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**Report and Account of Albert C. Wall,  
Administrator.**

(Filed Feb. 1, 1921)

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**IN CHANCERY OF NEW JERSEY.**

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In the Matter of The Estate of F. AUGUSTUS HEINZE, deceased.	}	Report and Account.
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To the Honorable EDWIN ROBERT WALKER, Chan-  
cellor of the State of New Jersey:

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The petition, report and account of Albert C. Wall, Administrator of the Estate in New Jersey, if any, of F. Augustus Heinze, deceased, respectfully show:

1. That on the 11th day of December, 1916, by order of this honorable Court in the above matter, your petitioner was appointed administrator of the estate in New Jersey, if any of said F. Augustus Heinze, deceased, together with Walter A. Fullerton, an administrator appointed under the Laws of New York.

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2. On the 8th day of January, 1917, your petitioner qualified and gave bond pursuant to the terms of said order.

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*Report and Account of Albert C. Wall, Adm.*

3. After your petitioner's appointment an appeal from the order of appointment was taken to the Prerogative Court, and your petitioner was, on the 23rd day of May, 1917, duly appointed administrator *pendente lite* of the estate in New Jersey of said F. Augustus Heinze, deceased, and ordered to  
10 give bond in the sum of \$1,000, which your petitioner subsequently did. Thereafter, the appeal coming on to be heard, the appointment of your petitioner's co-administrator of said estate was set aside, and your petitioner became sole administrator.

4. On the 4th day of April, 1916, Arthur P. Heinze, then administrator of the Estate of F. Augustus Heinze, deceased, filed a bill in Chancery against American Smelting & Refining Company, Miners' Smelting Company, and John E. McGuirk, praying, *inter alia*, that an account  
20 might be taken in the Court of Chancery of any amount due the estate of said F. Augustus Heinze under the contract referred to in said bill. Your petitioner was, on order of the Court of Chancery, substituted as complainant in said cause in the stead of said Arthur P. Heinze, and thereafter such proceedings were had that a decree was made  
30 by the Court of Chancery on March 12th, 1919, dismissing the bill of complaint in said cause, and thereafter appeal was taken to the Court of Errors and Appeals and the decree of the Court of Chancery was affirmed by said Court of Errors and Appeals.

5. Your petitioner further shows that claims to the amount of \$1,621,505.96 have been filed with him. A list of these claims is set forth in Paragraph  
40 10 hereof.

*Report and Account of Albert C. Wall, Adm.*

6. Your petitioner has received no property or assets of the said Estate of F. Augustus Heinze, deceased, and has expended the sum of \$70.95. A list of said expenditures is set forth in Schedule "A" hereto annexed.

7. Your petitioner, however, did receive \$100 on March 9th, 1918, sent on behalf of Western Development Company by Arthur P. Heinze, to cover expenses incident to the prosecution of the said cause in Chancery, the understanding being that if sufficient funds applicable to the payment of expenses should be obtained by your petitioner, as administrator of the said estate, your petitioner was to reimburse the said Heinze for said advance. 10

8. Your petitioner knows of no property of the said F. Augustus Heinze, deceased, within the State of New Jersey, other than the property as to which an account was prayed in the said bill of complaint above referred to. 20

9. On or about January 31st, 1920, suit was started in the Hudson County Circuit Court by Assets Development Company as plaintiff against your petitioner as substituted administrator as aforesaid, to recover the amount for which Assets Development Company had heretofore filed its claim with me on or about the 22nd day of July, 1918. Your petitioner communicated with the Surrogate of Hudson County and was informed by the Deputy Surrogate that no order to limit creditors had been entered in reference to this estate. The fact was, as your petitioner learned on January 7th, 1921, that an order to limit creditors was made and entered on the 27th day of September, 1916, and a decree barring creditors on the 28th day of June, 1917. Your petitioner did 30 40

*Report and Account of Albert C. Wall, Adm.*

not interpose the defense of the decree barring creditors to said claim of Assets Development Company. The said claim was the same claim that the Court of Errors referred to in its opinion in the case above mentioned, and which claim said Court characterized as not constituting the Assets Development Company a New Jersey creditor of the deceased. On the 28th day of January, 1921, the Honorable Luther A. Campbell, Judge of the Hudson County Circuit Court, signed an order to show cause calling upon said Assets Development Company to show cause on the 4th day of February, 1921, at the Hudson County Circuit Court why judgment notwithstanding the verdict should not be entered, or in the alternative that any judgment heretofore entered be opened on terms.

10. The names and addresses of all persons interested in said accounting are as follows:

F. Augustus Heinze, Jr., son,  
c/o Lida M. Fleitmann,  
129 East 73rd Street,  
New York City.

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*Report and Account of Albert C. Wall, Adm.*

## CLAIMANTS.

Union Bank of Brooklyn, c/o Joseph G. Deane, 15 Park Row, New York City.	(filed March 15, 1920)	\$76,832.91 with interest
United Copper Co., 51 Newark Street, Hoboken, N. J.	(filed Dec. 22, 1916, with Arthur P. Heinze, Ad- ministrator)	250,000.00
United Copper Co., 51 Newark Street, Hoboken, N. J.	(filed Dec. 22, 1916, with Arthur P. Heinze, Ad- ministrator)	200,000.00
Calvin P. Geer, East Orange, N. J.	(salary; filed June 21, 1918)	250.00
Assets Development Co., Englewood, N. J.	(filed July 22, 1918)	2,500.00 with interest
Assets Development Co., Englewood, N. J.	(filed July 22, 1918)	8,000.00
Luther Martin, Jr., Receiver United Copper Co., c/o Geo. D. Hendrickson, 75 Montgomery Street, Jersey City.	(filed Aug. 20, 1918)	600,000.00
George D. Hendrickson, and Luther Martin, Jr., Rec's. United Copper Co. 75 Montgomery St., Jersey City.	(filed Aug. 20, 1918)	483,923.05
		<hr/> \$1,621,505.96

*Report and Account of Albert C. Wall, Adm.*

American Smelting & Refining Co.,

15 Exchange Place,

Jersey City, N. J.

Miners' Smelting Co.,

c/o Albert I. Drayton,

15 Exchange Place,

10 Jersey City, N. J.

John E. McGuirk,

(Address unknown).

Walter A. Fullerton,

Administrator of F. Augustus Heinze, deceased,

Saratoga Springs, N. Y.

11. Your petitioner prays leave to file his account in this Honorable Court for the reasons, among others, that owing to the complicated nature of the various interests and litigations involved, which are described in the statements of fact set forth in the opinion of the Honorable John Griffin, Vice Chancellor, 90 N. J. Eq., 469, the Honorable Merritt Lane, Vice Ordinary, and the opinion in the Court of Errors, 108 Atl., 235, it will be necessary to obtain a decree disposing of the various questions which will arise lying outside the jurisdiction of the Orphans' Court.

20 30 It will also be necessary to obtain a decree of this Court adjudicating whether or no the fund or credit in the hands of the American Smelting & Refining Company and which it holds, as your petitioner is informed, as a mere stakeholder, is subject now to administration in New Jersey, particularly in view of the fact that this Honorable Court, as well as the Court of Errors and Appeals, passed on the bona fides and nature of the claims of creditors theretofore filed with your  
40 petitioner and his predecessor in the trust, but

*Report and Account of Albert C. Wall, Adm.*

did not make any decree affecting the rights of creditors, for the reason that the creditors, if any, were not directly before the Court as parties.

12. Your petitioner therefore prays for the allowance of his said account as stated, and also that suitable counsel fee may be fixed and allowed by the Court, and that he be discharged as administrator of the said estate. 10

Dated January , 1921.

SCHEDULE "A."

1917—Feb.	6—Premium on bond	.....	\$10.00	
1918—April	2—Premium on bond	.....	10.00	
	Fees of Chancery Court.		.68	
May	20—Premium on bond	.....	10.00	
July	1—Chancery Court fees	...	.06	
Dec.	1—Telephone charges	.....	.70	20
1919—Feb.	17—Premium on bond	.....	10.00	
Mar.	12—Paid for copy of opinion		2.50	
April	12—Chancery Court fees	...	.53	
Sept.	1—Telephone charges	.....	1.50	
Nov.	14—Premium on bond	.....	10.00	
	Paid for copy of opinion (Court of Errors)	...	3.00	
Dec.	10—Premium on bond	.....	10.00	
1920—Feb.	1—Telephone charges	.....	.20	30
Feb.	20—County Clerk's fees	....	1.50	
April	16—Carfare	.....	.28	
			\$70.95	

**Supplemental Report and Account of  
Administrator Wall.**

(Filed Oct. 17, 1921)

To the Honorable EDWIN ROBERT WALKER, Chan-  
cellor of the State of New Jersey:

10 By way of supplement to the petition, report  
and account heretofore filed herein on or about  
February 1st, 1921, of Albert C. Wall, Admin-  
istrator of the estate in New Jersey, if any, of  
F. Augustus Heinze, deceased, said administrator  
respectfully shows:

1. Since the filing of said account the following  
papers have been filed with the above-named ad-  
ministrator:

20 A paper purporting to be a proof of claim  
of Ada Louise Heinze for \$75,661.94 received  
by said administrator March 28th, 1921.

A paper entitled "Supplemental Proof of  
Claim" being an affidavit sworn to by Arthur  
P. Heinze as President of Assets Development  
Company, claiming a balance due of \$8,095.49  
received by said administrator March 22nd,  
1921.

30 A paper purporting to be a claim of West-  
ern Development Company, a corporation of  
Arizona, which Arthur P. Heinze as President  
swears to, for \$5,138,945.28 received by said  
administrator March 22nd, 1921.

40 2. On October 14th, 1921, said Ada Louise  
Heinze presented a petition to the Surrogate of  
Hudson County praying that the order barring  
creditors entered by the Surrogate of Hudson  
County on or about June 28th, 1917, be vacated and

*Supplemental Report and Account of Adm. Wall.*

set aside to the end that said petitioner may establish her claim as hereinbefore referred to.

3. Since the petition and account of said administrator was filed herein, he has made the following additional disbursements on account of said estate.

1921.			10
Feb.	8—Surrogate's fees .....	\$20.00	
	County Clerk's fees .....	2.00	
Mar.	28—Carfare .....	.26	
	Telephone charges .....	.30	
May	17—Carfare .....	.32	
May	24—Chancery Court fees.....	.25	
June	30—County Clerk's fees .....	7.50	
Sept.	15—Premium on bond.....	40.00	20
Total .....		\$72.63	

Your petitioner therefore prays in addition to the prayers set forth in his account heretofore filed herein, that he be discharged from all liability in respect of any of the matters herein set forth, and that he be reimbursed for all expense made herein and be paid an adequate fee for his services in connection with his duties as administrator of said estate; and further, that sufficient of the moneys in controversy be paid by the American Smelting & Refining Company to him as such administrator to cover his fee for services and disbursements.

And your petitioner will ever pray, &c.

ALBERT C. WALL.

*Supplemental Report and Account of Adm. Wall.*

State of New Jersey, }  
County of Hudson, } ss.:

Albert C. Wall, the administrator above named,  
being duly sworn on his oath says:

01 That he is the administrator named in the fore-  
going petition; that he has read said petition and  
knows the contents thereof, and that the allega-  
tions therein contained are true to the best of his  
knowledge, information and belief.

ALBERT C. WALL

Subscribed and sworn to before me }  
this 17th day of October, 1921. }

EUGENE H. LUDENBURGH,  
Master in Chancery of New Jersey.

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**Notice of Settlement of Account.**

**IN CHANCERY OF NEW JERSEY.**

Notice is hereby given that the account of the subscriber, Albert C. Wall, as Administrator of the estate in New Jersey, if any, of F. Augustus Heinze, deceased, will be audited and stated in the Court of Chancery of New Jersey and reported for settlement to said Court at the Chancery Chambers, No. 75 Montgomery Street, Jersey City, New Jersey, on Monday, the 7th day of March, 1921, at which time and place application will be made for the allowance of commissions and counsel fees.

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Dated January 31st, 1921.

ALBERT C. WALL,

Administrator of the estate in New Jersey, if any, of F. Augustus Heinze, deceased.

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**Exceptions of Walter A. Fullerton,  
Domiciliary Administrator.**

(Filed March 5, 1921.)

**IN CHANCERY OF NEW JERSEY.**

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In the Matter  
of  
The Estate of F. AUGUSTUS  
HEINZE, deceased.

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On Account-  
ing.  
Exceptions  
to Report  
and  
Account.

20 Walter A. Fullerton, domiciliary administrator of the Estate of Augustus Heinze, deceased, duly appointed as such administrator by the Surrogate of Saratoga County in the State of New York, of which County and State the said F. Augustus Heinze, deceased, was a resident at the time of his death, except to the report and account of Albert C. Wall, administrator of the estate of the said F. August Heinze, deceased, in the State of New Jersey, for the following reasons:

30 1. The alleged claims of the United Copper Company, Calvin P. Geer, Assets Development Company, Luther Martin, Jr., as Receiver of the United Copper Company, and George D. Hendrickson and Luther Martin, Jr., as Receivers of the United Copper Company, mentioned in said report and account, are fraudulent and sham, and said alleged claimants are not creditors of the said F. Augustus Heinze, deceased, nor are they nor the Union Bank of Brooklyn creditors of the said F. Augustus Heinze, deceased, in the State of New Jersey. The Court of Chancery of New Jersey and the New Jersey Court of Errors and Appeals in a

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*Exceptions of Walter A. Fullerton, Dom. Adm.*

cause wherein the said Albert C. Wall, as administrator of the estate of the said F. Augustus Heinze, deceased, was complainant, and the American Smelting and Refining Company, and others, were defendants, mentioned in said report and account, determined that the said United Copper Company, Calvin P. Geer, Assets Development Company, Luther Martin, Jr., as Receiver of the United Copper Company, and George D. Hendrickson and Luther Martin, Jr., as Receivers of the United Copper Company, are not creditors of the said F. Augustus Heinze, deceased, in the State of New Jersey, so far as alleged claims are concerned. 10

2. The alleged claims of the Union Bank of Brooklyn, Calvin P. Geer, Assets Development Company, Luther Martin, Jr., as Receiver of the United Copper Company, and George D. Hendrickson and Luther Martin, Jr., as Receiver of the United Copper Company, were not filed within the time limited by an order of the Surrogate of Hudson County made and entered on September 27, 1916, for the filing of claims against the estate of the said F. Augustus Heinze, deceased, and are barred by a decree of said Surrogate made and entered on June 28, 1917, barring all creditors of said F. Augustus Heinze, deceased, from any action against the administrator of the estate of the said F. Augustus Heinze, deceased, in the State of New Jersey, on claims of such creditors. 20 30

3. If judgment was recovered by said Assets Development Company in the suit by it in the Hudson County Circuit Court against said Albert C. Wall as administrator of the estate of said F. Augustus Heinze, deceased, in the State of New Jersey, mentioned in said report and account, said judgment was recovered by fraud on the part of 40

*Exceptions of Walter A. Fullerton, Dom. Adm.*

said Assets Development Company and its officers  
 and agents, for the reason that said Assets De-  
 velopment Company and its officers and agents  
 well knowing that the claim upon which said suit  
 was brought and judgment recovered is fraudu-  
 10 lent and sham and was held to be fraudulent and  
 sham by the Court of Chancery of New Jersey and  
 by the New Jersey Court of Errors and Appeals  
 in a cause wherein said Albert C. Wall, as admin-  
 istrator of the estate of said F. Augustus Heinze,  
 deceased, was complainant, and the American  
 Smelting and Refining Company, and others, were  
 defendants, and well knowing that said alleged  
 claim is barred by a decree of the Surrogate of  
 Hudson County made and entered on June 28,  
 20 1917, concealed those matters and kept them from  
 the knowledge of said Hudson County Circuit  
 Court for the purpose of recovering said judg-  
 ment. The alleged claim of said Assets Develop-  
 ment Company upon which said suit was brought  
 and judgment recovered is fraudulent and sham,  
 said judgment was recovered by fraud, and said  
 Assets Development Company has no claim there-  
 on against the estate of the said F. Augustus  
 30 Heinze, deceased, either in the State of New Jersey  
 or elsewhere.

4. The said report and account does not show  
 that the Union Bank of Brooklyn, United Copper  
 Company, Calvin P. Geer, Assets Development  
 Company, Luther Martin, Jr., Receiver of the  
 United Copper Company, and George D. Hend-  
 rickson and Luther Martin, Jr., Receivers of the  
 United Copper Company, alleged claimants against  
 the estate of the said F. Augustus Heinze, de-  
 40 ceased, are creditors of the said F. Augustus

*Exceptions of Walter A. Fullerton, Dom. Adm.*

Heinze, deceased, in the State of New Jersey, nor that there are any other creditors of the said F. Augustus Heinze, deceased, in said State, and, therefore, and because said alleged claimants are not creditors of the said F. Augustus Heinze, deceased, in the State of New Jersey and there are no creditors of the said F. Augustus Heinze, deceased, in the State of New Jersey, there is no reason for administration in said State of the property and assets in the hands of the American Smelting and Refining Company mentioned in said report and account, nor of any property or assets belonging to the estate of the said F. Augustus Heinze, deceased. 10

5. There never has been and there is now no reason for administration of the estate of the said F. Augustus Heinze, deceased, in the State of New Jersey, if there is any such estate in said State. 20

6. The said property and assets in the hands of the said American Smelting and Refining Company are claimed by the said Walter A. Fullerton as domiciliary administrator of the estate of F. Augustus Heinze, deceased, to constitute assets of said estate. They comprise a large part of the property and assets of said estate. They are claimed by said Walter A. Fullerton as said administrator to be properly subject to administration by him under the authority of the courts of the State of New York which appointed him as said administrator, and to which jurisdiction of the subject-matter of the said estate properly appertains. The appointment of an administrator in the State of New Jersey of the estate of the said F. Augustus Heinze, deceased, was originally brought about fraudulently and collusively by Arthur P. Heinze and Lida M. Fleitman, brother and sister, respectively, of the said F. Augustus Heinze, deceased, for the purpose of obstructing the proper administration of the said 30 40

*Exceptions of Walter A. Fullerton, Dom. Adm.*

estate. The said Lida M. Fleitman was formerly the administratrix of the estate of the said F. Augustus Heinze, deceased, in the State of New York, but has since been removed as such administratrix, and the said Fullerton appointed in her stead. The said Arthur P. Heinze was

10 originally the administrator of the estate of the said F. Augustus Heinze, deceased, in the State of New Jersey, but has since been removed and said Albert C. Wall appointed in his stead. Notwithstanding his removal, the said Arthur P. Heinze has continued to take steps to keep alive the administration in New Jersey for the purpose of obstructing the proper administration of the estate. So long as there is an administrator in

20 the State of New Jersey deriving his appointment from an assertion that the assets and property in the hands of the said American Smelting and Refining Company are subject to administration in New Jersey, the said American Smelting and Refining Company is subject to the possibility of inconsistent decrees in different states, the courts of each of which assert jurisdiction of the subject matter, and thus an *impasse* is created which makes it impossible for the courts either of the

30 State of New Jersey or the State of New York to make a decree fully protecting the said American Smelting and Refining Company (as it is advised by its counsel) in paying over to any one the said assets and properties in its hands. As there are no creditors entitled to administration of the estate of the said F. Augustus Heinze, deceased, in the State of New Jersey, the courts of that State should, for reasons of comity, fully

40 recognize the rights of the courts of the domicile of the decedent, namely, of the State of New York, exclusively to deal with the administration of said estate, and should relieve said assets

*Exceptions of Walter A. Fullerton, Dom. Adm.*

and property in the hands of said American Smelting and Refining Company, and any property and assets of the estate of the said F. Augustus Heinze, deceased, in the State of New Jersey, from any claims thereon or thereto by the alleged creditors of the said F. Augustus Heinze, deceased, mentioned in said report and account, and by the said Albert C. Wall, administrator of the estate of the said F. Augustus Heinze, deceased, in the State of New Jersey, for the purpose of administering the same in said State, to the end that said property and assets may be delivered to, and collected, received and administered by the said Walter A. Fullerton, domiciliary administrator of the said F. Augustus Heinze, deceased. The said Albert C. Wall should be discharged as administrator of the estate of the said F. Augustus Heinze, deceased, in the State of New Jersey, and such order or decree made as may be proper in the premises.

Dated March 5, 1921.

WALTER A. FULLERTON,  
Domiciliary Administrator of the  
Estate of F. Augustus Heinze,  
Deceased.

COLLINS & CORBIN,  
Solicitors for Walter A. Fullerton,  
Domiciliary Administrator of the  
Estate of F. Augustus Heinze,  
Deceased.

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**Exceptions of Assets Development Com-  
pany.**

(Filed , 192 .)

**IN CHANCERY OF NEW JERSEY.**

10	<p style="text-align: center;">In the Matter of The Application of ALBERT C. WALL for the Settlement of his Account as Substituted Administrator of F. Augustus Heinze, deceased.</p>	}	Exceptions.
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20 Assets Development Company, a corporation of the State of New Jersey, which has recovered a judgment in the Hudson County Circuit Court against the said Albert C. Wall, Substituted Administrator, etc., for \$6,012.54, hereby excepts to the account of Albert C. Wall as substituted administrator of the estate of F. Augustus Heinze, deceased, for the following reasons:

30 1. The Court of Chancery has no jurisdiction of the application or petition of the said Albert C. Wall to settle his account, or of the subject matter thereof; and the said account is improperly filed therein.

2. That the said Albert C. Wall was appointed substituted administrator of the estate of F. Augustus Heinze, deceased, by the Orphan's Court of the County of Hudson, on or about December 11, 1916; that he has filed no account therein;

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*Exceptions of Assets Development Company.*

that on the facts appearing in the petition and application herein, this Court should not entertain the administrator's application, because no special reason appears for interfering with the ordinary jurisdiction of the said Orphan's Court of Hudson County.

3. That there are assets in the State of New Jersey belonging to the estate of the said F. Augustus Heinze, from which this exceptant is entitled to be paid. 10

4. That this exceptant has recovered a judgment against the said administrator, but he has refused to attempt to reduce the assets in New Jersey to his possession and pay this exceptant's judgment therefrom.

5. That the administrator herein has made a motion before Hon. Luther A. Campbell, Judge of the Hudson County Circuit Court, in which said Court said judgment was obtained to open the judgment so obtained by this exceptant, which said motion is still pending and undetermined. 20

6. For other reasons to be shown on the hearing herein.

Dated March 7th, 1921.

ASSETS DEVELOPMENT COMPANY, 30

By (Signed) Arthur P. Heinze,

President.

(Signed) JOHN M. NOLAN,

Solicitor for Exceptant,

9 Colt St., Paterson, N. J.

**Supplemental Exceptions of Assets Development Company.**

**IN CHANCERY OF NEW JERSEY.**

	<p>In the Matter</p> <p>of</p>	
10	<p>The Application of ALBERT C. WALL for the Settlement of his Account as Substituted Administrator of F. Augustus Heinze, deceased.</p>	<p>Supplemental Exceptions of Assets Development Company. (Filed June 20, 1921)</p>

20 Assets Development Company, a corporation of the State of New Jersey, hereby makes supplemental exceptions to the report and account of Albert C. Wall as substituted administrator of the estate of F. Augustus Heinze, deceased, by reason of facts arising since the filing of the said account, and for the following supplemental reasons:

30 1. After this Court had adjourned the hearing herein to await the disposition of the motion referred to in this exceptant's exception No. 5, heretofore filed herein, the said motion was granted and the judgment against the said substituted administrator in favor of this exceptant was opened and he was allowed to plead a certain decree barring creditors granted by the Surrogate of Hudson County, in the said action in Hudson County Circuit Court. The Trial Court, however, limited the issue to be tried in the said action to the plea of the decree barring creditors.

40 Such proceedings were thereafter had in said Hudson County Circuit Court that judgment

*Supp. Exceptions of Assets Development Company.*

was granted in favor of the said Albert C. Wall, substituted administrator, and against this exceptant dismissing the complaint without costs. From the judgment entered on the decision of the said Hudson County Circuit Court, this exceptant did on June 3, 1921, appeal to the Court of Errors and Appeals of New Jersey, which appeal is now pending and undetermined. The said appeal is intended to bring up for review among other matters the question whether an administrator may waive a decree barring creditors and whether he may after having failed to plead a decree barring creditors have the judgment opened and be allowed to plead a decree barring creditors after nearly a year's lapse of time from the taking of judgment against him.

Dated June 3, 1921.

ASSETS DEVELOPMENT COMPANY,

By

President.

Solicitor for and Counsel with Exceptant,

9 Colt Street,

Paterson, New Jersey.

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**Exceptions of United Copper Company.**

(Filed , 192 .)

**IN CHANCERY OF NEW JERSEY.**

In the Matter  
of

10 The Application of ALBERT C. WALL for the settlement of his Account as Substituted Administrator of F. Augustus Heinze, deceased. } Exceptions

United Copper Company, a corporation of the State of New Jersey, which has filed its claim with Albert C. Wall, substituted administrator, etc., for \$450,000 hereby excepts to the account of Albert C. Wall as substituted administrator of the estate of F. Augustus Heinze, deceased, for the following reasons:

1. The Court of Chancery has no jurisdiction of the application or petition of the said Albert C. Wall to settle his account, or of the subject matter thereof; and the said account is improperly filed therein.
- 30 2. That the said Albert C. Wall was appointed substituted administrator of the estate of F. Augustus Heinze, deceased, by the Orphans' Court of the County of Hudson, on or about December 11, 1916; that he has filed no account therein; that on the facts appearing in the petition and application herein, this Court should not enter-

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*Exceptions of United Copper Company.*

tain the administrator's application, because no special reason appears for interfering with the ordinary jurisdiction of the said Orphans' Court of Hudson County.

3. That there are assets in the State of New Jersey belonging to the estate of the said F. Augustus Heinze, from which this exceptant is entitled to be paid. 10

4. That this exceptant has filed its claim with the predecessor of the said administrator, but he has refused to attempt to reduce the assets in New Jersey to his possession and pay this exceptant's claim therefrom.

5. For other reasons to be shown on the hearing herein.

Dated June 20th, 1921. 20

UNITED COPPER COMPANY,

By Arthur P. Heinze,

its Vice-President,

and of counsel,

Great Neck, N. Y.

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**Exceptions of Western Development  
Company.**

COURT OF CHANCERY IN NEW JERSEY.

In the Matter  
of  
The Accounting of ALBERT C.  
10 WALL, Substitute Adm. of the  
Estate of F. AUG. HEINZE.

REASONS WHY ADMINISTRATOR SHOULD NOT BE  
ALLOWED TO RETIRE.

Submitted by Western Development Co. through  
Arthur P. Heinze, its President and Counsel.

1. This Court should not take jurisdiction  
of this proceeding:

20 (a) It did not appoint Mr. Wall, whereas the  
Orphans' Court did, and he should therefore file  
his account in the Orphans' Court.

2. The Orphans' Court has concurrent juris-  
diction of accountings of administrators and ex-  
cept for special reasons, the Chancery Court will  
not interfere. *Salter vs. Williamson*, 2 N. J.  
Eq., 480 and 489.

3. There are no special reasons in this case  
30 and none have been alleged by the administrator  
in his petition.

4. This is the case of an insolvent estate and  
of these the Orphans' Court has exclusive juris-  
diction, as particularly provided by statute.

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5. Said Orphans' Court is peculiarly the tribunal to try disputed claims although in this case it is quite questionable whether there are any disputed claims before the Court, as none of those filed have been rejected by the administrator, as provided by statute, viz., in writing and within six months after filing. 10

6. There is an appeal pending from the decision of Mr. Justice Campbell opening the judgment obtained by the Assets Dev. Co. for one special reason only and that is to let the administrator plead the bar of the decree barring creditors which he had neglected to plead before judgment was entered. Should this Court now entertain jurisdiction and discharge Mr. Wall without appointing a substitute to take his place and continue efforts to administer the Estate in New Jersey, and should the Appellate Court thereafter decide that Mr. Wall's neglect to plead the bar of the decree was not a good ground for opening the judgment, after the time to appeal had expired, the judgment creditor would then be left in the peculiar position of having a judgment against an administrator who had been discharged in the meantime and all the proceedings to bring in the New Jersey assets for proper distribution among creditors, either resident or such as may have filed their claims in New Jersey, would have to be begun again. 20 30

7. Mr. Wall has not completed his duties as a trustee to bring in the asset which has now been determined to be a New Jersey asset.

8. These proceedings, as an effort to obtain a final disposal by discharge of the administrator (thus as Mr. Treacy for the Am. S. & R. Co. 40

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expressed it, getting a final clearance) are not in good faith and are in fact directly contrary to the assertions which prevailed with Mr. Justice Campbell and caused him to open the judgment, viz., on the ground that the decree barring creditors was not finally destructive of the rights of the claimant nor as extensive as the bar of the Statute of Limitations and that the creditor's right to come in and have subsequently discovered or unaccounted for assets brought in and then distributed proportionately to all applying, even though after decree barring creditors, was still preserved and open to the creditors.

Now these same parties, after prevailing with this argument upon a justice very reluctant to grant the favor requested, come into this Court and ask for an order which shall finally dispose of claimants' rights in the sense they desire, viz.: wipe them out. It does seem about time that the morass of charges and suspicion thrown about this case shall be cleared up.

A complicated structure of lies has been built up and is continued; for the benefit of whom? Solely for the benefit of a Shylock who took advantage of the distress of a man at the height of the 1907 panic to force said man to return to him at \$125 a share 7,000 shares of bank stock bought a year before at \$325 a share and on which the debtor had paid \$50 cash per share and interest. The Shylock got his stock back and his \$350,000 cash and interest and exchanged his bank stock later in a merger for Irving National Bank stock, netting him practically all Heinze had originally agreed to pay him and in addition got this note for some \$900,000, the basis of a judgment for \$1,250,000, which now, with interest, amounts to about \$2,000,000 and due to the

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judgment he obtained just before his victim's death he has now swallowed his entire estate in New York State, has gone after and obtained about \$300,000 worth of life insurance moneys which might have been available in part at least to start his victim's little son in life and in business, this Shylock we say comes over here to New Jersey, insults the Courts of this State by charging that it is my intention to obtain a collusive and corrupt judgment over here, and then proceeds to lie and continue to lie without restraint of any kind. He constantly states there is and was no creditor in New Jersey, but he does it with his tongue in his cheek, knowing full well that the answer under oath of the Am. Smelting & Refining Co. admits and asserts that it is a creditor and a New Jersey corporation; therefore, necessarily, a New Jersey creditor of the deceased at the time of his death. In spite of this fact, this creditor's counsel continue to assert this palpable falsehood and the further one that there is a conspiracy between these claimants and Mr. Heinze's sister; apparently the conspiracy is claimed to be that they shall pretend to have claims and if they collect the money due them the conspiracy charged is that they intend to turn the money over to Mrs. Fleitmann—the more absurd the charge the more chance of belief according to Gould's counsel and the New York administrator fraudulently posing in this Court as acting on behalf of all the creditors, when he himself has testified under oath that the estate is not nearly sufficient to pay even Gould's lone judgment and there will, admittedly, be nothing left for other creditors in New York, nor for his little son, yet he goes on posing and lying by an *amicus curiae* trying to impose on this Court and trying to establish a

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new method of paying debts by vilification in the Courts instead of in cash. Does he allege that the note held and purchased for value by the Assets Dev. Co. on which now a balance of some \$6,000 is due, has been paid, or is a forgery or was not issued for value? No; none of these things—  
 10 merely he asserts that the effort to obtain this \$6,000 is not made in good faith.

Does he allege the other note for some \$20,000 now due, also held by the Assets Dev. Co. was paid, or was a forgery or was not issued for value? Nothing of the kind. As to that note, in fact, he really has said nothing. Apparently, that note is to be paid by silence. But Gould's judgment based on a note obtained by most shameful  
 20 extortion practised by the son of a notorious thief, no, of course, that judgment is sacro-sanct, that judgment should not be paid in such Bolshevik coin of the realm as silence, no not much, that should be paid by the man's life blood, by his death, by his entire estate, by the very last cent that can be squeezed out by every device known to able and unscrupulous lawyers, including shameful, unmitigated and unceasing lying and  
 30 reiterated lying. It is shameful that there should be any possibility of such lying being successful. That it is lying and nothing but that should be evident if all the facts of the case were actually understood by the Court and this Court were not imposed upon by counsel reckless, adroit and unscrupulous, posing as *amicus curiae* while being paid as counsel by the domiciliary administrator whose sole real interest personally is to increase his fees. He has no duty imposed upon him by  
 40 the Courts of his home jurisdiction to go into another State and try to influence those Courts

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to deny justice to proper applicants applying in a proper way and through the recognized channels to enforce their just claims. What patience should we have with a debtor trying to escape the payment of those notes by such denial?

That it is drivel and nothing but drivel should be evident to anyone wholly conversant with the fact, which is a fact that most of these claims filed by Mr. Arthur Heinze's companies are ultimately and in the last analysis for the benefit of his wife and children. This applies to the two claims of the Assets, the claim of the new United Copper Co. and the claim of the Western Dev. Co. as Mr. Heinze's wife had advanced over \$140,000 to said Company to help it pay Mr. Heinze's creditors, practically all of whom were also Mr. F. Aug. Heinze's creditors, though, perhaps, they did not know it. This being a proven and uncontroverted fact, now at any rate, even if it was not so understood by the Court before, can it be possible that this Court will entertain and act in belief in the charge that Mr. Heinze conspired with his sister to defraud his wife and children. Merely to state the case, it seems to me, refutes the charge. It is so preposterous and laughable a charge that no pleader would subject himself to the laughter of a Court and jury as to plead that as a reason for being relieved from the payment of balances due on notes and of amounts stipulated for the delivery of securities evidenced by signed receipt and not claimed to have been paid or returned by the debtor acting as a trustee.

We think it is time the lying fog were dispersed and the domiciliary administrator were put to the proof

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(1) that the balances on the notes were paid

(2) that the securities delivered in trust were returned or accounted for; or

01 (3) that he discontinue his efforts to impose on the Court of this State by lying and unsupported assertions.

Further we might urge that the question of whether there are any creditors in New Jersey or not is *res adjudicata* in this case to the effect that there are by the original administration being sustained on appeal and the domiciliary administrator failing to contest that decision by appeal to the Court of Errors and Appeals as he should have done. So that point has been decided against him.

02 This fact was not brought to the attention of the Court of Errors and Appeals and they held the evidence submitted in the Wall case insufficient to establish creditors in Jersey. As a matter of fact Mr. Wall stated in open Court that it was his opinion that it was his right to pass upon the claims filed and not that of the Court, but he now considers himself in an *impasse*, as he naturally does not of his own motion want to go counter to

30 said decision, so that we now have the remarkable situation, that there is a New Jersey asset, that there were New Jersey creditors at the time of decedent's death, that it is *res adjudicata* in the case, that there are New Jersey claimants, that particular claimants have established the merit of one claim at any rate, that there are a large number of claimants in New Jersey whose claims have not yet been adversely passed upon by any Court,

40 that those whose claims have been criticized have been so passed upon under an erroneous sugges-

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tion, that they also should have a right to prove their claims, if they are considered to be rejected, though the Administrator has failed to notify them to that effect and yet, with the asset there, in full sight in all its effulgence, the danger appears great that it may go to Shylock and that by a Court of Equity. 10

Finally, we might refer to the case of Lewis, Adm. of Normand vs. Eliza Grogard, 17 N. J. Eq., 425, as establishing the principle that a creditor need not be a resident of the State where administration is sought, but may endeavor to collect his claim in a State where he can find an asset, in that case the State of Pennsylvania (see p. 428). In this case the non-resident claimants are applying in the State of New Jersey and all the resident claimants in New Jersey ask is the opportunity to establish their claims before a jury or before any Court. As outlined in the case of 20

Ryder vs. Wilson, 41 N. J. L., 12,

where it is stated that the "remedy of a creditor in laches, is to present his claim to the Orphans' Court, and to bring in at the same time property not accounted for and under the direction and order of the Court to have his claim established and the newly discovered property distributed. 30

**Testimony.**

## IN CHANCERY OF NEW JERSEY.

10	<p style="text-align: center;">In the Matter of The Estate of F. AUGUSTUS HEINZE, deceased.</p>	}	<p>On Report &amp; Account of Albert C. Wall, Adminis- trator in New Jersey.</p>
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## APPEARANCES:

- Mr. ROBERT J. BAIN (of COLLINS & CORBIN), and MR. ROYALL, of the New York Bar, for Walter A. Fullerton, Domiciliary Administrator.
- 20 Mr. JOHN J. TREACY (of TREACY & MILTON) and Mr. THATCHER, of the New York Bar, for American Smelting and Refining Company.
- Mr. JOHN M. NOLAN, for Assets Development Company.
- Mr. ALBERT C. WALL, *pro se*.
- Mr. ARTHUR P. HEINZE, for United Copper Company.
- 30 Before—HON. JOHN GRIFFIN, Vice Chancellor.

Chancery Chambers, Jersey City, N. J.,  
June 20, 1921.

Mr. Wall: We are here in the Heinze case. When we were last before your Honor it was adjourned,

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at the request of Judge Treacy; and the real point is why I should not be discharged, and my account allowed. There was also, at that time, thrown out a suggestion of the possible question as to whether the accounting should be in the Orphans' Court, or here; and then there were long statements by various people as to the course of the litigation. I imagine that there is no doubt as to what the law is, namely, that such an account will be entertained here, if there exist special circumstances which make it proper to do it. That is, if it is a mere routine matter, it is usually dealt with in the Orphans' Court, but—

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The Vice Chancellor: I do not think you need argue that, Mr. Wall.

Mr. Wall: No, sir.

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Mr. Bain: If your Honor please, I desire to introduce some evidence in this matter, almost all of it documentary. May I proceed?

Mr. Nolan: May it please the Court, are you going to dispose of the question of jurisdiction now?

The Vice Chancellor: Oh, yes, I will entertain jurisdiction. I have heard counsel last Monday. I think it is clearly a case where the Court should entertain jurisdiction.

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Mr. Bain: I offer in evidence—

Mr. Nolan: May I first offer the supplementary exceptions, showing the results of the litigation?

The Vice Chancellor: Have you served them on the other side?

Mr. Nolan: No, sir; I will serve them.

Mr. Wall: I would like to make a formal objection to it, in case there is anything in these exceptions that lengthens this thing out.

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The Vice Chancellor (Upon examining the supplemental exceptions submitted by counsel for the

*Opening of Case.*

Assets Development Company): I think they should be in, since it is setting up, by way of supplement, what has transpired since.

10 Mr. Heinze: May I ask to have these exceptions filed (presenting a paper to the Court)? They are practically the same as the exceptions of the Assets Development Company.

The Vice Chancellor: Is the Western Development Company in this matter?

Mr. Wall: All the Western Development Company has done is to file a claim with me. I do not know that they have any standing in this matter, unless Mr. Heinze's understanding is that they submit to the jurisdiction of this Court. Do you submit, or not?

20 Mr. Heinze: We except to the jurisdiction.

Mr. Wall: Then he has no standing here, has he, your Honor?

The Vice Chancellor: He is a creditor, and if he files an exception, of course he enters an appearance. Let there be a written appearance entered for the Western Development Company. A written appearance should be filed for the Western Development Company.

30 Mr. Treacy: Now that your Honor has determined that you have jurisdiction of the matter, on behalf of the American Smelting and Refining Company, our position is, as you know, simply this: Your Honor has had this litigation in your hands for several years, and you are familiar with the position of the American Smelting and Refining Company, and we think that this is an appropriate time for such a decree to be made as would protect the American Smelting and Refining Com-  
40 pany against any and all of these claims that are asserted against the Administrator; and we hope

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that whatever decree you will make will be so framed that it will protect the American Smelting and Refining Company, which has no interest in the case excepting merely as the holder of the fund. Mr. Charles D. Thatcher, of the New York Bar, who is associated with me, and who was before your Honor in this matter several times before, is here today, and I think it would be proper that he should apprise your Honor of the situation as it exists in New York, where the American Smelting and Refining Company is a defendant in several litigations, and in which some of these parties here are parties, and I believe some of them are not; but there is one claim made against us over there, in two suits by the Miners Smelting Company, which it is important, I think, for your Honor to know about in reaching any final determination in regard to this matter which will settle the rights of all the parties. I would like to have Mr. Thatcher state it to you.

The Vice Chancellor: Of course, this has not appeared by legal evidence, Judge Treacy.

Mr. Treacy: Then we would like an opportunity, if that is so, to present an affidavit. But I think that Mr. Royall, who is a member of the firm of Sullivan & Cromwell, who are also in those cases, would stipulate on the record as to those facts.

Mr. Thatcher: May I suggest now to your Honor (because, unfortunately, I have a court engagement at two o'clock, in New York,) that the American Smelting and Refining Company have a single desire in this suit, and that is to be relieved of the burden of continuous, long-drawn-out litigation, and to put this fund where it belongs. There have been negotiations in New York, and I understand that Mr. Royall is in a position to obtain all of the

*Opening of Case.*

consents required for the payment of any money on account of the Miners Smelting Company claim, or on account of Mr. Fullerton's claim as New York Administrator; and our desire is that, as you proceed with this proceeding here, the decree be so framed simply that when it is entered, those consents may be required, so that we will have these consents for our protection. The only reason we ask for that is this—while we, of course, recognize your Honor's jurisdiction to proceed with the accounting and proceeding, the question has been raised as to whether your Honor might determine a claim adverse to the fund in controversy here—it being a mere debt, and not a thing in *rem*—and the Miners Smelting Company's claim being a claim of title to that entire fund—your Honor will recall that that was the central issue in the action originally brought by Mr. Heinze in this court, dismissed, unfortunately, not upon the merits, in the Court of Errors and Appeals; so that that controversy, which was the initial controversy of this entire situation, has never yet been determined. I do not think we need to determine it, because I think Mr. Royall is in a position—and I know I have talked with the New York counsel of the Miners Smelting Company and the interests they represent—and I think those gentlemen are in a position, when your Honor has determined the New Jersey claims and the way these matters should be handled, to furnish to us consents to your decree which will give us absolute protection against even an adverse claimant to the fund. Now, whether it is necessary to take testimony I really doubt. I think that what should be done would be to have the Miners Smelting Company appear here personally, and I think Mr. Royall can arrange that, and that then the matter can proceed as to these other

*Opening of Case.*

claims, and then the counsel can agree—and, in the absence of an agreement, we should ask a future opportunity to show your Honor, by proof, the exact situation, so far as adverse claimants against us are concerned.

The Vice Chancellor: As I see it, this is merely  
 10 an account by an administrator who claims to have  
 no tangible assets; the only asset he has, if any-  
 thing, is a right against the American Smelting  
 and Refining Company to compel them to turn over  
 these royalties in excess of the sum due to it from  
 the Heinze Estate—now, as I assume, that stage  
 is reached where there is a surplus in hand which  
 should be paid over by the American Smelting and  
 Refining Company either to Mr. Fullerton or to  
 Mr. Wall as ancillary administrator. In my opin-  
 20 ion in the case previously tried, in view of the fact  
 that the Chancellor signed the decree affirming the  
 appointment of Mr. Wall, which presupposed the  
 idea that there were assets and creditors in this  
 State, I did not undertake to pass upon that feat-  
 ure of the case, and did not think I would be re-  
 quired to do so, because I should be overruling a  
 decree signed by the Chancellor. But the Court  
 of Errors went beyond that, and they said there  
 30 were no *bona fide* creditors in this State. Now, if  
 that is *res adjudicata* (it appearing that a number  
 of these creditors appeared before me and testified  
 to what their claims were) then that is dispositive  
 of a great portion of this case. It has been drag-  
 ging along for a long time, and I want to simply  
 cut the Gordian knot and decide it one way or  
 another, and get it out of the way, so that if it goes  
 to the Court of Errors anyone that takes it there  
 40 may get there promptly and have it decided. This  
 case and the case that has been taken up on appeal

*Opening of Case.*

from Judge Campbell ought to go together; and I am going to decide it so that both can go together; and if I am right, then, automatically, that disposes of Judge Campbell's case in any feature of it; and if I am wrong, because Judge Campbell's decision is reversed, then I can be reversed at the same time, and the whole thing be in the course of a quick settlement. And I propose to dispose of the case so that possibly you can all get to the Court of Errors at the next term. But there should be evidence, it seems to me, of what transpired in the Court of Chancery in the suit by Mr. Wall against the American Smelting and Refining Company so that it can be established (if it can be) that the question of the validity of the claims is *res adjudicata* by the opinion of the Court of Errors.

Mr. Bain: I offer in evidence exemplified copy of the proceedings before the Surrogate of Saratoga County, New York, for the removal of Lida M. Fleitman as Administratrix of the estate of F. Augustus Heinze, deceased, in the State of New York, the proceedings including the petition for the removal of Lida M. Fleitman as Administratrix, and the decree removing her and appointing Walter A. Fullerton in her place.

The Vice Chancellor: All of these things appeared in the other case?

Mr. Bain: I think they did, but it is rather difficult to offer that whole record in the other case.

The Vice Chancellor: If you are going to establish that it is *res odjudicata*, it must be before me in some form.

Mr. Bain: I am going to offer the bill, your Honor's opinion, and the decree in the suit against the American Smelting and Refining Company—they will come later.

*Opening of Case.*

The Vice Chancellor: Must you not also offer the evidence, to show what was litigated?

Mr. Bain: I have no objection to offering the evidence; I will offer that.

The Vice Chancellor: It seems to me, that whole printed record should go in evidence, which establishes everything, including the proceedings taken in the New York court, which is now, I assume, *res adjudicata* in this Court. With the printed book, it seems to me, you have got the whole record, including all these exhibits you are now offering. 10

Mr. Bain: I am not quite certain that the printed book includes the record in the Prerogative Court.

The Vice Chancellor: Oh, no, it does not include that; what it includes is the proceedings in the Court of Chancery in the suit of Mr. Wall against the American Smelting and Refining Company and others; and that testimony was taken to prove their claims. Now, upon the proof offered in that case by Mr. Geer and others, who were claimants, the Court of Errors said there were no *bona fide* claims in this State, and it was upon that theory that the appeal was dismissed and the bill dismissed. Now, if that is *res adjudicata*, it must be so based upon what was offered in that case, including the evidence. 20 30

Mr. Wall: The facts as to those claims are in the evidence only, and there is no other place where the facts as to those claims were set forth.

Mr. Bain: Except in the opinion of the Court of Errors and Appeals.

The Vice Chancellor: That is not evidence; it is the decree itself that is evidence; and the opinion in the Court of Errors, I assume, is supposed to correctly represent what is in the decree. 40

Mr. Bain: Well, I offer in evidence the record which was before this Court and before the Court

*Opening of Case.*

of Errors and Appeals in the suit of Albert C. Wall, as Substituted Administrator of F. Augustus Heinze, deceased, in place of Arthur P. Heinze, removed, against the American Smelting and Refining Company and others, the offer being of the complete state of the case.

10 The record is admitted, without objection, and marked Exhibit F-1, June 20, 1921.

Mr. Treacy (To Mr. Bain): Are you putting in the answer of the Smelting Company?

Mr. Bain: That, (referring to Exhibit F-1, June 20, 1921) includes all of the pleadings, the testimony and the exhibits in the cause.

