shall have at least ten days' notice by mail of * * * (7) the proposed compromise of any controversy."

But the order appealed from, by indirection, accomplishes all that, and more. It permanently restrains the trustee in bankruptcy from bringing "any action * * * or other proceedings" to recover this indebtedness, and thereby effectually restrains the trustee from any action or proceeding to test the right of Day to set-off these inchoate liens against this indebtedness. By indirection it also bars the creditors themselves from taking any steps to ascertain their rights, as such action must be taken in the *name* of the trustee, although at the instance, and for the benefit, of the creditors generally.

The practical effect of the order is to raise the status of certain claims, and therefore of certain creditors, from that of general claims entitled only to a dividend to that of preferred claims entitled to payment in full. The relief *denied* Day in the United States District Court, the court of original, superior, and exclusive jurisdiction, is indirectly given by the Court of Chancery over the objection of the trustee, upon a mere motion, without bill filed for an injunction, without a hearing other than arguments of counsel, without testimony, without even affidavits, without a reference to a law court for the determination of the legal questions involved, and without the authority of law or a single precedent.

POINT III.

The Court of Chancery was without jurisdiction to order the trustee in bankruptcy to release Joseph P. Day and Pauline M. Pope Day, his wife, from all claims, or any claim, of the bankrupt against them, or either of them.

The release of the trustee dated January 13, 1928 (Case, p. 53), was unobjectionable, although unnecessary and purposeless. The trustee disclaimed all interest in the liens, and could by no possibility have any claim *against Day*, or his wife, arising out of any dealings between Day and the lienors. The only possible result of such dealings would be a claim *by Day against the trustee*.

But the release "executed by order of the Court of Chancery," approved as to form by the Vice-Chancellor, filed April 27, 1928, but dated back to February 8, 1928 (Case, p. 60), presents a wholly different aspect, and one which must be dealt with in connection with the restraining order dated April 10, 1928, which it actually followed in point of time.

This release is in the broadest terms and ~~the word "discharges" is not a part of the~~ discharges "said Joseph P. Day and Pauline M. Pope Day, his wife, and each of them, and their respective heirs, executors and administrators, of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law or in equity, which against the said Joseph P. Day and Pauline M. Pope Day, his wife, and each of them, I, the said Harry G. Hendricks, Receiver and Trustee of George E.

Thomas, bankrupt, ever had, now have or which I, my successors and assigns hereafter can, shall, or may have, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of these presents."

This part of the release is so manifestly unsupported by even color of jurisdiction that argument seems unnecessary.

But, assuming that the quoted excerpt be struck out, the Court of Chancery was equally without jurisdiction to require the trustee to

"release and forever discharge the said Joseph P. Day and Pauline M. Pope Day, his wife (and each of them) from the claim in the sum of \$8,337.72 which George E. Thomas (now bankrupt) and I, the said Harry G. Hendricks, Receiver and Trustee of George E. Thomas, bankrupt, have or may claim to have against the said Joseph P. Day and/or Pauline M. Pope Day, his wife (and each of them), arising out of the agreement heretofore made between said Joseph P. Day and/or Pauline M. Pope Day, his wife (or one or both of them) with George E. Thomas (now bankrupt) relating to the labor and material performed and furnished in connection with the buildings upon the premises owned by the said Joseph P. Day and/or Pauline M. Pope Day, his wife (or both or either of them) located in the Township of Millburn, County of Essex and State of New Jersey, which premises are more particularly described in the mechanics' lien filed and suits thereon instituted by the Union County Coal & Lumber Company, John D. McCollum and Aaron O. Smith, trading under the firm name of McCollum & Smith, Arthur E. James and Harvey J. Tiger; the failure of the said George E. Thomas to pay said mechanics' lien claimants having resulted in said mechanics' lien claimants filing lien claims and instituting suit thereon."

Not only is jurisdiction to settle, release, or compromise claims by or against a bankrupt estate vested solely in the United States District Court, but that court has no power to confer such jurisdiction upon another court, nor has any other court a right to oust the Bankruptcy Court of jurisdiction and itself assume such jurisdiction.

Nor can it be inferred, in view of the history of this matter as disclosed by the record, that any such extraordinary result was within the contemplation or purpose of the United States District Court when it made its *ex parte* order of November 22, 1927.

As already pointed out this very issue had been before the United States District Court upon a rule awarded Day, and both court and referee concurred in the opinion that the referee then had "no authority to advise or enter an order expunging the claim of the bankrupt against the said Joseph P. Day and/or Pauline M. Pope Day, his wife" (Case, p. 3, l. 6).

Subsequently Day filed his petition in the United States District Court, in which it was prayed that "the bankrupt and trustee herein be ordered and directed by this court (the United States District Court) to execute and deliver to your petitioner and wife a general release for the sum of one dollar, releasing your petitioner and his wife, as well as the said lands owned by petitioner and his wife, from any lien or claim which the said trustee and/or bankrupt herein may have or claim to have as aforesaid," referring to the claim in question (Case, p. 8, l. 33). The petition was denied (Case, p. 12), but without prejudice to the right of the petitioner to raise the same issue, *in that court*, when the matter was ripe for decision.

In the argument upon the petition it was pointed out that title to the indebtedness of Day to Thomas was vested in the trustee in bankruptcy, that it was an asset of the bankrupt estate and for the benefit of the creditors generally of the estate, that a large majority in interest of the creditors had filed written objection to the "expunging" or release of the claim, and that Day had no claim against Thomas by way of set-off or counter-claim. So far as the mechanics' liens were concerned it was pointed out that the liens were inchoate, that Day denied their validity, and that Day was then under no obligation to pay such claims by way of exoneration of his lands or otherwise, and might never be.