Mr. Treacy: That includes the answer of the American Smelting and Refining Company, then.

20 Now, will you stipulate that the claim of the Miners Smelting Company, set forth in the case of Wall vs. American Smelting and Refining Company, as shown in the record just introduced in evidence, is the same claim as is now the subject of litigation in the Supreme Court of Saratoga County, and in the United States District Court for the Southern District of New York—there are two cases? Is that agreed to?

30 Mr. Bain: That is agreed to. .

Mr. Treacy: And that those courts have personal jurisdiction over the American Smelting and Refining Company, as one of the defendants?

Mr. Bain: Yes, sir.

The Vice Chancellor: What has Mr. Heinze's counsel to say to that?

Mr. Heinze: I have not seen the document, your Honor.

40 The Vice Chancellor: Well, it cannot be received unless all parties consent to it. The primary litigant here, I think, is Mr. Heinze, or his various companies.

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*Discussion.*

The Vice Chancellor: There is an exception to the account on the ground that several of these claims were filed after the time to limit creditors had expired—after the order barring creditors was entered? I see that there are several claims here that were filed in 1918, after the order barring creditors had been entered. Now, it can hardly be contended, can it, that they are in a position in this Court to question the right of the Administrator to a discharge? 10

Mr. Heinze: Why, under the decisions, as they have been pronounced in New Jersey, your Honor, I should say, yes—that the decisions are that the decree barring creditors, here in New Jersey, merely protects the administrator and enables him to close up an estate quickly; but it does not, in any way, shape or manner, destroy the right of a claimant to a distributive share of the estate, if he can discover an asset and bring it into court. 20

The Vice Chancellor: If he can find other assets.

Mr. Heinze: Now, Mr. Wall has not accounted for this indebtedness. It is true he has not been able to get it, up to date, but there is no reason why he should not get it.

The Vice Chancellor: No, you miss my point. A creditor that has presented a claim before the decree barring creditors has a lien on the property in the hands of the Administrator; his claim is affixed to the fund in the hands of the Administrator. That is not so in the case of one whose claim is presented after the decree barring creditors, excepting, perhaps, as to the surplus, or other property after it is discovered. Now, in so far as this case is concerned, as I see it, I have only to deal with those persons whose claims were presented prior to the decree barring creditors. They can question Mr. Wall's account, and they can except to it. Therefore, I will deal, only, with 30 40

*Discussion.*

10 exceptions filed by those who are *bona fide* claimants under claims filed prior to the decree barring creditors. Now, when this matter is disposed of, if Mr. Wall has any property, why should not an order go discharging him; and why, on proper pleadings presented to this court, should not a

20 decree go declaring that there are no claims against this property, and that it is the duty of Mr. Wall to turn over this property, in so far as he has any right, title and interest in it, to the domiciliary administrator? In other words, if there are no claims found, and there are assets, would not I do now just as the Court would do in case there were legitimate claims of property in this State, and, after the ancillary administrator

had paid the claims here, and had a surplus in his hands, order him to turn the property remaining over to the domiciliary administrator? Now, if I should reach the conclusion here that there are no *bona fide* claims, and discharge Mr. Wall, why should not I direct him to transfer all his right, title and interest, if any, in this property of the American Smelting and Refining Company over to Mr. Fullerton as domiciliary administrator?

30 Mr. Heinze: Will your Honor permit me to file, on behalf of the United Copper Company, the same exceptions as the Western Development Company?

The Vice Chancellor: I will not permit any filing of exceptions by any claimant who has not filed his claim before the order barring creditors was entered.

40 Mr. Heinze: This is by a creditor who did file his claim prior to the decree barring creditors—that is the claim for \$450,000.

The Vice Chancellor: That was a claim assigned by a New York creditor to a New Jersey creditor.

Mr. Heinze: Yes, that is correct.

*Discussion.*

The Vice Chancellor: Well, I should want to consider that very carefully, as to whether or not I should permit a foreign claimant to assign a claim to a New Jersey creditor for the purpose of giving jurisdiction to this Court to appoint an administrator. I will think that over, Mr. Heinze. I want to get rid of this case, and try to do it finally in such manner that if there is any appeal it is going to be settled in one more shot. 10

Mr. Heinze: Frankly, your Honor, I thought, under the decision of Lewis, Administrator, vs. Grognard, 17 Eq., 425, that the law of this State had really been established, that it did not require a New Jersey resident in order to have administration of an asset. That is why I have not asked the United Copper Company to file any exception. 20

The Vice Chancellor: Well, I will consider that. I think our statute has given broader powers to foreign administrators and foreign executors than they had in the time of 17th Equity.

Mr. Heinze: You mean, so as to destroy the rights of claimants to come in?

The Vice Chancellor: No, I think around the time of 17th Equity there was not any right of a foreign executor to sue in this State. I think now he is allowed to do so upon filing a certificate of his appointment in the Court in which the suit is brought. That is a statute passed since 17th Equity. 30

Mr. Heinze: But the Administrator has not taken advantage of that?

The Vice Chancellor: Why, he has got the property already, in New York; theoretically it is in New Jersey, because it is a New Jersey corporation; and it is going to create the utmost confusion in the business world with a corpora- 40

*Discussion.*

tion, having two residences, that is going to be subjected to litigation in both, where different decrees are going to be filed. There is an old opinion by Judge Story (that I did not cite in my former opinion) that clearly points out what a dangerous and insufferable situation would be created by that situation. Now, this corporation, while nominally a New Jersey corporation, is really a New York corporation. This property you speak of was never in the State of New Jersey—it is over there, subject to attachment, or to any possessory action which may be brought in the State of New York; and a decree in the State of New Jersey directing this corporation to turn over this property to Mr. Wall would afford no protection whatsoever to the corporation in the State of New York, where the property is, and where they can physically take it out of the hands of the corporation; and it is just that absurdity that I am going to try to avoid—especially so, where the parties now setting up claims to this fund are persons holding New York claims that might have been presented to the New York administrator there. I want to dispose of it in the shortest possible way, so you may go to the Court of Errors with this appeal from Judge Campbell, and let it be settled once and for all.

Mr. Heinze: Will your Honor permit us to introduce additional evidence, so as to show that some of these things were done under a misapprehension?

The Vice Chancellor: I am going to let you present all the evidence you can, so there will be a full hearing and ample grounds to set up any claims or right you may have.

Mr. Bain: Before Mr. Heinze proceeds, I am not sure my former offer included the record in

*Discussion.*

the Court of Appeals; I want to now offer a certified copy of the record in the Court of Appeals of the suit the record of which, in the Court of Chancery, I offered in evidence. It is certified by the Clerk of the Court of Errors and Appeals, and includes the entire record.

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The record is admitted, without objection, and is marked Exhibit F-2, June 20, 1921.

The Vice Chancellor: You have not offered the remittitur in the Court of Chancery yet.

Mr. Bain: No, the remittitur is here—the remittitur from the Court of Errors and Appeals is included in the documents which I now offer.

The Vice Chancellor: But you have not got the decree of the Court of Chancery, on remittitur.

Mr. Bain: Well, that was an affirmance of the decree in the Court of Chancery, and that decree is included in the record of the Court of Chancery which went to the Court of Errors and Appeals.

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The Vice Chancellor: I am talking about the remittitur on the decree in the Court of Chancery.

Mr. Bain: Oh, no, I haven't got that, but I will offer that, also.

Mr. Nolan: If the Court please, do the remarks which were addressed to Mr. Heinze with respect to his claim apply to the claim of the Assets Development Company? That company did not file its claim with the Administrator until after the decree barring creditors was made. Although it has had litigation since, it did not file its claim until after the decree barring creditors was made.

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The Vice Chancellor: The Union Bank of Brooklyn filed its claim in 1920; that is out. Calvin O. Geer, of East Orange, filed his claim on June 21st, 1918; that is out. The decree barring creditors was entered on June 18, 1917. The Assets De-

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*Discussion.*

velopment Company claim was filed in 1918—two claims; they are both out. The Luther Martin, Receiver of the United Copper Company claims (there were two claims filed in 1918) are out. The only claims that appear to be in here now are those of the United Copper Company.

10 Mr. Wall: Those were both dealt with by the Court of Errors.

The Vice Chancellor: The two claims of the United Copper Company, yes. Their exceptions are the only ones I will consider on behalf of the claimants, because they are the only ones that have a right to call upon the Administrator to account.

20 Mr. Nolan: Then that also will affect the claim upon which I have filed the exceptions—the Assets Development Company's?

The Vice Chancellor: Yes, if it was filed after the order to limit creditors had expired.

Mr. Heinze: Did your Honor say that you would receive additional evidence as to the *bona fides* of the claim?

30 The Vice Chancellor: No, I do not think I will. I am going to let you make your offer, and overrule it, I think, so that the Court of Errors may pass upon it. That is only my present impression. But bring your evidence in, and I will rule upon it when you offer it.

Mr. Nolan: The case of the Assets Development Company is contained in the exceptions filed with your Honor. I assume there is no doubt about that. And it will probably be admitted on the record—

40 The Vice Chancellor: Was that claim filed afterwards?

Mr. Nolan: Yes, it was filed afterwards.

The Vice Chancellor: Then I won't consider it.

Mr. Nolan: You will not consider an offer to

*Discussion.*

prove that after this proceeding they commenced an action at law?

The Vice Chancellor: No, I will not consider any claim that was not filed in time, on this application, unless you can show me some authority to the contrary.

Mr. Nolan: My idea as to all of that would be this—that where the administrator has come into equity, having abandoned the Orphans Court, and comes in here with his account, showing possible assets, and asserting an equity head of jurisdiction, then we are in a position to be able to prove claims in this court, if we show reasonable grounds for having our claims considered.

The Vice Chancellor: Well, do you think a court of equity has power, against the statute, to make a decree distributing the fund among persons who had not presented their claims and had not their liens affixed to the fund by presenting the claims before the rule barring creditors was entered—is that it?

Mr. Nolan: That is my proposition—that where the administrator comes in and files his account in this Court—where he gives up the statutory tribunal, the Orphans Court, and comes in here and alleges equitable grounds for his report and account and discharge, that then we would have the right to assert our claims in the equity court. I cannot give an authority on that, at the moment; my impression is that there have been one or two cases in Chancery—

The Vice Chancellor: Well, you had better look them up.

Mr. Nolan:—wherein an executor or administrator was brought in, and although the time to file claims had expired, yet, where he had nothing

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*Discussion.*

in his hands at the time that he filed his account, a creditor asserting a claim was enabled, in one proceeding, without going back to the Orphans Court, to assert his claim to funds that would come into the administrator's hands.

10 The Vice Chancellor: Well, is not that done on a petition? Where a man does not present his claim in time, and there is a surplus in the hands of the administrator after paying all the debts proven, has he not the right, then, to present his petition to the Court in some manner and get a direction that his claim be paid?

20 Mr. Nolan: That would be to the Orphans Court, yes, sir. Here, I take it, from the alignment of the parties now, and the proceedings had, we, in effect, have a bill of interpleader with the accounting proceedings—that is, all persons who have an interest in the fund are brought in as parties. Now, back of that, I suppose, is the whole question whether, under the circumstances of the case, there are assets in this State. But, since Chancery takes hold for one purpose, I think it can take hold for all purposes.

30 The Vice Chancellor: Where it does that it deals with everything germane to the common issue. It would not litigate a divorce suit in a suit for an accounting; but everything in the out-branches or ramifications of the case that is germane to the primary issue the Court will deal with and dispose of.

40 Mr. Nolan: Well, the thought in my mind was this—suppose the Court has the account filed and passes it here, that, alone, would not dispose of the question whether there are assets in the State of New Jersey.

*Discussion.*

The Vice Chancellor: It would do this, though —if the Court passes this account on proper proceedings (I do not know that the case is in shape to do it), when the account is passed by the Court of Chancery and disposed of, whatever surplus there remains after the payment of the creditors in this State, the Administrator here would be directed to pay over to the domiciliary administrator, unless something else intervenes that checks that course. Now, here there are no visible assets; there are book assets, or assets nominally in the State because this corporation is a New Jersey corporation. The most this Court could do would be to direct the administrator here to assign and transfer to the New York administrator all his estate, right, title and interest in this fund, so as to cut off any question of anyone in this State thereafter having any claim against it on account of debts. 10 20

Mr. Nolan: Now, the petition of the administrator here recites that he has no assets; now—

The Vice Chancellor: Well, the Court of Errors held that there were assets here, and I am inclined to follow it.

Mr. Wall: I said "I received no assets." 30

Mr. Nolan: He has received no assets; now, I presume the proceeding would be to go back to the Orphans Court and say that there are assets in the State which have not been reduced to possession, and we exhibit a claim against those assets after the account has been filed. Now, instead of being remitted back to the Orphans Court, my proposition is to dispose of it in this equity proceeding. 40

The Vice Chancellor: How long do you think it is going to take to offer your testimony and argue this case?

Mr. Nolan: I do not think there is a great deal of testimony; I think my case can be readily ad-

*Discussion.*

mitted, as far as we are concerned, that we obtained a judgment at law, and that judgment was opened, and the issue arising on that judgment was limited to the effect of the decree barring creditors, and, on the retrial, that issue was decided against us.

10 Mr. Bain: You are speaking now of the claim of the Assets Development Company?

Mr. Nolan: Yes; that is the only one I am speaking of.

The Vice Chancellor: Of course that is a question which arises between you and Mr. Wall. If Mr. Wall happened to let go by his plea of the bar of the statute, he may have to answer for it. It may not be pleasant, but that may be his situation.

20 Mr. Heinze: What I really had hoped, your Honor, was that you would be willing to hear some testimony that would go towards contradicting the idea which prevailed in the Court of Errors and Appeals to the effect that these claims were not filed in good faith. Now, for instance, a statement was made in the opinion that the Assets Development Company paid nothing or gave nothing for this note—now, the facts were that

30 it did.

The Vice Chancellor: I do not care about that; they have not proved their claim in time.

Mr. Heinze: Well, that is true, your Honor, they did not file it in time; but, as I take it, the assets still being here, unless your Honor removes them—for instance, Justice Campbell opened this judgment the other day on the statement of Mr. Wall (and of Mr. Bain, I think, too)

40 that this would have no effect upon the rights of the Assets Development Company, or its ability to recover them—fully recognizing the fact that the Assets Development Company had a perfect right

*Discussion.*

to go into the Orphans Court after the account had been exhibited, and ask the Orphans Court to bring this asset in.

Mr. Wall: I do not remember any such thing as that.

Mr. Heinze: Justice Campbell incorporated it in his opinion? He said that the Assets Development Company would have other remedies and that is the reason he opened the judgment, and he so states. 10

Mr. Wall: What you are talking about is that the decree barring creditors does not bar participation in any after-discovered assets. Now, everybody admits that. That has nothing to do with what you say.

Mr. Heinze: Well, there would not be any after-discovered assets if his Honor transfers the assets to New York. 20

The Vice Chancellor: Well, there is enough in the case to deal with every question. You control the action of the United Copper Company. Every claim that you assert for the Western Development Company, or the Assets Development Company, you can use in their claim; and their claim was filed within time, according to the record—that is right, is it not? 30

Mr. Wall: Yes, sir. He filed the United Copper claim himself when he was Administrator, and he was the moving spirit in that.

The Vice Chancellor: Then you have something there to fully litigate every question that will arise. I think what I will do, gentlemen, is to set this case for hearing on Friday the 24th, and will then hear whatever testimony you have. 40

Mr. Wall: I cannot be here that day. I do not suppose it is necessary for me to be here; I am go-

*Discussion.*

ing abroad the next day, and I cannot be here that day, because I have got some matters on in which there are a great many people interested, many more people than are interested in this.

10 The Vice Chancellor: Well, what can I do? I am filled up every day this week until Friday, and am filled up until July 1st.

Mr. Treacy: I have a reference in another matter on that day, and I would like to have some other day set.

Mr. Bain: Will your Honor go on this afternoon? Mr. Heinze says he is ready, I believe.

The Vice Chancellor: Yes; all right; we will go on this afternoon.

20 Mr. Heinze: I have not been able to get some exhibits that I expected to be able to introduce, just at present; they seem to be lost; they were delivered to the Referee, and he is hunting for them now.

Mr. Wall: Well, is there any reason, your Honor, why I should not be discharged?

30 The Vice Chancellor: The only reason I can see is that perhaps you have two remedies—one is to be discharged after the trust is closed, or the order of distribution is entered, and the other is for an immediate discharge before the trust is closed, if there are good grounds for discharging you. Now, here is this appeal from the judgment of the Circuit Court—you have got to exist as Administrator to have that litigated.

Mr. Bain: Why, your Honor? Is not a judgment under appeal a judgment, nevertheless? The Assets Development Company now has no claim against this estate.

40 The Vice Chancellor: Suppose the Supreme Court should think it has?

*Discussion.*

Mr. Bain: Well, as I understand the law, a judgment under appeal is nevertheless a judgment, and is given the effect of a judgment.

The Vice Chancellor: Certainly.

Mr. Bain: So, as the matter now stands, by a judgment of the Hudson County Circuit Court the Assets Development Company has no claim against Mr. Wall; now cannot the Court proceed to judgment now? 10

The Vice Chancellor: Suppose the Supreme Court should reverse Judge Campbell, then there would be a judgment against Mr. Wall, as administrator, and where is he?

Mr. Bain: There would not be any judgment on appeal against Mr. Wall, for Mr. Wall would be out. It might be that your Honor would not think it advisable to proceed until the Court of Errors and Appeals decided that matter; but I haven't any doubt that your Honor would have the right to proceed, if you wanted to. 20

The Vice Chancellor: There is no doubt about that; but I am going to proceed upon the theory that Judge Campbell will be sustained; and, instead of waiting to have the Court of Errors first pass upon that, and then proceed with the case, and then have this case go to the Court of Errors, I am going to decide this case on the theory that Judge Campbell is right, and then let both cases go to the Court of Errors, and, automatically, they can adjust the equities between the parties then. 30

Mr. Wall: Now, what your Honor said about an intermediate account suggests a thought: Why should not this account be passed and allowed, and a counsel fee awarded to me, on paper; and it might be that that would bring to light some of the people who are interested in the next step in 40

The Vice Chancellor: Yes.

*Discussion.*

10 this thing; and, peradventure, I might be paid. And, as it is now, I see that it is turning in your Honor's mind that I should be serving through the Fall and Winter of next year, also; and I was the Court's appointee (I have that dignity— I was not appointed on the application of any party), why should they be allowed to use me in this matter? Here is Mr. Heinze, who pays nobody; and he got me into this thing, or, rather, he got me in by his own diversions.

Mr. Heinze: I offered to pay you, Mr. Wall.

Mr. Wall: Pay me what?

Mr. Heinze: I offered to pay you your expenses, and offered to put up a bond.

20 Mr. Wall: That was a future matter. Now, why should not some order be made that that account be allowed as an intermediate account (if that is your Honor's view of it) and I be paid fifteen hundred dollars for my services in connection with this matter? Somebody—I do not put my finger on the person—but somebody connected with this thing ought not to be allowed to use the Court's appointee, and sit off in such a single attitude as it is easy to assume, while I have to attend at these hearings and give up my time.  
30 Now, is there not some justice in my position?

The Vice Chancellor: I have been all through it, Mr. Wall. I served in the matter for three years. Every time I sent out a circular it cost me about ten dollars for postage, and I did not have a retainer—oh, I had two hundred dollars; and you are in no worse position than I was.

40 Mr. Wall: Well, I will affirm that certainly if your Honor had one-tenth of the chance to get it that I have now, your Honor would have been paid. Your Honor's ingenuity would have seen to it that you would be paid.

*Discussion.*

The Vice Chancellor: Why, no; I don't think I ever gave a thought to money matters— they were aside from the practice of the law. I will set this matter for some day, or, if you are going on this afternoon, I will hear you; but there is no use in going on with it and then adjourning it.

Mr. Bain: Mr. Heinze says the only reason he cannot go on this afternoon is because he has not some exhibits which have been lost. There is no indication that they will ever be found. What Mr. Heinze is asking is that the thing go off indefinitely. 10

Mr. Heinze: The Referee is hunting for the papers in his office. They are either at the Referee's office or in counsel's office.

The Vice Chancellor: Well, in that case it is a mere matter of the offer of the paper when found. Is there anything more to do? You can take all your testimony except the offer of these exhibits, can't you? 20

Mr. Heinze: Yes.

The Vice Chancellor: Well, we will go on at two o'clock, and if you find your exhibits within a week you may offer them.

Mr. Treacy: May we do this your Honor—put in evidence the writ of *fi fa.* that has been served upon the American Smelting and Refining Company on the judgment execution of the Assets Development Company against Albert C. Wall, as Substituted Administrator? The writ was actually served on us before the judgment was set aside. 30

Mr. Bain: That execution has been stayed by order of the Circuit Court.

The Vice Chancellor: The whole record ought to be in. 40

Mr. Bain: That is, the whole record of the suit by the Assets Development Company?

The Vice Chancellor: Yes.

*Discussion.*

Mr. Bain: Did you not say you were going to treat that as out of the case?

10 The Vice Chancellor: I will treat it as out; but if you offer the execution there ought to be some evidence as to the status of this claim. I understood it was stipulated that the claim upon which judgment was entered was the same as mentioned in the suit of Wall vs. American Smelting and Refining Company, which was referred to in the Court of Errors and Appeals as not being a *bona fide* asset. If that is so, that is all you need in this case. But the fact that execution has been served on you in the case I think is evidential, and it should be offered.

20 Mr. Treacy: Well, there is no objection to an offer of a copy?

Mr. Bain: The purpose is not to show any existing debt?

The Vice Chancellor: No; merely to show the situation.

The paper was thereupon admitted and marked Exhibit J. J. T., 1, June 20, 1921.

30 The Vice Chancellor: We will go on this afternoon, then; and Mr. Heinze, later on, if he can find these exhibits, will put them in.

Mr. Nolan: What is there to go on with?

The Vice Chancellor: To take testimony on these various issues, as to whether Mr. Wall should be discharged, and the assets paid over to the New York administrator.

Mr. Nolan: With that testimony missing, I do not see how we could get very far.

40 The Vice Chancellor: Well, you can offer it when you find it.

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Recess until 2 o'clock p. m.

*Discussion.*

## Afternoon Session.

The hearing of the matter was resumed at two o'clock p. m., pursuant to adjournment in the presence of the counsel of the respective parties.

Mr. Heinze: I would like to offer, on behalf of the United Copper Company, the original receipt signed by my brother and myself, which covers the shares of the United Copper Company that were involved in our transfer of the claim to the United Copper Company of New Jersey. 10

The Vice Chancellor: Is not this one of the claims that were assigned to the New Jersey corporation? 20

Mr. Bain: The claim of the United Copper Company is by assignment, but there is nothing to connect that document with the claim assigned. 20

Mr. Heinze: This is the origin of the title of the assignor.

Mr. Bain: There is nothing but Mr. Heinze's statement for it. There is nothing to connect that document with it on the record. 30

The Vice Chancellor: You may offer it in evidence. 30

The paper was thereupon marked Exhibit Heinze, 1, June 20/21.

The Vice Chancellor: Mr. Heinze may submit a copy of this exhibit for the record.

The following is a copy of Exhibit Heinze, 1, June 20/21: 40

*Arthur P. Heinze—Direct.*

"New York, March 14th, 1906.

RECEIVED from Arthur P. Heinze #54821 shares of stock of the United Copper Company as his proportion of two hundred and twenty-five thousand (225,000) shares of United Copper Company common stock sold at \$50 a share, on which the first payment of ten per cent. (10%) has been made this day to the extent of \$20,000.00, subsequent payments to be of the same amount of 10% three months from date, and every two months thereafter, as received by the undersigned, who are in no way to benefit to any larger extent than the holder of this receipt, except in proportion to their stockholdings.

10

(Signed) ARTHUR P. HEINZE.

20

(Signed) F. AUG. HEINZE.

Endorsed:

N. Y. 3/14/06      27271 shares of within stock  
are the property of Ruth  
Noyes Heinze.

(Signed) ARTHUR P. HEINZE."

ARTHUR P. HEINZE, sworn.

30 DIRECT EXAMINATION BY MR. ARTHUR P. HEINZE:

Q. Mr. Heinze, do you state that 27,271 shares of the stock covered by the receipt marked Heinze, 1, June 20/21 was the property of Ruth Noyes Heinze? A. I do.

Q. Did you and your brother, F. Augustus Heinze, receive it from Ruth Noyes Heinze? A. We did.

Q. And you signed the receipt, in evidence, together with your brother, F. Augustus Heinze? A. Yes.

40

*Arthur P. Heinze—Direct.*

Q. Did you return any of this stock to Ruth Noyes Heinze? A. I did not, but my brother, F. Augustus Heinze, returned 1701 shares, I think in the year 1909.

Q. Did you pay any portion of the fifty dollars a share stipulated to be paid to Ruth Noyes Heinze? A. We did not. 10

Q. Were any other payments made, in the way of delivery of securities? A. Yes; after my departure to Europe in September, 1907, my brother took sole charge of all of these securities, and he subsequently delivered to me for account of Ruth Noyes Heinze, my wife, some 3,000 shares of Ohio Copper stock, some \$40,000 par value of Bingham Bonds, and he agreed to loan Ruth Noyes Heinze \$15,000 as a participation in a mortgage on her home at 220 Madison Avenue. I think he also, at one time— 20

Mr. Bain: I object to what the witness thinks.

The Vice Chancellor: I will listen to it.

A. (Resuming) —paid some \$5,000 cash to enable me to pay the interest on the mortgage on the house at 220 Madison Avenue.

By the Vice Chancellor: 30

Q. When was that done? A. I think that was in 1912.

Q. But you do not know that that is the fact? A. Yes, I am pretty sure it is. I do not remember the exact figure, but he did pay some sum of money there.

By Mr. A. P. Heinze:

Q. Did Ruth Noyes Heinze get anything for this assignment of her claim against the Estate of F. Augustus Heinze? A. Yes; she received one-half the capital stock of the New Jersey United Copper Company. 40

*Arthur P. Heinze—Direct.*

Q. Was the claim of the Western Development Company, which was also assigned to the United Copper Company of New Jersey, based on the same kind of a transaction? A. Yes.

Q. Did it receive a similar receipt? A. Yes.

10 Q. Have you got that receipt? A. No, I have not been able to find it.

Q. For how many shares of stock was it?

Mr. Bain: I object to this witness stating the contents of a written document.

Mr. Heinze: I have searched very carefully to try to find the original, your Honor, but our offices were moved several times, and we were thrown into the hands of two receivers.

20 The Vice Chancellor: I will permit the question to be answered.

A. I think it covered 6,095 shares of stock, and the stock was received by me and my brother, and we did pay Otto Heinze & Co. something like \$106,000 on account, leaving some Two hundred thousand dollars due and unpaid. The balance of the securities that had not been paid for were not returned to the firm of Otto Heinze & Co., or anybody representing them, by either me or my brother. He took charge of all these securities during my absence in Europe in the fall of 1907. The share of the stock of the United Copper Company of New Jersey which the Western Development Company received was some 4,900 shares.

30 Q. Do you know where this stock is? A. Yes, it is held as collateral to a note of the Western Development Company for \$140,000 loaned by the Madison Real Property and Security Company.

40 Q. I show you this note of \$140,000, dated May 9, 1913, signed by the Western Development Company, on which a large number of payments have

*Arthur P. Heinze—Direct.*

been endorsed, and ask you is this the note to which you have reference (showing the same to Mr. Bain)? A. It is.

Mr. Heinze: I offer it in evidence.

Mr. Bain: I object to it, on the ground that it is long outlawed.

The Vice Chancellor: Well, it is not offered as a claim in this suit, as I understand it.

Mr. Bain: No claim could possibly be based upon it.

The Vice Chancellor: I do not know what his motive is; it may be as evidence of a course of dealings of some kind; I cannot tell where it will lead to.

Mr. Heinze: The last payment endorsed on here is December, 1915, your Honor.

Mr. Bain: '15?

Mr. Heinze: '15 (showing the note again to Mr. Bain).

Mr. Bain: It is otherwise objectionable, on the ground that it is incompetent, immaterial and irrelevant.

The Vice Chancellor: I will overrule the objection.

The note was thereupon marked Exhibit Heinze, 2, June 20/21.

The following is a copy of Exhibit Heinze 2, June 20/21.

“\$140000.00           New York May 9th 1913

On demand after date we promise to pay to the order of MADISON REAL PROPERTY & SECURITY Co. One hundred and forty thousand 00/100 Dollars at our office No. 42 Broadway New York City

Value received

*Arthur P. Heinze—Direct.*

WESTERN DEVELOPMENT CO.

No———— due———— Arthur P. Heinze  
Pres.

Endorsed:

Received on % Jan. 15/1914 \$1200.00  
Twelve hundred Dollars.

10 MADISON REAL PROPERTY & SECURITY CO.  
A. P. Heinze Pres.

Received on % March 10, 1914 \$1200.00  
Twelve hundred Dollars

MADISON REAL PROPERTY & SECURITY CO.  
A. P. Heinze Pres.

Received on % April 2nd 1914 \$2700.00  
Twenty seven hundred Dollars

MADISON REAL PROPERTY & SECURITY CO.  
A. P. Heinze Pres.

20 Received on % April 8th, 1914 \$1040.00  
One thousand & forty Dollars

MADISON REAL PROPERTY & SECURITY CO.  
A. P. Heinze Pres.

Received on % April 24/1914 \$500.00  
check to Natl Surety Co on Mayer judgm't

MADISON REAL PROPERTY & SECURITY CO.  
A. P. Heinze Pres.

30 Received on % May 8th, 1914 Nine hun-  
dred Dollars, \$900.00.

MADISON REAL PROPERTY & SECURITY CO.  
A. P. Heinze, Pres.

Received on % June 1, 1914 \$694.00.

A. P. H. Pres.

Received on % June 30/1914 Twenty two  
hundred & twenty seven 71/100

MADISON REAL PROPERTY & SECURITY CO.  
A. P. Heinze Pres.

40 Rec'd on % Nov. 13, 1914 \$423.50/100

A. P. H. Pres.

Rec'd on % principal \$7000.00 Dec 17th,  
1915

A. P. H. Pres.

*Arthur P. Heinze—Direct*

Rec'd on % principal \$2000.00 Dec. 23rd 1915

A. P. H. Pres.

“ “ “ “ \$4000.00 Dec. 23rd 1915

A. P. H. Pres.

“ “ “ “ \$4200.00 Dec. 28th 1915

A. P. H. Pres.

10

Q. What did this note represent? A. This note represented advances and loans made by my wife, Ruth Noyes Heinze, to the Western Development Company, and in payment of demands of quite a large number of creditors of the firm of Otto Heinze & Co. and of myself, individually, a great many of whom were also creditors of F. Augustus Heinze in the same matter; and my wife transferred all of her property at that time to the Madison Real Property & Security Company, and received back the entire capital stock of said company, as I have previously testified in this case—in other proceedings in this case—the stock of the Madison Real Property and Security Company was trusted for the benefit of my children.

20

Mr. Heinze: Now, your Honor, if it is not in the case already, I would like to offer the decree in the Prerogative Court to sustain administration in this case—that is, sustaining the appointment of Mr. Wall as substituted administrator.

30

The Vice Chancellor: Well, you may offer the record in that case.

Mr. Bain: We have no objection to it, if Vice Chancellor Lane's opinion goes with it. I take it, your Honor will read the opinion in connection with the decree.

40

*Arthur P. Heinze—Direct.*

The Vice Chancellor: I have read it before. Is not the decree in that case in evidence?

10 Mr. Bain: The opinion of Vice Chancellor Lane was part of the record before the Court of Appeals in the suit of Wall vs. American Smelting and Refining Company. There is no objection, if the opinion goes in.

The Vice Chancellor: Well, I think, perhaps, you ought to have the decree in and the record, as well.

Q. Is the estate of F. Augustus Heinze insolvent?

20 Mr. Bain: I object to that, if your Honor please. How can the insolvency of an estate be proved by some parol testimony of the witness? The matter is controlled in this State by statute. Where an estate is insolvent the statute provides the method of declaring the insolvency.

The Vice Chancellor: I will permit the question.

A. Yes.

30 Q. Does the judgment of Mr. Gould, with interest to date, recovered in New York, cover all the assets of the estate in the State of New York?

Mr. Bain: I object to the question.

The Vice Chancellor: I will sustain that objection. It is no concern of this Court what it covers over there.

Q. Were you in Court when Mr. Fullerton so testified in this case here?

40 Mr. Bain: Of course I do not object to his stating whether he was present or not; but

*Arthur P. Heinze—Direct.*

I object to his attempting to state the testimony, because that is in evidence.

Mr. Heinze: It is part of the records of this Court.

The Vice Chancellor: You may proceed.

A. Yes, I was in Court when Mr. Fullerton so testified.

10

Mr. Bain: I object to that, and ask that it be struck out; that is the point of my objection.

The Vice Chancellor: I will strike it out.

Q. Is the estate insolvent in New Jersey?

Mr. Bain: I make the same objection that I made before.

The Vice Chancellor: I will sustain that objection.

20

Q. Have you asked the administrator, Mr. Wall, to petition the Orphans Court, on the ground that the estate is insolvent in the State of New Jersey, and have you asked him to appeal to the said Court on that ground?

Mr. Bain: Objected to, on the ground that it is irrelevant and immaterial.

The Vice Chancellor: The objection will be sustained.

30

Mr. Heinze: I would like, if I may, your Honor, to offer the note of \$15,000, which is the basis of the other claim of the Assets Development Company, because it was not passed upon by the Court of Errors and Appeals, at all.

Mr. Bain: I object to that, if your Honor please. I understand your Honor had ruled

40

*Arthur P. Heinze—Direct.*

out testimony as to claims not filed within the time limited by the order of the Surrogate. The claim of the Assets Development Company was not filed by them in time.

10 The Vice Chancellor: I will overrule the offer. It may be marked for identification, to verify it, in case the case goes up.

The note was thereupon marked for identification "A. P. H., 1 for Identification, June 20/21," and the following is a copy of the same:

"15,000.00 New York, December 27, 1907.

20 On October 22, 1908, I promise to pay to Ruth Noyes Heinze, or order, at the office of F. Aug. Heinze, 74 Broadway, New York City, fifteen thousand dollars (\$15,000.00), in funds current at the New York Clearing House for value received, with interest at six per cent. (6%) per annum.

(Signed) F. AUG. HEINZE.

Feb. 20/00 Received on % \$6,904.50, interest to Oct. 27/08 having been heretofore paid.

(Signed) RUTH NOYES HEINZE.

30 by Arthur P. Heinze,  
Atty. in fact

Endorsed:

Ruth Noyes Heinze."

Mr. Heinze: May I offer any testimony in connection with this note, subject to the same objection?

The Vice Chancellor: I don't know; you had better offer it.

40

*Arthur P. Heinze—Direct.*

Q. Do you know what this note of \$15,000.00, date December 27, 1907, and signed by F. Augustus Heinze, was given for?

Mr. Bain: I object to anything except a direct answer to that, of course.

A. Yes.

10

Q. What was it given for?

Mr. Bain: I object to that, if your Honor please, on the ground that all of Mr. Heinze's testimony in regard to that note was included in the evidence in the case of Mr. Wall against the American Smelting and Refining Company, and Mr. Heinze testified in that case as to that claim, and submitted the claim to the determination of this Court.

20

The Vice Chancellor: I suppose he can testify again to it; it is not the same suit. You offered it.

Mr. Bain: Let me make this plain to your Honor: That claim was produced in the former suit by Mr. Wall as administrator by Mr. Heinze, and submitted to the determination of this Court; the very purpose of producing the claim was to have its validity determined. I think it does not lie with Mr. Heinze now to attempt to produce some further or other testimony which was not introduced at that time. He cannot relitigate his claim, after having once litigated it.

30

The Vice Chancellor: I will sustain the objection—at the same time, if he had omitted or forgotten something in other suits, I do not know that he can be pre-

40

*Arthur P. Heinze—Direct.*

cluded in stating it here; I think I will take his testimony.

10 A. This was given for Fifteen thousand dollars cash which Ruth Noyes Heinze, my wife, loaned to F. Augustus Heinze. A payment of \$6,904.51, and interest to October 27, 1908, was made on account of this note, on February 20/09.

Mr. Bain: Of course your Honor understands that this is a claim barred by the statute—barred by the decree barring creditors—and, therefore, any testimony as to that claim at this time is objectionable.

The Vice Chancellor: I will overrule the objection.

20 A. (Resuming) And this note was turned over by my wife to the Madison Real Property and Security Company, and by this company sold to the Assets Development Company; and the Assets Development Company now owes the Madison Real Property and Security Company in excess of Fifty thousand dollars, on notes, for its various properties; so that any recovery had in this case would benefit the Company owned by my children. By Mr. Bain:

30 Q. Which one is that—the Madison Company?

A. Yes.

Q. So that that claim on that note is not a claim by the Assets Development Company, but, in substance, a claim of the Madison Company?

A. No; it is collateral to notes of the Assets Development Company to the Madison Company.

40 Q. But any claim filed on that note now by the Assets Development Company is for the benefit of the Madison Company? A. No, it is for the bene

*Arthur P. Heinze—Direct.*

fit of the Assets Company—it will repay with it that much of its obligations to the Madison Company.

Q. Bound to pay it, is it not? A. Yes.

Q. So that any recovery on that note now is for the benefit of the Madison Company? A. No, it is for the benefit of the Assets Company; it reduces its obligations. 10

Q. The Madison Company is a corporation of what State? A. New York.

Mr. Heinze: I have here also this note of \$10,000, which was introduced as the basis of the claim of the Assets Development Company on which it recovered this judgment. I offer that in evidence.

Mr. Bain: I object to it, on the ground that it is a claim barred by the decree barring creditors. 20

The Vice Chancellor: I will take it for what it is worth.

The note was thereupon marked Exhibit Heinze, 3, June 20/21, and the following is a copy of the same:

“New York, Apr 28 1909.

\$10,000.00 30

On demand and upon return of Securities given, I promise to pay to C. O. Geer or order Ten Thousand 00/100 Dollars for value received with interest at 6 per cent. per annum, having deposited with as collateral security:

15,000 par Ohio 1st Mort Bonds with authority to sell the same, or other Security subsequently substituted, at the Board 40

*Arthur P. Heinze—Direct.*

of Brokers, or at Public or Private Sale at their option, on the non-performance of this promise and without further notice; applying the net proceeds to the payment of this note, including interest, and accounting to  
 10 for the surplus, if any. In case of deficiency,  
 promise to pay to said  
 the amount thereof, forthwith after such sale, with legal interest.

(Signed) F. AUG. HEINZE.

Endorsed:

May 11, '09,

Rec'd from F. A. H.

\$6000 on within note.

\$1500 on sale of collateral

20 July 11, 1918.

Pay Assets Development Co. or order.

(Signed) C. O. GEER."

By Mr. Heinze:

Q. Did you know anything about this note, as to where it was when Mr. Geer filed his personal claim (showing the note to Mr. Bain)? A. Yes; it had been mislaid among some securities in the safe of Otto Heinze & Co., at 42 Broadway, New  
 30 York City, where Mr. Geer also kept quite a number of his own personal securities.

Q. Did you think it was outlawed at the time?

Mr. Bain: I object to what he thought; the question is whether it was outlawed.

The Vice Chancellor: What difference does it make whether he thought so, or not? I will sustain the objection.

Q. Or did you think of the note, at all, at the  
 40 time?

*Arthur P. Heinze—Direct.*

Mr. Bain: I object.

The Vice Chancellor: Same ruling.

Mr. Heinze: Now, in regard to this Western Development Company claim, I would like to offer a letter of F. Augustus Heinze, of date December 10th, 1904 (reading the same): "Mr. A. P. Heinze, Dear sir: With reference to certain agreements you have made and are making with reference to U. C. Co. Common stock"—

10

Mr. Bain: Has that letter been offered in evidence? Are you offering that?

Mr. Heinze: Yes, I am going to offer it.

Mr. Bain: I object to this, on the ground that there is nothing whatever to connect it with any of the claims before the Court. It is a letter, apparently, from Augustus Heinze to Mr. Arthur P. Heinze.

20

The Vice Chancellor: Well, I will overrule the objection, and let it go in.

The letter was thereupon marked Exhibit Heinze, 4, June 20/21, and the following is a copy of said exhibit:

"Copy fwd'd F. A. H. 22/04.

THE CONGRESS HOTEL COMPANY.

30

The Auditorium,  
The Annex, R. H. Southgate,  
Apartment Building. President.  
Chicago, Dec. 10 1904.

Mr. A. P. Heinze,

Dear Sir.

With reference to certain agreements you have made and are making with reference to U. C. Co. Common stock to be exchanged for

40

*Arthur P. Heinze—Direct.*

La France stock or bought I beg to say that I will participate in risk & profits to the extent of one third. You to send me copies & statement of all such transactions already entered into and to advise me in detail immediately any further agreements are made.

10 I have the right to cancel this understanding by giving you notice by wire or letter as to future purchases at any time. When my participation in any similar transactions entered into by yourself thereafter will have ceased. This contemplates your putting me in on all of such transactions which you have consummated since Oct. 1. 04.

Yours etc

20 (Signed) F. AUG. HEINZE."

Q. Now, Mr. Heinze, was this the beginning of the transactions which are evidenced in this case by the claim of the Western Development Company that has been filed here?

Mr. Bain: Objected to, on the ground that the beginning of the transaction was all subsequently merged, according to what Mr. Heinze says, in some agreement.

30 The Vice Chancellor: Well, I am going to let it go in; I do not follow the thing, at all, and I will let it go in and see what it is after it is in.

A. Yes.

Q. Did you, thereafter, operate in United Copper Common stock and Preferred stocks in the market in New York?

Mr. Bain: I think that is objectionable.

40

*Arthur P. Heinze—Direct.*

The Vice Chancellor: I think I will stop it right here. There is no question, I think, raised in this case about the Western Development Company having a claim, is there?

Mr. Heinze: This was another claim, that was filed recently, for some five million dollars—the Western Development Company filed an additional claim. 10

The Vice Chancellor: Here, in New Jersey?

Mr. Heinze: Yes, sir—subsequent to the decree barring creditors.

Mr. Bain: It must have been filed since the Report and Account was filed.

The Vice Chancellor: Oh, I won't listen to that, then. 20

Mr. Heinze: It is in his report—it is in Mr. Wall's report.

Mr. Bain (Examining the Report): There is no such claim in the Report.

The Vice Chancellor: There is nothing of that kind in the Report of Mr. Wall.

Mr. Royall: Mr. Fullerton hands me a claim filed with him, as the New York administrator, recently, by the Western Development Company. There is a letter of transmissal attached to it (handing the Court a paper). 30

Mr. Bain: That claim was plainly not filed within the time limited by the decree barring creditors; and, furthermore, it had been filed with the Administrator in New York.

The Vice Chancellor: There was none filed in New Jersey.

Mr. Heinze: Oh, yes, there was. 40

The Vice Chancellor: Was there?

Mr. Heinze: Yes.

*Arthur P. Heinze—Direct.*

The Vice Chancellor: It is not in this Report.

Mr. Heinze: It must have been filed since the Report was filed.

10 The Vice Chancellor: Well, I will not listen to anything that transpired since, unless the Report is amended, or some suggestion made of it in the record. Is there anything else you want to testify to?

Mr. Heinze: Well, my main testimony was going to be on that thing your Honor. If Mr. Wall were here, of course he would admit it was filed with him, all right.

20 The Vice Chancellor: Well, I am going to lay down the principle in this case that I am not going to pay any attention to the claims filed after the decree barring creditors was entered.

Mr. Heinze: Well, then I would like to offer this additional testimony:

Q. Did Mr. F. Augustus Heinze, at any time, acknowledge his liability in connection with the claims transferred to the new United Copper Company?

30 Mr. Bain: I object to that, if your Honor please; I do not think this witness is competent to testify to transactions with the deceased.

The Vice Chancellor: Why?

Mr. Bain: He appears to be one of the parties; he is president of this corporation; and the administrator has not offered himself.

40 The Vice Chancellor: I will overrule the testimony, because it is not material. He has either proven his claim, or he has not.

*Arthur P. Heinze—Direct.*

Mr. Heinze: I just thought I would like to offer the testimony as to how much he had offered.

The Vice Chancellor: As a compromise?

Mr. Heinze: Yes.

The Vice Chancellor: Haven't you got that in the other case?

10

Mr. Heinze: I think I said I was going to produce it, but I never did produce it.

The Vice Chancellor: The testimony was all offered in the other case.

Mr. Heinze: It is not in there. The statement was made that it was going to be offered, and then no testimony was offered.

The Vice Chancellor: Today?

Mr. Heinze: No, at any time.

20

Mr. Bain: Why, we had the whole book marked in evidence.

The Vice Chancellor: I understand the testimony in the other case is that Mr. Heinze agreed to compromise some hundreds of thousands of dollars for one hundred thousand dollars.

Mr. Heinze: No, he offered six hundred thousand dollars.

30

The Vice Chancellor: I do not care about that; you have either got your claim proven by what is in the case, or you have not. The mere fact that Mr. Heinze agreed to compromise does not add anything to it.

Mr. Heinze: Well, I just thought it might add to the bone fides of the claim, to show that a very large offer of settlement had been made.

The Vice Chancellor: I will overrule the offer.

40

*Arthur P. Heinze—Cross.*

10 Mr. Bain: So that there may be no misunderstanding, I desire to have it understood that this forenoon I offered the entire record which was before the Court of Errors and Appeals in the suit of Albert C. Wall, substituted administrator of F. Augustus Heinze, deceased, in the place of Arthur P. Heinze vs. American Smelting and Refining Company, and others, including the pleadings, testimony and exhibits in that cause.

The Vice Chancellor: You offered everything within the two covers of the printed book,—that is what I understood.

20 Mr. Heinze: Yes, but my impression was that this testimony I referred to, while I said I was going to offer it, I do not think I gave any testimony; but your Honor may be right about that.

The Vice Chancellor: My impression is that it is in, because I recall something about an attempted compromise.

Mr. Heinze: Might I look at the testimony and see where it is there?

30 Mr. Bain: Yes. I don't want to waste time, though, having Mr. Heinze study the testimony.

## CROSS EXAMINATION BY MR. ROYALL:

40 Q. Mr. Heinze, after your removal as administrator and before the qualification of Mr. Wall as administrator, you caused a proof of claim to be filed with yourself as administrator by a corporation, the United States Copper Company, is not that so? A. Why, I think, while an opinion had been handed down by the Judge, I had not yet been removed—that is, no order had been entered;

*Arthur P. Heinze—Cross.*

the order removing me was not entered until January 8, 1917; and these claims were filed—I asked my counsel where they should be filed, and he informed me that they should be filed with me.

Q. Just answer the question—after the decision of Judge Tennant there was filed with you a proof of claim by United Copper Company—is that correct? A. Yes; that is right. 10

Q. Now, do you know where the United Copper Company is incorporated—under the laws of what state? A. New Jersey.

Q. Do you know when that corporation was organized? A. I think, in 1914, something like that—'14 or '15.

Q. It was organized after the date of the death of your brother, F. Augustus Heinze, was it not? A. Yes. 20

Q. You caused that corporation to be organized, did you not? A. I did.

Q. You used the same name as a previous corporation whose charter had been revoked by the decree of the Governor of this State? A. I did it to protect the name.

Q. But you did it? A. Yes.

Q. Now, then, who are the officers of this second—we will speak of it as the “second United Copper Company”—who are the officers of it? A. I think, Mr. Franklin Bien and myself. 30

Q. Do you remember the names of any other officers? A. And, I think, Franklin Bien, Jr.

Q. What office do you hold? A. Vice-president.

Q. Who was the President? A. Franklin Bien.

Q. What offices does Franklin Bien, Jr., hold? A. Secretary and Treasurer, I think. 40

Q. Mr. Franklin Bien was, at one time, your counsel in these proceedings here in New Jersey, was he not? A. He was, yes.

*Arthur P. Heinze—Cross.*

Q. Franklin Bein, Jr., is his son? A. Yes.

Q. Who are the directors of that corporation?

A. The same three.

Q. And who are the stockholders—the same three? A. No, the stockholders are Ruth Noyes

10 Heinze, as I told you, and the Western Development Company, except, I think, for 100 shares, or so.

Q. Who owns the majority of the stock? A. Ruth Noyes Heinze.

Q. How much does each hold? A. I think she has 5,000 shares, and I think the Western Development Company has 4,900.

Q. What was the consideration for the issuance by the United Copper Company—the second  
20 United Copper Company—to Ruth Noyes Heinze of that stock? A. The assignment of this claim against F. Augustus Heinze.

Q. Now, who is Ruth Noyes Heinze? A. She is my wife.

Q. Where do you reside? A. Great Neck, Long Island.

Q. Does your wife live with you? A. Yes.

Q. Did you cause the second United Copper  
30 Company to file this claim with yourself, as administrator? A. I was not an officer of the Company at that time, but I did request them to file the claim.

Q. You caused it to be done, didn't you? A. I surely did. That was the object of my proceeding in New Jersey.

Mr. Royall: I move to strike out the volunteered part of the answer—"that was the object," etc.

40 The Vice Chancellor: I do not see how it hurts you any.

*Arthur P. Heinze—Cross.*

Mr. Royall: Well, I do not want the witness to volunteer.

The Vice Chancellor: He says he deliberately had the administration granted to himself in New Jersey for the purpose of transferring a debt owed to a New York citizen, and handled the administration for the purpose of transferring it to the corporation in New Jersey.

10

Mr. Royall: Well, I think that was not the purpose, however; Judge Tennant found the purpose—

The Vice Chancellor: That is what I take it his answer means.

Q. Now, Mr. Heinze, did your wife ever file with your sister, Mrs. Fleitman, while she was administratrix in New York, any proof of claim, or assert any claim as a creditor of F. Augustus Heinze, deceased, with Mrs. Fleitman as administratrix?  
A. We have discussed it with her.

20

Q. Did she file any? A. She did not file a proof of claim, but she discussed it with her and her counsel, I guess, quite at length.

Mr. Royall: I move that that last be stricken out.

30

The Vice Chancellor: It will be struck out.

Q. The Western Development Company is a corporation, is it? A. Yes.

Q. Where is it organized? A. Arizona.

Q. Who are the officers of it? A. I am the President.

Q. Who are the other officers? A. I think Mr. Geer is vice-president.

40

Q. Mr. Geer? A. Yes.

*Arthur P. Heinze—Cross.*

Q. Calvin O. Geer? A. Yes; and Secretary and treasurer, too.

Q. Who are the directors of it? A. I think he and I are the only directors left.

10 Q. Who were the stockholders? A. The stock is held quite extensively by a large number of people.

Q. You are speaking now of the Western Development Company? A. Yes.

Q. Now, you have mentioned in your direct-examination the Madison Real Property and Security Company—is it the owner of the stock of the Assets Development Company? A. No.

Q. But it is the owner of notes of the Assets Development Company—is that it? A. Yes.

20 Q. Now, this Assets Development Company, I understand, is a New Jersey corporation? A. Yes.

Q. And who are the officers of it? A. I am the president.

Q. You are the president? A. Yes.

Q. And who are the other officers? A. I think Mr. Geer.

Q. Calvin O. Geer? A. Yes.

30 Q. And who are the other officers? A. I guess that is all, at present.

Q. Haven't you forgotten that Mary T. Geer is the President of the Western Development Company? A. No; she has resigned.

Q. She was the wife of Calvin O. Geer? A. Yes.

Q. Calvin O. Geer is an employee of your office, is he? A. No.

Q. What is his business? A. I think he is a curb broker, at present.

40 Q. He has offices with you? A. No.

Q. Doesn't have offices with you, but is in the same suite, isn't he? A. No.

*Arthur P. Heinze—Cross.*

Q. He used to have, until recently ? A. He used to have until a year or so ago, yes.

Q. He still remains, however, an officer and director of these several corporations that we have mentioned? A. Yes.

Q. He and his wife? A. Not his wife.

Q. His wife has resigned from all of them, has she? A. I don't think she ever was more than temporarily an officer of any of the others.

Q. Now, the Madison Real Property and Security Company—where was it organized? A. New York City.

Q. And it is the owner of notes covering all the property of the Assets Development Company? A. Well, the Assets Development Company bought the property from the Madison Company, and gave its notes for the purchase.

Q. So that if you should succeed in restoring this judgment which you obtained against Mr. Wall, and should succeed in collecting it from him, then the proceeds would be payable eventually by the Assets Development Company to the Madison Real Property and Security Company—is that right? A. It holds the claim as collateral for the notes, yes.

Q. And the Madison Company, I think you testified, the stock of it is owned by your wife? A. It was originally, yes.

Q. Well, it is owned by her now, is it not? A. No.

Q. I thought you said in your direct testimony that she owns it and has trusteesd it for the benefit of your children? A. It is trusteesd for my children; my children own it today.

Q. Who is the trustee? A. Mr. Geer.

Q. Mr. Geer is the trustee? A. Yes.

10

20

30

40

*Arthur P. Heinze—Cross.*

Q. Now let us see how this chain works out: The eventual owners of all of this property are your infant children, through Mr. Geer as trustee, he holding the stock of the Madison Real Property and Security Company—all the stock of that company, for that purpose—is that right? A. That  
10 would only be the case to the extent that the \$140,000 note, with interest, covers any claim that the Western Development Company might recover.

Q. Now, turning back to these assignments—as I understand it, you do not claim that the United Copper Company was a creditor of F. Augustus Heinze when he died, do you—this second United Copper Company? A. No.

Q. It could not be, because it did not come into  
20 existence until after his death, did it? A. No.

Q. So the only claim it possibly could have is by virtue of these assignments which you claim have been made to it? A. It doesn't claim any other.

Q. Now, then, one of these assignments is executed by Ruth Noyes Heinze, under date of December 21, 1916, and it purports to assign an interest to the extent only of \$250,000 which she has  
30 against the decedent F. Augustus, is that right? A. Yes, that is right.

Q. Well, was that claim of Ruth Noyes Heinze greater than \$250,000? A. Well, yes, I think it was.

Q. So that that is merely a *pro tanto* assignment of an interest in her claim against F. Augustus Heinze? A. It was part of her claim.

Q. Now, then, turning to the Western Development Company's claim—it, I notice, assigns to this  
40 second United Copper Company an interest in a claim which it has against F. Augustus Heinze, or which it purports to have, to the extent of \$100,000,

## Arthur P. Heinze—Cross.

and no more; I believe you testified, or started to say on direct-examination, that the Western Development Company claimed to be a creditor to the extent of \$5,000,000? A. That was on a different claim.

Q. Well, it claims to be a creditor? A. A creditor, on a different ground. 10

Q. So that this is a *pro tanto* assignment to the extent of \$100,000 of its claims; is that right?

A. Well, it was assigned on account of stock delivered. The other claim is not on stock delivered.

Q. Now, Mr. Heinze, you caused the Western Development to make this assignment, didn't you?

A. Yes.

Q. Did the Western Development Company ever make any claim with Mrs. Fleitman, your sister, as administratrix of the domicile, to be a creditor? 20

A. It did. It did not file any claim, but it made a claim with her.

Q. I show you a letter purporting to be signed by you, and dated May 18, 1921, and addressed to Mr. Fullerton, the New York administrator, and ask you if that is in your handwriting? A. It is.

Q. Did you cause that letter to be sent to Mr. Fullerton? A. I sent it. 30

Q. You signed that letter "Western Development Company, by Arthur P. Heinze, President"? A. Quite likely.

Q. Did you send this paper with it, that is attached now to it? A. I did.

Q. You signed that letter "Western Development Company, previously to that, to file any proof of claim with either Mrs. Fleitman, as domiciliary administratrix, or with Mr. Fullerton, as her successor? A. No, but I discussed it with her counsel and herself. 40

*Arthur P. Heinze—Cross.*

Q. Well, now you were well acquainted with the affairs of your brother's estate during the course of the administration of your sister, Mrs. Fleitman?

A. No, unfortunately, I was not.

10 Q. Didn't you testify in the Orphans Court that you advised your sister in respect to her affairs as administratrix? Didn't you so testify? A. Only very occasionally.

Q. Didn't you so advise her? A. I did.

Q. And did not the Surrogate of Saratoga County find you were co-operating with her actively in the conduct of the affairs of the estate?

A. I do not recollect that, no.

Q. The fact is that you did? A. I did not.

20 Q. The fact is, you so testified, in any event? A. No, sir; I said that when my sister asked me questions in connection with matters, I occasionally advised her to the best of my ability. Now, that is what I testified, and nothing else. I was not her counsel at any time in these proceedings, and you have not met me as such in about forty or fifty meetings which you have had with the counsel of my sister. Was I ever present at any one of them?

30 Mr. Royall: I move that that be stricken out, and the witness be directed not to volunteer.

The Vice Chancellor: Well, he has testified about it in the other case.

Q. You knew of your brother's death when it occurred? A. Yes.

Q. You knew your sister was shortly after appointed as his administratrix? A. Yes.

40 Q. You did not cause any of these corporations, or cause your wife to file any claims in New York, did you? A. I thought it was useless.

Q. Well, you did not do it, did you? A. No, I did not.

*Discussion.*

Q. Tell me who are the officers of the Madison Real Property and Security Company? A. I am the president.

Q. And who are the other officers? A. Mr. Geer is vice-president and secretary.

Q. And he owns all the stock, as trustee for your infant children? A. Yes. 10

Mr. Nolan: Now, your Honor, with reference to the judgment and proceedings of the Assets Development Company against Mr. Wall—

Mr. Royall: May I interrupt a moment?

Mr. Nolan: Yes.

Mr. Royall: May I have that paper marked, that proof of claim? I offer in evidence letter addressed by the Western Development Company, by Arthur P. Heinze, president, to Walter A. Fullerton, dated May 18, 1921, together with the proof of claim of the Western Development Company, verified by Arthur P. Heinze on the 31st day of March, 1921, being the same paper identified by Mr. Heinze in his evidence here today. 20

The letter and proof of claim are admitted in evidence, and marked Exhibits F-3 and F-4, June 20/21. 30

Mr. Nolan: I just want to make it straight as to the judgment and proceedings of the Assets Development Company vs. Wall—I am not clear that we considered this morning that there was a definite offer of the record of the judgment in that action, and a rejection of it? 40

The Vice Chancellor: As I understand it, the record is in evidence down to the execu-

*Discussion.*

tion; the execution is here now, as an exhibit, offered by Judge Treacy. If the judgment is not in evidence, it may be offered, and everything that transpired in connection with it, including the appeal.

10 Mr. Nolan: Well, that is my purpose—to have the record of the judgment offered in evidence, and the notice of appeal, and the proceedings by Mr. Wall to open the judgment.

The Vice Chancellor: Well, you may offer the whole thing.

Mr. Nolan: Do you want them as an offer, or as an offer and rejection? Do you overrule the offer?

20 The Vice Chancellor: No, I do not; I say offer it; offer your judgment and everything on record.

Mr. Nolan: I will offer the certificate of the judgment of Assets Development Company vs. Albert C. Wall, entered May 4, 1920, for \$6,100.54 damages, and \$51.71 costs.

Mr. Bain: We object to the offer of the judgment alone, unsupported by the record.

30 The Vice Chancellor: I will sustain the objection. If counsel cannot agree upon the complete record, showing the situation, including the summons, pleadings, rule for judgment and the appeal, then you can submit to me a certified copy of it.

Mr. Bain: I think, if he puts in a certified copy of the whole record, that is what your Honor intends.

The Vice Chancellor: Oh, yes.

40 Mr. Nolan: I will do that. I offer, in connection with this same matter, then, the re-

*Discussion.*

ceipt of M. T. Geer to Assets Development Company for a part of the consideration of the claim upon which the judgment was had against Mr. Wall.

Mr. Royall: Is that the wife of Mr. Calvin O. Geer?

Mr. Bain: The Mary T. Geer mentioned in this receipt is the wife of Calvin O. Geer—is that correct? 10

Mr. Nolan: Yes.

Mr. Bain: Is this receipt for a part of the consideration paid by the Assets Development Company for the note on which the suit of the Assets Development Company was based?

Mr. Nolan: Yes. 20

Mr. Bain: That receipt is dated after the judgment was recovered.

The Vice Chancellor: What, after this judgment recently recovered?

Mr. Bain: Yes; this receipt is signed June 13, 1921.

The Vice Chancellor: What does that mean?

Mr. Bain: It means the consideration for that note was never paid. 30

The Vice Chancellor: Do you want to offer it in evidence?

Mr. Nolan: Yes.

The Vice Chancellor (To Mr. Bain): Do you object?

Mr. Bain: No, sir.

The Vice Chancellor: Let it be marked.

The receipt was thereupon marked Exhibit A. D. Co., 1, June 20/21. 40

Case Closed.

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## IN CHANCERY OF NEW JERSEY.

10	Between ALBERT C. WALL, as Substituted Administrator of F. Augustus Heinze, deceased, in place of Arthur P. Heinze, removed, <i>Complainant,</i> <i>and</i> AMERICAN SMELTING & REFINING COMPANY, <i>et al.,</i> <i>Defendants.</i>	} On Bill, &c.
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**Notice of Appeal.**

20 The complainant, Albert C. Wall, as Substituted Administrator of F. Augustus Heinze, deceased, in place of Arthur P. Heinze, removed, hereby appeals from the final decree of the Chancellor made in the above entitled cause under date of March 12th, 1919, dismissing the complainant's bill and from the whole and every part of said decree, to the Court of Errors and Appeals in the last resort in all causes.

A. C. WALL,  
Solicitor for Albert C. Wall, Substituted  
30 Administrator, the above named complainant.  
Dated March 21, 1919.

I conceive that there is good cause for appeal from the above stated decree.

A. C. WALL,  
Of Counsel with above  
named complainant.

**Petition of Appeal.**

**NEW JERSEY COURT OF ERRORS AND APPEALS.**

<p>Between</p> <p>ALBERT C. WALL, as Substituted Administrator of F. Augustus Heinze, deceased, in place of Arthur P. Heinze, removed, <i>Complainant-Appellant,</i> <i>and</i> AMERICAN SMELTING &amp; REFINING COMPANY, <i>et al.,</i> <i>Defendants-Respondents.</i></p>	}	<p>On Appeal from Chan- cery.      <b>10</b> (Griffin, Vice Chan- cellor)</p>
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To the Honorable the Court of Errors and Appeals  
in the last resort in all causes:

The petition of Albert C. Wall, as Substituted Administrator of F. Augustus Heinze, deceased, in place of Arthur P. Heinze, removed, 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 the State of New Jersey, bearing date the twelfth day of March, in the year Nineteen Hundred and Nineteen, in a certain cause wherein your petitioner was complainant, and the said American Smelting & Refining Company and others, were defendants, in this respect, to wit, that the said final decree orders, adjudges and decrees that the answer in lieu of plea filed by the defendant American Smelting & Refining Company to the bill of

TUNNEY & MITTON,  
Solicitors for Respondent,  
Of Counsel with Respondent.      **40**

*Petition of Appeal.*

complaint of said complainant is good and sufficient and has been sustained by the evidence and that therefore the complainant's bill be and the same was thereby dismissed.

10 And your petitioner humbly appeals from the whole of said final decree upon the ground that the same is erroneous for that the said decree should have adjudged, ordered and decreed that the said answer in lieu of plea filed by the defendant American Smelting & Refining Company was not good and sufficient and was not sustained by the evidence, and should have refused to dismiss the complainant's bill and should have ordered, adjudged and decreed that the complainant was entitled to the relief prayed for in the bill of complaint.

20 Your petitioner therefore prays that the said decree of the Chancellor may be reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

VREDENBURGH, WALL & CAREY,  
Solicitors of Complainant-Appellant.

ALBERT C. WALL,  
Of Counsel with Complainant-Appellant.

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**Answer of Respondent American Smelting & Refining Company to Petition of Appeal.**

**NEW JERSEY COURT OF ERRORS AND APPEALS.**

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Between

ALBERT C. WALL, as Substituted  
Administrator of F. Augustus  
Heinze, deceased, in place of  
Arthur P. Heinze, removed,

*Complainant-Appellant,*  
*and*

AMERICAN SMELTING & REFINING  
COMPANY, *et al.*,  
*Defendants-Respondents.*

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10  
On Appeal  
from  
Chancery.

The answer of Respondent, American Smelting & Refining Company to the Petition of Appeal of the above named Appellant.

This Respondent not acknowledging all or any of the matters which in the said Petition of Appeal are contained, to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the 12th day of March, 1919, made and entered in the Court of Chancery in the cause for the purpose mentioned in the said petition as therein stated; but as to the substance and form thereof, this Respondent prays to refer thereto when the same shall be produced; and this Respondent is advised and believes that the said Decree is agreeable to equity, and he prays that the same may be *Answer of Respondent, Miners Smelting Company, to Petition of Appeal.*

affirmed, with costs to be adjudged to this Respondent.

TREACY & MILTON,  
Solicitors for Respondent,  
Of Counsel with Respondent.

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**Answer of Respondent Miners Smelting  
Company to Petition of Appeal.**

**NEW JERSEY COURT OF ERRORS AND APPEALS.**

10	ALBERT C. WALL, as Substituted Administrator of F. Augustus Heinze, deceased, in place of Arthur P. Heinze, removed, <p style="text-align: center;"><i>Complainant-Appellant,</i></p> <p style="text-align: center;"><i>vs.</i></p> AMERICAN SMELTING & REFINING COMPANY and Miners Smelting Company, <p style="text-align: center;"><i>Defendants-Respondents.</i></p>	On Appeal from Chancery.
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20     The answer of Miners Smelting Company, respondent, to the petition of appeal of the above named appellant.

      This respondent answering the petition of appeal says:

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*Bill of Complaint.*

1. It admits that the decree was made and entered in the Court of Chancery on March 12th, 1919, in the above named cause as therein stated, and refers to said decree for the substance and form thereof.

2. This respondent is advised and believes that the said decree is agreeable to equity and is good and sufficient in accordance with the evidence, and it prays that the same may be affirmed with costs to be adjudged to this respondent. 10

ALBERT I. DRAYTON,  
Solicitor and counsel with Miners  
Smelting Company, Respondent.

**Bill of Complaint.**

IN CHANCERY OF NEW JERSEY. 20

TO THE HONORABLE EDWIN ROBERT WALKER,  
Chancellor of the State of New Jersey:

The complainant Arthur P. Heinze of the Borough of Manhattan, in the City of New York, in the State of New York, as administrator of F. Augustus Heinze, late of the State of New York, deceased, respectfully shows:

(1) F. Augustus Heinze died at Saratoga Springs in the County of Saratoga, in the State of New York on or about the 4th day of November, 1914, intestate possessed of personal property or choses in action within the County of Hudson in the State of New Jersey, and thereafter on March 28, 1916 administration of the goods and 30

*Bill of Complaint.*

chattels, rights and credits which were of said F. Augustus Heinze was granted by the Surrogate of the County of Hudson, to whom jurisdiction in that behalf appertained, to complainant who was duly authorized to administer the same agreeably to law; that complainant duly qualified as  
10 administrator and took upon himself the burthen of the administration of said estate.

(2) On or about May 21, 1907, a contract was made and entered into by and between said F. Augustus Heinze and Silver King Coalition Company, a corporation of the State of  
for the treatment by said F. Augustus Heinze of all the ores of said Silver King Coalition Company for the period of ten years from January 1,  
20 1909 upon the terms and for the consideration mentioned in said contract.

(3) That subsequently and on or about July 3, 1907 said F. Augustus Heinze assigned, transferred and set over all his right, title and interest in the contract mentioned and referred to in paragraph two hereof to the Miners Smelting Company, a corporation of the State of Maine, of which the said F. Augustus Heinze was then the President.

30 (4) On or about March 31, 1909 said Miners Smelting Company made and entered into a contract with American Smelting & Refining Company, a corporation of the State of New Jersey, having its principal office at 15 Exchange Place, in the City of Jersey in this State. In and by which said contract it was provided that the said Miners Smelting Company transferred to said American Smelting & Refining Company, its rights  
40 under the contract made by said F. Augustus Heinze with the Silver King Coalition Company

*Bill of Complaint.*

referred to in paragraph two hereof, and assigned and transferred to the Miners Smelting Company as set forth in paragraph three hereof; that thereafter said Smelting & Refining Company from time to time paid to the Miners Smelting Company the moneys provided to be paid in said contract as they became due. 10

(5) Shortly after the assignment and transfer of said contract made by said Miners Smelting Company to said American Smelting & Refining Company, the last named corporation loaned to the said F. Augustus Heinze the sum of \$115,000, upon securities satisfactory to itself, and under an agreement to apply the moneys payable under the above mentioned contract as they became due month by month in liquidation of the said loan. 20  
Subsequently and on or about March 10, 1914 said F. Augustus Heinze applied to said American Smelting & Refining Company for an additional loan of \$114,000, on the security of the said contract and at the same time offered to deposit additional security with the said last named corporation as collateral; that thereupon said last named corporation insisted as a condition for making said loan that the title to the said contract with it should be transferred to said F. 30  
Augustus Heinze and thereupon entered into a contract with said F. Augustus Heinze, Miners Smelting Company and one John E. McGuirk, under which an additional sum of \$114,000 in cash was advanced by said American Smelting & Refining Company to said F. Augustus Heinze, at the request of the other parties to said last mentioned contract, and the title to the monthly payments due and to become due from said American 40  
Smelting & Refining Company was placed in the name of said F. Augustus Heinze. Complainant

*Bill of Complaint.*

says on information and belief that no reassignment by said F. Augustus Heinze to said Miners Smelting Company, or to any other person or corporation has been found.

10 (6) The securities deposited by said F. Augustus Heinze as additional collateral on the making of said loan of \$114,000, were 55 first mortgage bonds of the Bingham Central Railway Company, 76 first mortgage bonds of the Ohio Copper Company, 100 shares of the capital stock of the State Savings Bank of Butte, Montana, 36,500 shares of the common capital stock of Ohio Copper Company, 70,000 shares of the Stewart Mining Company, all of which securities were deposited with said American Smelting & Refining Company, and as complainant is informed and believes are now held by said last named company. By application of the monthly payments to become due on the contract made between said Miners Smelting Company and said American Smelting & Refining Company the said loan has now been reduced to about \$98,000, and by the provisions of the agreement under which the loan was made, the monthly payments on said last named contract as they accrue must be applied in liquidation of said loan before resort is had to any of the collateral.

30 (7) Complainant is informed and believes that he as administrator of the estate of said F. Augustus Heinze is entitled to the equity remaining in said contract and the securities deposited by said F. Augustus Heinze as collateral for the said loan, after payment of the amount due on said loan, and that the moneys due on said contract and the said securities should be paid over and delivered to him upon payment of the balance due on said loan or subject to the said loan.

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*Bill of Complaint.*

(8) Complainant is informed and believes and therefore charges that said Miners Smelting Company makes some claim to the equity in the said contract, which at present stands in the name of said F. Augustus Heinze, referred to in paragraph four of this bill, and that efforts are being made by said Miners Smelting Company to assert such claim and to prevent the estate of said F. Augustus Heinze from realizing the benefit of said contract to which complainant is informed, it is entitled. That said assignment by said Miners Smelting Company to the said F. Augustus Heinze was an absolute assignment made for a valuable consideration and the claim of said Miners Smelting Company hereinbefore referred to is believed by complainant to be without substance.

(9) Complainant is advised and believes that unless steps are taken by him to protect the estate of said F. Augustus Heinze from the claim of said Miners Smelting Company that said estate may suffer irreparable injury and be deprived of its rights in and under the contract referred to in paragraph four of this bill.

Complainant is without adequate remedy in any of the courts of this State save this Honorable Court, and therefore prays:

1. That said American Smelting & Refining Company, Miners Smelting Company and John E. McGuirk, who are the defendants in this suit, may answer this bill of complaint, without oath, and each statement therein make.

2. That an account may be taken in this Honorable Court of the amount due and to grow due to the estate of said F. Augustus Heinze under the

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*Bill of Complaint.*

contract referred to in paragraph four of this bill, and of the amount due on the loan of \$114,000, made by said American Smelting & Refining Company to said F. Augustus Heinze.

3. That complainant may be decreed to be entitled to the benefit of said contract made on  
 10 or about March 31, 1909 between Miners Smelting Company and American Smelting & Refining Company, and all moneys due and to grow due thereon, and to the securities hereinabove recited, delivered as additional collateral by said F. Augustus Heinze to said American Smelting & Refining Company on the making of the loan of \$114,000 to said F. Augustus Heinze.

4. That an injunction issue restraining and  
 20 enjoining the said American Smelting & Refining Company from paying to said Miners Smelting Company or to any other corporation or person other than complainant any moneys due or to become due under the contract referred to in paragraph four of this bill.

5. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this  
 Court may make in the premises.

30 MCDERMOTT & ENRIGHT,  
 Solicitors for and of counsel with Complainant.

*Bill of Complaint.*

State of New Jersey, }  
 County of Hudson, } ss.:

Arthur P. Heinze, of full age being duly sworn according to law on his oath says: I am the complainant in the foregoing bill of complaint and the administrator of the estate of F. Augustus Heinze, deceased, under an appointment by the Surrogate of the County of Hudson in the State of New Jersey. I took part in the preparation of said bill of complaint and have read the same carefully since its completion. I have been obliged because of the death of said F. Augustus Heinze to state some of the matters set forth in said bill of complaint on information and belief; as to such matters I believe them to be true. Outside of what I have stated on information and belief the matters and things set forth in said bill of complaint are true.

ARTHUR P. HEINZE.

Sworn and subscribed before me }  
 this third day of April, 1916. }

HENRY OETJEN,

Seal. Notary Public of New Jersey.

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**Answer of American Smelting and Refining Company to Bill of Complaint.**

IN CHANCERY OF NEW JERSEY.

10	ARTHUR P. HEINZE, Administrator of F. Augustus Heinze, deceased, <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>against</i></div>	} On Bill, etc.
	AMERICAN SMELTING & REFINING COMPANY, Miners Smelting Company and John E. McGuirk, <div style="text-align: right;"><i>Defendants.</i></div>	

20 The answer of American Smelting and Refining Company, one of the defendants named in the bill of complaint of Arthur P. Heinze, Administrator of F. Augustus Heinze, deceased, filed herein on the 4th day of April, 1916, respectfully shows:

30 1. This defendant, answering paragraph (1) of said bill of complaint, admits that said F. Augustus Heinze died intestate at Saratoga Springs, in the County of Saratoga, in the State of New York, on or about the 4th day of November, 1914, but denies upon information and belief that said F. Augustus Heinze was possessed of any personal property or choses in action within the County of Hudson, in the State of New Jersey. Further answering said paragraph, this defendant admits that on or about March 28, 1916, an order or decree was made by the Surro-

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

gate of the County of Hudson, which purported to grant administration of the goods and chattels, rights and credits which were of said F. Augustus Heinze, to the complainant, but denies upon information and belief that said Surrogate of said County had jurisdiction to make said order, and avers, upon information and belief, that said order or decree was made without jurisdiction by reason of the fact that there was no personal property or choses in action belonging to the said F. Augustus Heinze or his estate within said County of Hudson or within said State of New Jersey, at the time of his death, or at any time thereafter. 10

II. This defendant, answering paragraph (2) of said bill of complaint, admits the allegations contained in said paragraph, and further avers, upon information and belief, that said Silver King Coalition Mining Company is a corporation duly organized and existing under the laws of the State of Nevada, and that said corporation is not now, and never has been, engaged in business within the State of New Jersey. 20

III. This defendant, answering paragraph (3) of said bill of complaint, admits the allegations thereof. 30

IV. This defendant, answering paragraph (4) of said bill of complaint, admits that on or about March 31, 1909, said Miners Smelting Company entered into a contract in writing with this defendant, but for the exact terms and purpose of the said contract this defendant prays leave to refer to the original of said contract, a copy of which is annexed to this answer, marked Exhibit A, and which is hereinafter referred to as Exhibit A. 40

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

V. This defendant, answering paragraph (5) of said bill of complaint, alleges that on the same day upon which Exhibit A was executed, a contract was entered into by and between said Miners Smelting Company, F. Augustus Heinze and this  
10 defendant, pursuant to which this defendant loaned to said Miners Smelting Company the sum of \$100,000, and said Miners Smelting Company, as a condition of said loan, agreed that this defendant should apply in payment of said loan all sums which said Miners Smelting Company was or might become entitled to receive under paragraph Third of Exhibit A; that the payment of said loan by said Miners' Smelting Company was  
20 extended when the same became due, and that while the same was still unpaid, and on October 16, 1909, said Miners Smelting Company entered into an agreement in writing with this defendant whereby it was agreed that this defendant should loan to the Ohio Copper Company, a corporation of the State of Maine, the sum of \$40,000, and it was agreed by and between the parties to said agreement that after the payment of said loan of \$100,000 to said Miners Smelting Company, this  
30 defendant, in case said loan of \$40,000 to the Ohio Copper Company should not be promptly paid at maturity, should have the right to apply to the payment of said loan to the Ohio Copper Company, until the same should be fully paid, all sums which said Miners Smelting Company was or might become entitled to receive under said paragraph Third of Exhibit A; that thereafter, and while said loans were still unpaid, said  
40 Miners Smelting Company, on December 31, 1910, sold, transferred, assigned and set over unto said F. Augustus Heinze all its right, title and interest

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

in and to any and all sums of money which might become due and payable to it under and by virtue of paragraph Third of Exhibit A. Said assignment was expressly made subject to said contract of March 31, 1909, pursuant to which said loan of \$100,000 was made by this defendant to said Miners Smelting Company and to said agreement of October 16, 1909, pursuant to which said loan of \$40,000 was made by this defendant to said Ohio Copper Company, and said assignment to said F. Augustus Heinze was delivered as security for the payment to him of the sum of \$336,895.83, with interest at 6% per annum from December 31, 1910, which said sum was then due and owing to said F. Augustus Heinze from said Miners Smelting Company; that thereafter, by an instrument bearing date December 31, 1910, said F. Augustus Heinze assigned to his sister, Lida M. Fleitman, the right to receive all payments pursuant to the Third paragraph of Exhibit A, as callateral security for the payment of the sum of \$51,761.84, for which amount said F. Augustus Heinze was then indebted to said Lida M. Fleitman, and said assignment was made expressly subject to the payment of said loans of \$100,000 made by this defendant to said Miners Smelting Company, and of \$40,000 made by this defendant to said Ohio Copper Company; that thereafter, on January 16, 1911, this defendant was notified of said assignment to Lida M. Fleitman; that thereafter, and on or about April 1, 1911, this defendant loaned to said F. Augustus Heinze the sum of \$150,000; that thereafter, on October 21, 1911, a written agreement was entered into by and between said Miners Smelting Company, said F. Augustus Heinze and this defendant, pursuant

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

to which, and at the request of said Miners Smelting Company and said F. Augustus Heinze, this defendant loaned to said Ohio Copper Company the additional sum of \$113,000, and it was there-  
10 by agreed by said Miners Smelting Company and said F. Augustus Heinze that this defendant, after the payment of said loan of \$40,000, made by this defendant, to said Ohio Copper Company, and after the payment to said Lida M. Fleitman of said indebtedness of \$51,761.84, owing to her by said F. Augustus Heinze, should have the right to apply to the payment of said loan of \$113,000 all sums which said Miners Smelting Company or said F. Augustus Heinze should or might be-  
20 come entitled to receive under paragraph Third of Exhibit A; that on December 6, 1911, said Miners Smelting Company and said F. Augustus Heinze agreed in writing that said assignment dated December 31, 1910, from said Miners Smelting Company to said F. Augustus Heinze as modified by said agreement dated October 21, 1911, should be held as collateral security for the payment of two notes made by said Miners Smelting Company to said F. Augustus Heinze in the sums of \$50,000  
30 and \$296,949.54 respectively, and it was there-upon agreed by and between said Miners Smelting Company and said F. Augustus Heinze that the holder of said notes should, on the non-performance of any of the promises or agreements therein contained, have the right to retain the interest transferred to said Heinze by said assignment, together with other interests assigned to  
40 him as collateral for the payment of said notes as liquidated damages for the amount of both of said notes, inasmuch as the values of the collateral were difficult of ascertainment with exactness, or, upon

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

such default, that the holder of said notes, at his option, should have the right to sell the whole of said collateral, or any part thereof, or any substitutes therefor, or any additions thereto, at private sale in the City of New York or elsewhere, or, at the election of the holder thereof, at public sale through Adrian H. Muller & Son, auctioneers, at the Exchange Sales Room, Nos. 14-16 Vesey Street, Borough of Manhattan, City of New York, such private or public sale to be upon three days' notice to the Miners Smelting Company, and after deducting all costs and expenses for collection, sale and delivery, to apply the residue of the proceeds of such sale or sales to pay any or all of the said liabilities to the holder of said notes, returning the over-plus to said Miners Smelting Company; and it was further agreed that the holder of the note or notes might purchase the whole or any part of such securities at such sale, discharged from any right of redemption, and that the Miners Smelting Company should be and remain liable to the holders of said notes for any deficiency; that thereafter on January 6, 1912, said Miners Smelting Company defaulted in the payment of both of said notes, and in pursuance of said contract, after the notice required to be given by said contract had been duly given to said Miners Smelting Company, the collateral for said notes, including said assignment by said Miners Smelting Company to said F. Augustus Heinze, dated December 31, 1910, was duly sold at public auction in accordance with the terms of said agreement, by Adrian H. Muller & Son on January 31, 1912, to the defendant herein, John E. McGuirk, who thereafter assigned said collateral to said F. Augustus Heinze; that thereafter, by an agreement in writing dated August 12, 1912,

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

between F. Augustus Heinze, said Miners Smelting Company and this defendant, said F. Augustus Heinze purchased from this defendant the promissory note of the Ohio Copper Company evidencing said loan of \$113,000, made to said company by this defendant pursuant to said agreement of October 21, 1911, by paying in cash therefor the sum of \$50,081.66, and giving his demand note for \$62,000, and it was agreed by the parties to said agreement that this defendant should have the right to apply to the payment of said sum of \$62,000 loaned by it to said F. Augustus Heinze all sums which said Miners Smelting Company or said F. Augustus Heinze should be come entitled to receive under paragraph Third of Exhibit A, after the payment therefrom of all sum which might thereafter become due to Mrs. Lida M. Fleitman under the terms of said assignment made to her by said F. Augustus Heinze; that pursuant to said assignment from F. Augustus Heinze to Lida M. Fleitman, this defendant, prior to March 17, 1913, made the payments required to be made under paragraph Third of Exhibit A to said Lida M. Fleitman, and on the 17th day of March, 1913, had paid in full to said Lida M. Fleitman the sum of \$51,761.84, which amount of the indebtedness authorized to be paid by said assignment from said F. Augustus Heinze to said Lida M. Fleitman; that thereafter, and on or about March 10, 1914, said F. Augustus Heinze applied to said American Smelting & Refining Company for an additional loan on the security of said contract, and at the same time offered to deposit additional security with this defendant as collateral, and, in order to procure said loan, said F. Augustus Heinze represented to this defendant that all the right, title and interest of said Miners

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

Smelting Company in the sums of money which might become due to it under paragraph Third of Exhibit A, were duly sold at public auction on January 31, 1912, to John E. McGuirk, and were by said McGuirk subsequently assigned to said F. Augustus Heinze; that as a condition of making said loan, this defendant insisted that such representations should be confirmed by said Miners Smelting Company and said John E. McGuirk, and thereupon said Miners Smelting Company, said John E. McGuirk and said F. Augustus Heinze entered into a written agreement with this defendant, bearing date March 10, 1914, which is the agreement referred to in paragraph (5) of said bill of complaint, a copy of which is annexed to this answer, marked Exhibit B and which is hereinafter referred to as Exhibit B, and upon the same date said Miners Smelting Company executed and delivered to this defendant a formal assignment, release and quit-claim of any and all interest which it then had in the contract between said Miners Smelting Company and said Silver King Coalition Mining Company, and did thereby sell, assign, quit-claim and transfer to this defendant all its right, title, interest and benefit in and to said agreement of May 21, 1907, which is the agreement referred in paragraph (2) of said bill of complaint, and a copy of which is annexed to this answer, marked Exhibit C. On information and belief, this defendant admits that no reassignment by said F. Augustus Heinze to said Miners Smelting Company, or to any other person or corporation, has been found.

Except as hereinbefore expressly admitted, this defendant denies, upon information and belief, each and every allegation contained in paragraph (5) of said bill of complaint.

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

VI. This defendant, answering paragraph (6) of said bill of complaint, admits that the securities mentioned in paragraph First of Exhibit B were deposited with this defendant and are now held by it as collateral security under the terms  
10 of said agreement, with the exception of twenty-nine First Mortgage Six Per cent. Convertible Gold Bonds of the Ohio Copper Company, which have been deposited with the Guaranty Trust Company of New York under a plan for the reorganization of said company, and further admits that by the application of payments which had become due under paragraph Third of Exhibit A, said loan has now been reduced to the sum of  
20 \$68,200.18.

Further answering paragraph (6) of said bill of complaint, this defendant denies each and every allegation contained in said paragraph which is not hereinbefore expressly admitted.

VII. Answering paragraph (7) of said bill of complaint, this defendant denies, upon information and belief, that the complainant is the duly qualified administrator of the estate of said F. Augustus Heinze, and alleges that the order pur-  
30 porting to appoint him such administrator was made without jurisdiction by reason of the fact that said F. Augustus Heinze did not, at the time of his death, own any personal property or choses in action whatsoever in this state, nor has his estate owned any such property within this state at any time since his death; and this defendant further avers that none of the securities deposited as collateral under said agreement of March 10, 1914, have ever physically been within the State of  
40 New Jersey, and that all of said securities, with the exception of said twenty-nine Ohio Copper Company bonds, which have been deposited with the Guaranty Trust Company as aforesaid, have

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

been at all times since the death of said F. Augustus Heinze physically held by this defendant within the State of New York; that none of said securities were issued by any corporation incorporated or doing business in the State of New Jersey; that none of the contracts, assignments or written obligations hereinbefore referred to have at any time been within the State of New Jersey, but that the same have at all times been physically located within the State of New York; that this defendant is regularly conducting business in the State of New York, where it is authorized to do business and can be served with process, and this defendant is informed and believes that the complainant is a resident of the State of New York, and that the other defendants may be personally served within said state; that until the payment in full of the indebtedness of said F. Augustus Heinze to this defendant, referred to in said agreement of March 14, 1914, neither the estate of F. Augustus Heinze nor the Miners Smelting Company, nor any other person, has or can have any claim whatsoever against this defendant to recover from it any of the payments required to be made under the Third paragraph of Exhibit A, and that the estate of F. Augustus Heinze has no present cause of action against this defendant of any kind whatsoever.

Further answering paragraph (7) of said bill of complaint, this defendant denies that complainant is entitled to the equity remaining in said contract referred to in paragraph (7) of said bill of complaint or to the securities deposited under said agreement of March 10, 1914, after payment of the amount of the loan referred to therein, and further denies that any moneys

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

due on any contract from this defendant or any securities held by it should be paid over or delivered to the complainant upon any terms or conditions; and further, this defendant avers that the complainant has never offered or tendered  
10 payment of the amount of said loan still unpaid to this defendant. This defendant further avers upon information and belief that Lida M. Fleitman was duly appointed administratrix of the estate of said F. Augustus Heinze by the Surrogate of the County of Saratoga, in the State of New York, on the 5th day of November, 1914, and thereafter acted as such administratrix; that  
20 thereafter and on the 23rd day of August, 1916, a decision and decree were duly made and entered by said Surrogate of Saratoga County removing said Lida M. Fleitman as administratrix, and appointing Walter A. Fullerton, of Saratoga Springs, in said State of New York, as administrator in her place and stead of the goods, chattels and credits of said F. Augustus Heinze, deceased, and that thereafter said Walter A. Fullerton duly qualified, and is now acting as such administrator; that said Surrogate of the County  
30 of Saratoga had full jurisdiction and authority to grant letters of administration upon the estate of F. Augustus Heinze, deceased, who, at the time of his death, was a resident of said county, in said State of New York, and that said administrator has full power and authority under the laws of the State of New Jersey, as well as under the laws of the State of New York, to make any claim to which the said estate is or may be entitled against  
40 this defendant.

VIII. This defendant, answering paragraph (8) of said bill of complaint, avers that it has no

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

knowledge or information of any claim made by said Miners Smelting Company to the equity in the contract referred to in paragraph (4) of said bill of complaint, and alleges that no such claim has ever been presented to it by said Miners Smelting Company or any person in its behalf, nor has this defendant any knowledge or information that any efforts are now being made by said Miners Smelting Company to assert any such claim or to prevent the estate of said F. Augustus Heinze from realizing the benefit of said contract, except that this defendant is informed and believes that in the proceedings before said Surrogate of Saratoga County in the administration of the estate of said F. Augustus Heinze, said Lida M. Fleitman has made such a claim in testimony given by her before said Surrogate. This defendant denies that the contract referred to in paragraph (4) of said bill of complaint stands in the name of F. Augustus Heinze, except as hereinbefore expressly admitted, and this defendant denies each and every allegation contained in said paragraph (8) of said bill of complaint which has not hereinbefore been expressly admitted or denied.

IX. This defendant, answering paragraph (9) of said bill of complaint, avers that it has never done or threatened to do anything contrary to, or in violation of the terms of, any of the agreements between this defendant and said F. Augustus Heinze; that the only claim ever made by said Miners Smelting Company or this defendant with respect to said agreement of March 10, 1914, was made long after the commencement of this action on June 9, 1916, when similar demands were re-

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

ceived in the mail from the complainant herein and from the Miners Smelting Company, each demanding the delivery of a portion of the securities deposited under said agreement of March 10, 1914, pursuant to paragraph Eighth thereof. This

10 defendant alleges upon information and belief that the complainant herein himself procured said demand to be made by said Miners Smelting Company, and thereafter appeared before this Court and consented to the delivery of certain of said securities to said Miners Smelting Company under the order entered herein on the 29th day of June, 1916, to the terms of which this defendant prays leave to refer. Further answering the

20 allegations of said paragraph (9) of said bill of complaint, this defendant avers that it has regularly each month credited upon said loan of said F. Augustus Heinze the monthly payments in accordance with the terms of Exhibit B, and denies that unless steps are taken by complainant to protect the estate of said F. Augustus Heinze from the claim of said Miners Smelting Company, the estate may suffer irreparable injury or be deprived of any of its rights.

30 X. Further answering said bill of complaint, this defendant alleges on information and belief that Lida M. Fleitman is the sole stockholder of said Miners Smelting Company, and while acting as said administratrix of the estate of said F. Augustus Heinze, said Lida M. Fleitman filed an inventory in the Surrogate's Court for the County of Saratoga, in the State of New York, in which she included as part of the assets of said estate

40 the securities deposited with this defendant as collateral under said agreement Exhibit B, but

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

that said Lida M. Fleitman, as administratrix of said estate, failed to include in said inventory any statement of any right, title or interest of said F. Augustus Heinze, in the payments required to be made pursuant to paragraph Third of Exhibit A; that thereafter, while acting as said administratrix, said Lida M. Fleitman failed to make any disclosure whatsoever of any of the rights of said F. Augustus Heinze arising under any of the agreements or assignments hereinbefore alleged, of which she had full knowledge as administratrix of said estate at all times subsequent to her appointment; and this defendant further alleges that said Lida M. Fleitman was removed on August 23, 1916, as administratrix of the estate of F. Augustus Heinze as hereinbefore alleged, and that among the grounds assigned by said Surrogate of Saratoga County for removing said administratrix was that she had, while claiming to be the sole stockholder of said Miners Smelting Company, asserted claims in behalf of that company to all the beneficial right and interest in and to the payments required to be made under paragraph Third of Exhibit A after the payment of the indebtedness referred to in Exhibit B, and that while acting as said administratrix, she, the said Lida M. Fleitman, had failed to disclose the agreement in this answer referred to as Exhibit B, or any beneficial interest of said F. Augustus Heinze under said agreement or under the agreement in this answer referred to as Exhibit A.

Further answering said bill of complaint, this defendant alleges on information and belief that the application of the complainant to the Surrogate of the County of Hudson for letters of administration was made upon the written consent

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

and with the approval of said Lida M. Fleitman for the purpose of securing a collusive adjudication by this Court that the beneficial interest to the payments required to be made pursuant to paragraph Third of Exhibit A belonged to the  
 10 Miners Smelting Company, as claimed by said Lida M. Fleitman in said proceedings in said Surrogate's Court of Saratoga County, and that the estate of said F. Augustus Heinze has no interest therein, so that the creditors of said estate may not be able to reach the interest of said estate in said payments; and this defendant further avers on information and belief that said Lida M. Fleitman hopes and expects by this device to secure  
 20 for herself, as the sole stockholder of said Miners Smelting Company, the benefits of said payments and the equity in said collateral to the exclusion of the creditors of said estate.

XI. Further answering said bill of complaint, this defendant alleges that an action has been commenced, and is now pending, in the Supreme Court of the State of New York, for the County of New York, by Edwin Gould, on behalf of himself and all other creditors of F. Augustus Heinze,  
 30 deceased, against said Lida M. Fleitman, individually and as administratrix of the goods, chattels and credits of F. Augustus Heinze, deceased, and Miners Smelting Company, to determine and establish the right of the estate of F. Augustus Heinze, deceased, to the said contracts referred to in the bill of complaint, and to the moneys due and to become due thereunder, and the securities held by this defendant as collateral for said loan  
 40 as against said Miners Smelting Company; and

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

this defendant alleges that said Supreme Court of the State of New York is the proper tribunal within which said dispute may be adjudicated, and that upon principles of equity and comity further proceedings in this suit should await the determination of the questions involved in said action now pending in said Supreme Court of the State of New York. 10

XII. Further answering said bill of complaint, this defendant alleges that it has no interest whatsoever in said controversy, and is not making any claim adverse to the estate of F. Augustus Heinze, deceased, and that the said estate of F. Augustus Heinze, deceased, had no right of action against this defendant, and did not have at the time the alleged order or decree was made purporting to grant letters of administration by the Surrogate of the County of Hudson. This defendant further alleges that Miners Smelting Company is a corporation organized under the laws of the State of Maine, and this defendant is informed and believes that said company has no property within the State of New Jersey, and is not conducting business in said state. This defendant further alleges that the complainant is not a resident of the State of New Jersey, but is a resident of the State of New York. 20 30

XIII. This defendant further avers that the bill of complaint does not set forth facts sufficient to entitle the complainant to any relief in this Honorable Court or to constitute any cause of action whatsoever; that said bill of complaint is without equity, and that this Court has no jurisdiction of the subject-matter, and this defendant prays that it shall have the same benefit of these defenses as if it had demurred to the complainant's bill. 40

*Answer of American Smelting & Refining Company  
to Bill of Complaint.*

And this defendant humbly prays to be hence dismissed with its reasonable costs and charges in its behalf most wrongfully sustained.