In that situation the Court, of course, denied the prayer of the petition. That situation remains unchanged.

It is inconceivable that, under those circumstances, the United States District Court ever intended, or attempted, to divest itself of jurisdiction, or to confer jurisdiction upon the Court of Chancery, or to require the trustee in bankruptcy to submit himself to the jurisdiction of the Court of Chancery, and the trustee properly, and, at the first opportunity, denied the jurisdiction of the Court of Chancery in the premises by moving that the bill be dismissed.

There is no equitable question involved, and there is no ground for interpleader or other equitable interference as between the trustee and Day, or as between the trustee and the lienors. The issue raised is one of law solely between the trustee and Day, and within the exclusive jurisdiction of the United States District Court; the jurisdiction of that court had attached both to parties and subject matter, the issue was in process of settlement, and the respondent here had

already petitioned that court to settle *all* the matters in controversy. No allegation is made, or can be made, that the United States District Court had taken, or proposed to take, or threatened to take, any inequitable action prejudicial to the interests of respondents here. There is no reason to anticipate that the United States District Court will make an erroneous or inequitable decision. Until, at least, a *prima facie* case is made out to the contrary it must be presumed that the United States District Court will deal justly as between the parties.

In effect the Court of Chancery reviews, and nullifies, the order of the United States District Court denying Day's petition that the debt be expunged, although this court, in *Raimondi v. Bianchi*, 140 A. 584 (not officially reported) said that

"It is not the province of a court of equity to review the sentences or judgments of other tribunals to ascertain whether they have erred in the exercise of their judicial power and discretion in matters over which they had complete jurisdiction."

The conduct of the respondent in thus attempting to oust the jurisdiction of the United States District Court was unwarranted and unprecedented, and the assumption of jurisdiction by the Court of Chancery was an unauthorized and illegal usurpation of authority. The order directing the trustee in bankruptcy to interplead was made before the bill was filed and never contemplated any such situation as the bill presented. Promptly upon the service of the bill the trustee protested the jurisdiction and moved that the bill be dismissed. The attitude of the United States Supreme Court toward usurpation of jurisdiction is well illustrated in two recent cases. In *Wabash*

R. Co. v. Adelbert College, 208 U. S. 38; the court said:

“When a court of competent jurisdiction has, by appropriate proceedings, taken property into its possession through its officers, the property is thereby withdrawn from the jurisdiction of all other courts. The latter courts, though of concurrent jurisdiction, are without power to render any judgment which invades or disturbs the possession of the property while it is in the custody of the court which has seized it. For the purpose of avoiding injustice which otherwise might result, a court during the continuance of its possession has, as incident thereto and as ancillary to the suit in which the possession was acquired, jurisdiction to hear and determine all questions respecting the title, the possession, or the control of the property.”

In Lion Bonding & Surety Co. v. Katz, 262 U. S. 77; 67 L. Ed. 871, the court said:

“Where a court of competent jurisdiction has, by appropriate proceedings, taken property into its possession through its officers, the property is thereby withdrawn from the jurisdiction of all other courts. Possession of the *res* disables other courts of coordinate jurisdiction from exercising any power over it. The court which first acquired jurisdiction through possession of the property is vested, while it holds possession, with the power to hear and determine all controversies relating thereto.”

The jurisdictional issue is, substantially, one between the United States District Court and the Court of Chancery, rather than one between individuals. Three meritorious questions are raised. First: A Federal Court having taken jurisdiction in a matter peculiarly within its province as to subject matter, and all the parties being before that Court, may a State Court oust that jurisdiction by enjoining a statutory officer of the Federal Court from the performances of his statutory duties, notwithstanding his objection to such

See also
Koplowitz v. Trugman,
105 F.2d 38
VII Adv. R. 38
146 a. 663

interference, and notwithstanding the Federal Court has complete power and authority to do full justice to all the parties. Second: Has the Court of Chancery jurisdiction to coerce a trustee in bankruptcy into executing a general release of claims against a creditor of a bankrupt estate, where such claims are within the exclusive jurisdiction of the Bankruptcy Court, have not been submitted to the Court of Chancery for adjudication, and no hearing has been had thereon. Third: May a State Court permanently enjoin an officer of a Federal Court on a mere motion made in a proceeding the validity of which is challenged on jurisdictional grounds, where no bill has been filed germane to such injunction, and where the title to the property affected is vested in an officer of the Federal Court and subject to the exclusive jurisdiction of that Court.

“The jurisdiction of a District Court of the United States sitting as a court of bankruptcy, is *superior and exclusive* in all matters arising under the statute. The estate surrendered is placed in the custody of the court so sitting in bankruptcy, and the officer appointed to manage it is accountable to the court appointing him, and to that court alone. No court of an independent state jurisdiction can withdraw the property surrendered nor determine in any degree the manner of its disposition.” *Orinoco Iron Co. v. Metzel*, 230 Fed. 40.

The Court of Chancery being without jurisdiction to oust the jurisdiction of the United States District Court, or to restrain the trustee in bankruptcy from proceeding with the orderly administration of the bankrupt estate under the bankruptcy act, the order of the Court of Chancery appealed from should be set aside.

Respectfully submitted,

SMITH & SLINGERLAND,
Of Counsel with Defendant-Appellant.