AMERICAN SMELTING & REFINING CO.,

By Edward Brush,

Vice-President.

10

Attest:

W. E. MERRISS,

Secretary.

TREACY & MILTON,

Solicitors for Defendant, American

Smelting & Refining Company.

State of New Jersey, }  
County of Hudson, } ss.:

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The answer of the defendant American Smelting & Refining Company was taken before me under its common seal this 5th day of October, Nineteen hundred and sixteen.

JOHN S. RIDLEY,

Master in Chancery of New Jersey.

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**Exhibit A.**

Agreement, made this 31st day of March, 1909, by and between the Miners' Smelting Company, a corporation of the State of Maine, hereinafter called "Miners' Company," party of the first part, and the American Smelting and Refining Company, a corporation of the State of New Jersey, hereinafter called "American Company," party of the second part. 10

Whereas, heretofore and on the 21st day of May, 1907, the Silver King Coalition Mining Company, a corporation, duly made and entered into an agreement in writing with F. Augustus Heinze, whereby said Company agreed to sell to him or his assigns its entire output of crude ore and concentrates for a period of ten years beginning January 1st, 1909, all upon the terms and conditions as in said agreement set forth, to which reference is hereby made; and 20

Whereas, heretofore and on the 3rd day of July, 1907, the said Heinze duly assigned his interest in and to said agreement to the Miners' Company; and

Whereas, the Miners' Company desires to sell, and the American Company desires to purchase, all the crude ore and concentrates that may be received by the Miners' Company under the said agreement of May 21st, 1907; 30

Now therefore, this agreement

Witnesseth:

That, in consideration of the premises and of one dollar and other valuable considerations, mutually paid and received, the parties hereto do hereby covenant and agree as follows:

FIRST. The Miners' Company hereby sells and agrees to deliver to the American Company, and 40

*Exhibit A—Annexed to Answer of American Smelting & Refining Company.*

the American Company hereby purchases and agrees to receive from the Miners' Company, all crude ore and concentrates that may be received by the Miners' Company under the said agreement of May 21st, 1907, and the Miners' Company  
 10 agrees that, in no case, shall any ore or concentrates received by it under staid agreement be shipped by it to any other party than the American Company or its assigns.

SECOND. The American Company agrees to receive the above mentioned ore and concentrates delivered in carload lots f. o. b. Park City, Utah, and to pay for the same as set out in the second paragraph of said agreement of May 21st, 1907, a  
 20 copy whereof is attached hereto as part of this agreement.

THIRD. In addition to the sums required to be paid under the second paragraph hereof, the American Company agrees to pay the Miners' Company on the tenth of each month, the sum of Two dollars (\$2.) per dry ton for all ores and concentrates and One and 50/100 dollars (\$1.50) per dry ton for all slimes received by it under or in pursuance of this agreement on the settlements  
 30 made by it during the preceding calendar month.

FOURTH. The Miners' Company agrees that it will fully and promptly perform and do all things required to be performed or done by it by said agreement of May 21st, 1907, and further agrees that, if the Silver King Coalition Mining Company shall not fully and promptly perform its obligations under said agreement, the Miners' Company will cause to be promptly instituted and will dili-

*Exhibit A—Annexed to Answer of American  
Smelting & Refining Company.*

gently prosecute any and all actions that may be proper or necessary in the effort to compel the Silver King Coalition Mining Company or its assignees to comply with all the requirements of the said agreement of May 21st, 1907. The American Company shall have the right to designate at least one of the attorneys who shall have charge of such action or actions, and one-half of all the costs and expenses of such litigation, including attorneys' fees, shall be paid by each of the parties hereto, provided that the American Company shall not be obliged or required to pay any part of such costs and expenses, unless the proceeding or proceedings instituted for the purpose of compelling the Silver King Coalition Mining Company to comply with its obligations and the conduct of such proceedings shall be approved by the counsel selected by the American Company to assist therein.

FIFTH. The Miners' Company further agrees that, if it shall fail to deliver to the American Company all the ores and concentrates herein provided to be delivered by it to the American Company under this agreement, it will pay to the American Company, as liquidated damages, the sum of Five dollars (\$5.) per ton on all ores, concentrates or slimes which it shall so fail to deliver.

SIXTH. This agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto.

In witness whereof, the parties hereto have hereunto caused their respective corporate names to be signed and their respective corporate seals

*Exhibit A—Annexed to Answer of American Smelting & Refining Company.*

to be hereto affixed, duly attested by their respective Secretaries, the day and year first herein written.

MINERS' SMELTING COMPANY,  
By (Sgd) John B. Summerfield,  
President.

10

Attest:

(Sgd) GEO. BAGLIN,  
Secretary.

AMERICAN SMELTING & REFINING COMPANY,  
By (Sgd) Barton Sewell,  
Vice-President.

Attest:

(Sgd) W. E. MERRISS,  
Secretary.

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**Exhibit B.**

Agreement, made this 10th day of March, 1914, between American Smelting and Refining Company, a corporation organized under the laws of the State of New Jersey, hereinafter called the "American Company," party of the first part, and F. Augustus Heinze, of the City of New York, party of the second part, Miners Smelting Company, a corporation organized under the laws of the State of Maine, hereinafter called the "Miners Company," party of the third part, and John E. McGuirk, of the City and State of New York, of the fourth part.

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*Exhibit B—Annexed to Answer of American Smelting & Refining Company.*

Whereas, the American Company has heretofore from time to time loaned certain sums of money to the party of the second part and has advanced certain other sums for his account, which said loans and advances have been secured from time to time by the deposit of certain collateral; and 10

Whereas, the said Heinze represents that all the right, title and interest of the Miners Company in the sums of money which might become due to it under the third paragraph of an agreement of March 31st, 1909, between it and the American Company, were duly sold at public auction on or about January 31st, 1912, to one John E. McGuirk, and were by said McGuirk subsequently assigned to said Heinze, and the Miners Company and the said McGuirk by joining in this instrument admit the truth of said representation and that said Heinze is now legally entitled to the said sums of money, which may become payable under the third paragraph of said agreement of March 31st, 1909; and 20

Whereas, the American Company has rendered a statement of account to the party of the second part on the date hereof, showing the total indebtedness of the party of the second part to the American Company including One hundred and fourteen thousand three hundred and four  $\frac{3}{100}$  Dollars (\$114,304.03) this day loaned by it to Heinze, to be the sum of Two hundred and twenty nine thousand Dollars (\$229,000.00); and 30

Whereas, it is the desire of the party of the second part and of the Miners Company to secure the payment of the said sum of money, 40

Now therefore, this agreement witnesseth:

*Exhibit B—Annexed to Answer of American Smelting and Refining Company.*

That in consideration of the premises and of the covenants and agreements hereinafter contained, it is agreed as follows:

10 FIRST. The party of the second part hereby agrees that the American Company shall hold the following bonds and stocks as collateral security for the payment of his said indebtedness to the American Company, viz.:

Bingham Central Railway Co.

6% Gold Bonds ..... \$255,000 par

Ohio Copper 1st Mortgage 6%

Convertible Gold Bonds..... 78,000 “

Ohio Copper Co. capital stock. 36,150 shares

State Savings Bank of Butte... 100 “

20 Stewart Mining Company shares 7,000 “

SECOND. The said indebtedness of said second party to said first party shall be repaid at the rate of at least Five Thousand Dollars (\$5,000) per month from the date hereof in the following manner:

30 The said party shall credit to said second party all sums received by said first party under and by virtue of the contract hereinbefore referred to, dated March 31, 1909; if, in any month, the payment under said contract shall not equal said sum of Five thousand dollars (\$5,000) then said first party shall, on the 15th day of said month, in writing, notify said second party of said fact, and said second party shall have until the first day of the following month to make good the deficiency; that is, the difference between said monthly payment of Five Thousand Dollars (\$5,000) and said

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*Exhibit B—Annexed to Answer of American  
Smelting & Refining Company.*

cash received by said first party under said contract. If said second party shall not make up said difference and pay the same in cash by the first day of the following month then and in that event said first party is privileged to elect that entire amount of said indebtedness shall be and become due and payable within sixty days from the date when payment is thereafter demanded, to be evidenced by written demand therefor. 10

THIRD. In default of payment of the said indebtedness, or any part thereof, as hereinbefore provided, the party of the second part hereby authorizes the said American Company, or its assigns, to sell or dispose of the said collateral security, or any part thereof, at public or private sale, and to apply the proceeds of such sale, as far as needed, toward the payment of the indebtedness so secured, together with interest and expenses of sale, and to hold the party of the second part responsible for any deficiency remaining after such application. 20

If any such sale be at public auction, the American Company may itself be the purchaser at such sale, free from any right and equity or redemption of the party of the second part, such right and equity being hereby waived and released. 30

FOURTH. The party of the second part agrees that the American Company shall have the right to cut from any bonds held by it as collateral security for said cash, any and all coupons that may mature before the said indebtedness shall be fully paid, the proceeds of the said coupons to be applied first by the American Company to the payment of the principal of the said debt. 40

*Exhibit B—Annexed to Answer of American Smelting & Refining Company.*

FIFTH. The Miners Company and the said F. Augustus Heinze hereby assign, transfer and set over unto the American Company as additional collateral security hereunder, all sums which the Miners Company or the said F. Augustus Heinze shall, or may, become entitled to receive under the third clause of a certain agreement, dated March 31st, 1909, made by and between the Miners Smelting Company and the American Smelting and Refining Company, until the present or any future indebtedness of the said Heinze to the American Company, together with the interest thereon, has been fully paid.

SIXTH. The Miners Company hereby assigns, transfers and sets over to the American Company all sums which the Miners Company is, or may become, entitled to receive under the terms of the first paragraph of an agreement dated April 1st, 1911, made by and between the Miners Company and the American Smelting and Refining Company, until the present or any future indebtedness of the said Heinze to the American Company, together with the interest thereon has been fully paid.

SEVENTH. Upon the payment in full of the indebtedness hereby secured with the interest thereupon, said first party shall continue the payment to second party, or his assigns, in accordance with the terms of the agreements dated March 31st, 1909 and April 1st, 1911, herein referred to.

EIGHTH. It is further agreed that the said party of the second part, as payments are made from month to month, or otherwise, may withdraw said collateral securities *pro rata*, that is in

*Exhibit B—Annexed to Answer of American  
Smelting & Refining Company.*

the proportion that the securities so pledged bear to the total indebtedness.

NINTH. This agreement supersedes and cancels a certain agreement heretofore entered into by and between the parties hereto, dated August 12th, 1912. 10

In witness whereof, the respective corporations, parties hereto, have caused these presents to be executed by their proper officers and their corporate seals to be hereunto affixed, and the said F. Augustus Heinze and the said John E. McGuirk have hereunto set their hands and seals, the day and year first hereinabove written.

AMERICAN SMELTING AND REFINING COMPANY.  
By Edward Brush, Vice President. 20

Attest:

W. E. Merriss,  
Secretary.

MINERS SMELTING COMPANY,  
By Chas. W. Saacke, Vice President.

Attest:

Jno. L. Williams,  
Secretary.

(Seal.)

F. AUGUSTUS HEINZE 30

Witness:

Nash Lockwood.

JOHN E. MCGUIRK

Witness:

L. A. Dunham.

**Exhibit C.**

Agreement made this 10th day of March, 1914, by and between Miners Smelting Company, a corporation of the State of Maine, hereinafter called "Miners Company," party of the first part, and American Smelting and Refining Company, a corporation of the State of New Jersey, hereinafter called "American Company," party of the second part.

Whereas, heretofore, on the 21st day of May, 1907, the Silver King Coalition Mines Company, a corporation organized under the laws of the State of Nevada, hereinafter called "Silver King Company," duly entered into an agreement in writing with F. Augustus Heinze, whereby the Company agreed to sell to him and his assigns, its entire output of crude ore and concentrates for a period of ten (10) years, beginning January 1st, 1909, all upon the terms and conditions in said agreement set forth, to which reference is hereby made; and

Whereas, heretofore, on the 3rd day of July, 1907, the said Heinze duly assigned his interest in and to said agreement to the Miners Company; and

Whereas, heretofore, on the 3rd day of July, 1907, the said Heinze duly assigned his interest in and to said agreement to the Miners Company; and

Whereas, the Miners Company represents that, heretofore and on or about January 31st, 1912, all the right, title and interest of the Miners Company in the sums of money which might become due to it under the third paragraph of an agreement dated March 31st, 1909, between it and the American Company were duly sold at public auc-

*Exhibit C—Annexed to Answer of American  
Smelting & Refining Company.*

tion to one John E. McGuirk and were by said McGuirk subsequently assigned to F. Augustus Heinze, and the said Heinze is now legally entitled to the said sums of money which may become payable under the third paragraph of said agreement of March 31st, 1909; and

10

Whereas, it has been mutually agreed between the parties hereto that said Miners Company shall execute and deliver a formal assignment, release or quit-claim of any interest it now has in said contract of May 21st, 1907;

Now therefore, this agreement witnesseth: That in consideration of the premises, of Five dollars (\$5), mutually paid and received, and other good and valuable considerations, the parties do hereby mutually agree as follows:

20

FIRST. The Miners Company does hereby sell, assign, quit-claim and transfer to the American Company all the right, title, interest and benefit of the Miners Company in and to said agreement of May 21st, 1907, between said Silver King Company and said Heinze.

SECOND. The American Company does hereby accept this assignment and does hereby covenant and agree to punctually and faithfully do and perform all matters and things required to be done by the said Miners Company under said assignment of July 3rd, 1907, from the said Heinze to it.

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THIRD. This agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the respective parties hereto.

In witness whereof, the parties hereto have caused this agreement to be executed by their

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*Exhibit C—Annexed to Answer of American Smelting & Refining Company.*

proper officers and their corporate seals to be hereunto affixed, the day and year first above written.

MINERS SMELTING COMPANY,  
By Chas. Saacke, Vice-Pres.

Attest:

10 John L. Williams,  
Secretary.

AMERICAN SMELTING AND REFINING COMPANY,  
By Edward Brush, Vice-Pres.

Attest:

W. E. Merriss,  
Secretary.

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**Answer of Miners Smelting Company to  
Bill of Complaint.  
IN CHANCERY OF NEW JERSEY.**

<p>ARTHUR HEINZE, as Administrator of F. Augustus Heinze, deceased,</p>	}	Complainant,	On Bill, &c. <b>10</b>
<p style="text-align: center;">vs.</p>			
<p>AMERICAN SMELTING &amp; REFINING COMPANY, <i>et al.</i>, Defendants.</p>		Defendants.	

**THE ANSWER OF THE DEFENDANT MINERS SMELTING COMPANY.**

The defendant Miners Smelting Company answering the Bill of Complaint says that:

1. Paragraphs 1 to 4 inclusive are admitted. **20**
2. That that portion of paragraph 5 alleging loans by American Smelting & Refining Company to F. Augustus Heinze of \$229,000 upon certain securities and under a certain agreement and upon condition that the title to the contract between this defendant and American Smelting & Refining Company, dated on or about March 31st, 1909, should be transferred to said Heinze, and the making of a contract with said Heinze, this defendant and one John E. McGuirk, whereupon the title to monthly payments due and to become due from said American Smelting & Refining Company was placed in the name of F. Augustus Heinze, upon information and belief is admitted **30**

**40**

*Answer of Miners Smelting & Refining Co. to Bill  
of Complaint.*

but this defendant has no knowledge as to whether a reassignment of said last mentioned contract has been found by complainant, but on information and belief states the fact to be that there is a reassignment of said contract by said F. Augustus  
10 Heinze to this defendant.

3. Paragraph 6 is admitted.

4. This defendant denies paragraph 7 in which it is alleged that the estate of F. Augustus Heinze is entitled to the equity remaining in the contract made by this defendant with American Smelting & Refining Company and in the securities deposited by said F. Augustus Heinze as collateral for the loan of \$114,000 made by American Smelt-  
20 ing & Refining Company to said F. Augustus Heinze after the payment of the amount due on said loan, but states the fact to be that the title to said contract is in this defendant and the securities pledged for said loan should be paid over and delivered to this defendant upon payment of the balance due on said loan.

5. This defendant admits that portion of paragraph 8 in which it is charged that this defendant makes a claim to the equity under the contract referred to in paragraph 4 of this bill, and that  
30 efforts are being made by this defendant to assert such claim and prevent the estate of said F. Augustus Heinze from realizing the benefit of said contract but denies that said contract stands in the name of F. Augustus Heinze or that the estate of said Heinze is entitled to the benefits of said contract, and further denies that the assignment by this defendant to F. Augustus Heinze was an  
40 absolute assignment made for a valuable consid-

*Answer of Miners Smelting & Refining Co. to Bill  
of Complaint.*

eration, and further denies the claim of this defendant is without substance.

6. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph 9.

MINERS SMELTING COMPANY,  
By Lida M. Fleitmann,  
President.

10

Attest:

Calvin O. Geer,  
Secretary.

Seal.

ALBERT I. DRAYTON,  
Solicitor of Defendant,  
Miners Smelting Company.

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State of New York, }  
County of New York, } ss.:

The answer of the defendant, Miners Smelting Company, by Galvin O. Geer, Secretary, was taken this 29th day of September, 1916, before me, under the common seal of the said corporation, as by its said seal thereto affixed, appears.

(Seal) MORRIS MYERS,  
Notary Public,  
New York Co. 266.

30

Certificate of County Clerk attached to original,  
dated October 2nd, 1916.

40

**Replication to Answer of American  
Smelting & Refining Company.**

IN CHANCERY OF NEW JERSEY.

10	ARTHUR P. HEINZE, Administra- tor of F. Augustus Heinze, de- ceased,  <div style="text-align: right;">Complainant,</div>	}	On Bill, &c.
	vs.		
	AMERICAN SMELTING & REFINING COMPANY, <i>et al.</i> ,  <div style="text-align: right;">Defendants.</div>		

The complainant joins issue on the answer of the defendant, American Smelting & Refining Company.

MCDERMOTT & ENRIGHT,  
Solicitors of Complainant.

**Replication to Answer of Miners Smelt-  
ing Company.**

IN CHANCERY OF NEW JERSEY.

30	ARTHUR P. HEINZE, Administra- tor of F. Augustus Heinze, de- ceased,  <div style="text-align: right;">Complainant,</div>	}	On Bill, &c.
	vs.		
	AMERICAN SMELTING & REFINING COMPANY, <i>et al.</i> ,  <div style="text-align: right;">Defendants.</div>		

The complainant joins issue on the answer of the defendant, Miners Smelting Company.

MCDERMOTT & ENRIGHT,  
Solicitors of Complainant.

**Petition of Albert C. Wall, Administra-  
tor, etc.. to be Substituted as Party  
Complainant.**

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Between

ARTHUR P. HEINZE, Administra-  
tor of F. Augustus Heinze, de-  
ceased,

Complainant,

vs.

AMERICAN SMELTING & REFINING  
COMPANY, *et al.*,

Defendants.

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On Bill, &c.

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TO THE HONORABLE, EDWIN ROBERT WALKER,  
CHANCELLOR OF THE STATE OF NEW JERSEY:

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Your petitioner, Albert C. Wall, respectfully  
shows:

1. That on the 11th day of December, 1916, by  
order of the Hudson County Orphans' Court in  
the matter of the Estate of F. Augustus Heinze,  
deceased, your petitioner was appointed adminis-  
trator of the estate in New Jersey, if any, of said  
F. Augustus Heinze, deceased, together with  
Walter A. Fullerton, the New York Adminis-  
trator.

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2. On the 8th day of January, 1917, your peti-  
tioner qualified and gave bond pursuant to the  
terms of said order.

3. After your petitioner's appointment an ap-  
peal from the order of appointment was taken to  
the Prerogative Court and your petitioner was, on  
the 23rd day of May, 1917, duly appointed admin-

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*Petitioner of Albert C. Wall, Adm., to be Substituted as Party Complainant.*

istrator *pendente lite* of the estate in New Jersey of said F. Augustus Heinze, deceased, and ordered to give bond in the sum of One thousand dollars (\$1,000) which your petitioner subsequently did.

10 Thereafter the appeal coming on to be heard, the appointment of your petitioner's co-administrator of said estate was set aside and your petitioner became sole administrator.

4. On the 4th day of April, 1916, Arthur P. Heinze, then administrator of the estate of F. Augustus Heinze, deceased, filed a bill in Chancery against American Smelting & Refining Company, Miners' Smelting Company and John E. McGuirk, praying, *inter alia*, that an account  
20 might be taken in the Court of Chancery of any amount due the estate of said F. Augustus Heinze under the contract referred to in said bill.

Answers were filed and the cause was set down for hearing.

The complainant, Arthur P. Heinze, is no longer administrator of the estate of F. Augustus Heinze and consequently has no right to further prosecute said suit.

30 Your petitioner therefore prays that he may be substituted as party complainant in said cause to the end that a determination of the subject matter of said suit may be had.

ALBERT C. WALL,  
Administrator of the Estate  
in New Jersey of F. Augustus Heinze, deceased. *Pro se.*

*Petitioner of Albert C. Wall, Adm., to be Substituted as Party Complainant.*

State of New Jersey, )  
County of Hudson, ) ss.:

Albert C. Wall, being duly sworn, according to law, on his oath deposes and says:

I am the petitioner named in the foregoing petition. The matters and things therein stated are true to the best of my knowledge, information and belief.

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ALBERT C. WALL.

Subscribed and sworn to before me }  
this 25th day of March, 1918. }

CHAS. J. GORMLEY,

Notary Public of New Jersey.

We consent that the petitioner named herein be substituted as party complainant in accordance with the prayer of said petitioner.

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TREACY & MILTON,  
Solicitors for American Smelting & Refining Company.

ALBERT I. DRAYTON,  
Solicitor for Miners' Smelting Company, *et al.*

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**Order Appointing Albert C. Wall, Administrator, as Party Complainant.**

**IN CHANCERY OF NEW JERSEY.**

10	Between ARTHUR P. HEINZE, as Administrator of F. Augustus Heinze, deceased,  <div style="text-align: right;">Complainant,</div> <div style="text-align: center;"><i>and</i></div> AMERICAN SMELTING & REFINING COMPANY, <i>et al.</i> , <div style="text-align: right;">Defendants.</div>	} On Bill, &c.
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20 The Court having considered the petition of Albert C. Wall for leave to be substituted as party complainant in the above stated cause, and it appearing that the solicitors for American Smelting & Refining Company and Miners' Smelting Company, *et al.*, have consented to such substitution;

It is, on this 30th day of March, 1918,

30 Ordered that Albert C. Wall, administrator of the estate in New Jersey of F. Augustus Heinze, deceased, be substituted as complainant herein, in the stead of Arthur P. Heinze, sometime administrator of F. Augustus Heinze, deceased.

Respectfully advised,

JOHN GRIFFIN,  
V. C.

**Supplemental Order Substituting Albert C. Wall, Administrator, etc., as Complainant.**

IN CHANCERY OF NEW JERSEY.

Between ARTHUR P. HEINZE, Administrator of F. Augustus Heinze, deceased,  Complainant,  <i>and</i>  AMERICAN SMELTING & REFINING COMPANY, <i>et al.</i> , Defendants.	}	On Bill etc.	10
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This Court having on March 30, 1918, made order substituting Albert C. Wall as complainant in place of Arthur P. Heinze, administrator of F. Augustus Heinze, deceased, who had been removed by the Orphans' Court of Hudson County, and doubt having been expressed whether, under the terms of that order it is competent to challenge the legality of the appointment of Albert C. Wall as administrator of F. Augustus Heinze, deceased, and his right to maintain this action, and application for this order, whereof notice is admitted, being now made in the presence of and after hearing said Albert C. Wall and the counsel for the answering defendants:

It is on this 19th day of April, A. D. nineteen hundred and eighteen, on motion in behalf of Treacy & Milton, solicitors of the defendant American Smelting & Refining Company, ordered

*Sup. Order Substituting Albert C. Wall, Adm., as  
Complainant.*

10 that the answering defendants have leave within fifteen days to file an answer, or answer in lieu of plea, challenging the legality of the appointment of Albert C. Wall as administrator of F. Augustus Heinze, deceased, and his right as such to maintain this action, without prejudice to the complainant's right to deny the right of defendants to make such attack upon the appointment of the administrator.

Respectfully advised,

JOHN GRIFFIN,  
V. C.

E. R. WALKER,  
C.

20 A true Copy.

ROBERT H. MCADAMS,  
Clerk.

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**Notice of Motion to Amend Answer in  
in Lieu of Plea.**

IN CHANCERY OF NEW JERSEY.

Between

ALBERT C. WALL, Administrator  
of F. Augustus Heinze, de-  
ceased, substituted as complain-  
ant in place of Arthur P.  
Heinze, removed,

Complainant,

*and*

AMERICAN SMELTING & REFINING  
COMPANY, *et al.*,  
Defendants.

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To ALBERT C. WALL, Administrator, etc., Solicitor **20**  
*pro se*;

ALBERT I. DRAYTON, Solicitor for Defendant,  
Miners Smelting Co.

Dear Sirs:

Take notice that on Monday, July 18, 1918, at  
10 A. M. or as soon thereafter as we can be heard,  
at the Chancery Chambers in Jersey City, we  
shall apply to the Honorable John Griffin, Vice-  
Chancellor, to whom above stated cause was re-  
ferred, for an order for leave to amend the answer  
in lieu of plea filed by the defendant American  
Smelting & Refining Company, by adding thereto  
the following paragraphs:

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"9. F. Augustus Heinze, deceased, did not die  
possessed of personal property or choses in ac-  
tion within this state, or the evidence of which  
was in the hand of any resident of this state, nor  
did he die seized of any real estate or any interest  
therein within this state; nor was there at the  
time of the grant of administration by the Surro-

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*Notice of Motion to Amend Answer in Lieu of Plea*

gate of the County of Hudson to Arthur P. Heinze on the estate of F. Augustus Heinze, deceased, nor is there now, within this state any property or choses in action of the said F. Augustus Heinze, deceased.

10 "10. There was not at the time of the death of F. Augustus Heinze, deceased, or at the time of said grant of administration, nor is there at the present time, and bone fide creditor of said F. Augustus Heinze, deceased, resident in New Jersey.

20 "11. The said grant of administration and the bringing of the present suit were in pursuance of a fraudulent design to draw into the courts of New Jersey a controversy properly belonging in the State of New York.

"12. This court, for reasons of comity toward the State of New York, should refuse to further entertain jurisdiction in this suit."

Yours, etc.,

TREACY & MILTON,

Solicitors for Defendant,

American Smelting & Refining Co.

Dated, July 3, 1918.

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**Order for Amendment of Answer in  
Lieu of Plea.**

IN CHANCERY OF NEW JERSEY.

Between

ALBERT C. WALL, Administrator  
of F. Augustus Heinze, de-  
ceased, substituted as complain-  
ant instead of Arthur P.  
Heinze, removed,

Complainant,

*and*

AMERICAN SMELTING & REFINING  
COMPANY, *et al.*,  
Defendants.

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On due notice to the complainant and to the  
solicitors of the defendant Miners Smelting Com-  
pany and after hearing counsel: 20

It is on this eighth day of July, nineteen hun-  
dred and eighteen, on motion in behalf of Treacy  
& Milton, solicitors for and of counsel with the  
defendant American Smelting & Refining Com-  
pany,

Ordered that the answer in lieu of plea filed by  
the defendant American Smelting & Refining  
Company in above stated cause be and the same 30  
hereby is amended by adding thereto the follow-  
ing paragraphs, namely,

“9. F. Augustus Heinze, deceased, did not  
die possessed of personal property of choses  
in action within this state, or the evidence of  
which was in the hands of any resident of  
this state, nor did he die seized of any real  
estate, or any interest therein within this  
state, nor was there at the time of the grant 40  
of administration by the Surrogate of the

*Order for Amendment of Answer in Lieu of Plea.*

County of Hudson to Arthur P. Heinze on the Estate of F. Augustus Heinze, deceased, nor is there now, within this state any property or choses in action of the said F. Augustus Heinze, deceased.

10 "10. There was not at the time of the death of F. Augustus Heinze, deceased, or at the time of said grant of administration, nor is there at the present time, any bona fide creditor of said F. Augustus Heinze, deceased, resident in New Jersey.

"11. The said grant of administration and the bringing of the present action were in pursuance of a fraudulent design to draw into the courts of New Jersey a controversy properly belonging in the State of New York.

20 "12. This Court for reasons of comity toward the State of New York, should refuse to further entertain jurisdiction in this Court."

And the complainant desiring to offer evidence heretofore filed by the complainant do stand as if filed to the amended answer in lieu of plea.

And the complainant desiring to offer evidence on the subject of New Jersey creditors, it is

30 Further ordered that such evidence, and any in response thereto that may be offered be taken at the Chancery Chambers in Jersey City, on Monday, July 15, 1918, at 2 o'clock in the afternoon, or as soon thereafter as the matter can be heard.

Respectfully advised,

JOHN GRIFFIN,

V. C.

E. R. WALKER,

C.

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**Answer of American Smelting and Refining Company in Lieu of Plea.**

IN CHANCERY OF NEW JERSEY.

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Between

ALBERT C. WALL, Administrator  
of F. Augustus Heinze, de-  
ceased, substituted as complain-  
ant instead of Arthur P.  
Heinze, removed,

Complainant,

*and*

AMERICAN SMELTING & REFINING  
COMPANY, *et al.*,

Defendants.

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} On Bill, &c.

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The answer of the defendant American Smelting & Refining Company in lieu of plea.

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This defendant answering the bill of complaint as prosecuted, by way of substitution, by Albert C. Wall, claiming to be administrator of F. Augustus Heinze, deceased, says:

1. F. Augustus Heinze, deceased, died intestate, a resident of Saratoga County, New York, and administration upon his estate was granted to his sister Lida M. Fleitman by the Surrogate of said County of Saratoga, to whom jurisdiction for that purpose properly pertained.

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2. The Surrogate of the County of Hudson, New Jersey, in assuming to appoint Arthur P. Heinze, administrator of the estate of F. Augustus Heinze, deceased, exceeded his jurisdiction, for the reason that an appointment as administrator in New Jer-

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*Answer of American Smelting & Refining Co. in  
Lieu of Plea.*

sey could only be ancillary to the primary jurisdiction in New York. The statute covering the case is "An act respecting the Orphans' Court, and relating to the powers and duties of the ordinary, and the Orphans' Court and Surrogates (Revision one thousand eight hundred and ninety-eight)," Section 29 of which reads as follows:

10 "If any person, not a resident within this state, shall die or shall have heretofore died possessed of personal property or choses in action within this state or the evidence of which shall be in the hands of any resident of this state, or has died or shall die seized of  
20 any real estate or any interest therein within this state, the Surrogate of the county in which such real estate or interest therein, choses in action or evidence thereof, or personal estate, are situate, upon application and proof to his satisfaction that such decedent died intestate, shall issue letters of administration upon the estate of such decedent to the administrator of such decedent, or to any person who would be entitled to administration  
30 in case the decedent had resided in this state at the time of his death; if any executor or administrator of a non-resident decedent shall neglect for the space of sixty days after the death of such decedent to make application in this state for letters testamentary or of administration upon or in respect to such decedent's estate, then upon the application of any person alleging himself or herself to have any  
40 debt, or legal claim against such decedent, which, by the laws of this state, survives against the personal representatives of parties

*Answer of American Smelting & Refining Co. in  
Lieu of Plea.*

deceased, the Surrogate may issue letters of administration to such person as he may select, either *cum testamento annexo* or otherwise, as the circumstances of the case may require; in case application is made under this section by any one except the executor or administrator, letters shall only be granted upon such notice to the executor or administrator as the Surrogate may prescribe." 10

While the petition to the Surrogate of the County of Hudson for administration on the estate of F. Augustus Heinze, deceased, recited that the decedent died possessed of personal property or choses in action within said county and state, such was not the fact. The only pretense of authority for the making of the appointment was the consent thereto of Lida M. Fleitmann, the domiciliary administratrix, who pretended to waive her right to be appointed administrator in New Jersey in favor of Arthur P. Heinze, deceased; and such appointment was procured by collusion and fraud between the said Lida M. Fleitmann and the said Arthur P. Heinze. 20

3. Subsequently, the said Lida M. Fleitmann was herself removed as administratrix of F. Augustus Heinze, deceased, by the Surrogate of the County of Saratoga, State of New York, upon due proceedings and lawful jurisdiction to make such removal, and Walter A. Fullerton was appointed administrator in her place by the said Surrogate of the said County of Saratoga. 30

4. On due application by the said Walter A. Fullerton, domiciliary administrator of F. Augustus Heinze, deceased, the Orphans' Court of the 40

*Answer of American Smelting & Refining Co. in  
Lieu of Plea.*

County of Hudson removed the said Arthur P. Heinze as administrator as aforesaid.

10 5. Said Orphans' Court, notwithstanding the contention of said domiciliary administrator that no administration in New Jersey was necessary or proper, did of its own motion in said order of removal assume to appoint the said Walter A. Fullerton together with the said Albert C. Wall as administrators of the estate in New Jersey, if any, of the said F. Augustus Heinze, deceased, in the place and stead of Arthur P. Heinze, removed as aforesaid. Said Walter A. Fullerton never qualified in New Jersey and has always protested against any administration in this state.

20 6. On appeal by Arthur P. Heinze, to the Prerogative Court, that Court on May 14, 1917, did order, adjudge and decree that the order of the Orphans' Court appealed from should be modified by striking out the appointment of said Walter A. Fullerton as administrator of F. Augustus Heinze; and as so modified that the said order appealed from should be affirmed with costs. The striking out of said Walter A. Fullerton from the order appealed from, thus making the said Albert C.  
30 Wall the sole administrator in New Jersey of said F. Augustus Heinze, deceased, was beyond the jurisdiction of said Prerogative Court and without authority of law.

7. Said Albert C. Wall was not the domiciliary administrator of said F. Augustus Heinze, deceased, or entitled to administration in case said decedent had resided in the State of New Jersey at the time of his death, and his appointment as

*Answer of American Smelting & Refining Co. in  
Lieu of Plea.*

administrator in New Jersey was without authority of law.

7. Even if the said F. Augustus Heinze, deceased, had died possessed of personal property or choses in action within the State of New Jersey, which was not the case, ancillary administration would not have been lawful except for the purpose of enabling such property to be reduced to possession and returned to the domiciliary administrator, or for the purpose of reducing it to possession and paying therefrom New Jersey creditors and accounting for the surplus to the domiciliary administrator. By virtue of Section 1 of a supplement approved March 26, 1896, to "An act concerning executors and the administration of intestates' estates (Revision of 1874)," the said Walter A. Fullerton had the right, upon filing in the office of the Register of the Prerogative Court an exemplified copy of his letters to bring all necessary actions in any of the courts of this state, and therefore no ancillary administration for the purpose aforesaid was necessary or proper. Neither the said petition of Arthur P. Heinze to the Surrogate of the County of Hudson, upon which he obtained his appointment as administrator as aforesaid, nor any of the other proceedings in the Orphans' Court represented that there was any creditor resident in the State of New Jersey in whose behalf administration in this state was invoked, nor was there nor is there now any such creditor.

TREACY & MILTON,  
Solicitors for Defendant,  
American Smelting & Refining Co. 40

**Replication of Complainant to Answer  
of Defendant, American Smelting &  
Refining Company, in Lieu of Plea.**

IN CHANCERY OF NEW JERSEY.

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Between

10      ALBERT C. WALL, Administrator  
of F. Augustus Heinze, de-  
ceased, substituted as complain-  
ant instead of Arthur P.  
Heinze, removed,

Complainant,

*and*

AMERICAN SMELTING & REFINING  
COMPANY, *et al.*,

Defendants.

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20      The replication of the complainant to the an-  
swer of the defendant, American Smelting & Re-  
fining Company, in lieu of plea.

30      This complainant joins issue on the said answer  
and hereby notifies said defendant that on the  
hearing of the matters set forth in said answer,  
he will move the Court to strike out such parts  
of the said answer as assert that the Surrogate of  
the County of Hudson and the Orphans' Court of  
said county, and the New Jersey Prerogative  
Court were without jurisdiction to make the  
orders or decrees therein referred to on the ground  
that the said orders or decrees cannot be attacked  
collaterally in this court.

ALBERT C. WALL,  
Administrator, etc.,  
Solicitor *pro se.*

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**Testimony.****IN CHANCERY OF NEW JERSEY.**

Between ALBERT C. WALL, as Substituted Administrator, etc., in place of Arthur P. Heinze, <i>et al.</i> , <div style="text-align: right;">Complainant,</div> <div style="text-align: center;">and</div> AMERICAN SMELTING & REFINING COMPANY, <i>et al.</i> , <div style="text-align: right;">Defendants.       </div>	}	Minutes of Final Hearing.	<b>10</b>
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**APPEARANCES:**

For the Complainant, ALBERT C. WALL, Esq.	
For ARTHUR P. HEINZE, FRANKLIN BIEN, Esq.,	<b>20</b>
For THE AMERICAN SMELTING AND RE- FINING COMPANY, JOHN J. TREACY, Esq., HON. GILBERT COLLINS, of Counsel. WALTER A. FULLERTON, Esq.,	
For the MINERS SMELTING COMPANY, AL- BERT L. DRAYTON, Esq.,	
Before—Hon. JOHN GRIFFIN, Vice Chancellor. Chancery Chambers, Jersey City, N. J. June 14, 1918.	<b>30</b>

Mr. Collins: I offer in evidence, or at least I will give notice that I will read in evidence  
*Joseph T. Fitzsimmons—Direct.*

the files in this case, the rule is that you can read in evidence at the hearing any files of the Court of Chancery if you give notice that you intend to do so. I now offer in evidence an exemplified copy of the record of Letters of Administration issued to Lida M. Fleitman of the goods, chattels and credits, etc., by the Surrogate of Saratoga County, New York, and it is dated November 5th, 1914.

Marked Exhibit D-1.

*Walter A. Fullerton—Direct.*

WALTER A. FULLERTON, sworn.

DIRECT EXAMINATION BY MR. COLLINS:

Q. You are a member of the bar of New York?

A. Yes, sir.

10 Q. How many years standing? A. Eight.

Q. Are you familiar with the Statute Book of the State of New York? A. I am.

Q. And you have what? A. The Code of Civil Procedure.

Q. Is that the Statute Book published by the authority of the State of New York? A. It is.

Mr. Collins: I offer it in evidence.

Mr. Collins: Now we rest.

20 By Mr. Wall:

Q. What is the date of it? A. 1915.

Mr. Wall: That is the one that was in force when Mr. Royall commenced his proceedings to remove Mrs. Fleitmann?

By Mr. Collins:

Q. Mr. Fullerton, this publication shows the law as it existed at the time of the removal of Mrs. Fleitmann in the Surrogate's Court of New York? A. Yes, sir.

30 Q. And at the time of her appointment as administrator? A. Yes, sir.

By Mr. Wall:

Q. Are you able to point to the particular section? A. Yes, Section 2569, is the section which has to do with the removal or revocation of letters of administration, etc. Section 2588 has to do with the appointments?

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*Walter A. Fullerton—Direct.*

Q. With the appointments? A. Yes, sir.

Mr. Wall: I would like to offer in evidence Bond that I gave as administrator in the Orphans' Court and also the bond that I gave in the Prerogative Court. It was under some Order *pendente lite* and are those orders here?

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Mr. Collins: Yes, they are here.

Mr. Wall: You will admit that the Bond is in accordance with the Order?

Mr. Collins: Yes, you had better give the date of it.

Mr. Wall: I offer the Bond.

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WALTER A. FULLERTON, recalled:

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By Mr. Wall:

Q. Does Judge Collins represent you in this proceeding, Mr. Fullerton? Why do you hesitate?

A. I don't understand the question. I am not a party to the record.

Q. Does Judge Collins represent you as Administrator of the Estate of F. Augustus Heinze, deceased, in this cause?

Mr. Collins: I object to that, as calling for a conclusion; I said I was counsel for Mr. Fullerton, and was watching this case through the courtesy of Mr. Treacy. Mr. Fullerton, your Honor, is not a party to this suit, and never appeared, and by no possibility could I represent him.

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Q. What I want to bring out is whether Judge Collins did not represent you in the case of obtaining the judgment by Edwin Gould against F. Augustus Heinze in his lifetime?

40

Walter A. Fullerton—Direct.

Mr. Collins: I object to that as calling for a conclusion.

The Vice Chancellor: I do not see the point of the question. Of course I do not think it is proper at this time.

10 Mr. Wall: I only make that request in view of Judge Collins' statement at the beginning, that he bore some relation to Mr. Fullerton, in that Mr. Collins said that Mr. Fullerton was not a party to the record; but my motion may be entirely wrong as to the interest of Judge Collins in relation to persons who obtained judgments against F. Augustus Heinze. I just wanted to arrive at the fact. I do not intend to criticise the fact  
20 that Judge Collins does represent the present witness. This is really a quarrel between the creditors of the estate, and Judge Collins' purpose is to attack this jurisdiction here, and so affect any creditors that there may be in New Jersey, without allowing them to go ahead and prove their claims in the proper way. It seems to me that as he came forward as an *amicus curiae*, I have the right to ask this question.

30 Judge Collins: I have an objection to this double-barrelled question. He may ask Mr. Fullerton if I am his counsel, and I will not object to that.

Mr. Wall: I am expressly disclaiming an intention to seek to get, by my question or any answer, that there is jurisdiction over Mr. Fullerton.

40 The Vice Chancellor: I will allow the question to stand.

*Walter A. Fullerton—Direct.*

A. Judge Collins is my counsel here, practically, and paid by me as the Administrator of the Estate of F. Augustus Heinze.

Q. In what proceedings? A. In the proceeding for the removal of Mr. Heinze, and all subsequent matters having to do with it, New Jersey matters; and I consider him my New Jersey counsel. 10

Q. Now, then, are there any other creditors of the Heinze estate in New York? A. Yes, sir.

Q. What is the amount of the judgment of Edwin Gould? A. \$1,264,581.00, with interest from October 15, 1914, and some costs; I cannot give you the precise amount.

Q. What proportion of the assets of the estate of F. Augustus Heinze, of which you have knowledge, would that judgment absorb? A. All, and more. 20

Q. You said there were other creditors, so that they would have some ratable proportion? A. The judgment obtained in the lifetime of F. Augustus Heinze, according to Section 2652 of the Code of Civil Procedure, is a prior claim.

Mr. Wall: I ask that that answer be stricken out.

The Witness: If I have not answered the question I will try and do so. 30

The Vice Chancellor: I think that that answers your question, if Mr. Gould's judgment had any priority, in substance over other creditors.

Q. Then all the money that you collect will go to the payment of the judgment of Edwin Gould, less your expense? A. Yes; and, of course, if by any accident, more should be recovered than to 40

*Walter A. Fullerton—Redirect.*

pay Mr. Gould's judgment, it would go to the other creditors.

Q. Is it your notion that at present there is enough? A. It is not.

RE-DIRECT EXAMINATION BY MR. COLLINS:

10 Q. Have you always maintained the attitude that there was no need of the suit in New Jersey by the American Smelting and Refining Company and the Miners Smelting Company? A. I have.

Mr. Wall: I say, your Honor, that it is an entirely irrelevant matter whether he has always had that attitude.

The Vice Chancellor: I will let him testify that he was opposed to any administration in this state, or any other state.

20 Q. You have not, or have, maintained that attitude? A. I have.

Q. And still do? A. I do.

By Mr. Wall:

Q. Have you had any relations with Edwin Gould, or anyone representing him? A. I have.

Q. And did you have any relations with the Estate of F. Augustus Heinze, in his lifetime, or anyone connected with the Estate? A. No.

30 Q. What relations did you have with Edwin Gould? A. Since my appointment I have actively co-operated with counsel of Edwin Gould in getting in the assets of the estate which belong to it.

Q. Did you belong to any firm of lawyers that represent Edwin Gould? A. I do not.

Q. Do you now? A. I do not.

Q. You have no other relations with Edwin Gould or any of his representatives excepting the

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*Walter A. Fullerton—Redirect.*

relations which have come since you were appointed administrator, in order to administer the assets that came to your hands in accordance with the laws of New York? A. No.

By Mr. Collins:

Q. When you were appointed in what shape was the judgment obtained against the Heinze Estate? 10

A. The judgment had been procured and unanimously affirmed by the Appellate Division, First Department, and was then up on appeal in the Court of Appeals.

Q. What did you do to perfect that appeal? A. I employed counsel to argue that appeal; then he argued it and I actively helped in the preparation of that brief.

Q. And you prosecuted that appeal vigorously and diligently, in good faith? A. I did. 20

Q. Did it succeed? A. It did not.

Q. The Court of Appeals affirmed the judgment of the Court below? A. It did.

Q. (By the Vice Chancellor.) And that judgment was procured after the death of Mr. Heinze? A. No, sir, before.

Q. And that judgment operates under the rule? A. It does. 30

Mr. Collins: We rest.

Mr. Wall: I offer the bond in the Orphans Court of Hudson County, of Albert C. Wall, as Administrator, dated the 8th day of January, 1917, together with the oath of said Wall, dated the 8th day of January, 1917; the bond is in pursuance of the order of appointment of that court. I also offer the bond of said Wall as Administrator pen- 40

*Albert C. Wall—Direct.*

*dente lite*, in the Prerogative Court, in the sum of One thousand dollars, which bond was offered in pursuance of the order of said Court, filed with the Register on the 23rd of May, 1917.

10 The Vice Chancellor: Are all the papers in both courts in evidence?

Mr. Collins: Yes, sir.

Mr. Wall: I will be sworn.

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ALBERT C. WALL, Esq., sworn.

20 The Witness: I am the Administrator, and am the substituted complainant in this action. On the 10th day of January last, I received from Mr. Frank P. McDermott, who represented Mr. Arthur P. Heinze in the various litigations that have been referred to, so far as the record has been introduced in this court, a letter stating that he enclosed two claims of the United Copper Company (and, if I may be permitted, I should like to put that letter in evidence, and submit the two claims, which I was informed by Mr. McDermott had been filed with Arthur P. Heinze, Administrator of the estate of F. Augustus Heinze in

30 New Jersey, on December 22nd, 1916). Mr. McDermott also informed me as follows, "These claims have been in my safe for over a year, and I am now sending them to you by direction of Mr. Heinze; the New York address of the United Copper Company is 5 Beekman Street, care of Franklin Bien, the New Jersey agent of this company is Franklin Bien, 95 Dwight Street, Englewood, N. J." I won't put in the rest of it unless

40 you desire it, Judge Collins. The claims in question are annexed to the letter portions of which

*Albert C. Wall—Cross.*

I have just read. I offer the claims and the letter in evidence.

## CROSS EXAMINATION BY MR. COLLINS:

Q. Mr. Wall, what is the date of that letter? He does not state when the so-called claims were presented, in the letter? A. Yes, he says they were filed December 22nd, 1916, with Mr. Heinze. 10

Mr. Collins: I will call your Honor's attention to the fact that that date was after Mr. Heinze was removed.

Q. Mr. Wall, you did not qualify, or give your bond, as appears by the date thereof, until a long time after the order appointing you. After you did qualify and give the bond, did you consider whether or not you should go on with this suit as substituted complainant? A. Oh, yes, I did. 20

Q. Did you send word, either by letter or otherwise, to the solicitors of the defendants, and also to Mr. McDermott, who was solicitor of Arthur P. Heinze, the original complainant, and say that you wanted to be enlightened as to what you wanted to do, or something to that effect? A. Well, I don't think it was as precatory as that. You might read the letter, if you have it. Have you got a copy of it? 30

Mr. Collins: You gave me one, but I have not got it here.

The Witness: The tenor of the letter was that I had been appointed, and that if anybody was sufficiently interested to lay before me any facts that had to do with any debt that there was owing, I would be glad to have them lay those facts before me; and I sent a copy to you, and I think 40

*Albert C. Wall—Cross.*

to Mr. Treacy, and to Mr. McDermott, and to Mr. Drayton.

Q. And I did call upon you, in behalf of Mr. Walter A. Fullerton, and suggest to you that the suit ought to be abandoned? A. I believe you did.

10 Q. Then, did Mr. McDermott communicate with you and ask for an interview with him and Mr. Arthur P. Heinze? A. Yes.

Q. And they had such an interview? A. Yes.

Q. And they wanted you to go? A. Mr. Heinze did, but I do not think Mr. McDermott did.

Q. Mr. Heinze wanted you to go on with the suit? A. Yes.

Q. And you told him you hadn't any funds? A. I don't know that I put it in that way; I had no  
20 funds; I never had any assets.

Q. Didn't you tell him that if he wanted you to go on, he should pay the expenses? A. I did; I said somebody should be sufficiently interested in this matter to pay all the expenses.

Q. And did he send you something? A. He did, he sent me a hundred dollars, of all of which I informed you before; and I arranged with him, in case any assets were recovered, that he should  
30 be paid back after various proper claims were first taken care of.

Mr. Collins: I am not criticising you at this time; you were very frank, and told me this.

The Vice Chancellor: I do not see that that makes any difference.

Q. No other claims have ever been presented to you? A. No, sir; it is the only one.

40 Q. And you don't know of anyone else who claims to be a New Jersey creditor? A. I do not.

*Albert C. Wall—Cross.*

Mr. Collins: Will your Honor read this letter?

The Vice Chancellor: Your objection is what?

Mr. Collins: Neither one of them was a creditor of F. Augustus Heinze, deceased. These claims are, respectively, one by the wife of Arthur P. Heinze, the other by the Western Development Company, of which this Mr. Geer is Vice President; both of them are assigned to the United Copper Company, and the United Copper Company happens to be a New Jersey corporation. 10

The Vice Chancellor: I see; the original owners of the claims are not New Jersey residents? (After further argument by Jude Collins): Well, they may not be valid claims but must I not receive them to show that they were presented to the Administrator? 20

Mr. Collins: I think you should, when it comes to the question of what you should do.

(The claims are marked Exhibit C-1.)

Mr. Collins: I think that is all, Mr. Wall.

Mr. Wall: I will call Mr. Arthur P. Heinze. 30

ARTHUR P. HEINZE, SWORN.

DIRECT EXAMINATION BY MR. WALL:

Q. Mr. Heinze, were these claims which have been marked C-1 filed with you? A. To the best of my recollection, they were. They were left in Mr. McDermott's office by the representative of the United Copper Company, whoever that was.

10 Q. Mr. McDermott's letter says that they were filed with you on December 22nd, 1916, which is the day after they were verified? A. Well, they were either filed with me personally, or with Mr. McDermott over here in New Jersey; I don't remember whether I sent them over to Mr. McDermott, or whether they were filed by the representative of the United Copper Company.

20 Q. When did you first hear of the purpose to file these claims with you? A. Why, it was my purpose, when I applied to be appointed here, to have these assignments executed to the United Copper Company of New Jersey, and have such Companies file such claims.

Q. And what did you plan to effect by that filing?

Mr. Collins: I object to that; his wishes are not important.

30 The Vice Chancellor: What was his purpose?

Mr. Collins: I object to that.

The Vice Chancellor: I think I will permit the question.

A. The purpose was to enable these parties whose claims were exactly as good as Edwin Gould's to, if possible, recover something for the sums of money and securities that they had advanced to Mr. F. Augustus Heinze in his lifetime.  
40 I was perfectly well aware of the fact, having

*Arthur P. Heinze—Direct.*

known of it in his lifetime, and having known that he owed these sums of money to these various interests that have assigned them now to the United Copper Company, I took these steps and endeavored to protect these interests and to recover something for them, if possible. The fact that these assignments were not made until after my appointment was simply due to the fact that Mr. McDermott had not advised me that they should be made before my appointment. 10

By the Vice-Chancellor:

Q. Well, is not the United Copper Company a trustee for her? A. No, your Honor; the consideration for which the United Copper Company acquired these claims was their stock. The United Copper Company paid for these claims with its stock; I think its stock issue was increased from ten thousand dollars, par, to one hundred thousand dollars, par; and, in order to purchase these assignments the additional stock was issued to the Western Development Company; and my wife would, indirectly she would, benefit, if anything was recovered, as a stockholder of the United Copper Company. 20

Q. If they did not recover, there would have been no stock issued by the United Copper Company? A. Oh, yes; the assignments of the claims would be the consideration. 30

Q. I want to know if this was a *bona fide* sale, or whether it was a sale to put it in the hands of some New Jersey party?

The Witness: The assignors assigned these claims for the consideration of the increased stock. 40

*Arthur P. Heinze—Cross.*

## CROSS EXAMINATION BY MR. COLLINS:

Q. Mrs. Ruth Noyes Heinze is your wife? A. She is.

Q. The Western Development Company is a company in which you are interested? A. It represents my creditors.

10 Q. And Calvin Geer is Vice President? A. I do not think he is. I am the President of the Company.

Q. And Calvin Geer is an officer of the Company? A. No, sir; he was at one time.

Q. He was at one time? A. Yes, sir.

Q. I call your attention to the Western Development Company, that is a corporation of the State of Arizona.

20 Q. I call your attention to the incorporators of the present United Copper Company, a certified copy of the certificate of the incorporation of the assignee of these claims. A. I had everything to do with this.

Q. Then I want to ask you who these people are? A. Franklin Bien, Jr. is the son of Franklin Bien, I think.

30 Q. Who was your counsel in this removal proceeding? A. Mr. McDermott.

Q. No, but he, Bien, appeared for you in New York? A. Yes; he has appeared for me a good many times.

Q. He is the son of Franklin Bien? A. Yes, sir.

Q. He is a lawyer? A. Yes.

Q. Who is the next man, Thomas Adams? A. Thomas Adams is his clerk. Mr. Bien incorporated the United Copper Company at my request.

40 Q. Do you know Robert L. Turk? A. No.

*Arthur P. Heinze—Cross.*

Q. Did Franklin Bien incorporate the United Copper Company at your request? A. Yes, as I recollect it; but it is quite a number of years ago.

Q. Yes, it is December 3rd, 1914; and I notice that the resident agent of the company is Franklin Bien of Dwight Avenue, Englewood, New Jersey? A. Yes; that is the father. 10

Q. He is the Senior Bien? A. Yes.

Mr. Collins: I offer in evidence the certificate of incorporation of the United Copper Company, dated December 3rd, 1914, and filed in the Secretary of State's office December 7, 1914.

(This certificate is admitted and marked Exhibit D-4.)

Q. I forgot to ask you the question: You were present in the Chambers here before Vice-Chancellor Griffin when some matter touching the pending suit was up, on several occasions you were present before Vice-Chancellor Griffin? A. Yes. 20

Q. Do you remember of one occasion when the Vice-Chancellor said that the case might have a different aspect if there was a New Jersey creditor? A. Yes, sir; I attended right then and there.

Q. You attended at that hearing? A. Yes; I think the question was raised at one of the hearings. 30

Q. Now after that these claims were assigned by your wife and the Western Development Company to the United Copper Company? A. The physical act was performed. I do not know that it has any relation to this, or that anything like that occurred. I don't know the date. I think, if I said to Vice-Chancellor Griffin, that there were New Jersey creditors, you will find that the date of that was subsequent to those assignments. 40

*Max H. Schultze—Direct.*

Q. Don't you remember that these assignments were made after this remark of the Vice-Chancellor was made? A. My recollection is that I went to Mr. McDermott and told him to state to Vice-Chancellor Griffin that these assignments had been made, and the claims were filed. The whole proceeding was begun for the sole purpose of having these claims filed and admitted. The very aim of the proceeding was to file the claims.

MAX H. SCHULTZE, sworn.

DIRECT EXAMINATION BY MR. BIEN:

Q. Mr. Schultze where do you reside? A. I reside at 280 Garfield Place, Brooklyn.

20 Q. You were connected in business with Mr. F. Augustus Heinze, during his lifetime? A. Yes, sir.

Q. Do you know Mr. Calvin O. Geer? A. Yes, sir.

Q. Did you have charge of the bookkeeping affairs of Mr. F. Augustus Heinze?

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30 Recess until 2 o'clock P. M.

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Afternoon Recess.

Hearing of the matter resumed at 2 o'clock P. M

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*Ruth Noyes Heinze—Direct.*

RUTH NOYES HEINZE, sworn.

DIRECT EXAMINATION BY MR. BIEN:

Q. Where do you reside? A. On Long Island.

Q. And you are the wife of Arthur P. Heinze?

A. Yes, sir.

10

Q. And sister-in-law of F. Augustus Heinze, deceased? A. Yes, sir.

Q. You were the owner of certain shares of stock of the United Copper Company, at one time?

A. Yes, sir.

Q. How many shares did you own? A. I cannot state how many I did own.

Q. At that time? A. I can definitely say that I gave Mr. Fritz Heinze 28,000 shares, but I owned some other shares.

20

Q. What was the par value of the 28,000 shares?

A. \$100.00 a share—\$2,800,000.00.

Q. For what purpose was the stock delivered to F. Augustus Heinze?

Mr. Collins: I object to that question as incompetent, irrelevant and immaterial. This is an attempt to bolster up the claim of the present United Copper Company and I do not think it is competent; also the same objection as to her being competent as a witness.

30

The Vice Chancellor: I am only admitting it, because it is easier to admit it now than not to have it in, as it might be material.

A. He was forming a syndicate and my stock was to be sold at \$50.00 a share.

Q. \$1,400,000. A. Yes, sir.

40

Q. You went to Europe? A. Yes, sir.

Q. On your return from Europe, did you see Mr. F. Augustus Heinze in relation to that stock? A. Yes, sir.

*Ruth Noyes Heinze—Cross.*

Q. What was said between you and he at that time?

Same objection and same ruling.

10 A. I asked Mr. Heinze when I was to get my money back or where my stock was (I mean Mr. Fritz Heinze) and he said I am using your stock at present, but I will see that it is made right to you, presently, later.

Q. Did you ever receive \$1,400,000.00 for your stock? A. No, I did not.

Q. What were you to get for it? A. I was to get \$50.00 a share net.

Q. In what? A. In cash.

Q. And the \$50.00 amounted to \$1,400,000.00? A. Yes, sir.

20 Q. Now, did you on the 21st of December, 1916, execute this assignment to the United Copper Company a corporation of the State of New Jersey (Showing paper to witness)? A. Yes, sir, that is my signature.

Q. And you delivered that? A. Yes.

Mr. Bien: I offer the assignment in evidence.

(It is admitted and marked Exhibit C-4.)

30 Q. Did you ever receive any of the 28,000 shares of that stock back from anybody? A. Yes, sir, 1701 shares, one certificate.

Q. So that at the time of F. Augustus Heinze's death he still owed you over \$1,000,000.00? A. Yes, sir.

## CROSS EXAMINATION BY MR. COLLINS:

40 Q. You say you held this stock; who was the real owner of it? A. I was.

Q. Wasn't it your husband's stock in your name? A. No, sir, it was my own stock.

Q. Well, how did you acquire it? A. When I

*Ruth Noyes Heinze—Cross.*

was married Mr. Heinze gave me some of it as a wedding gift, and later on, on birthdays and Christmas he gave me more.

Q. It was all gifts from your husband? A. Yes, sir.

By the Vice-Chancellor:

Q. It was all in the lifetime of Mr. F. Augustus Heinze? A. Yes, sir, it was all before 1906. 10

By Mr. Collins:

Q. There was nothing in writing from F. Augustus Heinze, it was just word of mouth, when you turned this stock over to him to form a syndicate? A. I don't recall, but I think something must have been given to me.

Q. Have you got it here? A. No, Mr. Heinze has charge of all business matters. 20

Q. You think if it is in writing he has it? A. I don't know.

Q. You did not yourself hand the stock to F. Augustus Heinze? A. I can't recall positively whether I gave it to Fritz; I am inclined to think I took it out of the safe when he was attendant there and I gave it to him.

Q. Mr. Arthur P. Heinze was to be one of the syndicate? A. Yes, sir. 30

Q. Who were the others? A. Mr. Fritz Heinze was to be the other.

Q. You know that Arthur P. was? A. Yes, sir.

Q. They never formed the syndicate? A. Yes, sir.

Q. The syndicate was formed? A. I think so.

Q. Well, it was the syndicate that would owe you for the stock? A. Well they were trustees; they owed me as trustees.

By Mr. Bien: 40

Q. You delivered the 28,000 shares? A. Yes, sir.

*Max H. Schultze—Direct.*

Q. And then they were to give you \$50.00 a share? A. Yes, sir.

Q. And they never gave it to you? A. No, sir.  
By Mr. Collins:

Q. This assignment, I notice, is an assignment  
10 of \$200,000 of your claim against the estate of A.  
Augustus Heinze? A. Yes, sir.

Q. What have you done with the balance of the claim?

Mr. Bien: I object to that question.

The Vice-Chancellor: I overrule the objection.

A. I am afraid you will have to ask Mr. Heinze.

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MAX H. SCHULTZE, recalled.

20 DIRECT EXAMINATION BY MR. BIEN:

Q. You were a member of the firm of Otto Heinze & Company, were you not? A. I was.

Q. You were also in the participation of the sale of the United Copper Company's stock at \$50. a share? A. Yes, sir.

Q. In which Mrs. Heinze claims she delivered 28,000 shares? A. Yes, sir.

30 Q. And how many shares were handled by the syndicate? A. 225,000 shares at par value.

Q. How many shares did you have? A. Well, about 4,000 in that syndicate. I got paid for mine \$50. a share.

Q. Did Mrs. Heinze ever receive \$50. a share for her 28,000 she had? A. I don't think so.

Q. Whose books will show? A. I don't know; I have not got the books.

40 Q. Did the firm of Otto Heinze & Company also participate in the syndicate? A. Yes, sir.

Q. How many shares? A. 6,095 shares; I don't want to make any mistake, were sold to F. Augus-

*Max H. Schultze—Direct.*

tus Heinze; what he did with them was not my business.

Q. The firm of Otto Heinze & Company had a claim at the time of the death of F. Augustus Heinze, did they not?

Mr. Collins: I object to that.

The Vice-Chancellor: I will overrule the objection. 10

A. Yes, sir.

Q. And did you assign that claim to the Western Development Company or did the Western Development Company acquire it by purchase?

A. They acquired it by purchase.

Q. I show you a book marked Otto Heinze & Company, Ledger, and ask you whether that was the Ledger kept under your supervision, in your hand writing? A. Yes, this Ledger was written up by request of the Receiver for Otto Heinze & Company at that time. 20

Q. What was his name? A. Mr. Russell.

The Vice-Chancellor: Written up after the transaction occurred?

The Witness: From all the firm's books, it is a general ledger.

By Mr. Bien: 30

Q. He said that he wrote it himself? A. Yes.

Q. I want to show what the amount of the indebtedness was at the time of the death of F. Augustus Heinze to Otto Heinze & Company? A. Yes, sir.

Mr. Collins: I object to it as not the best evidence.

Q. Where did you get the entries which you wrote this book up from? A. That is part of the books of Otto Heinze & Company, this book was originally written up because the bookkeeper 40

*Max H. Schultze—Direct.*

didn't write up the special ledger in full; it was written up by special instructions from Mr. Russell.

Q. By whom? A. By me.

Q. When? A. In 1908.

10 Q. Now, were any of the entries that appear in that book in connection with the firm of Otto Heinze & Company in there before you completed the entries? A. Well, they were not in this book, but they were in other books from which they were written up.

Q. What has become of the other books? A. They are in existence.

Q. Where? A. In the hands of the Western Development Company.

20 Q. Are those entries in your handwriting? A. Yes, sir.

Q. And in whose handwriting are the other entries? A. The bookkeeper, I checked them up.

Q. You were a member of that firm? A. Yes, sir.

Q. How long? A. Since 1900.

30 Q. Will you kindly close the book and tell me how much F. Augustus Heinze owed at the time of his death?

Mr. Collins: I object to that as irrelevant and not the best evidence.

The Vice-Chancellor: Otto Heinze and the other members of the company were non-residents of New Jersey.

Mr. Bien: Yes, your Honor.

40 The Vice-Chancellor: This claim was sold by the Supreme Court, County of New York, in the suit of the United Copper Company against Otto Heinze & Company and the Western Development Company, a corporation of Nevada. I think it is better that he should offer it and I can rule on it.

*Max H. Schultze—Direct*

Q. Mr. Schultze, how much was the indebtedness, if you can now recollect, on this stock?

Same objection; same ruling.

A. Over \$200,000.

Q. And did Otto Heinze & Company receive any payment on account of that stock? A. Yes, sir. 10

Q. How much? A. Three or four payments.

Q. And how much was the balance? A. The balance was about \$200,000.

Q. How much was there paid on account, if you recollect? A. Well, there were 6,095 shares at \$50. a share.

Q. Of about what? A. About \$92,000. or \$93,000.

Q. So there was a balance of \$200,000, still owing? A. Yes, sir. 20

Q. Has any part of that amount been paid to Otto Heinze & Company? A. No, not that I know of.

Q. Did you have any conversation with Mr. F. Augustus Heinze during his lifetime looking toward the payment of this balance?

Same objection; same ruling.

A. Yes, sir, many conversations.

Q. And what conversations did you have? A. 30  
Well, he said he would make good on this affair, if we could give him time, in fact he offered over \$600,000 in cash and notes over all that he owed Otto Heinze & Company and syndicates which he was interested in; he did so in the office of Hays & Hershfield in the presence of four or five persons.

Q. What became of these notes? A. Well, the settlement never went through.

Q. Although this offer was made nothing was paid on this \$200,000? A. No. 40

Q. Whose fault was it that the settlement didn't go through?

Objected to; question withdrawn.

*Max H. Schultze—Cross.*

Q. Did you demand the amount from F. Augustus Heinze? A. Yes, sir, and they wanted \$750,000 but we didn't get it; I can give you the name of the party, if you wish it?

Q. No, we don't want to know that. When was that conversation that you have testified about?

10 A. In 1908.

Q. Who was present at that conversation? A. Mr. Hershfield, 115 Broadway, a lawyer; Mr. Bamberger, of Welling & Company, a big broker of Philadelphia and New York; Mr. Otto Heinze, Mr. Arthur P. Heinze, Mr. F. Augustus Heinze and myself.

CROSS EXAMINATION BY MR. COLLINS:

20 Q. Is this claim of Otto Heinze & Company based upon stock that was turned over to a syndicate, which syndicate was to pay Otto Heinze & Company \$50. a share on it? A. No, this stock was bought outright from Mr. Otto Heinze; I don't know for whom they bought it; it did not bother me.

30 Q. Mr. Otto C. Heinze was a member of the firm of Otto Heinze & Company and then you knew Otto Heinze was going to buy from his own company stock? A. These two gentlemen bought in all 225,000 shares which was held by us and many other stockholders.

Q. Yes. A. That Otto was going to buy from his own firm.

Q. That is, he and his brother were going to buy from his own firm? A. So the stockholders together with 15 or 16 other people and Mr. Arthur Heinze bought 225,000 shares.

40 Q. And then that is a different case of Mrs. Ruth Heinze; she says that she sold to a syndi-

*Max H. Schultze—Cross.*

cate? A. What she says I am not responsible; I sold stock myself to Mr. Arthur P. Heinze.

Q. Was not there a syndicate? A. Those gentlemen formed a syndicate; they were responsible to us for the money and nobody else.

Q. Wasn't there a syndicate? A. Quite possibly; I don't know for whom they bought that; I have my own opinion about it. 10

Q. Didn't you say they were to get \$50. a share on it? A. Yes, sir.

Q. Did they give it in writing? A. They gave, I believe, receipts at the time for the stock which they got.

Mr. Collins: I object to parole evidence.

Q. Have you got those receipts? Did you deliver the stock? A. Yes, certainly. 20

Q. When was this to be paid? A. Well, the understanding was that it was to be paid by them in three months or six months; that is when the gentlemen had enough money to pay it.

Q. When they made the deal, was not the whole purpose to get a stock speculation on the market? A. No.

Q. And didn't that have reference to the 225,000 shares that you spoke of? Wasn't that 225,000 shares dealt with at that time? A. No. 30

Q. What became of that? A. It was handed over to Mr. F. Augustus Heinze and Arthur P. Heinze.

Q. What did they have to do with it; didn't it go into that boom? A. No.

Q. Was not Otto Heinze & Company interested in that? A. Oh, yes, but they had some more stocks besides.

Q. They sold it to F. Augustus Heinze? A. Yes, sir, and Arthur Heinze. 40

Q. Didn't they secure other stock from other people at the same time? A. Oh, yes.

*Arthur P. Heinze—Direct.*

Q. And wasn't it a scheme in which they were the representatives of every one that went into that deal? A. Oh, no; they bought some stock from me and paid me cash for it.

10 Mr. Bien: I offer in evidence the assignments, I think they are attached and the proofs of claim, the original assignments of the Western Development Company, to the United Copper Company of New Jersey, two assignments, one dated 12th December, 1917, for \$100,000, duly acknowledged before a Notary Public of New Jersey, and the other dated 20th December, 1916, executed by Mary T. Geer, acknowledged by a Notary Public of New Jersey, covering these two  
20 assignments and claiming \$200,000.

(Assignments admitted and marked Exhibits C-4 and C-5.)

ARTHUR P. HEINZE, recalled.

DIRECT EXAMINATION BY MR. BIEN:

Q. Now, Mr. Heinze, you are the husband of Ruth Noyes Heinze? A. Yes, sir.

30 Q. And were you present in person at any conversation after Mrs. Heinze returned from Europe, when you and she and F. Augustus Heinze had a conversation in relation to the 28,000 shares of stock? A. Yes, sir.

Q. Where was that? A. In our library, at 220 Madison Avenue, New York City.

40 Q. Can you fix about the date when that conversation took place? A. I think it was within a week after our return from Europe; we returned on November 6th, 1907.

Q. And will you kindly reiterate to the Court what was said on that occasion?

Same objection; same ruling.

*Arthur P. Heinze—Direct.*

A. My wife asked my brother what had happened to her stock, to her 28,000 shares of stock, which she had sold to my brother and me at \$50. a share, and my brother said, that he was using that stock at present in the Market and requested her to refrain from demanding an immediate return of it, and he told her that he would fix matters up later on; that he would do the right thing by her in connection with that matter. 10

Q. Now, you had charge of all your wife's financial transactions, did you not? A. Yes, sir.

Q. And did you ever receive for her a return of the 28,000 shares or any part thereof, and, if so, whatever was the amount; how much? A. I did receive 1,701 shares in one certificate in her name from my brother and delivered it to my wife and at subsequent time, when I asked my brother on behalf of my wife, to let her have something on this sale; I received for her on one occasion 5,000 shares of Ohio Copper Company stock, and he subsequently, upon renewed demands, agreed to make some compensation for this stock and delivered me \$40,000 par of the Bingham Central Railway 1st Mortgage bonds on account, and subsequently through requests she returned \$25,000 of this; on the occasion when the house at 220 Madison Avenue was under foreclosure, he took a participating interest in the first mortgage of \$140,000 and in that way caused the insurance company to dismiss its suit of foreclosure; in the subsequent spring, when we found it very difficult to pay the taxes and interest, he again agreed to do something in connection with this matter; he arranged to make a payment of \$5,000 to me to save the house from foreclosure. On another occasion as a result of the demands that were made by them, the firm and the various participants, I, 20 30 40

*Arthur P. Heinze—Direct.*

myself being a participant in that sale and my brother Otto and his wife also, as a result of that, we had this meeting at Mr. Hershfield's office, which Mr. Schultze has testified to, at which my brother offered to settle all these matters for \$50,000 cash and notes of \$50,000 each, separated  
 10 over several years, aggregating \$600,000, we demanded \$750,000, of which \$150,000 was to be in cash, and as a result, my brother declined to do it. Incidentally, I have a memorandum of an additional offer that I made to my brother there at the same time.

Mr. Collins: I object; it is irrelevant and incompetent.

Q. When was that made? A. It was made in  
 20 the Summer of 1909, I think, subsequently to this meeting that we had at Mr. Hershfield's office.

Q. That is where a dispute arose between the \$600,000 and \$750,000 offer? A. Yes, sir.

Q. And subsequently, when your brother did not see fit to do that did you do anything; if so, what? A. Why, I made a demand in connection with the stock of my wife, and in connection with this matter.

By the Vice-Chancellor:

30 Q. When was it made? A. At that time.

Mr. Collins: I object to it; it is not evidence.

The Vice-Chancellor: I will overrule your objection.

Memorandum admitted and marked for identification C-1.

By Mr. Bien:

Q. Now, Mr. Heinze, will you kindly examine  
 40 that paper; is it in your handwriting? A. Yes, sir.

Q. Did you have any conversation with Mr. F.

*Arthur P. Heinze—Direct.*

Augustus Heinze in relation to matters which are referred to in that memorandum? A. I did.

Q. Kindly state when and what they were?

Mr. Collins: I object.

The Vice-Chancellor: I will permit the witness to answer the question.

A. I requested my brother to pay the \$8,000 and interest which was still due to my wife on some loans which she had made to him against his notes in December, 1907; she had loaned him \$45,000 on three notes of \$15,000 each, at three, six and nine months after date, and one of those notes is the claim that the Assets Development Company has filed. I also said that my wife would loan my brother the balance, that is the twenty-seven thousand and odd shares left over of the United Copper Company stock, belonging to her, and which was in his hands, if he would open an open credit for me in my name of \$160,000 with Wolff Brothers, to enable me to purchase some 5,000 shares of United Copper Preferred and I offered to put it up and offered to let this firm, in which my brother was negotiating at the time, use this 27,000 shares as collateral for the United Copper Company preferred stock. I also asked him to do the same in connection with some La France bonds and agreed that the whole indebtedness should be liquidated in at least two years. The preferred stock was to be held so that if my brother was not satisfied with my account, in said preferred stock it could be closed out, if that was done, he was to deliver up 27,000 shares of the United Copper Company stock to my wife, and he did not accept it.

Q. Now, what was the value that was fixed by you and F. Augustus Heinze on this 225,000 shares? A. We agreed to pay \$50 a share.

Q. When? A. I think the agreement was made in December.

Q. Was there any price agreed upon for which you and your brother were to pay for that stock?

A. Yes, sir.

Q. What was the amount to be paid?

Mr. Collins: I object to the question.

Q. What did you and your brother agree to pay for this stock? A. \$50. a share.

10 Q. Were Mrs. Heinz's 28,000 shares included in these 225,000 shares? A. They were.

Q. And you have testified that she was never paid for these 28,000 shares? A. Yes, sir.

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**Opinion of Vice Chancellor Griffin.**

**IN CHANCERY OF NEW JERSEY.**

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20 Between  
ALBERT C. WALL, as substituted  
Administrator &c. in place of  
Arthur P. Heinze, &c.,  
Complainant,  
and  
AMERICAN SMELTING & REFINING  
COMPANY, *et al.*,  
Defendants.

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30 Submitted February 5, 1919; decided March 4, 1919.

ALBERT C. WALL, Solicitor pro se (with whom was FRANKLIN BIEN, ESQ., of the New York Bar), for Complainant;

TREACY & MILTON (JOHN J. TREACY, ESQ.), for American Smelting & Refining Company.

ALBERT I. DRAYTON, ESQ., for Miners Smelting Company;

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*Opinion of Vice-Chancellor Griffin.*

HON. GILBERT COLLINS, appearing specially, as *amicus curiae*, for Mr. Fullerton, the Primary Administrator.

Jersey City, N. J., February 28, 1919.

GRIFFIN, V. C.:

This bill is filed by an ancillary administrator to impress a trust upon certain stocks, bonds and a royalty contract entered into with the Silver King Coalition Company (hereinafter called the Silver Company), pledged by the intestate to the American Smelting and Refining Company (hereinafter called the American Company), and to have it declared that he succeeded to the ownership thereof, subject to the lien of the pledgee. 10

F. Augustus Heinze, the pledgor, died at Saratoga Springs, N. Y., on November 14th, 1914, intestate, and on the 5th day of November, 1914, his sister, Mrs. Fleitman, was appointed administratrix by the Surrogate of Saratoga County, New York, and duly qualified. 20

The American Company is a corporation of New Jersey with authority to transact business in the State of New York, and is transacting business therein.

The stocks and bonds in question were issued by corporations created under the laws of states other than New York or New Jersey. These, together with the royalty agreement with the Silver Company, a corporation of Nevada, were pledged and delivered to the American Company in the City of New York to secure loans, the last pledge being made about March 10th, 1914. 30

The stocks, bonds and royalty agreement, since the date of the pledge (excepting certain bonds which had been for a short time in the West in a re-organization scheme) were continuously kept in the State of New York, and are still there, and, since the date of the pledge, have at no time been physically in New Jersey. 40

*Opinion of Vice-Chancellor Griffin.*

Proceedings were taken before the Surrogate of Saratoga County to remove Mrs. Fleitman as administratrix, and she was so removed by an order dated August 23rd, 1916.

10 Edwin Gould, as a judgment creditor in upwards of \$1,000,000., initiated the proceedings about November, 1914, which resulted in her discharge.

On March 16th, 1916, a petition was presented praying that the administratrix file her account.

At this time it is quite apparent that Mrs. Fleitman was satisfied that she would be removed; thereupon, Mr. Arthur P. Heinze, the brother of Mrs. Fleitman, procured waivers for Mrs. Fleitman as guardian of the intestate's infant son, and  
20 as administratrix, and also that of another brother, dated March 21, 1916, and on March 27, 1916, presented them to the Surrogate of Hudson County with an application to be appointed ancillary administrator and he was so appointed.

Mr. Arthur Heinze somewhat advised and assisted his sister in her administration affairs. He is a member of the Bar of the State of New York.

30 In his 41st finding of fact, the Surrogate found that she had inventoried certain stocks and bonds which correspond to those described in the bill, but the number in the inventory is in excess of that in the bill. This finding also states the number of stocks and bonds pledged. And in his 42nd finding he finds that she did not account for these securities, claiming that they were the property of the Miners Smelting Company, a corporation of the State of Maine.

40 She did not inventory or disclose the beneficial interest in the Silver Company royalty agreement (Finding No. 26) until after the hearing on March 1, 1916.

*Opinion of Vice-Chancellor Griffin.*

On April 4, 1916, Mr. Heinze, as administrator, filed his bill in this Court ostensibly for the purposes above stated; whereas, it is reasonably deducible from the facts that he was endeavoring to produce the administration of these properties in New Jersey in order to avoid the lien of the Gould judgment, to the end that the claims of the Western Development Company, a corporation of Arizona (which represents his, A. P. Heinze's creditors and of which he is President) and Mrs. Ruth Noyes Heinze, his wife, a resident of Long Island, might share with Mr. Gould in the distribution. Accordingly, in order to sustain his appointment as administrator, the claims of the Western Development Company, for part of its alleged debt, were assigned to the United Copper Company, a corporation of New Jersey, in December, 1916, more than eight months after the bill was filed, which latter company presented its claims to Mr. Heinze, as administrator, who endorsed them "Filed, Dec. 22, 1916"; and the claim of Mrs. Heinze, for part of her alleged debt was also, in December, 1916, assigned by her to the United Copper Company, which presented its claim to Mr. Heinze, who endorsed it "Filed, Dec. 22, 1916."

The Assets Development Company, a corporation of New Jersey, also presented a claim to Mr. Wall, as substituted administrator, on July 22, 1918. Mr. Arthur P. Heinze is President of this Company and made the proof. This claim was assigned by one, Calvin O. Geer, a citizen of New Jersey, who was in the employ of the intestate in his lifetime and was intimately associated with the corporations in which the Heinzes were interested, and in a number of which he, Geer, held office. This claim consists of a stock note, dated New York, April 28th, 1909, in the sum of \$10,000

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*Opinion of Vice-Chancellor Griffin.*

payable on demand, upon which the following endorsement appears, "May 11, '09. Rec'd from F. A. H. \$6,000 on within note, \$1,500 on a sale of collateral. Pay, July 11, 1918, Assets Development Co. or order. C. O. Geer."

10 Mr. Geer also filed with Mr. Wall, on June 21, 1918, a claim for part of his salary as employee of intestate for the month of October, 1907, \$175.00.

The property described in the bill, and the above alleged creditors are the only properties or creditors asserted by the complainant to be within the State of New Jersey.

20 An application was made by Mr. Fullerton (who was appointed by the Surrogate of Saratoga County, New York, in the stead of Mrs. Fleitman) to the Orphans Court of the County of Hudson for the removal of Mr. Heinze as administrator, and the Court did remove him, and appointed Mr. Wall and Mr. Fullerton as substituted administrators in his stead. From this decree an appeal was taken to the Prerogative Court, which sustained the Orphans Court in its removal of Mr. Heinze, but vacated the appointment of Mr. Fullerton, thus continuing Mr. Wall as sole substituted administrator.

30 Mr. Heinze, as administrator, took out an order to limit creditors on September 27, 1916; and, on June 26, 1917, a decree was entered barring creditors.

The American Company filed an answer in lieu of a plea, raising substantially three objections to the bill, viz.:

40 1. That the appointment of Mr. Heinze as administrator by the Surrogate of Hudson County was illegal, null and void: and the Orphans and Prerogative Courts were without jurisdiction to appoint or continue substituted administrator or administrators.

*Opinion of Vice-Chancellor Griffin.*

2. That the appointment was procured by fraud.

3. That there were and are no assets or creditors of the intestate in New Jersey.

In considering Objections 1 and 2, it may be presumed that the subject matter of these objections, in a degree, at least, was considered by the Orphans Court and Prerogative Court, by whose decrees Mr. Wall was made and continued substituted administrator. The Prerogative Court had full jurisdiction of the subject matter. The decree was signed by the Ordinary. I should, therefore, hesitate to consider the question of jurisdiction, and in effect, undertake to sit on appeal from such decree. It is not necessary, however, to pass upon this question, because the case may be disposed of under the third objection.

(Upon the death of the intestate the title to this property [property pledged with American Smelting & Refining Company as security for Heinze's loan] vested in the primary administrator; the property was physically in the State of New York; the pledgee, while a corporation of New Jersey, had authority to transact business in New York and was actually doing business therein, and was therefore liable to be sued in the courts of that State; the debt to secure which the pledge was given had its *situs* in New York, and the *situs* of none of the things pledged are in New Jersey. Under such circumstances, it seems quite clear that the ancillary administrator is not entitled to their possession. *Pisano vs. Shanley*, 66 N. J. Law, 1 [7]; *Banta vs. Moore*, 15 N. J. Eq., 97; *In re Election of Cape May &c. Nav. Co.*, 51 N. J. Law, 78; *Merrill vs. New England Ins. Co.*, 103 Mass., 245.)

In Dietz's Case, 41 N. J. Eq., 284 (1886), where testator died a resident of New Jersey, with

*Opinion of Vice-Chancellor Griffin.*

stocks, bonds and the like located in New York in the possession or under the control of two of the respondents, the Orphans Court, in a contest touching the validity of a will ordered these two respondents to turn over to the administrator *pendente lite*, appointed by said Court, the securities in their possession belonging to the testator, and to give access to the safe of the testator to the administrator, so that the contents might be taken in to the administrator's possession. The Ordinary, in affirming the decree, said "It is argued that the Court had no jurisdiction to make the order. It had jurisdiction of the subject matter and of the parties. Speaking generally, the order was a direction (it was an authorization also) to pay and deliver over property of the estate to the person entitled by law to the custody of it. There is no conflict of jurisdictions. The order directed the parties to do nothing which it was not their plain duty to do without it."

The distinction between the Dietz Case and the present is quite apparent. In the former, the administration in New Jersey was primary; and the title to the property, although outside of this State, was vested in the administrator appointed here; and there was no conflict of jurisdiction, apparently, in this that there was no administrator in the City of New York. Here, however, the ancillary administration is in New Jersey, with no right to administer property unless it can be taken within this State. It is quite clear that this Court could not lawfully make an order that the property mentioned in the bill be brought within the State of New Jersey to be administered; (it being made to appear that there is primary administration in New York, where the assets are

located) yet this is substantially the only form of decree which would aid the administrator here. Any decree made by this Court declaring that, as between the estate of the intestate and the Miners Smelting Company, no trust is impressed upon the stocks, bonds, etc., in favor of the estate, would have no force and effect in the State of New York, where the primary administration exists and the property is physically situated, as there is no privity between the primary and ancillary administrator. *Pisano vs. Shanley, supra*, 11 R. C. L., Sec. 531, Note 11. 10

A decree will be advised dismissing the bill.

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**Final Decree.**

**IN CHANCERY OF NEW JERSEY.**

Between

ALBERT C. WALL, as Substituted  
Administrator of F. Augustus  
Heinze, deceased, in place of  
Arthur P. Heinze, removed,  
Complainant,

and

AMERICAN SMELTING & REFINING  
COMPANY, *et al.*,  
Defendants.

On Bill

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This cause coming on to be heard upon answer in lieu of plea filed by the defendant American Smelting & Refining Company to the bill of complaint of said complainant, and replication thereto, in the presence of Albert C. Wall, substituted administrator of F. Augustus Heinze, deceased, complainant, in his own person, with whom was Franklin Bien (of the New York Bar); John J. Treacy, of counsel with the American Smelting & Refining Company, and Albert I. Drayton, of 40

*Final Decree*

counsel with the Miners Smelting Company, and the evidence of the parties having been taken, and the court having considered the same and the arguments of counsel, and being of opinion that said answer in lieu of plea is good and sufficient and has been sustained by the evidence.

- 10 It is, on this 12th day of March, in the year of our Lord one thousand nine hundred and nineteen, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, does, by virtue of the power and authority of this court, hereby order, adjudge and decree that the said answer in lieu of plea is good and sufficient and has been sustained by the evidence, and that
- 20 therefore the complainant's bill be and the same hereby is dismissed.

Respectfully advised,

E. R. WALKER,

C.

JOHN GRIFFIN, V. C.

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**Stipulation.****IN CHANCERY OF NEW JERSEY.**

ALBERT C. WALL, Substituted Ad- ministrator, etc., Complainant, against AMERICAN SMELTING & REFINING COMPANY, <i>et al.</i> , Defendants.	}	10
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It is hereby stipulated:

(1) That the American Smelting & Refining Company is a New Jersey corporation and has the authority to transact business in the State of New York and is transacting business in said State of New York. 20

(2) That none of the corporations issuing the stocks and bonds mentioned in the bill of complaint as being held by the American Smelting & Refining Company as collateral security for loans to F. Augustus Heinze is a corporation existing under the laws of New Jersey.

(3) That the Silver King Coalition Company is a corporation of the State of Nevada. 30

Dated January 28, 1919.

VREDENBURGH, WALL & CAREY,  
Solicitors for Complainant.

TREACY & MILTON,  
Solicitors for Defendant,  
American Smelting & Refining Co.

ALBERT I. DRAYTON,  
Solicitor for Defendant,  
Miners Smelting Company. 40

**Exhibit 8.**

CERTIFICATE OF SURROGATE JAMES F. NORTON, APPOINTING ALBERT C. WALL ADMINISTRATOR OF ESTATE OF F. AUGUSTUS HEINZE, DECEASED, IN PLACE OF ARTHUR P. HEINZE, REMOVED.

10 STATE OF NEW JERSEY, }  
County of Hudson, } ss. :

To all whom these presents shall come, Greeting: Whereas F. Augustus Heinze, late of the County of Hudson in the State of New Jersey, departed this life intestate, of whose goods, chattels and credits administration was duly committed to Arthur P. Heinze and the said

20 after taking upon himself the burden of said administration was removed from his said office by decree of the Orphans Court of said County dated December 11th, 1916.

Therefore I, James F. Norton, Surrogate of the County of Hudson, in obedience to said decree do in the place and stead of the said Arthur P. Heinze hereby substitute and appoint, Albert C. Wall administrator of all and singular the goods, chattels and credits of said intestate who is duly authorized as such substituted administrator to

30 administer the same agreeably to law.

In Witness Whereof I have hereunto set my hand and seal of office this eighth day of January, nineteen hundred and seventeen.

JAMES F. NORTON,  
Surrogate.

Seal.

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**Exhibit 9.**

(Being marked Exhibit C-1.)

Letter dated January 10, 1918, from Frank P. McDermott to Albert C. Wall (Mr. McDermott representing Mr. Arthur P. Heinze), stating that he enclosed two claims of the United Copper Company, filed with Arthur P. Heinze, Administrator of the Estate of F. Augustus Heinze, in New Jersey, on December 22, 1916; one claim being created by an assignment by Ruth Noyes Heinze (wife of Arthur P. Heinze) and the other by an assignment by the Western Development Company, of which Mr. Geer is Vice President, and both assigned to the United Copper Company, a New Jersey Corporation.

10

**Exhibit 10.**

(Being Exhibit D-4.)

CERTIFICATE OF INCORPORATION OF UNITED COPPER COMPANY, DATED DECEMBER 3, 1914, AND FILED IN SECRETARY OF STATE'S OFFICE DECEMBER 7, 1914.

20

CERTIFICATE OF INCORPORATION  
of  
UNITED COPPER COMPANY

State of New Jersey, ss.:

30

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the acts amendatory thereof and supplemental thereto, do hereby certify as follows:

FIRST: The name of the corporation is "United Copper Company."

40

SECOND: The place where the principal business of this corporation shall be transacted is Jersey

*Exhibit 10.*

City, in the County of Hudson and State of New Jersey, but a business office may be located in the Borough of Manhattan, City, County and State of New York.

10 THIRD: The nature of the business and the objects and purposes proposed to be transacted, promoted and carried on, are to do any or all of the things herein mentioned, in any part of the world, viz.:

01  
02  
20 (1) To carry on the business of mining, milling, concentrating, converting, smelting, treating, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in gold, silver, copper, lead, zinc, brass, iron, steel and in all kinds of ores, metals and minerals, and the products and by-products thereof of every kind and description, and by whatsoever process the same can be or may hereafter be produced; to buy, sell, exchange, lease, acquire and deal in lands, mines, minerals, rights and claims and in the above specified products, and to conduct all business appurtenant thereto.

03  
30 (2) To carry on as principals, agents, commission merchants or consignees, the business of mining, milling, concentrating, converting, smelting, treating, buying, selling, exchanging, manufacturing and dealing in the above specified lands, properties, rights, products, and all the materials used in the manufacture of each, any and all of such articles, and to carry on as such principals, agents, commission merchants or consignees, any other business which in the judgment of the company may be conveniently conducted in conjunction with any of the matters aforesaid, and to do  
40 every other act or thing in the purchase and leasing of lands and mines and the purchase and leasing of machinery and procuring patents to prop-

*Exhibit 10.*

erly conduct the business for which this corporation has been incorporated.

FOURTH: The amount of the total authorized capital stock of this corporation is Five thousand Dollars (\$5,000) divided into five hundred (500) shares of the par value of Ten Dollars (\$10) each. The amount of the capital stock with which the corporation will commence business is One thousand Dollars (\$1,000). 10

FIFTH: The names and post-office addresses of the incorporators, and the number of shares of stock subscribed for by each, are as follows:

Names	Post office Addresses	No. of Shares	
Franklin Bien, Jr.	Linden Ave. & Deane St., Englewood, N.J.	40	20
Thomas Adam	10 E. 130th St., Bor- ough of Manhattan, New York City.	30	
Robert L. Turk	50 W. 77th St., Bor- ough of Manhattan, New York City	30	

SIXTH: The duration of the corporation shall be perpetual.

SEVENTH: The number of the directors of this corporation shall be three, and the names and residences of such who are to serve until the election of their successors are as follows: 30

Name	Post Office Addresses	
Franklin Bien, Jr.	Linden Avenue & Deane St., Englewood, State of New Jersey.	
Thomas Adam	10 East 130th Street, Borough of Manhattan, City and State of New York.	40
Robert L. Turk	50 West 77th Street, Borough of Manhattan, City and State of New York.	

*Exhibit 10.*

EIGHTH: The resident agent of this Company shall be Franklin Bien, of No. 95 Dwight Place, Englewood, State of New Jersey.

10 NINTH: This corporation may become seized and possessed of real estate to an amount that may be necessary for the objects of the corporation, and also possessed of personal estate to the value of an unlimited amount.

TENTH: The highest amount of indebtedness or liability which this corporation may at any time incur shall not exceed the amount of the subscribed capital stock of the said corporation.

20 ELEVENTH: The Directors shall have the power to fix the amount to be reserved as working capital, and to authorize, and cause to be executed, mortgages and liens upon the property and franchises of this corporation.

In witness whereof, we have hereunto set our hands and seals, the Third Day of December, 1914.

In presence of:

FRANKLIN BIEN, Jr. (L. S.)

THOMAS ADAM, (L. S.)

ROBERT L. TURK (L. S.)

30 Meyer Phillips

40

CITY AND STATE OF NEW YORK, }  
 County of New York, } ss. :

On this third day of December, 1914, before me personally appeared Franklin Bien, Jr., Thomas Adam and Robert L. Turk, to me personally known and known to me to be the individuals described in and who executed the foregoing Certificate of Incorporation, to whom I first made known the contents thereof, and they duly severally acknowledged to me that they had executed the same as and for them and each of them voluntary act and deed, for the uses and purposes therein expressed. 10

MEYER PHILLIPS,  
 Notary Public,  
 (Seal) New York County No. 2,983,  
 New York Register No. 6,093. 20

**Exhibit 14.**

(Being marked Exhibit C-4.)

ASSIGNMENT MADE BY RUTH NOYES HEINZE TO UNITED COPPER COMPANY FOR \$250,000, DATED DECEMBER 21, 1916, BEING EXHIBIT NO. 1, ATTACHED TO FOLLOWING PROOF OF CLAIM, OF WHICH IT IS A PART. 30

**HUDSON COUNTY ORPHANS COURT.**

In the Matter of the Estate  
 of  
 F. AUGUSTUS HEINZE,  
 Deceased.

The Estate of F. August Heinze, deceased,  
 To United Copper Company, Dr. 40  
 To amount due on a claim against the Estate of F. Augustus Heinze, deceased, assigned by

*Exhibit 14.*

Ruth Noyes Heinze to the United Copper Company, a New Jersey Corporation of Two Hundred and Fifty Thousand Dollars, a copy of which assignment is hereto annexed, marked "Exhibit No. 1." The claim arises out of the sale of said Ruth Noyes Heinze to the late F. Augustus Heinze and

10 Arthur P. Heinze as Trustees of a large amount of the common stock of the United Copper Company to be paid for at Fifty Dollars per share of the stock, but only a small amount of money and stock was turned over to said Ruth Noyes Heinze by the said Trustees, leaving said Estate of F. Augustus Heinze indebted to her in a sum exceeding Three hundred thousand Dollars.

STATE OF NEW JERSEY, }  
 20 County of Hudson, } ss.:

Joseph Cashin, of full age, being duly sworn according to law, upon his oath deposes and says that he is the Secretary of the United Copper Company, a New Jersey Corporation, the creditor in the foregoing claim mentioned, which is correctly set forth to the best of deponent's knowledge from information received by him. And deponent further says that no part of the foregoing claim has been paid, but that the whole sum of

30 Two Hundred and Fifty Thousand Dollars, therein mentioned, is justly due and owing to the claimant, to the best of his knowledge and belief.

JOSEPH CASHIN.

Subscribed and sworn to before me }  
 this 22nd day of December, 1916. }

HENRY A. OETJEN,  
 Notary Public of N. J.

(Seal)

40

*Exhibit 15.*

## EXHIBIT No. 1.

Know all men by these presents, that I, Ruth Noyes Heinze, of Great Neck, County of Nassau, State of New York, for and in consideration of the sum of One Dollar to me in hand duly paid by the United Copper Company, a corporation created by and under the laws of the State of New Jersey, as well as other valuable consideration, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over, and hereby sell, assign, and set over unto the said United Copper Company, corporation aforesaid, all of my right, title and interest in and to the sum of Two Hundred and Fifty Thousand Dollars in a certain claim that I now have against the Estate of F. Augustus Heinze, deceased, exceeding that amount this assignment being limited to the sum of Two Hundred and Fifty Thousand Dollars, of such claim and no more, and being without recourse against me, with full power to the said United Copper Company aforesaid to collect such amount under his assignment up to said sum of Two Hundred and Fifty Thousand Dollars, but at its own proper cost and expense.

In witness whereof I have hereto set my hand and affixed my seal this 21st day of December, 1916.

RUTH NOYES HEINZE (Seal)

Witness:

George A. Duck.

STATE OF NEW YORK, }  
County of Nassau, } ss.:

On this 21st day of December, 1916, before me personally came Ruth Noyes Heinze, to me known and known to me to be the person described in and who executed the foregoing assignment, and duly acknowledged that she executed the same.

GEORGE A. DUCK,  
Notary Public,  
Nassau Co., N. Y.

*Exhibit 15.***Exhibit 5.**

ASSIGNMENTS OF WESTERN DEVELOPMENT COMPANY  
 TO UNITED COPPER COMPANY, ONE DATED DE-  
 CEMBER 12, 1917, FOR \$100,000. AND THE  
 OTHER DATED DECEMBER 20, 1916, FOR  
 10 \$100,000., BEING EXHIBITS 1 AND  
 2 REFERRED TO IN ATTACHED  
 PROOF OF CLAIM OF UNIT-  
 ED COPPER COMPANY  
 FOR \$200,000.

**HUDSON COUNTY ORPHANS' COURT.**

In the Matter of the Estate

of

20 F. AUGUSTUS HEINZE,  
*Deceased.*

The Estate of F. Augustus Heinze, deceased,  
 To United Copper Company, Dr.

To amount due on two claims against the es-  
 tate of F. Augustus Heinze, deceased, assigned by  
 the Western Development Company, an Arizona  
 Corporation, to the United Copper Company, a  
 30 New Jersey Corporation, of One Hundred Thou-  
 sand Dollars each or a total of Two Hundred  
 Thousand Dollars. Copies of the Assignments  
 are hereto annexed, marked "Exhibits Nos. 1 &  
 2." The claims arise out of transactions of F.  
 Augustus Heinze, when living, in the purchases  
 and sales of United Copper Company's Stock,  
 common and preferred, and other securities re-  
 sulting in a large loss, and which was owing to  
 40 the Western Development Company at the time of  
 the death of F. Augustus Heinze, and which was  
 in excess of the sum of Three Hundred Thousand  
 Dollars.

*Exhibit 15.*

STATE OF NEW JERSEY, }  
 County of Hudson, } ss.:

Joseph Cashin, of full age, being duly sworn according to law, upon his oath deposes and says that he is the Secretary of the United Copper Company, a New Jersey Corporation, the creditor in the foregoing claim mentioned, which is correctly set forth to the best of deponent's knowledge and information received by him. And deponent further says that no part of the foregoing claim has been paid, but that the whole sum of Two Hundred Thousand Dollars therein mentioned is justly due and owing to the claimant, to the best of his knowledge and belief.

JOSEPH CASHIN.

Subscribed and sworn to before me }  
 this 21st day of December, 1916. }

HENRY A. OETJEN,

Notary Public of New Jersey.

(Seal)

EXHIBIT No. 1.

Know all men by these presents, that the Western Development Company, a corporation created by and under the laws of the State of Arizona, for and in consideration of the sum of One Dollar, to it in hand duly paid by the United Copper Company, a corporation created by and under the laws of the State of New Jersey, as well as other valuable consideration, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over, and hereby sell, assign, transfer, and set over unto the said United Copper Company, corporation aforesaid, all its right, title and interest in and to a certain portion of all its right, title and interest in and to a certain claim that the said Western Development Company has against the estate of F. Augustus Heinze, de-

*Exhibit 15.*

10 ceased, up to the amount of one hundred thousand dollars, this, however, being without recourse as against the said Western Development Company, the corporation aforesaid, with full power to the said United Copper Company aforesaid to collect such amount under this assignment, up to said sum of one hundred thousand dollars, but at its own proper cost and expense.

In witness whereof, the said Western Development Company has caused these presents to be signed in its corporate by its President, and its corporate seal to be attached hereto, this 12th day of December, 1916.

WESTERN DEVELOPMENT COMPANY,

By Mary T. Geer,

20 (Seal)

President.

Arthur M. Richards.

STATE OF NEW JERSEY, }  
County of Essex, } ss.:  
City of East Orange, }

30 On the 13th day of December, 1916, before me personally appeared Mary T. Geer, who being by me first duly sworn, did depose and say that she resides in East Orange, N. J.; that she is the President of the Western Development Company, the Corporation named in and who executed the foregoing assignment; that she is familiar with the seal of said corporation and that the seal attached hereto is such corporate seal, and that the same was affixed by order of the Board of Directors of said corporation, and that she signed her name thereto by like order.

ARTHUR M. RICHARDS,

Notary Public of New Jersey

40

*Exhibit 15*

## EXHIBIT No. 2.

Know all men by these presents, that the Western Development Company, a corporation created by and under the laws of the State of Arizona, for and in consideration of the sum of One Dollar, to it in hand duly paid by the United Copper Company, a corporation created by and under the laws of the State of New Jersey, as well as other valuable consideration, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over unto the said United Copper Company, corporation aforesaid, all its right, title and interest in and to a certain portion of all its right, title and interest in and to a certain claim that the said Western Development Company has against the Estate of F. Augustus Heinze, deceased, in an additional sum of One Hundred Thousand Dollars, this being in addition to the assignment of One Hundred Thousand Dollars made by it to the said United Copper Company by assignment on December 12th, 1916. This assignment also, however, being without recourse as against the said Western Development Company, with full power to said United Copper Company to collect such additional sum of One Hundred Thousand Dollars under this assignment but as its own proper cost and expense.

In witness whereof, the said Western Development Company has caused these presents to be signed in its corporate name by its President, and its corporate seal to be attached this 20th day of December, 1916.

WESTERN DEVELOPMENT COMPANY,

By Mary T. Geer, President.

(Seal)

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40

*Exhibit 15*

STATE OF NEW JERSEY, }  
 County of Essex, } ss.:  
 City of East Orange, }

10 On this 21st day of December, 1916, before me personally appeared Mary T. Geer, who being by me first duly sworn, did depose and say that she resides in East Orange, New Jersey; that she is the President of the Western Development Company, the corporation named in and who executed the foregoing assignment; that she is familiar with the seal of said corporation and that the seal attached hereto is such corporate seal, and that the name was affixed by order of the Board of Directors of said corporation, and that she signed her name hereto by like order.

20 (Signed) ARTHUR W. RICHARDS,  
 Notary Public  
 of New Jersey.

(Seal)

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30

40

**Exhibit 6.**

THERE WERE OFFERED THE FOLLOWING, WITHOUT  
GIVING THEM ANY EXHIBIT NUMBERS.

Order limiting Creditors, dated September 27,  
1916; and

Decree barring Creditors, dated June 28th, 1917.

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**NEW JERSEY COURT OF ERRORS AND APPEALS. 10**

<p>In the Matter of the Estate of F. AUGUSTUS HEINZE, deceased.</p>	}	<p>On Appeals from Chancery.</p>
-------------------------------------------------------------------------	---	------------------------------------------

**EXHIBIT D-2—JUNE 14, 1918.**

**Petition of Arthur P. Heinze, for Ap- 20**  
**pointment as Administrator in New**  
**Jersey.**

*To the Surrogate of the County of Hudson, New  
Jersey.*

Arthur P. Heinze, residing at Marie Antoinette  
Hotel, Broadway and 67th Street, in the Borough  
of Manhattan, City and State of New York, re-  
spectfully represents that he is the oldest brother 30  
of F. Augustus Heinze, late of the City of New  
York, who departed this life intestate in the said  
City of Saratoga, on the fourth day of November,  
A. D. 1914. That said intestate was at the time  
of his death a resident of the County of New  
York or of Saratoga, in the State of New York,  
and left surviving the following named heirs and  
next of kin, to wit:

F. Augustus Heinze, Jr., infant, now four years 40  
old,

*Petition of Arthur P. Heinze*

Arthur P. Heinze, a brother,  
 Otto C. Heinze, a brother,  
 Lida M. Fleitmann, a sister,  
 Alice H. Watjen, of Bremen, Germany, a sister.

10 That administration on the estate of said deceased was granted by the Surrogate of the County of Saratoga, to Lida M. Fleitmann, who has renounced and waived the right to administration in the State of New Jersey.

That the estate of said deceased located within the State of New York amounted approximately to the sum of in excess of \$10,000.00/100.

20 That the Surrogate of the County of Saratoga exacted from said administratrix a bond in the penal sum of \$20,000, which was approved and filed in the Surrogate's Office in the County of Saratoga.

30 That the personal assets of said deceased within the State of New York have already been reduced to possession by the administratrix there. That the deceased left no tangible personal estate within the State of New Jersey, but his legal representative is entitled, as petitioner believes, to a chose in action, the value of which is problematical and incapable of ascertainment at this time. The administration within the State of New Jersey is sought principally for the purpose of realizing on said chose in action, and petitioner respectfully submits that his bond as administrator within this State be fixed at the sum of \$1,000.

Therefore the said applicant respectfully applies for letters of administration upon the goods, chattels, rights and credits of which said intestate died possessed in the State of New Jersey.

40 Dated March 28, A. D. 1916.

ARTHUR P. HEINZE.

*Petition of Arthur P. Heinze*

STATE OF NEW YORK, }  
 City and County of New York, } ss. :

Arthur P. Heinze, named in the above application, being duly sworn, on his oath saith that the matters and things set forth in the above application are true to the best of his knowledge and belief. 10

ARTHUR P. HEINZE.

Sworn and subscribed before me }  
 this 28th day of March, A. D. 1916. }

MORRIS MEYERS,  
 (Seal.) Notary Public,

New York Co. No. 2567.

STATE OF NEW YORK, }  
 County of New York, } ss. :

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, do hereby certify, That Morris Meyers, whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such deposition, or proof and acknowledgment, a Notary Public in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of State and for general purposes; and also to take acknowledgment and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine. 20 30 40

In Testimony Whereof, I have hereunto  
set my hand and affixed the seal of the  
(Seal.) said Court and County the 28th day of  
March, 1916.

{ Rev. } WM. F. SCHNEIDER,  
{ Stamp. } Clerk.

10 **Petition of Walter A. Fullerton, Domi-  
ciliary Administrator, for removal of  
Arthur P. Heinze as Administrator in  
New Jersey.**

**HUDSON COUNTY ORPHANS' COURT.**

20 In the Matter of the Estate of }  
F. AUGUSTUS HEINZE, deceased. }  
On petition }  
for removal }  
of Arthur }  
P. Heinze, }  
as adminis- }  
trator. }

**PETITION.**

*To the Orphans' Court of the County of Hudson.*

30 The petition of Walter A. Fullerton, as admin-  
istrator of the goods, chattels and credits which  
were of F. Augustus Heinze, deceased, residing at  
Saratoga Springs, Saratoga County, New York,  
respectively shows:

40 I. That on the 28th day of March, 1916, the  
Surrogate of the County of Hudson granted, or  
purported to grant, unto Arthur P. Heinze, letters  
of administration on the estate of F. Augustus  
Heinze, deceased; that said letters were granted  
upon the application of said Arthur P. Heinze,

*Petition*

and upon the written consent of one Lida M. Fleitmann (a sister of said Arthur P. Heinze), then acting, or purporting to act, as administratrix of the goods, chattels and credits of F. Augustus Heinze, deceased, under the appointment of the Surrogate of the County of Saratoga, State of New York. 10

II. That said F. Augustus Heinze died a resident of the County of Saratoga, State of New York, on the 4th day of November, 1914, and that on the 5th day of November, 1914, said Lida M. Fleitmann was appointed administratrix of the goods, chattels and credits of his estate by the Surrogate of Saratoga County, New York, and thereafter qualified as such administratrix, and acted as such. 20

III. That, on the petition of Edwin Gould, a creditor of said F. Augustus Heinze, deceased, and of his estate, he being the owner of a judgment duly taken against said Heinze in the Supreme Court of the State of New York, on the 15th day of October, 1914, in the sum of \$1,264,588.91, a decision and decree were duly made by the said Surrogate of Saratoga County, New York, removing the said Lida M. Fleitmann as such administratrix, and appointing your petitioner as the administrator of the goods, chattels and credits of F. Augustus Heinze, deceased, that your petitioner has duly qualified and is now acting as such administrator. An exemplified copy of the proceedings in the Surrogate's Court of Saratoga County removing said administratrix and appointing your petitioner is hereto annexed and filed herein. 30

IV. That the said Arthur P. Heinze in obtaining his appointment as administrator by the Surrogate of Hudson County as aforesaid in and by 40

*Petition*

his written application, verified by him upon the 28th day of March, 1916, and filed in the office of the Surrogate of Hudson County, misrepresented and falsely suggested a material fact, namely, that Lida M. Fleitmann, as administratrix of the goods, chattels and credits of F. Augustus Heinze, deceased, had qualified under bond of \$20,000, whereas, in fact, the said Lida M. Fleitmann was then acting as such administratrix under bonds in the amount of \$270,000; upon his application so made, the said Arthur P. Heinze was permitted to qualify and did qualify, or purpose to qualify, upon the giving of a bond in the amount of \$1,000.

V. That, prior to the making of the application as aforesaid of Arthur P. Heinze, for the grant of letters granted by the Surrogate of Hudson County, in proceedings had in the Surrogate's Court of Saratoga County, New York, taken therein upon behalf of said Edwin Gould, a creditor, in a proceeding duly brought for the purpose of requiring the said Lida M. Fleitmann to file a further inventory of the assets of said F. Augustus Heinze, deceased, it was disclosed by the testimony of one F. W. Hills, Comptroller of the American Smelting & Refining Company, a New Jersey Corporation, that on the 10th day of March, 1914, the said F. Augustus Heinze was the sole and actual owner of an agreement with the American Smelting & Refining Company, which was of very great value, and under which the said Heinze and his estate are entitled to receive until the 1st day of January, 1919, from the said American Smelting & Refining Company certain monthly royalties amounting to a sum varying between the amount of \$5,000 and the amount of \$10,000 a month, and was then also the owner of the following securities of great value, namely:

*Petition*

- 7,000 shares of the capital stock of Stewart Mining Company;
- 36,150 shares of the stock of Chick Ohio Copper Mining Company;
- \$78,000 par value of the six per cent. gold bonds of Ohio Copper Company; 10
- \$225,000 in par value of the six per cent. gold bonds of the Bingham Central Railroad Company;
- 100 shares of the capital stock of State Savings Bank, of Butte, Mont.

That the said agreement and the said securities were at the time of the death of said F. Augustus Heinze, held by the American Smelting & Refining Company, as collateral security for the repayment of a loan of \$229,000 made by it to said Heinze during his lifetime, the balance unpaid upon said loan as of the date of the death of said Heinze being the sum of about \$190,000; that since the date of the death of said Heinze, said loan has been in whole, or nearly, liquidated by the application by the American Smelting & Refining Company of said monthly royalties in repayment of the same; that your petitioner, as administrator of the estate of F. Augustus Heinze, is, subject to the repayment to the American Smelting & Refining Company of such balance (if any) which remains due upon such loan, the owner of such royalty agreement and of said securities, and entitled to receive the same. 20 30

VI. That the said Lida M. Fleitmann has claimed in such proceedings in the Surrogate's Court of Saratoga County, that the said royalty agreement and the said securities so disclosed as aforesaid to have been the property of the said F. Augustus Heinze, deceased, on the 10th day of March, 1914, should not be included in her in- 40

*Petition*

ventory as such administratrix, but that such assets are the property of a corporation named the Miners Smelting Company; that said Lida M. Fleitmann claims that she is the sole owner of the shares of stock of Miners Smelting Company; that the said Miners Smelting Company is a  
10 corporation organized under the laws of the State of Maine, and that it maintains no office for the transaction of business in the State of New Jersey, and that its officers and directors are the nominees of said Lida M. Fleitmann.

VII. That said Arthur P. Heinze, while purporting to act as such administrator, did, on the 3rd day of April, 1916, verify a bill of complaint in an action in Chancery in the State of New  
20 Jersey, wherein he alleged, among other things, that said royalty agreement and the said securities were the property of said F. Augustus Heinze, at the date of his death, and were and are the property of his estate, and wherein he alleged that the said Miners Smelting Company claimed to be the owner of such royalty agreement and such securities, and that the claim of the said Miners Smelting Company was without substance, and wherein he prayed that a judgment be made  
30 determining that said property is the property of the estate of F. Augustus Heinze, deceased.

VIII. Upon information and belief that such bill of complaint was made and filed by said Arthur P. Heinze, in pursuance of a collusive arrangement with said Lida M. Fleitmann, with the intent and purpose of confusing the title to said property and getting such property into the possession and control of said Miners Smelting  
40 Company and of hindering and delaying the creditors of F. Augustus Heinze, deceased, and of his estate, and the proper representatives of

*Petition*

said estate from collecting or receiving such property.

IX. Upon information and belief that in pursuance of such unlawful and collusive understanding, the said Miners Smelting Company voluntarily appeared in the action so commenced by Arthur P. Heinze by such bills of complaint, and that such voluntary appearance was procured therein by said Lida M. Fleitmann through her attorney, one Stephen A. McIntire who authorized and directed its solicitor in New Jersey to appear therein on behalf of said Miners Smelting Company. 10

X. Upon information and belief in further pursuance of such collusive understanding, said Arthur P. Heinze, and the said Lida M. Fleitmann wrongfully procured to be made upon the formal consent of both the said Arthur P. Heinze, purporting to act as such administrator, and of said Miners Smelting Company, an order in chancery dated June 29, 1916, providing that a large part of the said property so belonging to the estate of F. Augustus Heinze, deceased, should be delivered over to said Miners Smelting Company. 20

XI. That the Ohio Copper Mining Company, \$78,000 in face value of the bonds of which were held as aforesaid by the American Smelting & Refining Company, was, in August, 1916, in bankruptcy, and at that time a plan of reorganization upon behalf of the bondholders of such corporation had been promulgated, and had been consented to by all of the bondholders of such corporation, with the exception of the \$78,000 bonds above mentioned, and a few scattering bonds, not exceeding in the aggregate fifteen bonds; that the purpose of the plan of reorganization was to save the property of the bankrupt corporation for the 30  
40

*Petition*

benefit of the bondholders, and that in order to enjoy the benefits of the plan it was necessary that the bondholders should deposit their bonds with the Reorganization Committee; that in the month of August, 1916, and after the Surrogate of Saratoga County as aforesaid handed down his decision for the removal of said Lida M. Fleitmann, as administratrix, it was stated to the Surrogate of Saratoga County by the counsel of said administratrix and by the counsel of Edwin Gould, a creditor, that it was for the interest of the estate of F. Augustus Heinze that said bonds be deposited with such committee, and that the time for the deposit of such bonds could not be extended beyond the thirtieth day of August when the sale and foreclosure of the property so to be had at Salt Lake City, Utah, was to take place, and that it was necessary that the consent to the deposit of the bonds, and the bonds, be forwarded to the Reorganization Committee not later than that date; thereupon the Surrogate of Saratoga County instructed the said Stephen A. McIntire, as counsel for said Lida M. Fleitmann, to procure her consent as administratrix to the deposit of such bonds and to take such other steps as were necessary to complete the deposit of such bonds; that the deposit of such bonds not having been made on August 23rd, on which date the formal decision and decree were entered in the Surrogate's Court of Saratoga County removing said Lida M. Fleitmann and appointing your petitioner as administrator, the Surrogate of Saratoga County instructed your petitioner to take such steps as would procure a deposit of such bonds if possible; that thereupon your petitioner formally notified said Stephen A. McIntire, as counsel for said Lida M. Fleitmann, and formally

*Petition*

notified said Lida M. Fleitmann that as such administrator he was desirous that such bonds be deposited and asked that said Stephen A. McIntire, procure the modification of the said order above mentioned, so entered in Chancery in New Jersey, so as to permit the making of such deposit by the said American Smelting & Refining Company; that said Lida M. Fleitmann and said Stephen A. McIntire refused and failed to secure such modification of such order, and that thereupon your petitioner notified said Stephen A. McIntire that he would attend before the Vice-Chancellor sitting in the Chancery Chambers in Jersey City on the 28th day of August, 1916, in order to procure a modification of such orders; that on the 28th day of August, 1916, your petitioner called upon the solicitor in the State of New Jersey, representing said Arthur P. Heinze, as administrator, and the solicitor in the State of New Jersey, representing the Miners Smelting Company, and informed them fully as to the facts hereinabove related, and that both the American Smelting & Refining Company, and your petitioner, as administrator, were desirous that such order be modified so as to permit of the deposit of such Ohio Copper Company bonds, and requested said solicitors to consent to such modification of such order, and that the solicitor for the said Arthur P. Heinze, as administrator communicated with said Arthur P. Heinze in the presence of your petitioner, and informed your petitioner that said Arthur P. Heinze refused to consent to such modification of such order, and was informed by said solicitor for the said Miners Smelting Company that he had been in communication with said Stephen A. McIntire, the counsel for Lida M. Fleitmann, and that the said Stephen

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*Petition*

A. McIntire refused to authorize him to consent to such modification; and furthermore, that the said solicitors informed your petitioner that they were not authorized to and would not appear before Vice-Chancellor Griffin on said day in order to permit of the presentation to the Vice-Chancellor of an application for the modification of such order; and that thereupon your petitioner did attend before Vice-Chancellor Griffin, together with the solicitor for the said American Smelting & Refining Company, who asked the said Vice-Chancellor for a short order to show cause, returnable the same day, but who was not able to obtain such order; that said bonds so effected by said collusive order improperly providing for the delivery thereof to the said Miners Smelting Company were not deposited with the Committee, and as a result thereof the value thereof has been greatly reduced and impaired.

XII. That the said F. Augustus Heinze, was at the time of his death a resident of the County of Saratoga, State of New York, and that jurisdiction in respect to the administration of his estate properly pertained to the Surrogate of Saratoga County, New York; that the said F. Augustus Heinze, at the time of his death and his estate owned or now owns no property of any kind or description situated within the State of New Jersey; nor did he or his estate nor does his estate own any cause of action against any resident of the County of Hudson, State of New Jersey; that the Surrogate of Hudson County was entirely without jurisdiction in the premises in purporting to appoint the said Arthur P. Heinze as such administrator and that such appointment is absolutely void.

XIII. That the said Arthur P. Heinze, has as aforesaid and otherwise wasted and misapplied

*Petition*

the estate of said F. August Heinze and has abused the trust and confidence reposed in him, and neglects and refuses to execute and perform the duties and trusts devolving upon him.

WHEREFORE, your petitioner prays that this Court may revoke the letters of administration granted to the said Arthur P. Heinze, as aforesaid, and remove him from his said office. 10

WALTER A. FULLERTON,  
As Administrator of the estate  
of F. Augustus Heinze, deceased.

—o—

STATE OF NEW YORK, }  
County of Saratoga. } ss.:

WALTER A. FULLERTON, being duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof, and that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true. 20

WALTER A. FULLERTON.

Sworn to before me this 3rd day }  
of October, 1916. } 30  
Gertrude E. Gilhouse,  
Notary Public.

—o—

STATE OF NEW YORK, }  
Saratoga County Clerk's Office. } ss.:

I, JOHN F. HENNESSY, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record therein, do hereby certify that Gertrude E. Gilhouse, whose name is subscribed to the certificate of acknowledgment of proof of the annexed instrument in writing, and endorsed thereon, was, at the time of taking such acknowledgment or proof, a Notary Public in 40

and for the County aforesaid, dwelling in said County and duly authorized to take the same; and I do further certify that I am well acquainted with the handwriting of the said Notary Public, and verily believe that the signature to the said certificate of acknowledgment or proof is genuine.

10 In Testimony Whereof, I have hereunto set my name, and affixed my official seal as County Clerk of said County, and Clerk of said Courts, at Ballston Spa, this 3rd day of October, in the year 1916.

(Seal.)

JOHN F. HENNESSY,  
Clerk.

20 **Order Removing Arthur P. Heinze as  
Administrator in New Jersey.**

HUDSON COUNTY ORPHANS' COURT.

30 In the Matter of the Estate of F.  
AUGUSTUS HEINZE, deceased.

On Petition  
for Removal  
of Admin-  
istrator.  
Order for  
Removal.

40 This matter coming on to be heard in the pres-  
ence of Gilbert Collins, of counsel with the pe-  
titioner and Frank P. McDermott, of counsel  
with the respondent, and the Court having con-  
sidered the evidence of the parties and the argu-  
ment of counsel and being of the opinion and here-  
by adjudging that the administrator appointed by

the Surrogate has abused the trust and confidence reposed in him;

IT IS, on this eleventh day of December, A. D., 1916, on motion i aneholfbsM8 æ8\*N56Z61 VU 1916, on motion in behalf of the petitioner ordered, adjudged and decreed that the respondent Arthur P. Heinze, be and he hereby is removed as administrator in New Jersey of the estate of F. Augustus Heinze, late of the County of Saratoga in the State of New York, deceased. 10

And the Court being of the opinion that there should be administration in New Jersey of said estate does now of its own motion, petition the administrator in New York suggesting to the Court, however, that no administration in New Jersey is necessary or proper, does hereby appoint Walter A. Fullerton of New York, administrator, together with Albert C. Wall, Esquire, of South Orange, in the County of Essex, as administrator of the estate in New Jersey, if any, of the said F. Augustus Heinze, deceased, in the place and stead of Arthur P. Heinze, so removed aforesaid. 20

And it is further ordered that said administrator give bond to the ordinary of New Jersey in the sum of one thousand dollars for the faithful execution of the trust reposed therein. 30

GEORGE G. TENNANT,  
Judge.

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**Extract from Opinion of Mr. Justice Kalisch.**

The evidence satisfies us, that neither Geer's claim for salary, nor the Assets Company's claim, on the note is real, and that neither is a New Jersey creditor of the deceased. 40

The only other claim made against the estate

*Extract from Opinion*

is that of the United Copper Company, a corporation of this State. This claim is made up of two alleged claims of the Western Development Company, a foreign corporation, of which the wife of Mr. Geer, who figures so prominently in all these transactions, is the president, and of an alleged claim of Ruth Noves Heinze, the widow of the deceased, a resident of the State of New York. The Western Development Company assigned their claims to the United Copper Company on December 12 and 20, 1916, and Mrs. Heinze assigned her claim to the Copper Company on December 21, 1916. These claims were filed on December 22, 1916, with Arthur P. Heinze, who was appointed in this State on March 27, 1916, under circumstances which have been above detailed, and who was succeeded by the appellant as such administrator on January 18, 1917. It cannot successfully escape notice that at the time of the decedent's death and of the appointment of an administrator in this State there were no bona fide New Jersey creditors, and that the artificial process which has been resorted to for the creation of New Jersey creditors fails of its purpose. For the reason that there were no bona fide New Jersey creditors the decree below must be affirmed.

Endorsed:

"Filed No. 17, 1919.

THOMAS F. MARTIN,  
Secretary of State."

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**Decree of Affirmance.**

(Filed Nov. 10, 1921.)

**NEW JERSEY COURT OF ERRORS AND APPEALS.**

JUNE TERM, 1919.

Between

ALBERT C. WALL, substituted administrator of F. Augustus Heinze, deceased, etc.,

*Complainant-Appellant,*

and

AMERICAN SMELTING AND REFINING COMPANY, et al.,

*Defendants-Respondents.*

10

On Appeal  
from Chancery. Decree of Affirmance.

20

This cause coming on to be heard at the June Term, one thousand nine hundred and nineteen, and being argued in behalf of the appellant by Franklin Bien, Esq., of the New York Bar, counsel for the appellant, and in behalf of Treacy & Milton, solicitors for respondent American Smelting & Refining Co., by Gilbert Collins, counsel for said respondent, and the Court having taken time to consider the same, and being of the opinion that the decree of the Chancellor should be affirmed in all things—

30

It is now, on this seventeenth day of November, in the year of our Lord one thousand nine hundred and nineteen, ordered, adjudged and decreed, that the decree of the Chancellor be in all things affirmed with costs; and that the record and proceedings be remitted to the Court of Chancery, to

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be therein proceeded on according to law and the practice of said Court.

On motion of

TREACY & MILTON,  
Solicitors and of Counsel for Respondent,  
American Smelting & Refining Co.

10

**Exhibit J. J. T. 1, June 20, 1921.**

Execution in suit by Assets Development Co.  
vs. Albert C. Wall, Adm. in Hudson County Cir-  
cuit Court.

**Exhibit F. 3, June 20, 1921.**

20

N. Y. May 18/21.

Mr. W. A. Fullerton

Dear Sir:

Enclosed please find claim of Western Dev. Co.  
against the Estate of F. Aug. Heinze.

Kindly file same & oblige,

Yours very truly,

Arthur P. Heinze,  
Pres.

30

Address answer if any  
to Co.—

c/o Arthur P. Heinze,  
19 Beverly Road,  
Great Neck, N. Y.

40

**Exhibit F. 4, June 20, 1921.**

In the Matter  
of  
The Estate of F. AUGUSTUS  
HEINZE,  
Deceased.

10

STATE OF NEW YORK, }  
County of New York. } ss.:

ARTHUR P. HEINZE, being duly sworn on his oath according to law, deposes and says that he is the President of the Western Development Company a corporation organized under the laws of Arizona in the year 1908.

20

That the said company has a claim against the Estate of F. Augustus Heinze, deceased, as hereinafter shown.

That on or about March 20, 1906, a syndicate was formed consisting of F. Augustus Heinze, Arthur P. Heinze, Otto C. Heinze, Max H. Schultze, Stanley Gifford, George W. Watjen and John MacGinniss, the said syndicate being commonly called "Account No. 4." That the said syndicate assumed and agreed to pay the obligations theretofore incurred by certain persons (including some of the persons in the syndicate) known as "Account 3," (which Account No. 3 was carried in part by J. S. Bache & Co. of New York) and which obligations were largely in excess of \$3,000,000. That active operations continued for "Account No. 4" with Arthur P. Heinze as syndicate manager which operations ultimately resulted in a loss in excess of \$5,-

30

40

*Exhibit F-4, June 20, 1921*

000,000 as per statement presented to the said F. Augustus Heinze in or about February, 1908, a copy of which statement is hereto annexed, made part hereof and marked "Exhibit A."

10 That some of the securities mentioned in the annexed statement are still being carried by the Bank of America of New York and when they are realized upon the said debt will be definitely ascertained.

That the said Arthur P. Heinze together with the firm of Otto Heinze & Company and Otto C. Heinze and Max H. Schultze, incurred these obligations on behalf, by the instruction and for the account of the said syndicate owning "Account No. 4."

20 That the Western Development Company was incorporated by a majority of the creditors of Arthur P. Heinze and Otto Heinze & Co., and the individual members of Otto Heinze & Co. for the purpose of liquidating their affairs and acquiring all their rights to be reimbursed by the other members of the syndicate by purchase from Arthur F. Crosby, Receiver of Otto Heinze & Co., and its individual members and by purchase from Otto Heinze & Co. as well as by purchase from  
30 Arthur P. Heinze and by a decree of the United States District Court for the Southern District of New York.

That the said sum is now justly due to this deponent, the Western Development Company; that no payment has been made thereon, and that there are no offsets against the same to the knowledge of this deponent, and the same is not secured by judgment or mortgage upon, or expressly charged  
40 on the real estate of the deceased or any part

*Exhibit F-4, June 20, 1921*

thereof, and that no note has been given for the same.

ARTHUR P. HEINZE.

Sworn to before me this 31st }  
day of March, 1921. }

Alexander Begg,

Notary Public No. 84,

New York County.

10

(Seal.)

—o—

*EXHIBIT A.*

Oct. 14, To Purchase	33,350	1,954,115.13	
<i>Rebooked</i>			20
United Copper Co.	1,000	7,457.97	
L. B. Sanderson %	500	27,062.50	
Judge Van Wyck	500	26,715.05	
L. B. Sanderson		8,041.85	
Cini Consuel Den.	1,000	65,102.92	
M. Ephrusi	2,000	95,142.36	
Silver Bow Natl. Bk.	125	6,878.76	
J. Creighton Webb,			
400 pref.	1,000	74,928.90	
Lem. Girandean	300	13,089.70	
Luther Martin, Jr.	200	3,089.70	30
Penhale & Darnell	250	18,450.25	
M. S. Largey	300	16,626.85	
James Breen	3,000	196,008.81	
Chester Glass, 10 shr.			
Men. Natl. Bk.	381	32,788.34	
<i>Bad Debts</i>			
Camille Weidenfeld		28,526.32	
Chas. A. Pforzheimer		13,069.24	
Louis Schoengruen—		6,162.89	
Interest and Expenses		28,899.28	
			40
400 pref.	43,906		
Com.		\$2,622,591.02	
<i>Losses estimated</i>			
Bank Stock account	\$43,175.37		
<i>Estimated Loss on %</i>			

## Exhibit F-4, June 20, 1921

	W. T. Hatch Sons	20,000.	
	Popper & Sternbach	76,000.	
	Allen A. Ryan with F. A. H.	12,000.	
	Kellogg with Harri- man & Co.	16,000	
10	O. C. H. with Selig- man	210,000.	377,175.37
			<hr/>
			\$2,999,766.39

Oct. 16/23

	By sales J. H. Bache & Co.	9340.	\$114,406.95
	Hornblower & Weeks	2700.	34,975.
	T. A. McIntyre & Co.	400	4,767.
	Thompson & Mairs	100.	2,491.75
20	E. F. Hutton Co.	800.	11,952.75
	Popper & Sternbach Sales	2,000.00— 13760.	16,000. 721,433.50
	O. H. Co. with M. H. @ 10	500.	5,000.
	Allen A. Ryan with F. A. H. @ 10	700.	7,000.
	Kellogg with Hanna @ 10	500.	5,000.
	Seligman, O. C. H. @ 8	11,981.	95,848.
		<hr/>	
30		42,781.	\$1,007,874.05
	<i>Loss Estimated</i>		\$1,967,141.44

Sale Balance of Stocks

400 prefd. @ 30

10 sh. Merc. B.

W. @ 150

1125 Uca Con.

@ 10

24,750.

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\$2,999,766.3940 Losses of Otto Heinze &  
Co.

With Brokers on Ucco pa.

331,803.84

On customers Accounts tak-  
ing Ucco Com. at \$10.

prefd. at 30

340,000.00

*Exhibit F-4, June 20, 1921*

Estimated on accounts of A. P. H. 26,275 shares, of which 22000 @ 6½ 5274 @ 10	1,630,000.	
<i>Estimated Loss</i>		
On Bremen %		
7000 Ucco with collateral @ 10		10
1300 Ice @ 30	255,000.	
Estimated loss on securities taken up for A. P. Heinze on Oct 14		
7250 Ucco Com. @ 10		
500 " Pref. @ 30		
1500 B. Coal @ 29		
1000 Ohio @ 3	115,000.	
<i>Estimated Loss</i>	<u>\$2,671,803.84</u>	20
Estimated Losses		
Common P. %	1,967,141.44	
Estimated Losses on Pre- ferred %	500,000.	
TOTAL ESTIMATED LOSS	<u>\$5,138,945.28</u>	

This does not include any transactions of A. P. H. with other brokers than O. H. Co. in *Prefd.* or *Common Stock*.

This does not include the loss on 2700 sh. Pre-ferred and \$80,000. Cash on *prefd.* Transactions prior to *March 20, 1906*. 30

**Exhibit A. D. Co. 1, June 20, 1921.**

**RECEIPT.**

June 13, 1921.

Received from Assets Development Co., one hundred and ninety-one dollars and twenty cents (\$191.20), being the balance due the undersigned on the agreement of the Assets Development to pay M. T. Geer three hundred and fifty dollars, and interests in part consideration for the sale by C. O. Geer to said company of the note of F. Augustus Heinze, for \$10,000, dated April 28, 1909, on which a balance of \$2,500, and interest was due and unpaid.

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M. T. GEER.

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**Opinion of V. C. Griffin.****IN CHANCERY OF NEW JERSEY.**


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*In re* Estate of F. AUGUSTUS  
HEINZE, deceased.

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Memoran-  
dum.

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Submitted July 2nd, 1921; decided July 22nd,  
1921.

MESSRS. WALL, HAIGHT, CAREY & HART-  
PENCE, and MR. WALL for Mr. Wall,  
Substitutionary Ancillary Administra-  
tor in New Jersey.

MESSRS COLLINS & CORBIN, MR. ROBERT J.  
BAIN (and MR. ROYALL, of the New York  
Bar), for Mr. Fullerton, Domiciliary Ad-  
ministrator.

20

MESSRS. TREACY & MILTON, for Mr. John  
J. Treacy (and MR. THATCHER, of the  
New York Bar), for American Smelting  
and Refining Company.

MR. JOHN NOLAN, for Assets Development  
Company.

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MR. ARTHUR P. HEINZE (of the New York  
Bar), 1st Vice-President of United Cop-  
per Company, and President of Western  
Development Company, for said corpo-  
rations.

GRIFFIN, V. C.:

Mr. Wall, as substitutionary administrator (an-  
cillary) of the Estate of F. Augustus Heinze, de-  
ceased, filed his petition, report and account, ask-  
ing that the account be passed and he be dis-

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*Opinion of Vice-Chancellor Griffin.*

charged. His petition is not filed under Section 146, Orphans' Court Act, 3 Compiled Statutes, p. 3868, which applies to a discharge prior to the termination of the trust.

In the petition it is set forth under the caption "10": The names and addresses of all persons interested in said accounting are as follows:

	CLAIMANTS.	
Union Bank of Brooklyn, c/o Joseph G. Deane, New York City.	(filed March 15, 1920)	\$76,832.91 with int.
United Copper Co., 61 Newark St., Hoboken, N. J.	(filed Dec. 22, 1916, with Arthur P. Heinze Administrator)	250,000.00
United Copper Co., 51 Newark St., Hoboken, N. J.	(filed Dec. 22, 1916, with Arthur P. Heinze Administrator)	200,000.00
Calvin O. Geer, East Orange, N. J.	(salary, filed June 21, 1918)	250.00
Assets Development Co., Englewood, N. J.	(filed July 22, 1918)	2,500.00 with int.
Assets Development Co., Englewood, N. J.	(filed July 22, 1918)	8,000.00
Luther Martin, Jr., Receiver United Copper Co., c/o Geo. H. Hendrickson, 75 Montgomery St., Jersey City.	(filed Aug. 20, 1918)	600,000.00
George D. Hendrickson and Luther Martin, Jr., Receivers United Copper Co., 75 Montgomery St., Jersey City.	(filed Aug. 20, 1918)	483,923.05
		<hr/> \$1,621,505.96

*Opinion of Vice-Chancellor Griffin.*

To this account and report exceptions were filed by Mr. Fullerton as domiciliary administrator, Assets Development Company, United Copper Company, and, since the petition was filed, by the Western Development Company, who filed its claim with Mr. Wall since his petition was filed.

On the day set for the hearing the Assets Development Company filed supplementary exceptions dealing with the situation which arose after its original exceptions had been filed, viz.: the setting aside of the judgment which will be hereafter referred to.

The exceptions of all the parties, except Mr. Fullerton's, are substantially addressed to the question of jurisdiction, the point being that "no special reason appears for interfering with the ordinary jurisdiction of the Orphans' Court."

I quite disagree with the views of these exceptants. The history of the litigation in this estate, and the things to be accomplished to make an end of it, present an appropriate case to be heard and determined in this Court. *Filley vs. Van Dyke*, 74 N. J. Eq., reversed 75 *idem.*, 571; *Wyckoff vs. O'Neill*, 71 N. J. Eq., 681.

The exceptions of Mr. Fullerton, among other things, goes to the point that none of the claimants above-named are *bona fide* creditors of the State of New Jersey, and, therefore, their several claims should be rejected, and the account passed, to the end that the exceptant might take and receive the assets and administer them in the State of New York.

In the absence of the judgment of the Assets Development Company on the claim of Geer for Two thousand five hundred dollars (\$2,500.00) with interest, assigned by Geer to it, it seems perfectly plain that the presenting of these claims should not defeat the passing of the account, and

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*Opinion of Vice-Chancellor Griffin.*

on proper application to direct the substitutionary administrator to pay or turn over to the domiciliary administrator, assets in his hands or claims to assets in this State, in view of the opinion of this Court in *Wall, substitutionary Administrator vs. American Smelting & Refining Company*, reported in 90 N. J. Eq., 469, and the reasons given for affirmance by the Court of Errors and Appeals in the opinion by Mr. Justice Kalisch, reported in 91 *idem*, page 131. The only assets which can be said to be in this State are the royalties payable under the Silver King agreement referred to in said opinions. The other property, consisting of stocks and bonds which, with said agreement, were pledged with the American Smelting & Refining Company to secure a debt of the deceased, did not have their *siti* in this State. The bill in the suit in which the above opinions were filed and decrees in accordance with said opinions were entered, sought to establish the right of the accountant to the royalties after the pledgee was paid, as well as the title to the other properties above referred to. All of the claims above referred to, excepting that of the Union Bank of Brooklyn, were dealt with in the case, and Mr. Justice KALISCH in conclusion said:

“It cannot successfully escape notice that at the time of decedent’s death and of the appointment of an administrator in this State, there were no *bona fide* New Jersey creditors, and that the artificial process which has been resorted to for the creation of New Jersey creditors fails of its purpose

“For the reason that there were no *bona fide* New Jersey creditors the decree below will be affirmed.”

*Opinion of Vice-Chancellor Griffin.*

In the face of this judicial determination, I must hold that the claimants under the claims above passed upon, were not bone fide New Jersey creditors; and as to the claim of the Union Bank, its claim, which was filed March 15, 1920, after the decision of the Court of Errors and Appeals and therefore was not considered, should not be allowed, because the Bank is not a New Jersey creditor. 10

This decision went to the very root of the case, and in effect held that the appointment of an administrator in this State was wholly unnecessary and improvident. This, if rendered in the suit originating in the Orphans' Court, could only have resulted in vacating the appointment and thus ending all litigation in this State. 20

A circumstance, however, has arisen since the above was decided, which leads me to pause in carrying into effect this conclusion as to the claim of the Assets Development Company (on the claim assigned by Geer) for Two thousand five hundred dollars (\$2,500) with interest.

On January 31, 1920, the Assets Development Company (after the decision of our Court of last resort had been announced) began suit in the Hudson Circuit Court against Mr. Wall as substitutionary administrator upon the note of Ten thousand dollars (\$10,000.00) upon which it is claimed there was due Two thousand five hundred dollars (\$2,500.00) with interest, being the claim (assigned by Geer) in that amount above referred to. The defendant pleaded, omitting, however, to plead the decree of the Orphans Court barring creditors, and on a trial of the cause a verdict was rendered on May 4, 1920, in favor of the plaintiff and against the defendant for Six thousand sixty dollars and eighty-three cents (\$6,060.83) and costs, and judgment was accordingly entered. 30 40

*Opinion of Vice-Chancellor Griffin.*

Thereafter such proceedings were had in said cause, that on May 13, 1921, said Court set aside the judgment, gave leave to the defendant to amend by setting up the decree barring creditors, limiting the re-trial to the issue framed on the amendment.

10 Upon the issue thus framed, without going into details as to the formal procedure, the Court entered judgment on June 6, 1921, in favor of the defendant and against the plaintiff. Thereupon the plaintiff, on June 6, 1921, appealed to the Court of Errors and Appeals, which appeal is now pending.

20 Shortly after the rule to show cause was entered why the judgment should not be set aside, the plaintiff took out execution on February 3, 1921, and served a copy of the same on the American Smelting & Refining Company.

The American Smelting & Refining Company opposes the application of Mr. Wall, at this time, because if the Court of last resort should reverse the Circuit Court, there would be a judgment which it might be compelled to pay and for which it might not receive credit at the suit of the domiciliary administrator—thus, as an innocent stakeholder, it might be compelled to pay twice.

30 Without passing on this question, this fear of the American Smelting & Refining Company is not fanciful, as by reason of its dual residence, it is liable to be sued in both States.

In this situation, ordinarily no decision would be herein rendered prior to the decision of the appeal in the case at law. If, however, this course were pursued, further and unnecessary delay in disposing of this controversy would follow. The law appeal may now be argued at the November

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*Opinion of Vice-Chancellor Griffin.*

Term, 1921, and decided on or before the March Term, 1922. Immediately thereafter an appeal might be taken from the decision of this Court in this cause, which, ordinarily, would be arguable at the June Term, 1922, and be decided on or before the November Term, 1922. But in this case the Court should strenuously endeavor to end this long-drawn out litigation, which has been denounced by the Court of last resort. To that end, I propose to decide the case as far as it may now be disposed of, so that an appeal may be taken from the decree of this Court, at once, and both cases argued at the November Term, 1921. I will, therefore, advise a decree sustaining the exceptions of the domiciliary administrator to all the claims above set forth excepting that of the Assets Development Company for Twenty-five hundred dollars with interest, which was the subject of the suit at law; and as to this claim, I will withhold advising a decree until its status is settled by the Court of Errors and Appeals.

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The Western Development Company, from statements made at the hearing, filed a claim with Mr. Wall after his application for discharge was filed, and it was allowed to file exceptions. Near the close of the testimony it appeared that it is a corporation of Arizona. As its claim is not reported by the administrator, and there is no prayer in his petition for discharge with reference thereto, I have not considered nor passed upon the claim in this proceeding.

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I have not deemed it necessary to encumber

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this memorandum with the many recitals of facts which plainly appear in the above-cited opinions and in the record of the case in which the opinions were filed, as such records are in evidence, and reference may be made thereto.

10 **Decree on Account of Albert C. Wall,  
Administrator.**

(Dated and Filed October 17, 1921.)

**IN CHANCERY OF NEW JERSEY.**

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In the Matter  
of the  
Estate of F. AUGUSTUS HEINZE,  
Deceased.

On Report  
and Ac-  
count. De-  
cree of Ac-  
count and  
Adjudicat-  
ing upon  
Exceptions.

30 The account of Albert C. Wall, administrator  
of the estate in New Jersey, if any, of F. Augustus  
Heinze, deceased, having been filed in this Court  
twenty days prior to March 7, 1921; and notice  
of the intention of said Albert C. Wall, admin-  
istrator as aforesaid, to settle his said account on  
said day having been duly given; and said ac-  
count having been reported to this Court on said  
day for allowance and settlement; and exceptions  
to said account having been filed by Walter A.  
40 Fullerton, domiciliary administrator of the es-

*Decree on Account of A. C. Wall, Administrator.*

tate of said F. Augustus Heinze, deceased, appointed by the Surrogate of Saratoga County in the State of New York, and by Assets Development Company, a corporation, and by the United Copper Company, a corporation, each of which filed claims against the estate of said F. Augustus Heinze, deceased, with the administrator of said estate in the State of New Jersey; and the matter having been heard in the presence of Albert C. Wall counsel *per se*, Robert J. Bain counsel for said Walter A. Fullerton, domiciliary administrator as aforesaid, John M. Nolan counsel for said Assets Development Company, Arthur P. Heinze counsel for said United Copper Company, and John J. Treacy counsel for the American Smelting and Refining Company, a corporation, which has possession of certain assets of the estate of said F. Augustus Heinze, deceased; and it appearing that the matter is a proper one for the exercise by this Court of its jurisdiction; and it also appearing that the only assets of the estate of said F. Augustus Heinze, deceased, in the State of New Jersey consists of certain rights, credits, moneys and effects in the possession of said American Smelting and Refining Company which were the subject of a suit in this Court by Arthur P. Heinze, as administrator of the estate in New Jersey of said F. Augustus Heinze, deceased, and said Albert C. Wall who succeeded said Arthur P. Heinze, as such administrator, against said American Smelting and Refining Company, Miners Smelting Company and John E. McGuirk, and to which rights, credits, moneys and effects claims have been made by said Walter A. Fullerton, domiciliary administrator as aforesaid, and said Miners Smelting Company in the

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*Decree on Account of A. C. Wall, Administrator.*

State of New York, which claims are now in litigation in said State of New York; and it also appearing that United Copper Company, Calvin O. Geer, Luther Martin, Jr., Receiver of United Copper Company, and George D. Hendrickson and Luther Martin, Jr., Receivers of United Cop-  
10 per Company, who have filed claims against the estate of said F. Augustus Heinze, deceased, with the administrator of said estate in the State of New Jersey, as stated in said account, are not *bona fide* creditors in the State of New Jersey of said estate, and that said Union Bank of Brooklyn which has filed a claim against said estate with the administrator thereof in the State of New Jersey, as stated in said account, is not a  
20 creditor in the State of New Jersey of said estate; and it also appearing that said Assets Development Company brought a suit in the Hudson County Circuit Court of this State against said Albert C. Wall, administrator as aforesaid, upon the claim of \$2,500. and interest, assigned to it by Calvin O. Geer, and recovered a judgment in said suit for the sum of \$6,012.54, but that said judgment was set aside and judgment entered in said suit in favor of said Albert C.  
30 Wall, administrator as aforesaid, and against said Assets Development Company, from which last mentioned judgment an appeal is now pending before the New Jersey Court of Errors and Appeals and undetermined; and it also appearing that since said account was filed a claim of Western Development Company, a corporation of Arizona, against the estate of said F. Augustus Heinze, deceased, was filed with the ad-  
40 ministrator of said estate in the State of New Jersey, but as the accountant has not reported said claim and has prayed no relief with respect

*Decree on Account of A. C. Wall, Administrator.*

thereto, said claim has not been considered or passed upon in this proceeding.

It is on this seventeenth day of October, Nineteen Hundred and Twenty-one, by EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor by virtue of the power and authority of this Court, does hereby order, adjudge and decree that the exceptions submitted by said Walter A. Fullerton, domiciliary administrator of the estate of said F. Augustus Heinze, deceased, be, and the same hereby are allowed, except as to said Assets Development Company; and that said United Copper Company, Calvin O. Geer, Luther Martin, Jr., Receiver of United Copper Company, and George D. Hendrickson and Luther Martin, Jr., Receivers of United Copper Company, are not *bona fide* creditors in the State of New Jersey of the estate of said F. Augustus Heinze, deceased, and that said Union Bank of Brooklyn is not a creditor in the State of New Jersey of said estate.

And it is further ordered, adjudged and decreed that the determination of said exceptions submitted by said Walter A. Fullerton, domiciliary administrator of the estate of said F. Augustus Heinze, deceased, with respect to the claim for \$2,500. and interest assigned by Calvin O. Geer to Assets Development Company be withheld until the final determination of said suit by said Assets Development Company against said Albert C. Wall, administrator of the estate in New Jersey of said F. Augustus Heinze, deceased, in said Hudson County Circuit Court.

And it is further ordered, adjudged and decreed that of the exceptions filed by said Assets Development Company, exceptions one and two,

*Decree on Account of A. C. Wall, Administrator.*

which question the jurisdiction of the Court, be and the same hereby are overruled, and as to exceptions three and four, which refer to the judgment obtained in the Hudson Circuit Court and the supplemental exception referring to the opening of said judgment and the appeal taken, be and  
 10 the same are hereby reserved until the final determination of said suit at law.

And it is further ordered, adjudged and decreed that said exceptions submitted by said United Copper Company be, and they hereby are, overruled.

And it is further ordered, adjudged and decreed that in order to preserve the *res* pending the final determination of this cause, and until  
 20 the further order of this Court, the American Smelting and Refining Company retain the property of said estate which by the opinion of the Court of Errors and Appeals in the cause above referred to has its *situs* in this State.

Respectfully advised,

JOHN GRIFFIN,  
 V. C.

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**Notice of Appeal of Walter A. Fullerton,  
Domiciliary Administrator.**

(Served and Filed October 28, 1921.)

**IN CHANCERY OF NEW JERSEY.**

<p style="text-align: center;">In the Matter of the Estate of F. AUGUSTUS HEINZ, deceased.</p>	}	<p>On Report and Ac- count of Albert C. Wall, Ad- ministrator. Notice of Appeal.</p>	<p>10</p>
			<p>20</p>

Walter A. Fullerton, domiciliary administrator of the estate of F. Augustus Heinze, deceased, exceptant, hereby appeals from so much of the decree made in this court in the above stated cause as does not allow the exceptions allowed by said Walter A. Fullerton, domiciliary administrator as aforesaid, to the report and account of Albert C. Wall, Administrator of the estate in New Jersey, if any, of F. Augustus Heinze, deceased, as to the Assets Development Company, a corporation; and which withholds determination of said exceptions submitted by said Walter A. Fullerton, domiciliary administrator as aforesaid, with respect to the claim for \$2,500. and interest assigned by Calvin O. Geer to said Assets Develop-

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*Notice of Appeal of W. A. Fullerton, Dom. Admr.*

ment Company until the final determination of a certain suit by said Assets Development Company against said Albert C. Wall, administrator as aforesaid, in the Hudson County Circuit Court; and which reserves determination of said exceptions submitted by said Assets Development

10 Company with respect to the judgment in said suit by it against said Albert C. Wall, administrator as aforesaid; and which orders that until the further order of this Court, the American Smelting and Refining Company, a corporation, shall retain certain property of the estate of said F. Augustus Heinze, deceased, which it has been said has its *situs* in this State, to the Court of Errors and Appeals, the last re-

20 sort in all causes.

Dated, October 26, 1921.

COLLINS & CORBIN,  
Solicitors of Walter A. Fullerton,  
Domiciliary Administrator of the  
Estate of F. Augustus Heinze, de-  
ceased, Exceptant.

ROBERT J. BAIN,  
Of Counsel.

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

ROBERT J. BAIN,  
Of Counsel with Walter A. Fullerton,  
Domiciliary Administrator of  
the Estate of F. Augustus Heinze,  
deceased, Exceptant.

**Petition of Appal of Walter A. Fullerton,  
Domiciliary Administrator.**

(Served and Filed October 28, 1921.)

**NEW JERSEY COURT OF ERRORS AND APPEALS.**

<p style="text-align: center;">In the Matter of the Estate of F. AUGUSTUS HEINZE, deceased.</p>	}	<p>On Appeal from Chancery. Petition of Appeal.</p>	<p>10</p>
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To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The Petition of Walter A. Fullerton, Domiciliary Administrator of the estate of F. Augustus Heinze, deceased, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a decree made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 17th day of October, 1921, in a cause wherein Albert C. Wall, administrator of the estate in New Jersey of said F. Augustus Heinze, deceased, was accountant, and your petitioner, as administrator aforesaid, and the Assets Development Company, a corporation, the United Copper Company, a corporation and the Western Development Company, a corporation, were exceptants, and to which the American Smelting and Refining Company, a corporation, which has in its possession certain property belonging to the estate of said F. Augustus Heinze, deceased, was also a party, in this respect, to wit: That the said decree excepts said Assets Development Company from its adjudication allowing the exceptions submitted by

*Petition of Appeal of W. A. Fullerton, Dom. Adm*

your petitioner to the report and account of said Albert C. Wall, administrator as aforesaid; and withholds determination of said exceptions submitted by your petitioner to said report and account with respect to the claim of \$2,500. and interest assigned by Calvin O. Geer to said Assets

10 Development Company, until the final determination of a suit by said Assets Development Company against said Albert C. Wall, administrator as aforesaid, in the Hudson County Circuit Court; and reserves determination of said exceptions to said report and account of Albert C. Wall, administrator as aforesaid, submitted by said Assets Development Company in respect of the judgment in said suit by it against said Albert C.

20 Wall, administrator as aforesaid; and orders that until the further order of the Court of Chancery said American Smelting and Refining Company shall retain certain property belonging to the estate of said F. Augustus Heinze, deceased, which it has been said has its *situs* in this state. And your petitioner humbly appeals from that part of the decree of the Chancellor which decree as aforesaid, upon the ground that the same is erroneous in that the said decree should

30 have allowed said exceptions submitted by your petitioner as against said Assets Development Company; and should have adjudged that the said Albert C. Wall be discharged as administrator of the estate in New Jersey of said F. Augustus Heinze, deceased, and that said property in the possession of said American Smelting and Refining Company and belonging to the estate of said F. Augustus Heinze, deceased, and any

40 property of said estate in the State of New Jersey, be relieved from any and all claims thereon or thereto for administration in the State of New

*Notice of Appeal of W. A. Fullerton, Dom. Admr.*

Jersey, for the reasons stated in said exceptions submitted by your petitioner, which are as follows:

1. The alleged claims of the United Copper Company, Calvin O. Geer, Assets Development Company, Luther Martin, Jr., as Receiver of the United Copper Company, and George D. Hendrickson and Luther Martin, Jr., as receivers of the United Copper Company, mentioned in said report and account, are fraudulent and sham, and said alleged claimants are not creditors of the said F. Augustus Heinze, deceased, nor are they nor the Union Bank of Brooklyn creditors of the said F. Augustus Heinze, deceased, in the State of New Jersey. The Court of Chancery of New Jersey and the New Jersey Court of Errors and Appeals in a cause wherein the said Albert C. Wall, as administrator of the estate of the said F. Augustus Heinze, deceased, was complainant, and the American Smelting and Refining Company, and others, were defendants, mentioned in said report and account, determined that the said United Copper Company, Calvin O. Geer, Assets Development Company, Luther Martin, Jr., as Receiver of the United Copper Company, and George D. Hendrickson and Luther Martin, Jr., as Receivers of the United Copper Company, are not creditors of the said F. Augustus Heinze, deceased, in the State of New Jersey, so far as said alleged claims are concerned.

2. The alleged claims of the Union Bank of Brooklyn, Calvin O. Geer, Assets Development Company, Luther Martin Jr., as Re-

*Petition of Appeal of W. W. Fullerton, Dom. Admr.*

10 ceiver of the United Copper Company, and George D. Hendrickson and Luther Martin, Jr., as Receivers of the United Copper Company, were not filed within the time limited by an order of the Surrogate of Hudson County made and entered on September 27, 1916, for the filing of claims against the estate of the said F. Augustus Heinze, deceased, and are barred by a decree of said Surrogate made and entered on June 28, 1917, barring all creditors of said F. Augustus Heinze, deceased, from any action against the administrator of the estate of said F. Augustus Heinze, deceased, in the State of New Jersey, on claims of such creditors.

20 3. If judgment was recovered by said Assets Development Company in the suit by it in the Hudson County Circuit Court against said Albert C. Wall, as administrator of the estate of said F. Augustus Heinze, deceased, in the State of New Jersey, mentioned in said report and account, said judgment was recovered by fraud on the part of said Assets Development Company, and its officers and agents, for the reason that said Assets Development Company and its officers and agents well knowing that the claim upon which said suit was brought and judgment recovered is fraudulent and sham and was held to be fraudulent and sham by the Court of Chancery of New Jersey and by the New Jersey Court of Errors and Appeals in a cause wherein said Albert C. Wall, as administrator of the estate of said F. Augustus Heinze, deceased, was complainant, and the American Smelting and Refining Company

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*Petition of Appeal of W. W. Fullerton, Dom. Admr.*

and others, were defendants, and well knowing that said alleged claim is barred by a decree of the Surrogate of Hudson County made and entered on June 28, 1917, concealed those matters and kept them from the knowledge of said Hudson County Circuit Court for the purpose of recovering said judgment. The alleged claim of said Assets Development Company upon which said suit was brought and judgment recovered is fraudulent and sham, said judgment was recovered by fraud, and said Assets Development Company has no claim thereon against the estate of the said F. Augustus Heinze, deceased, either in the State of New Jersey or elsewhere. 10 20

4. The said report and account does not show that Union Bank of Brooklyn, United Copper Company, Calvin O. Geer, Assets Development Company, Luther Martin, Jr., Receiver of the United Copper Company and George D. Hendrickson and Luther Martin, Jr., Receivers of the United Copper Company, alleged claimants against the estate of the said F. Augustus Heinze, deceased, are creditors of the said F. Augustus Heinze, deceased, in the State of New Jersey, nor that there are any other creditors of the said F. Augustus Heinze, deceased, in said State, and, therefore, and because said alleged claimants are not creditors of the said F. Augustus Heinze, deceased, in the State of New Jersey, and there are no creditors of the said F. Augustus Heinze, deceased, in the State of New Jersey, there is no reason for administration in said State of the property and assets in the hands of the American Smelting and Refining Company mentioned 30 40

*Petition of Appeal of W. W. Fullerton, Dom. Admr.*

in said report and account, nor of any property or assets belonging to the estate of the said F. Augustus Heinze, deceased.

10 5. There never has been and there is now no reason for administration of the estate of the said F. Augustus Heinze, deceased, in the State of New Jersey, if there is any such estate in said State.

20 6. The said property and assets in the hands of the said American Smelting and Refining Company are claimed by the said Walter A. Fullerton as domiciliary administrator of the estate of F. Augustus Heinze, deceased, to constitute assets of said estate. They comprise a large part of the property and assets of said estate. They are claimed by said Walter A. Fullerton as said administrator to be properly subject to administration by him under the authority of the courts of the State of New York which appointed him as said administrator, and to which jurisdiction of the subject matter of the said estate properly appertains. The appointment of an administrator in the State of New Jersey of the estate of the said F. Augustus Heinze, deceased, was originally brought about fraudulently and collusively by Arthur F. Heinze and Lida M. Fleitman, brother and sister, respectively, of the said F. Augustus Heinze, deceased, for the purpose of obstructing the proper administration of the said estate. The said Lida M. Fleitman was formerly the administratrix of the estate of the said F. Augustus Heinze, deceased, in the State of New York, but has

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*Petition of Appeal of W. W. Fullerton, Dom. Admr.*

since been removed as such administratrix, and the said Fullerton appointed in her stead. The said Arthur P. Heinze was originally the administrator of the estate of the said F. Augustus Heinze, deceased, in the State of New Jersey, but has since been removed and said Albert C. Wall appointed in his 10  
stead. Notwithstanding his removal, the said Arthur P. Heinze has continued to take steps to keep alive the administration in New Jersey for the purpose of obstructing the proper administration of the estate. So long as there is an administrator in the State of New Jersey deriving his appointment from an assertion that the assets and property in the hands of the said American Smelting and Refining Company are subject to adminis- 20  
tration in New Jersey, the said American Smelting and Refining Company is subjected to the possibility of inconsistent decrees in different states, the courts of each of which assert jurisdiction of the subject matter, and thus an *impasse* is created which makes it impossible for the courts either of the State of New Jersey or the State of New York to 30  
make a decree fully protecting the said American Smelting and Refining Company (as it is advised by its counsel) in paying over to any one the said assets and prop- erties in its hands. As there are no creditors entitled to administration of the estate of the said F. Augustus Heinze, deceased, in the State of New Jersey, the courts of that State should, for reasons of comity, fully 40  
recognize the rights of the courts of the domicile of the decedent, namely, of the State of New York, exclusively to deal with the ad-

*Petition of Appeal of W. W. Fullerton*

10 ministration of said estate, and should relieve said assets and property in the hands of said American Smelting and Refining Company, and any property and assets of the estate of the said F. Augustus Heinze, deceased, in the State of New Jersey, from any claims thereon or thereto by the alleged creditors of the said F. Augustus Heinze, deceased, mentioned in said report and account, and by the said Albert C. Wall, administrator of the estate of the said F. August Heinze, deceased, in the State of New Jersey, for the purpose of administering the same in said State, to the end that said property and assets may be delivered to, and

20 collected, received and administered by the said Walter A. Fullerton, domiciliary administrator of the said F. August Heinze, deceased. The said Albert C. Wall, should be discharged as administrator of the estate of the said F. Augustus Heinze, deceased, in the State of New Jersey, and such order or decree made as may be proper in the premises.

30 Your petitioner, therefore, prays that the said decree of the Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden; and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

40 COLLINS & CORBIN,  
Solicitors of Appellant.  
ROBERT J. BAIN,  
Of Counsel with Appellant.

**Notice of Appeal of Albert C. Wall, Sub.  
Administrator.**

(Filed Nov. 1, 1921.)

**IN CHANCERY OF NEW JERSEY.**

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In the Matter of the Estate  
of  
F. AUGUSTUS HEINZE,  
Deceased.

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Notice of  
Appeal.

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Albert C. Wall, Administrator of the estate in New Jersey of F. Augustus Heinze, deceased, hereby appeals from so much of the decree made in this Court in the above stated cause as does not—

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1. Allow the report and account of said Wall as administrator filed herein on or about February 1st, 1921, as supplemented by the supplemental report and account heretofore filed herein on October 17th, 1921, prior to the making of said final decree herein; and

2. From so much of said decree as does not direct the American Smelting & Refining Company to pay over to said Wall as administrator, sufficient moneys due by it to the estate of F. Augustus Heinze, to answer the proper costs and fees of said Wall in respect of his administration and the legal services performed in connection with it; and

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3. From so much of said decree as does not discharge said Wall as such administrator.

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To the Court of Errors and Appeals, the last resort in all causes.

Dated, October 27th, 1921.

WALL, HAIGHT, CAREY & HARTPENCE,  
Solicitors for and of Counsel with  
Administrator.

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

ALBERT C. WALL,  
Of Counsel.

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**Petition of Appeal of Albert C. Wall,  
Sub. Administrator.**

20 (Filed Nov. 1, '21.)

**NEW JERSEY COURT OF ERRORS AND APPEALS.**

30	<p style="text-align: center;">In the Matter of the Estate of F. AUGUSTUS HEINZE, deceased.</p>	}	<p>On Appeal from Chancery. Petition of Appeal.</p>
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To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of Albert C. Wall, administrator of the estate in New Jersey of said F. Augustus Heinze, deceased, the appellant in the above  
*Notice of Appeal of A. C. Wall, Sub. Admr.*

40 stated cause, respectfully shows that your petitioner finds himself aggrieved by decree made in

*Notice of Appeal of A. C. Wall, Sub. Admr.*

the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date October 17th, 1921, in a cause wherein said Albert C. Wall, administrator of the estate in New Jersey of said F. Augustus Heinze, deceased, was accountant, and in this respect, to wit: **10**

1: That said decree does not allow the report and account of said Wall as administrator filed herein on or about February 1st, 1921, as supplemented by the supplemental report and account heretofore filed herein on October 17th, 1921, prior to the making of said final decree herein; and

2: That said decree does not direct the American Smelting & Refining Company to pay over to said Wall as administrator, sufficient moneys due by it to the Estate of F. August Heinze, to answer the proper costs and fees of said Wall in respect of his administration and the legal services performed in connection with it; and **20**

3: That said decree does not discharge said Wall as such administrator. **30**

WALL, HAIGHT, CAREY & HARRTPENCE,  
Solicitors for and of Counsel with  
Administrator.

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**Petition of Appeal of United Copper  
Company.**

(Filed )

**NEW JERSEY COURT OF ERRORS AND APPEALS.**

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In the Matter  
of  
The Estate of F. AUGUSTUS HEINZE,  
Deceased.

Appeal of  
Petition of  
United Cop-  
per Com-  
pany.  
Chancery.  
On Appeal  
from  
Appeal.

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To the Honorable the Court of Errors and Ap-  
peals in the last resort in all causes:

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The petition of United Copper Company, ap-  
pellant, and one of the exceptants to the account  
filed in the above stated cause, respectfully shows  
that your petitioner finds itself aggrieved by a  
final decree made in the Court of Chancery by  
His Honor Edwin Robert Walker, Chancellor of  
the State of New Jersey, bearing date the seven-  
teenth day of October, 1921, in a cause wherein  
Albert C. Wall, administrator in New Jersey of  
the estate of F. Augustus Heinze, deceased, was  
accountant, and your petitioner, and others, were  
exceptants, in this respect to-wit: that the said  
decree orders, adjudges and decrees that the ex-  
ceptions submitted by your petitioner to the said  
account of the said Wall be overruled, and that  
the said decree adjudges that your petitioner was  
not a *bona fide* creditor in the State of New Jer-  
sey of the estate of F. Augustus Heinze, deceased,  
and that the said decree allowed the exceptions

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*Petition of Appeal*

submitted by Walter A. Fullerton, domiciliary administrator of the estate of F. Augustus Heinze, deceased, in particular, the exceptions numbered 1, 2, 4 and 5, and your petitioner humbly appeals from the whole and every part of the said decree upon the ground that the same is erroneous, and your petitioner's exceptions to the account of the said Wall should not have been overruled, but should have been allowed, and the exceptions of the aforesaid Fullerton should not have been allowed but should have been overruled, and your petitioner should not have been adjudged not to be a *bona fide* creditor in the State of New Jersey of F. Augustus Heinze, deceased.

10

AND YOUR PETITIONER THEREFORE PRAYS that the said decree of the Chancellor may be in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court may seem meet.

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MCCARTER & ENGLISH,  
Solicitors for Appellant.

G. W. C. MCCARTER,  
Of Counsel.

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(Filed June 29, 1922.)

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**Notice of Appeal.**

**IN CHANCERY OF NEW JERSEY.**

10 In the Matter of the  
Estate of F. AUGUSTUS HEINZE,  
deceased. } Notice of  
Appeal.

20 UNITED COPPER COMPANY, exceptant, hereby ap-  
peals from the whole and every part of the de-  
cree of the account and adjudicating upon ex-  
ceptions made and filed in this cause on the  
seventeenth day of October, 1921, to the Court  
of Errors and Appeals in the last resort in all  
causes.

30 McCARTER & ENGLISH,  
Solicitors of Appellant.  
G. W. C. McCARTER,  
Of Counsel.

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

30 G. W. C. McCARTER,  
Of Counsel.

30 A True Copy,  
Jesse R. Salmon,  
Clerk.

9040 *Allyn 1928*

*Filed after the Oral Argument  
by leave of Court.*

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

In the Matter of the Estate of F.  
AUGUSTUS HEINZE, deceased.

*On Appeal of  
United Copper  
Co. from  
Chancery.*

### Supplemental Brief for Walter A. Fullerton, Domiciliary Administrator of the Estate of F. Augustus Heinze, Deceased, Respondent.

Brief for appellant was not served as required by the rules of this Court, and to avoid delaying the argument, brief for this respondent was prepared and printed without waiting for brief for appellant. It necessitates a supplemental brief for this respondent.

Appellant admits that there was an issue as to the *bona fides* of appellant's claim in the case of *Wall, administrator, v. American Smelting & Refining Co., et al.*, cited in the brief for appellant and in the brief for this respondent, and that such issue was decided adversely to appellant in that case, but says it was settled only as between the administrator in New Jersey and the American Smelting & Refining Co., and not as between appellant and the administrator in this state, because appellant was not a party to the suit and had no notice that its status was the subject of inquiry therein.

The record in that case shows that appellant was incorporated by Arthur P. Heinze and that he caused assignments to be made to it by Ruth Noyes Heinze, his wife, and the Western Development Co., another company controlled by him, for the purpose of creating, if possible, a New Jersey creditor of the estate (p. 164, l. 1-p. 168, l. 12). The following appears in the minutes of the hearing in that case on July 18, 1918, but has been omitted by appellant from the present record:

*"Mr. Heinze. If your Honor please, Mr. Bien,  
"who is counsel for the United Copper Company*

“and myself, has been unable to attend here today  
 “owing to the illness of his son and he asked me  
 “to read this statement to your Honor, and with  
 “your Honor’s permission, I will do so.”

He then read a long statement regarding the claim of his wife, Ruth Noyes Heinze, part of which she is said to have assigned to appellant. That statement has also been omitted from the present record.

It was Arthur P. Heinze and appellant who prosecuted the suit against the American Smelting & Refining Co. after Mr. Wall was appointed administrator and substituted as complainant (p. 160, l. 16-p. 163, l. 30). Mr. Bien, counsel for Mr. Heinze and appellant, appeared and was heard on the appeal to this Court in that case.

It is stated in 23 Cyc., p. 1249, that:

“A third person who comes into a pending action,  
 “by intervention or interpleader, setting up a claim  
 “to the subject of the controversy, is concluded by  
 “the judgment, and if it is in his favor he may  
 “take advantage of it in any subsequent litigation  
 “in which the same questions are raised and the  
 “same parties concerned. But in order that an  
 “intervener should be bound by the judgment it is  
 “necessary that he should make himself actively  
 “and substantially a party, and he will not be con-  
 “cluded if he withdrew or abandoned his claim, or  
 “if for any reason it was not considered or ad-  
 “judicated.

“A third person who virtually makes himself a  
 “plaintiff in an action between other parties, by  
 “assuming the conduct of the litigation and ac-  
 “tively prosecuting it, for the benefit or protection  
 “of interests of his own, is bound by the judgment,  
 “although not a party of record. But no one is  
 “bound by a decree against another party, although  
 “acting in his behalf, unless he has a real interest  
 “in the subject matter of the litigation.”

See also *Lyon v. Stanford*, 42 N. J. Eq. 411.

In view of the record, it is idle for appellant to say that it had no notice that its status was the subject of inquiry in that suit. Its claim was produced therein and its status

as a New Jersey creditor disputed. It appeared by counsel for the purpose of sustaining its status, and with its representative, Arthur P. Heinze, actively prosecuted the suit for its own benefit. It participated in the appeal to this Court. The learned Vice-Chancellor did not err in concluding that it was bound by the decision of this Court as to its status.

It is contended by appellant that neither the Court of Chancery nor this Court has jurisdiction to inquire into the merits of appellant's claim in this matter as appellant has a legal right to have the merits of its claim determined by a jury after the administrator gives notice that he disputes the claim under section 71 of the Orphans' Court Act (Comp. Stat., p. 3835). It does not appear that such question of jurisdiction was raised in the Court of Chancery, but in any event, appellant misapprehends the nature of the present proceeding. The report of Mr. Wall as administrator referred to the decision of this Court in his suit against the American Smelting & Refining Co., and showed that there was no justification for administration in this state, because there are no creditors of F. Augustus Heinze who reside therein. Appellant asserted in its exceptions that it is such a creditor. The exceptions of this respondent denied that it, and the other claimants mentioned in the report, are such creditors. The question before the Court of Chancery was whether appellant and the other claimants are New Jersey creditors. It was necessary and proper for the Court to inquire into appellant's claim for the purpose of determining whether appellant is a *bona fide* New Jersey creditor. Be the claims of appellant's assignors good or bad as to merits, the Court had jurisdiction to determine whether appellant's position is collusive and artificial, in order to determine appellant's status as a New Jersey creditor. If there are no *bona fide* New Jersey creditors, administration in New Jersey cannot be justified. Mr. Wall's report showed that there are no such creditors. The Court of Chancery had jurisdiction to inquire into the facts in that regard in

order to determine whether Mr. Wall's report and account should be allowed and whether he should be discharged. It cannot be successfully contended that the Court had no jurisdiction to determine how and when appellant claimed to have become a creditor in order to determine whether it is a *bona fide* New Jersey creditor.

Appellant says that it is a *bona fide* New Jersey creditor of the estate. The undisputed facts are *that appellant was incorporated after the death of F. Augustus Heinze*, and that the assignments to appellant were made long after his death for the purpose of securing certain property of the estate for the benefit of Arthur P. Heinze, his relatives and companies, none of whom are residents of this state (p. 164, l. 1-p. 168, l. 12). Vice-Chancellor Griffin during the hearing of the suit against the American Smelting & Refining Co. characterized appellant as a creditor by sham, but his statement has been omitted from the present record. This Court determined in that case that appellant is not a *bona fide* New Jersey creditor. The assignments to appellant are only of portions of the alleged claims of its assignors, and, therefore, appellant cannot sue thereon in its own name. *Otis v. Adams*, 56 N. J. L. 38; *Sternberg & Co. v. Lehigh Valley Railroad Co.*, 78 N. J. L. 277. Appellant has no standing whatever as a New Jersey creditor. Its position in the matter is not only artificial, as this Court has found, but it lacks ability to proceed in its own name even in its artificial character. It is not a *bona fide* New Jersey creditor entitled to administration of the estate in New Jersey.

It has been held that where debts of a decedent are assigned after his death, the assignee does not become a creditor entitled to administer. 23 Corpus Juris 1043.

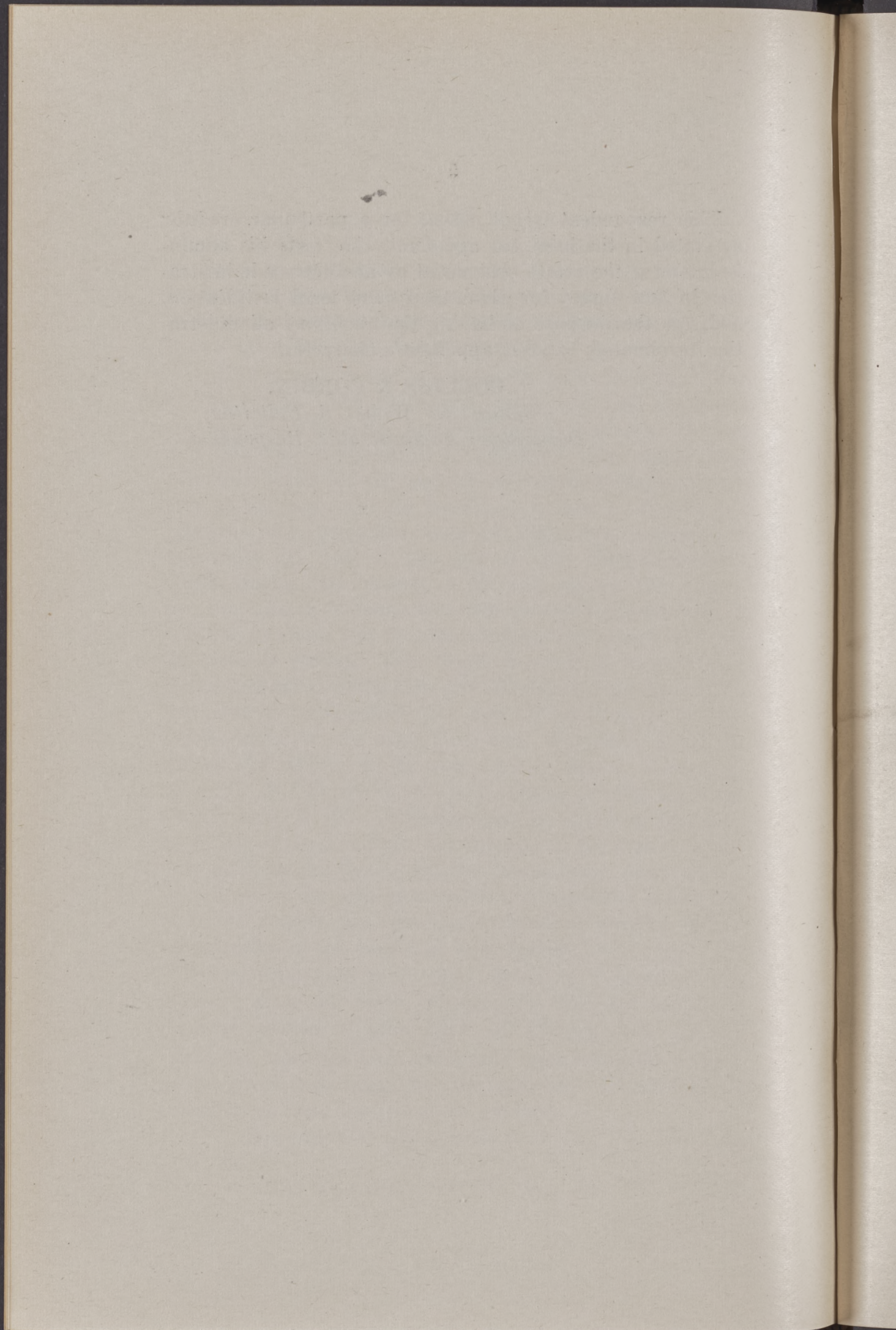
The law does not look with favor upon colorable assignments which are made for the purpose of transferring jurisdiction from one court to another.

*Waterman v. Chesapeake & O. Ry. Co.*, 199 Fed. 667;

*McCarthy v. Foresters*, 107 App. Div. (N. Y.) 185.

This respondent is not acting for a particular creditor as stated in the brief for appellant. He finds his administration of the estate obstructed by ancilliary administration in New Jersey for which there is no legal justification, and, for the purpose of having the ancilliary administration terminated, exposes appellant's character.

COLLINS & CORBIN,  
*Counsel for Walter A. Fullerton,  
Domiciliary Administrator, Respondent.*



## New Jersey Court of Errors and Appeals

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IN THE MATTER

of the

Estate of F. AUGUSTUS HEINZE, de-  
ceased.

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*On Appeal of  
United Copper  
Company from  
Chancery.*

**Brief for Walter A. Fullerton, Domiciliary Administrator  
of the Estate of F. Augustus Heinze, deceased,  
Respondent.**

This matter is not before the Court on appeals of Walter A. Fullerton, domiciliary administrator of the estate of F. Augustus Heinze, deceased; Albert C. Wall, substituted administrator in New Jersey of the estate of said F. Augustus Heinze, and Assets Development Co., as indicated by the cover of the printed record. Those appeals were argued before this Court at the March term, 1922, and the decree of the Court of Chancery affirmed on opinion filed on June 19, 1922. The present appeal is by the United Copper Co., and is from the decree which was affirmed by this Court on the other appeals.

Arthur P. Heinze, a brother of F. Augustus Heinze, is president of the Assets Development Co., prior appellant, and vice-president of the United Copper Co., present appellant. Apparently he controls the action of both companies. The United Copper Co., if it was dissatisfied with the decree, could have appealed therefrom at the time the Assets Development Co. appealed, but did not do so. It waited until the decree was affirmed on the other appeals before taking its appeal. The obvious purpose of the present appeal is to avoid, if possible, the effect of the decision of this Court. Arthur P. Heinze, having failed to accomplish his purpose by the appeal of the

Assets Development Co., makes another attempt by the appeal of the United Copper Co.

The decree from which the United Copper Co. has appealed is on a report and account of Albert C. Wall, substituted administrator in New Jersey of the estate of F. Augustus Heinze. The only property of the estate in this state consists of certain moneys, securities, rights and credits in the hands of the American Smelting & Refining Co. Arthur P. Heinze was the original administrator in New Jersey of the estate of F. Augustus Heinze. He was appointed by the Surrogate of Hudson County on March 28, 1916. Shortly after he was appointed he filed a bill in the Court of Chancery against the American Smelting & Refining Co., and the Miners Smelting Co., which also claimed the property in the hands of the American Smelting & Refining Co., ostensibly to have the property declared to belong to the estate. He was removed as administrator on December 11, 1916, and Mr. Wall was appointed administrator in his place. Mr. Wall was substituted as complainant in this suit, but Arthur P. Heinze continued to prosecute it. Neither Mr. Heinze nor his successor Mr. Wall had any standing in that suit unless it could be shown that there are New Jersey creditors of the estate. Alleged claims of the United Copper Company, Assets Development Co., Calvin O. Geer and Luther Martin, Jr. and George D. Hendrickson, as receivers of another United Copper Co. were therefore produced for the first time during the hearing of the suit. The bill was dismissed by decree of the Chancellor on the ground that the property in the hands of the American Smelting & Refining Co. has no situs in this state. Mr. Wall, the new administrator and substituted complainant, appealed from the decree. This Court found that the property has a situs in New Jersey, but affirmed the decree on the ground that there were no *bona fide* New Jersey creditors to support administration in this state. 91 N. J. Eq. 131.

Referring to the claims above mentioned, this Court said in its opinion in that case:

“It cannot successfully escape notice that at the  
“time of the decedent’s death and of the appoint-  
“ment of an administrator in this State there were  
“no bona fide New Jersey creditors, and that the  
“artificial process which has been resorted to for  
“the creation of New Jersey creditors fails of its  
“purpose.”

This Court conclusively determined in that case that the claims filed with the administrator in New Jersey would neither support administration in this state, nor entitle the administrator to recover the property in the hands of the American Smelting & Refining Co. There was nothing left for Mr. Wall to do as administrator but to seek his discharge. The Court of Chancery as well as the Orphans’ Court had jurisdiction in the premises. The matter was not an ordinary accounting. Arthur P. Heinze was removed as administrator in New Jersey on charges of fraud and misrepresentation. Mr. Wall was appointed administrator solely for the purpose of prosecuting the suit against the American Smelting & Refining Co. He could not recover therein and had no funds for which to account. This Court had determined there were no *bona fide* New Jersey creditors of the estate. The Assets Development Co., one of the alleged creditors in New Jersey, had brought a suit in the Hudson County Circuit Court against Mr. Wall as administrator, on a claim which this Court had found was not the claim of a *bona fide* New Jersey creditor, and recovered a judgment therein. Proceedings in the Hudson County Circuit Court to set aside that judgment were then pending. The Court of Chancery could control that matter if necessary. The circumstances were so peculiar that they warranted the exercise by the Court of Chancery of its jurisdiction, and Mr. Wall filed a report to that Court setting forth the facts and praying for his discharge as administrator. Notice of the filing of the report was given to all parties in interest, including

the alleged creditors in New Jersey. For the purpose of protecting his rights in the matter, Walter A. Fullerton, domiciliary administrator of the estate of F. Augustus Heinze, and present respondent, filed exceptions to the report, setting forth that (pp. 12-17):

(1) The claims mentioned in the report were not claims of *bona fide* New Jersey creditors, and as to the Union Bank of Brooklyn, a new claimant, that it was not a New Jersey creditor.

(2) All of the claims mentioned in the report, except those of the United Copper Co. were not filed within the time limited by an order of the Surrogate of Hudson County, and were barred by his decree made and entered on June 28, 1917.

(3) The judgment in favor of the Assets Development Co. in its suit against Mr. Wall as administrator in the Hudson County Circuit Court was recovered by fraud.

(4) The report did not show that the claimants mentioned therein were New Jersey creditors, and, therefore, and because there were no New Jersey creditors, there was no reason for administration in this state.

(5) The appointment of an administrator in New Jersey was secured by fraud and collusion on the part of Arthur P. Heinze and Lida M. Fleitmann, brother and sister of F. Augustus Heinze, for the purpose of obstructing the administrator of his estate by the domiciliary administrator, and Arthur P. Heinze continued to keep the administration alive for the same purpose. Also that the domiciliary administrator claimed the property in the hands of the American Smelting & Refining Co., but could not obtain it while there was an administrator in New Jersey, because it was impossible for either the courts of New Jersey or New York to make a decree which would fully protect the American Smelting & Refining Co. The domiciliary administrator prayed for the discharge of the administrator in New Jersey.

Exceptions to the report were filed by the Assets Development Co. on the grounds that (pp. 18-21):

(1) The Court of Chancery had no jurisdiction in the matter.

(2) There were no reasons for the interference by the Court of Chancery with the ordinary jurisdiction of the Orphans' Court to discharge the administrator.

(3) There were assets of the estate in the State of New Jersey out of which the Assets Development Co. was entitled to be paid.

(4) The Assets Development Co. had recovered a judgment on its claim, but the administrator in New Jersey had refused to secure the assets of the estate in New Jersey and pay said judgment therefrom.

(5) Proceedings to set aside the judgment recovered by the Assets Development Co. were then pending.

Supplemental exceptions were filed by the Assets Development Co., setting forth that the judgment recovered by it against Mr. Wall as administrator had been set aside by the Hudson County Circuit Court and judgment entered in favor of Mr. Wall, but that the Assets Development Co. had appealed to the Court of Errors and Appeals from the judgment in favor of Mr. Wall.

Exceptions to the report were also filed by the United Copper Co. similar to the first four exceptions of the Assets Development Co., except that the former had no judgment on its claim.

The matter was heard by Vice-Chancellor Griffin, who found it a proper one in which to exercise the jurisdiction of the Court of Chancery, and who advised a decree allowing the exceptions of the domiciliary administrator, except as to the Assets Development Co., and reserving decisions on the exceptions of the domiciliary administrator as to the claim of the Assets Development Co. upon which it brought suit against Mr. Wall as administrator in the Hudson County Circuit Court until the final deter-

mination of that suit. The decree also disallowed the first and second exceptions of the Assets Development Co., which were to the jurisdiction of the Court of Chancery, and reserved decision on the third and fourth exceptions of that company until the final determination of its suit in the Hudson County Circuit Court. The exceptions of the United Copper Co. were disallowed by the decree (pp. 236-240).

The domiciliary administrator appealed from the decree on the grounds that his exceptions should have been allowed against the Assets Development Co., that the administrator in New Jersey should have been discharged, and that the property in the hands of the American Smelting & Refining Co. should have been relieved from any and all claims for administration in this state for the reasons stated in his exceptions (pp. 243-250).

The Assets Development Co., appealed from the decree on the ground that its first and second exceptions, which were to the jurisdiction of the Court of Chancery, should have been allowed.

Mr. Wall, the administrator in New Jersey, appealed from the decree on the grounds that his report and account should have been allowed, that his fees and expenses should have been paid out of the funds in the hands of the American Smelting & Refining Co., and that he should have been discharged.

The three appeals were heard by this Court together and the decree affirmed in all respects. If we correctly construe the opinion of this Court affirming the decree, the only matter which prevented the discharge of Mr. Wall as administrator was the possibility that the Assets Development Co. might ultimately recover a judgment in its suit against him in the Hudson County Circuit Court, and the only claim by the administrator in New Jersey upon the property in the hands of the American Smelting & Refining Co. was for a sufficient sum to pay the claim of the Assets Development Co. upon which it

brought its suit, if it is successful therein, and Mr. Wall's fees and expenses as administrator.

The opinion of this Court affirming the decree was filed on June 19, 1922, and decree of affirmance filed on June 30, 1922. The opinion has not yet been reported and, therefore, is printed herewith. The present appeal of the United Copper Co. was filed on June 29, 1922.

The present appeal is on the grounds that the exceptions of the United Copper Co. should have been allowed, that the first, second, fourth and fifth exceptions of the domiciliary administrator should have been disallowed, and that the United Copper Co. should not have been adjudged not to be a *bona fide* New Jersey creditor.

The first and second exceptions of the United Copper Co. were to the jurisdiction of the Court of Chancery. Similar exceptions were filed by the Assets Development Co. and disallowed by the decree. The question raised by those exceptions was before this Court on the appeal of the Assets Development Co., and the decree affirmed in respect thereof. Assuming that the decision of this Court is not *res judicata* as to the United Copper Co., it is applicable under the doctrine of *stare decisis*. Furthermore the facts were such that the Court of Chancery could and did properly exercise its jurisdiction.

The third and fourth exceptions of the United Copper Co. assert the validity of the claim of that company as a *bona fide* New Jersey creditor. The first, second, fourth and fifth exceptions of the domiciliary administrator deny that the United Copper Co. is a *bona fide* New Jersey creditor. The facts are that F. Augustus Heinze died, a resident of Saratoga County, New York, on November 4, 1914. His sister, Lida M. Fleitmann, was appointed administratrix of his estate by the surrogate of that county on the day after his death. She was removed on a petition alleging misconduct on August 23, 1916, and Walter A. Fullerton, this respondent, appointed administrator in her place. Exhibits showing those matters were a part of the

record before the Court of Chancery but have been omitted by appellant from the present record. Lida M. Fleitmann, evidently in anticipation of her removal, renounced her right to administration in New Jersey, and Arthur P. Heinze applied to the Surrogate of Hudson County for letters of administration in this state. They were issued to him on March 28, 1916. He filed his above mentioned bill against the American Smelting & Refining Co. in the month of April, 1916. He was removed on a petition alleging misrepresentation and fraud, and Mr. Wall appointed administrator in his place, on December 11, 1916. He appealed to the Prerogative Court from the order of the Orphans' Court removing him. His appeal was heard by Vice-Ordinary Lane who said in his opinion affirming the order, that:

“There is evidence of dealings between the ad-  
 “ministratrix in New York and Mr. Heinze with  
 “respect to assets of the estate, evidence of pur-  
 “chase by him of assets of the estate either in his  
 “own name or in the name of corporations in which  
 “either he or his relatives are interested; evidence  
 “of his attempt to reduce to his possession or at  
 “any rate to interfere with assets of the estate  
 “without this state, which I will not consider in de-  
 “tail, but which alone demonstrate, I think, that Mr.  
 “Heinze ought not to be permitted to act as ad-  
 “ministrator in this state.”

This Court found in the case of *Wall, substituted administrator v. American Smelting & Refining Co., et al., supra*, that that suit was not instituted by Arthur P. Heinze in good faith.

The United Copper Co., present appellant, was incorporated by certificate filed in the office of the Secretary of State of New Jersey on December 7, 1914, over a month after the death of F. Augustus Heinze (pp. 193-197). It is controlled by Arthur P. Heinze. Its alleged claims are on assignments by Ruth Noyes Heinze, wife of Arthur P. Heinze and a resident of the State of New York, and the Western Development Co., another company controlled by

Arthur P. Heinze and a corporation of Arizona. The assignments purport to have been made in the month of December, 1916, and almost immediately after his removal as administrator in New Jersey (pp. 197-204). He testified in the case of Wall, substituted administrator *v.* American Smelting & Refining Co., *et al.*, *supra*, that neither his wife nor the Western Development Co. had filed claims with the domiciliary administrator. That testimony was before the Court of Chancery in the present matter, but appears to have been omitted by appellant from the record. Such claims were produced for the first time during the hearing of the suit against the American Smelting & Refining Co.

This Court in its opinion in the case of Wall, substituted administrator, *v.* American Smelting & Refining Co., *et al.*, *supra*, referred specifically to the claim of the United Copper Co., and found that it was created by artificial process and that the company was not a *bona fide* New Jersey creditor. It is possible that such decision is *res judicata* in the present matter for Arthur P. Heinze who controls the United Copper Co., appeared for it, and if that was not so, it was represented by the administrator with whom its claim was filed and who produced it in support of the administration in New Jersey and of the right of the administrator in this state to recover the property in the hands of the American Smelting & Refining Co. However that may be, the facts have not changed. The artificiality of the claim of the United Copper Co., is as apparent now as it was when this Court referred to it several years ago. Arthur P. Heinze cannot create a New Jersey creditor of F. Augustus Heinze by having residents of New York and Arizona assign alleged claims to a New Jersey corporation which was not in existence at the time F. Augustus Heinze died, nor can he overcome the apparent invalidity of the claims. The record supports the exceptions of the domiciliary administration.

We respectfully submit that the decree in respect of the matters mentioned in the petition of appeal should be affirmed.

COLLINS & CORBIN,  
*Of Counsel with Walter A. Fullerton,  
domiciliary administrator of the es-  
tate of F. Augustus Heinze, de-  
ceased, respondent.*

**Opinion on Appeals of Walter A. Fullerton, Domiciliary  
Administrator, and others.**

NEW JERSEY COURT OF ERRORS AND APPEALS.

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IN THE MATTER of the Estate of F.  
AUGUSTUS HEINZE, deceased.

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On appeals from the Court of Chancery.

For appellants, Collins & Corbin, Wall, Haight, Carey  
& Hartpence, and McCarter & English.

For respondent, Treacy & Milton.

*Per Curiam.*

Albert C. Wall, substituted administrator of the estate in New Jersey of F. Augustus Heinze, deceased, filed his petition, report and account in the Court of Chancery, alleging that certain matters set out therein were required to be adjudicated by the Court as a preliminary to the final passage of his account; and praying for the adjudication thereof, the allowance of his account as stated therein, and the fixing of a suitable counsel fee and compensation for his services as such administrator. The matter came on to be heard before Griffin, *V.-C.*, all parties in interest being represented, and, after consideration, a final decree was entered therein. From this decree Walter A. Fullerton, the domiciliary administrator of the Heinze estate; the Assets Development Company, an alleged creditor of that estate; and Mr. Wall, the substituted administrator of the estate in New Jersey, have each appealed.

So far as those portions of the decree which are attacked by Mr. Fullerton and by the Assets Development Company are concerned, we are content to affirm for the reasons stated in the opinion of the learned vice-chancellor.

The appeal of Mr. Wall presents the following situation. It having appeared upon the hearing before the vice-chancellor that the Assets Development Company had brought suit against him as administrator in New Jersey; that such suit had resulted in a judgment against the Development Company; and that the latter had appealed from that judgment to this Court, the vice-chancellor considered that the determination of the question of passing Mr. Wall's account as a final account, and his consequent discharge as administrator, should be continued until the rendition of judgment by this Court upon the appeal of the Assets Development Company, for the reason that, until the question of the liability of Mr. Wall as administrator in New Jersey to the Assets Development Company was determined, it was impossible to say finally whether or not that claim should be included in his account. We think this view was sound, and that the portion of the decree so adjudging should be affirmed.

Mr. Wall also complains that the vice-chancellor improperly refused to fix his compensation as administrator and fix an allowance for counsel fees. But we think that it was not proper for the vice-chancellor to do this until the account itself was finally passed, because, until the question of his liability to answer the claim of the Assets Development Company was finally determined, the amount of his compensation as administrator and the extent to which counsel fees should be allowed him could not be accurately determined. As we construe this portion of the decree, it recognizes the right of the administrator to compensation and an allowance for counsel fees, but merely postpones the fixing of the amounts until the final passing of the account. So construed, we concur in the view of the learned vice-chancellor.

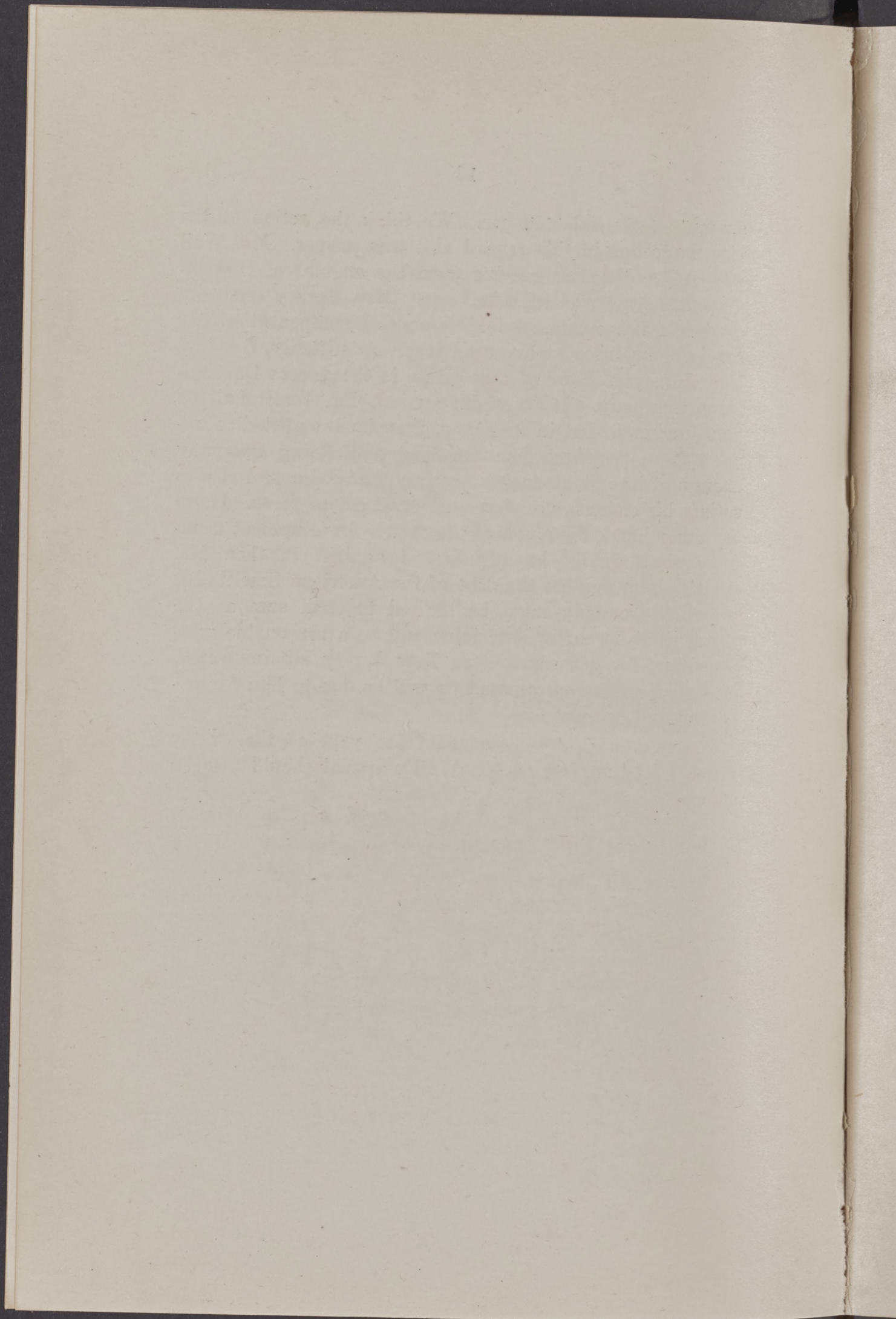
Mr. Wall also complains that the vice-chancellor did not presently compel the American Smelting & Refining Company, a New Jersey debtor of the Heinze estate, to pay over to Mr. Wall, as New Jersey administrator, the

amount of its indebtedness. We think the action of the vice-chancellor in this regard also was proper. Mr. Wall was only entitled to receive from the amount of that indebtedness a sufficient sum to pay New Jersey creditors of decedent's estate, and his (Wall's) compensation for services, expenses and counsel fees. Admittedly, the only New Jersey creditor of that estate is the Assets Development Company. If its claim against Mr. Wall shall be finally adjudicated in its favor, then he is entitled to receive from the American Smelting & Refining Company enough of its indebtedness to satisfy that claim, and also to satisfy his claim for compensation and counsel fees. If, on the other hand, the claim of the Assets Development Company shall finally be adjudicated against it, then Mr. Wall's claim against the debt of the American Smelting & Refining Company must be limited to such sum as the Court shall hereafter determine will be a reasonable compensation for his services as New Jersey administrator, plus such additional amount as will be due to him for expenses and counsel fees.

We conclude, therefore, that that part of the decree which is the subject of Mr. Wall's appeal should also be affirmed.

Endorsed: "Filed June 19, 1922.

THOMAS F. MARTIN,  
*Clerk.*"



## New Jersey Court of Errors and Appeals

In the Matter of the Estate of  
F. AUGUSTUS HEINZE, deceased.

On Appeal of  
the United  
Copper  
Company, a  
Corporation of  
New Jersey.

### BRIEF FOR THE UNITED COPPER COMPANY.

This is an appeal from an order (advised by Vice-Chancellor Griffin) overruling exceptions filed by the United Copper Company to the original and supplemental accounts of Albert C. Wall, substituted administrator of F. Augustus Heinze, deceased, and adjudging that the said company is not a *bona fide* creditor of said decedent.

In order that the matter may be intelligently presented to, and understood by, the Court it is necessary that the facts be briefly stated.

*F. Augustus Heinze*, a citizen of New York State, died intestate at Saratoga, on the 4th of November, 1914, and administration was shortly thereafter undertaken upon his estate in Saratoga County. On or about March 28, 1916, ancillary letters of administration upon his estate in New Jersey were granted to decedent's brother, Arthur P. Heinze, by the Surrogate of Hudson County. In October, 1916, the domiciliary administrator filed a petition in the Hudson County Orphans' Court (Case, p. 208) praying the removal of Mr. A. P. Heinze, which resulted in an order dated December 11, 1916 (Case, p. 218) directing his removal and appointing in his place as ancillary administrators the domiciliary administrator, Mr. Fullerton, and Albert C. Wall. An appeal was at once taken from this order by Mr. Heinze and the Prerogative Court, by an order dated May 23, 1917 (Case, p. 2) modified the order by omitting Mr. Fullerton but confirming the appointment of Mr. Wall. No appeal was taken from that order of the Prerogative Court.

Meantime, and pending the appeal before mentioned to the Prerogative Court, there was served upon Mr. Arthur P. Heinze a verified claim against the estate by the United Copper Company, assignee of Ruth Noyes Heinze (Case, p. 161) and this claim was brought to the attention of Mr. Wall, the substituted ancillary administrator, on or about January 10, 1918 (Case, p. 160), and he has never excepted thereto, or taken any steps to question it. It is not denied that the assignment from Ruth Noyes Heinze to the United Copper Company (the appellant here) was made for a valuable and full consideration (Case, p. 165) from the Copper Company.

This claim is based upon the delivery by Mrs. Ruth Noyes Heinze to the decedent on March 14, 1906, of 27,271 shares of stock of the old United Copper Company at an agreed price of \$50.00 a share. The original receipt for this stock was produced (Case, p. 58) and both Mrs. Heinze (Case, p. 169) and Mr. Schultze (Case, p. 172) testify to its authenticity. No one questions it, nor denies the assignment, or claims that the stock was ever paid for, or returned to Mrs. Heinze.

On the first of February, 1921, Mr. Wall filed in the Court of Chancery his report and account (Case, p. 1); and on October 17, 1921, he filed his supplemental account and report, and prayed that his accounts should be allowed, his fees fixed and he be discharged. The original report (Case, p. 5) disclosed, among those interested in the account, the United Copper Company, upon the claim in question. Notice was duly given (Case, p. 11) of the settlement of these accounts, and exceptions thereto were filed by the domiciliary administrator (Case, p. 12) denying, among other things, that the United Copper Company was a creditor of the decedent, claiming that there never was any reason for the ancillary administration of said estate, and expressly on his own part claiming as domiciliary administrator a right to all the estate of the decedent. Other exceptions to the account were filed by Assets Development Company (Case, p.

18), United Copper Company (p. 22) and Western Development Company (p. 24). Testimony was taken in support of these exceptions, and an opinion filed by the Vice-Chancellor (Case, p. 229) maintaining the jurisdiction of the Court of Chancery and determining that the contention of the domiciliary administrator in his exceptions must be sustained that the claims of the United Copper Company and the Assets Development Company were not *bona fide*. He reached this conclusion wholly upon the theory that the action of this Court in its opinion in the case of *Wall v. American Smelting and Refining Company*, 91 N. J. Eq., p. 131, required him to do so. In a word, that the matter was *res adjudicata*. His opinion (p. 232) says:

“All of the claims above referred to, excepting that of the Union Bank of Brooklyn, were dealt with in the case, and Mr. Justice Kalisch in conclusion said:

“‘It cannot successfully escape notice that at the time of decedent’s death and of the appointment of an administrator in this State, there were no *bona fide* New Jersey creditors, and that the artificial process which has been resorted to for the creation of New Jersey creditors fails of its purpose.

“‘For the reason that there were no *bona fide* New Jersey creditors the decree below will be affirmed.’

“‘In the face of this judicial determination, I must hold that the claimants under the claims above passed upon were not *bona fide* New Jersey creditors.’”

A decree (p. 236) followed sustaining the exceptions of the domiciliary administrator, and adjudging that the (*inter alia*) claim of the United Copper Company was not a valid one. In view, however, of the *status* of the claim of the Assets Development Company, the decree declined to discharge Mr. Wall or fix his fees. Appeals were taken from this decree to this Court by the domiciliary administrator, by Mr. Wall, and by the Assets Development Company. These appeals were argued in March

term, 1922, and this Court in a *per curiam* opinion filed in June, 1922, affirmed the decree.

Meantime the present appellant (The United Copper Company) filed its appeal from the same decree (Case, p. 256), and it is that, that is the present subject of discussion.

Obviously, as it was not a party to the appellate proceedings just referred to, it is not bound thereby, and the statement in that opinion, "admittedly the only New Jersey creditor of that estate is the Assets Development Company," must have been made, without regard to the status of the claim of the present appellant, which was not then before the Court, and regardless also of the conceded fact that the American Smelting and Refining Company (a New Jersey corporation) is also a large creditor (Case, p. 6).

It is, therefore, necessary to examine the record in the case of *Wall v. The American Smelting and Refining Company, supra*, to see if the question here presented is really *res adjudicata* in this court. The whole record in that case, including the testimony, is printed in this record, where it is an exhibit (pp. 97-222).

The bill was originally filed in the Court of Chancery by Arthur P. Heinze, then ancillary administrator, seeking to have it declared that a certain claim due from the American Smelting and Refining Company (a New Jersey corporation) to the decedent was an asset of the decedent's estate in New Jersey and should be adjudged to belong to him as New Jersey administrator. The only parties defendant were the American Smelting and Refining Company, the Miners' Smelting Company and one McGuirk, all of whom were alone interested in this claim in opposition to the interest of the decedent therein. The American Smelting and Refining Company answered, as did also the Miners' Company, and replications were duly filed to these answers (Case, p. 136). Mr. Wall filed a petition (Case, p. 137) showing his succession to Mr. Heinze as ancillary administrator and praying to be sub-

stituted as complainant. This was granted (Case, p. 140). An order was later entered (p. 141) permitting the American Smelting and Refining Company to file an answer in lieu of a plea, challenging the legality of the appointment of Wall as administrator, and subsequently an answer setting up that there was no occasion for the appointment of an ancillary administrator as there were no assets in New Jersey, and if there had been the domiciliary administrator could have readily sued to recover the same (Case, p. 147). It will be noted that this was an indirect attempt to attack collaterally the decree of the Prerogative Court appointing Wall, from which no appeal had been taken by anyone. For this reason Mr. Wall gave notice that he considered this effort collaterally to attack his appointment was ineffectual (Case, p. 152). Concerning this particular question Vice-Chancellor Griffin in his opinion in that case said (Case, p. 187):

“It may be presumed that the subject matter of these objections, in a degree, at least, was considered by the Orphans’ Court and Prerogative Court, by whose decrees Mr. Wall was made and continued substituted administrator. The Prerogative Court had full jurisdiction of the subject matter. The decree was signed by the Ordinary. I should, therefore, hesitate to consider the question of jurisdiction, and in effect, undertake to sit on appeal from such decree. It is not necessary, however, to pass upon this question, because the case may be disposed of under the third objection.”

The Vice-Chancellor, as the same opinion shows, held that as the subject matter of the suit in chancery was located in New York it had no *situs* in New Jersey and that as the domiciliary administrator could recover upon it in New York, there were no assets of the decedent’s estate in New Jersey, and he therefore advised a decree (Case, p. 189) dismissing the bill.

An appeal was taken from this decree by the ancillary administrator to this Court, and the decree was affirmed, the opinion being written by *Mr. Justice Kalisch* (91 N. J.

Eq., p. 131) and an extract from this opinion appears on page 219 of the record. This Court took a different view from the Vice-Chancellor, holding that the claim of the estate against the American Smelting and Refining Company had its *situs* in New Jersey, and hence that there were assets of the estate here. It concluded, however, that there were no *bona fide* creditors in New Jersey, and hence affirmed the decree. The opinion, upon this point, says:

“The only other claim made against the estate is that of the United Copper Company, a corporation of this State. This claim is made up of two alleged claims of the Western Development Company, a foreign corporation, of which the wife of Mr. Geer, who figures so prominently in all these transactions, is the president, and of an alleged claim of Ruth Noyes Heinze, the widow of the deceased, a resident of the State of New York. The Western Development Company assigned their claims to the United Copper Company on December 12 and 20, 1916, and Mrs. Heinze assigned her claim to the Copper Company on December 21, 1916. These claims were filed on December 22, 1916, with Arthur P. Heinze, who was appointed in this State on March 27, 1916, under circumstances which have been above detailed, and who was succeeded by the appellant as such administrator on January 18, 1917. It cannot successfully escape notice that at the time of the decedent's death and of the appointment of an administrator in this State there were no *bona fide* New Jersey creditors, and that the artificial process which has been resorted to for the creation of New Jersey creditors fails of its purpose. For the reason that there were no *bona fide* New Jersey creditors the decree below must be affirmed.”

It is to be noted that the United Copper Company was not a party to this suit, nor does it appear, or is it a fact, that it ever had any notice that its status was the subject of inquiry in the suit. Its duly verified claim had been filed with the ancillary administrator before the expiration of the time limited by the order to limit credi-

tors. Mr. Wall's attention to the claim submitted under oath to his predecessor was directed in January, 1918. He never objected to the claim. On the contrary, in his report and account he expressly recognizes it (Case, p. 5). After a claim is duly submitted to an administrator the claimant has nothing to do or to fear, unless the administrator disputes it, in which event he must commence suit thereon within three months (Orphans' Court Act, §71, 3 C. S., p. 3835). Now the claim got into the case because it appeared in the account filed by Mr. Wall, which he asked to be allowed, and while some evidence was offered as to the nature of the claim and its origin, none of the witnesses were officers or even directors of the company. The issue as to the *bona fides* of all the claims was contested by Wall on one side and the American Smelting and Refining Company on the other. It must be, therefore, that the Vice-Chancellor was mistaken in his construction of the decision of this Court. All that was said or attempted to be decided was that "*at the time of the decedent's death and of the appointment of an administrator in this State, there were no bona fide New Jersey creditors. \* \* \** For the reason that there *were* no *bona fide* creditors, the decree below must be affirmed."

In fact, Mr. Wall in his report and account (Case, p. 6, l. 40) expressly recognized this situation, stating (Case, pp. 6, 7):

"It will also be necessary to obtain a decree of this Court adjudicating whether or no the fund or credit in the hands of the American Smelting and Refining Company and which it holds, as your petitioner is informed, as a mere stakeholder, is subject now to administration in New Jersey, particularly in view of the fact that this honorable Court, as well as the Court of Errors and Appeals, passed on the *bona fides* and nature of the claims of creditors theretofore filed with your petitioner and his predecessor in the trust, but did not make any decree affecting the rights of creditors, for the reason that the creditors, if any, were not directly before the Court as parties."

We conclude, therefore, that the Vice-Chancellor erred in the view that the matter was *res adjudicata*, and that for this reason the decree should be reversed.

We also insist that neither the Court of Chancery nor this court has jurisdiction to inquire into the merits of a claim that is duly verified and presented to an administrator; unless the administrator objects to it, it stands, and if he does, either on his own initiative, or on the solicitation of someone else, he must then give notice to the claimant that his claim is disputed and the latter can then have *the propriety of his claim tried by a jury*. To this he is entitled and of it he cannot legally be deprived.

Nor, we claim, is the situation changed by the fact that the status of the United Copper Company arises by assignment from a non-resident of the State. The fact that there were and are assets in New Jersey belonging to the estate gave and gives a *raison d'être* to the existence of the ancillary administration.

In *Normands, Admr., v. Grogard*, 17 N. J. Eq. 425, 428, Chancellor Green said:

“The distribution of the fund must be regulated by the law of the domicile of the intestate. But whether that distribution shall be made by the tribunals of the several states by which the letters are granted, or whether the balance for distribution shall be transmitted by the foreign administrator to the place of the domicile, to be there distributed, depends upon the circumstances, and rests in the sound discretion of the tribunal before which the account of the foreign administrator is brought for settlement. Where the parties interested in the distribution reside in the state where foreign administration is granted, the fund will be retained and distributed there. *Harvey v. Richards*, 1 Mason 381; *Isham v. Gibbons*, 1 Bradford’s R. 70; *Parsons v. Lyman*, 4 Bradford’s R. 268.”

Nor is this obsolete law. *Chief Justice Depue*, in *Pisano v. Shanley Co.*, 66 N. J. Law 1, 6 (1901), said:

“The grant of administration on the personal estate of a deceased is vested primarily in the

courts of his domicile. Administration taken out in another state is ancillary to the administration in the forum of the domicile. Such an administration depends upon the fact that there is property within the foreign jurisdiction to be administered upon and debts there to be paid, or for the purpose of collecting the property of the deceased, realizing upon it and remitting the proceeds to the primary administrator. The grant of administration operates only within the jurisdiction where it is granted. It gives no legal right to collect debts or recover the possession of property elsewhere. When a foreign administrator is appointed in another state, his appointment is ancillary to the administration in the place of the domicile. For property which he obtains within the jurisdiction where his letters are granted, after payment of debts in that locality, he accounts to the administrator at the domicile of the deceased. *Normand's Administrator v. Grognard*, 2 C. E. Gr. 425; *Pratt v. Douglas*, 11 Stew. Eq. 516; 1 Story Conf. L. §514."

In *Hayes v. Pratt*, 147 U. S. 557, 574, the Supreme Court of the United States said:

"There being no one in New Jersey having any right to a claim upon this fund and no especial reason being shown for administering it in New Jersey, it should upon familiar principles be transmitted to the executor appointed at the testator's domicile for distribution."

See also *Hurd v. Elizabeth*, 41 N. J. Law 1.

*Travelers' Insurance Co. v. Grant* (54 N. J. Eq. 208)

In none of these cases (and they are merely types) is there any suggestion that the creditor resident in the State of ancillary administration should not have become such by assignment; that his status as a creditor of the decedent should have arisen by convention between him and the decedent. The law favors assignments of claims, and modern statutes have placed an assignee in New Jersey in the same position at law that Equity alone formerly recognized. *Jamison, v. Tindall*, 89 N. J. Law 429. Interstate lines are not, in modern days, limitations

upon the right to assign claims or debts, and let it be once established that a resident of New Jersey *has* a claim (however derived, whether by original transaction with the deceased or by assignment from the decedent's creditor), then the State exercises a paternal control over the local asset, and will not permit it to be taken out of the State until that claim is paid thereout. Suppose a negotiable note of a decedent to be outstanding and not yet due, at the time of his death; would not an endorsee thereof, who became such after the death and who lived in the State of ancillary administration, be entitled to the protection these cases afford?

In 5 Corpus Juris, 994, we find:

“The general rule is that the reasons and consideration for an assignment, or the object sought to be attained thereby, will not be inquired into in an action by the assignee, but that the action is properly brought by the assignee as the real party in interest if the assignor has transferred all apparent interest and title in and to the subject matter, although the assignee may be only an agent or trustee, and others may be beneficially interested.”

A case illustrating the principle we here invoke is *Proctor v. Natl. Bank of the Republic* (Mass.), 25 N. E. 81. The head note holds:

“Where a Massachusetts creditor sells his claim against a debtor of the same state to a citizen of another state before the debtor is adjudged insolvent, the assignee in insolvency cannot recover from the creditor the amount obtained from his claim, though at the time of the sale the creditor and his purchaser knew that the debtor was in fact insolvent and though the sale was made for the purpose of the creditor's obtaining a preference over the other creditors by enabling the purchaser to maintain an action on the claim in another state after the debtor was declared insolvent.”

We quote the following from the opinion:

“We think it appears that the notes were actually sold and delivered by the defendant to the

Continental National Bank of New York; that the intention of the defendant in making the sale was to obtain an advantage over the other creditors of E. & A. H. Batcheller & Co., that this intention was known to the Continental National Bank at the time it purchased the notes, and that it bought them for the purpose, among others, of enabling the defendant to carry this intention into effect. The defendant knew that Batcheller & Co. were insolvent in fact, and might be adjudged insolvent debtors in this commonwealth, and that if this were done before it obtained judgment in Ohio it might be enjoined from prosecuting the action in Ohio to judgment; and, in order to avoid this, it sold the notes to the Continental National Bank. This sale included all the rights which the defendant had to prosecute the action then pending in Ohio. The agreement of the defendant with the Continental National Bank to pay to it any deficit if it should not recover the full amount of the notes, and also to pay to it a sum equal to all its costs, charges and expenses, is an agreement collateral to the sale, and does not affect the title of the Continental National Bank to the notes, or the absolute right of control, which, after the sale, it had over the action pending in Ohio. When, therefore, this bill was brought in, an injunction against the defendant's prosecuting the action in Ohio would have been ineffectual, because the defendant had no control over the action. It has been held, in *Lawrence v. Batcheller*, 131 Mass. 504, that if the defendant had prosecuted the suit in Ohio to judgment, and the judgment had been satisfied out of the funds there garnished, the plaintiffs could not recover of the defendant the amount of the judgment. It is also settled that if the defendant, after Batcheller & Co. had been adjudged insolvent debtors, had retained control of the suit, the plaintiffs could have obtained an injunction against the further prosecution of it by the defendant. *Devon v. Foster*, 4 Allen, 545, 7 Allen 47; *Cunningham v. Butler*, 142 Mass. 57, 6 N. E. Rep. 782; *Cole v. Cunningham*, 133 U. S. 107, 10 Sup. Ct. Rep. 269. If there seems to be any inconsistency in principle between these two classes of cases, it arises in part, at

X  
And our own courts in a long line of decisions have settled the rule that an assignment made by a non-resident, which is valid by the law of the place where made, cannot be impeached in this state on behalf of non-resident creditors with regard to property situated here, even though the assignment be incompatible with the laws of our state. The only person who may object to such an assignment is a creditor resident in this state.

Bentley vs. Whittemore (19 N. J. E. 462) E. & A.

Peaberton vs. Klein (43 E. J. E. 98 at p. 98) Ch.

Green vs. Wallis Iron Works (49 N. J. E. 48 at p. 54) Ch.

Moore vs. Bonnell (41 N. J. L. 90) Sup.

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least, from the limitations imposed by the constitution of the United States upon the power of the commonwealth to pass laws relating to bankruptcies and laws which shall impair the obligation of contracts, and from a want of jurisdiction over citizens of other states."

See also *Peterson v. Chemical Bank*, 32 N. Y. 21; *Dewey v. Komar*, 110 N. W. 90.

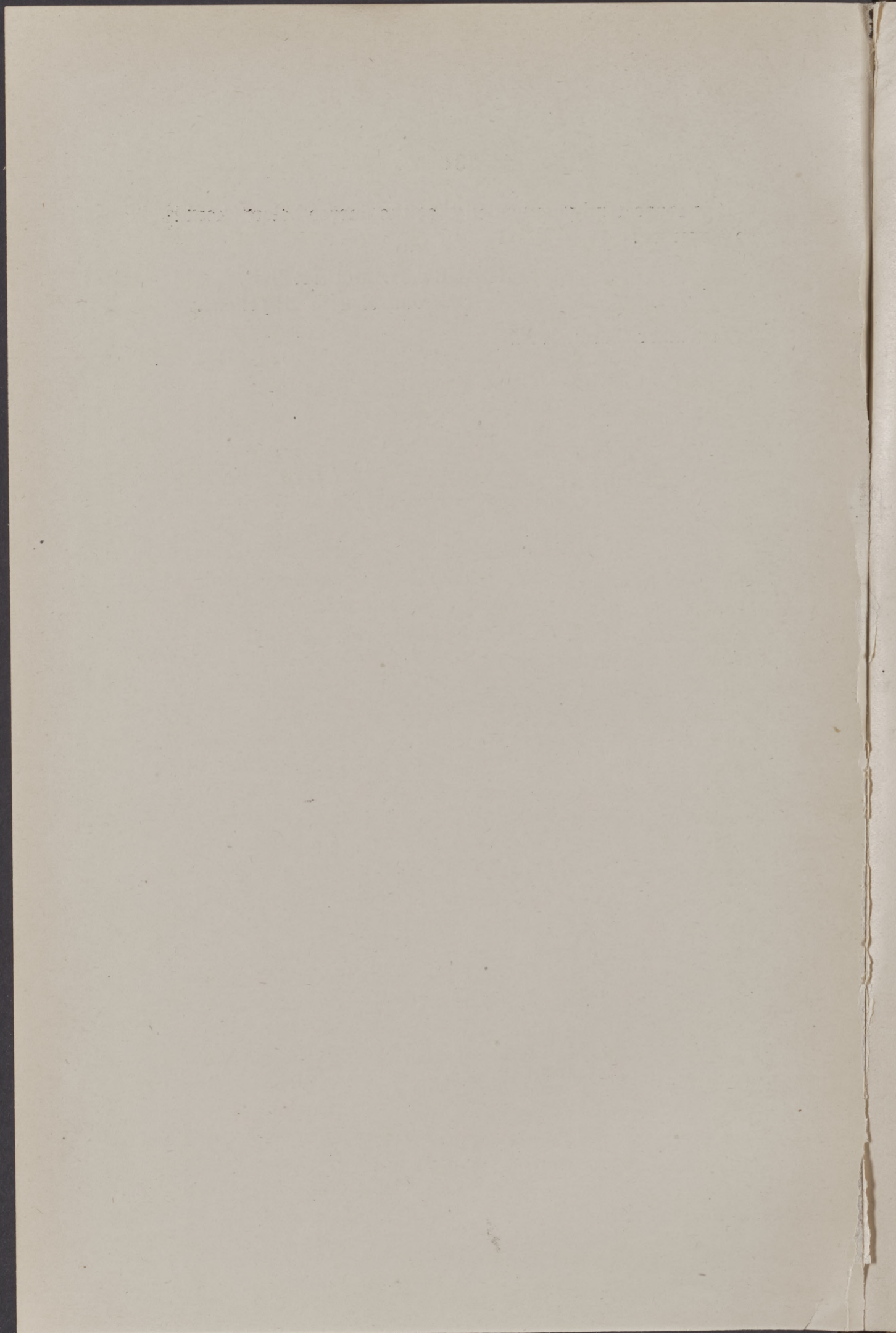
Now, then, who objects to the allowance of appellant's claim?

Has the administrator rejected it within the six months provided by law? No. Or at all? No; but the New York administrator appears upon the scene and objects. One of the fundamental rules in equity is that a man must appear with clean hands in equity and not with a lie on his lips. How does this administrator appear? Under the New York law his duty is restricted to New York State, he has no rights outside of the jurisdiction of his appointment and he is in duty bound to represent all the creditors and act for the benefit of all. He also is guardian of the deceased's infant son. Now, then, being by law under the obligation to administer the estate for the benefit of all creditors, impartially, what do we find him doing? He goes out of his way and into a foreign jurisdiction and by vilification of several creditors holding unpaid notes of the deceased and receipts for securities delivered to the deceased and not returned or paid for or accounted for by him, thus undoubted creditors, and whose claims it is his sworn duty to treat impartially and just the same as the overwhelming claim of Gould, we say he makes these extraordinary efforts to get this New Jersey asset into his clutches and thus to subject it to annihilation as far as these applicants in New Jersey are concerned because he, himself, has boastfully testified that the Gould judgment will absorb the entire estate in New York (p. 157, l. 20). Thus, instead of acting for the benefit of all creditors, he is acting for the benefit of one alone.

It is respectfully contended that the decree below should be reversed.

ROBERT H. McCARTER,  
*Of Counsel with Appellant.*

November Term, 1922.



99 NOV. 1922

Filed after the Oral Argument  
by leave of Court.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

IN THE MATTER

of

THE ESTATE OF F. AUGUSTUS HEINZE,  
deceased.

On Appeal of  
United Copper  
Company.

### SUPPLEMENTAL MEMORANDUM FOR UNITED COPPER COMPANY.

A short reply is necessary to the supplemental brief filed on behalf of Mr. Fullerton since the argument. I cannot permit without protest the repeated assertions and claims that the United Copper Company was a party, or represented in the suit of *Wall, Administrator v. American Smelting & Refining Co.*, notwithstanding the accurate statement of facts with reference thereto contained in my main brief. On page 153 of the book, the appearances are given. Mr. Arthur P. Heinze, who had been the administrator, and had originally instituted the suit to recover the New Jersey assets, was there in person to assist Mr. Wall in the assertion of the claim designed to secure those assets. United Copper Company was not there. Testimony was offered in support of the plea in lieu of the answer, and on page 160, Mr. Wall himself was sworn, and then on page 163, he called Mr. Heinze as a witness, and examined him. At the hearing on the afternoon of the same day, Mr. Bien, who represented Mr. Arthur P. Heinze (Case, p. 153), examined Mrs. Heinze, and Mr. Schultz, and later, Mr. Heinze himself on page 178 was recalled. This constitutes all the evidence, and on page 182 appears the opinion with the statement of counsel as given by the Court of Chancery, and there isn't a word to indicate that the United Copper Company was a party either in fact or in name. The mere assertion by

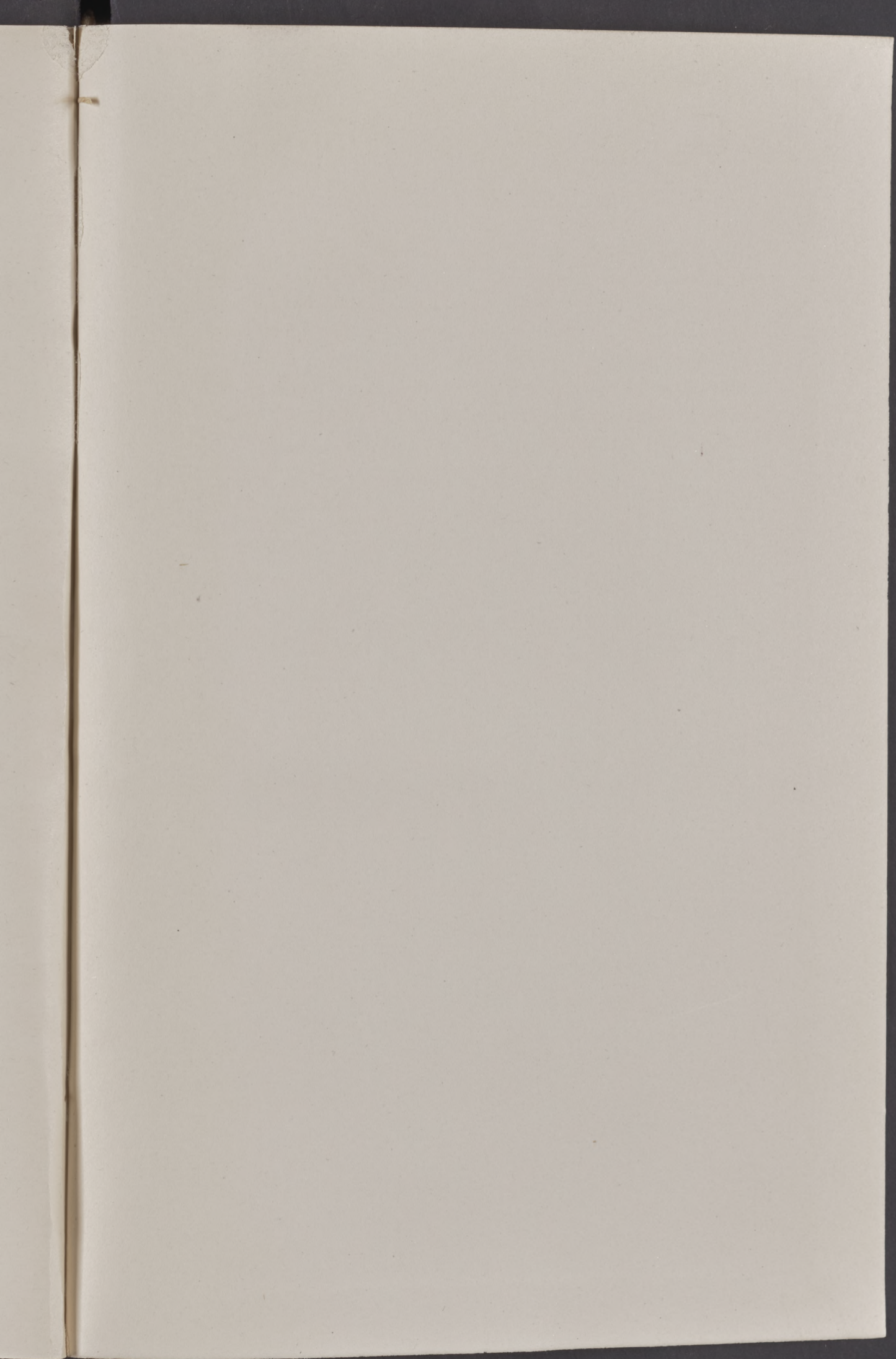
counsel for the domiciliary administrator, therefore, cannot overcome the record, nor is it effective to contradict the statement of Mr. Wall (Case, pp. 6 and 7) that the United Copper Company and the other creditors were not before the Court in the case.

As stated at the argument, the only omissions from the record are matters that affected claims other than those of United Copper Company.

Respectfully submitted,

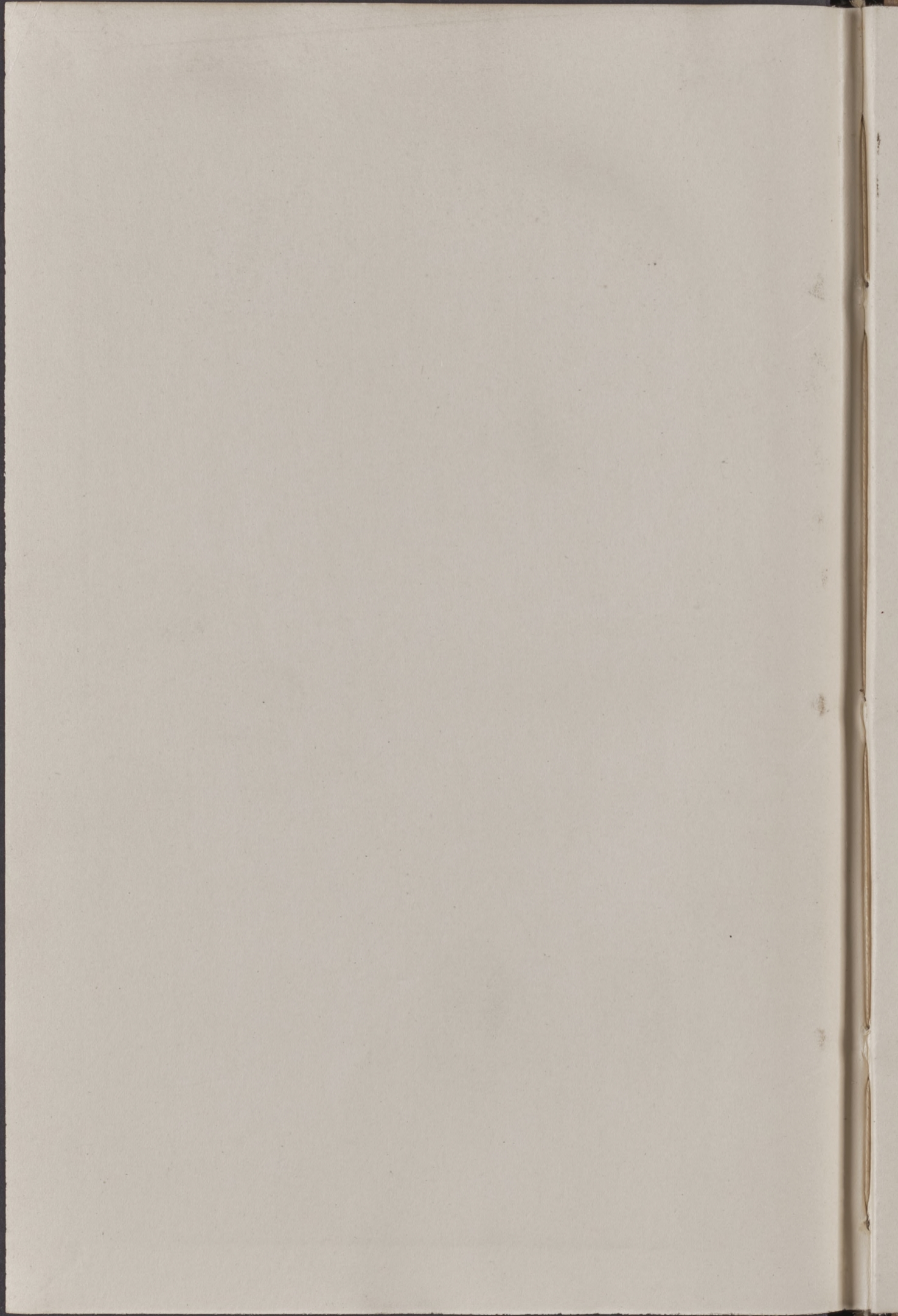
ROBERT H. McCARTER,  
*Counsel for United Copper Company.*

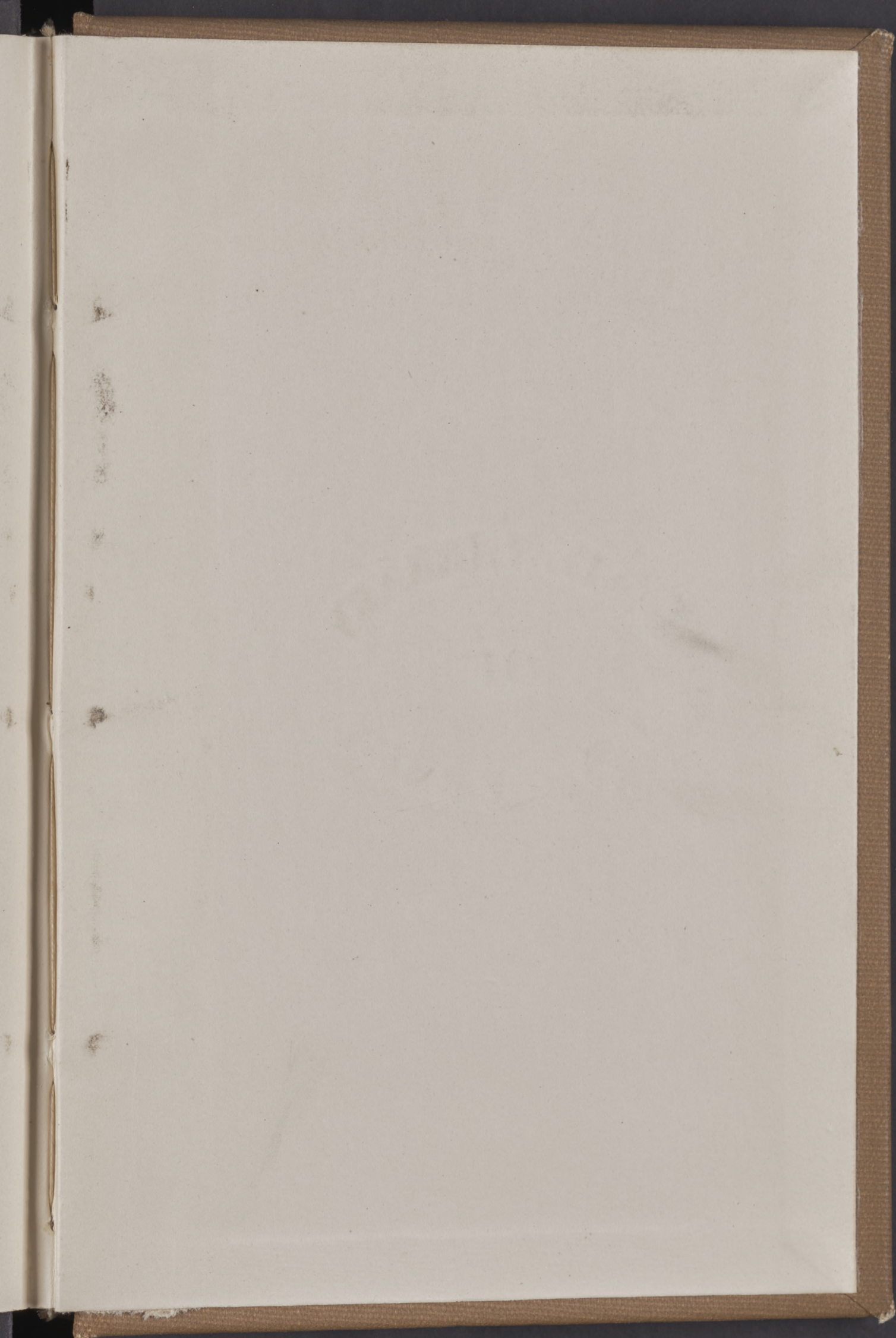
November term, 1922.











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