

INDEX.

	Page
Bill of Complaint	1
Affidavit of Samuel Gottlieb	5
Order Appointing Custodial Receiver	9
Affidavit of Mailing	12
Affidavit of Service	13
Order of Continuance	14
Petition	15
Affidavit of William C. Wolf	19
Exhibit A—Annexed to Affidavit of William C. Wolf	21
Exhibit B—Annexed to Affidavit of William C. Wolf	27
Exhibit C—Annexed to Affidavit of William C. Wolf	28
Order Continuing Assignee	29
Notice of Appeal	32
Amended Notice of Appeal—Feb. 5, 1930....	33
Amended Notice of Appeal—April 25, 1930..	34
Affidavit of Service	35
Petition of Appeal	36
Answer to Petition of Appeal	39
Notice of Hearing	40

New Jersey State Library

THE UNIVERSITY OF CHICAGO

Bill of Complaint.

Filed Jan. 20, 1930.

In Chancery of New Jersey.

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

Complaining unto your Honor, complainant, Standard Parlor Suite Co., Inc., a creditor of Hudson Upholstering Works, Inc., a corporation of the State of New Jersey, for and on behalf of himself and all other creditors and stockholders who may become parties to this suit says: 10

1. That your complainant is a creditor of the Hudson Upholstering Works, Inc. in excess of the sum of \$600.00 for goods sold and delivered to the said defendant corporation and which claim remains unpaid at the time hereof. 20

2. The said defendant corporation was engaged in business as an upholsterer, and maintained its place of business at 49 Fremont Street, Jersey City, Hudson County, New Jersey.

3. That the corporation was organized under the laws of the State of New Jersey, on or about the 6th day of March 1928, capitalized at \$100,000.00 common stock 1,000 shares at the par value of \$100.00 each. 30

4. The officers and directors of the corporation are as follows:

George Rothstein, 763 Bergenline Ave.
Union City.

Samuel J. Davidson, 512 - 1st St., Hoboken,
N. J.

Louise Saranza, 26 Hancock Ave., Jersey City. 40

Bill of Complaint.

5. Your complainant further says that the said defendant corporation is hopelessly insolvent and admitted its insolvency, and its inability to continue its business, and actually suspended the payment of its obligations to its creditors on or about the 17th day of January 1930, at which date the said defendant corporation executed an assignment and transfer of its assets to one William C. Wolf, a non-resident of the State of New Jersey, supposedly in trust for the benefit of its creditors.

6. Complainant further says upon information and belief, that the aforesaid alleged transfer and conveyance by the said defendant corporation to William C. Wolf, was not made in accordance with the laws of the State of New Jersey, relating to assignments for the benefit of creditors, and said transferee has given notice that he proposed to sell the assets of the defendant corporation on the 24th day of January 1930, and which sale, complainant says would be to the irreparable damage and injury of the defendant corporation, and its stockholders and creditors, and in violation of the laws of the State of New Jersey, relating to corporations.

7. Your complainant says that the defendant corporation has suspended the normal operation of its business because of lack of funds with which to operate the same, and it is unable to raise any funds with which to discharge its obligations by the ordinary use of its credit.

8. Your complainant further says that the business of the said defendant corporation has obviously been conducted at a great loss and greatly prejudicial to the interest of its creditors and

Bill of Complaint.

stockholders, and that its inability to meet past due obligations has materially effected the credit of the said defendant corporation, which is obviously without funds and without any means to raise any funds except by disposing of its assets to the damage and detriment of the stockholders and creditors, and that it is therefore unable to operate its business with safety to the stockholders and the public. 10

9. Your complainant further says that it would be to the best interest of the stockholders and creditors, that a Receiver be appointed for the said corporation for all of the assets and property of every kind and description, and that unless all of the assets of the said defendant corporation are properly marshalled by a Receiver to be appointed by this Court, the said corporation may be subject to vexatious and costly litigation, and in the event of a forced sale, the said assets may bring far less than their fair and reasonable value, all of which would be of great detriment to the stockholders and creditors of the said corporation. 20

10. That unless this Court, in view of the facts above set forth shall take the said property of the corporation into judicial custody for the protection of every interest, individual creditors will exert their rights and remedies in different Courts and the result will be a multiplicity of suits and race of diligence. 30

11. Your complainant believes that unless this Court, in view of the inability of the said corporation to meet its due and maturing obligations, will deal with the property as a single trust fund, said property may be dissipated to such an extent that its stockholders will realize little or nothing from 40

Bill of Complaint.

their holdings of their stock, and that in all probability, the creditors of the corporation will be unable to collect their claims or any substantial part thereof from said corporation, and that the intervention of this Court is necessary for the protection of said stockholders and creditors of said corporation, to the end that its property may not be dissipated, and that the interest of all concerned may best be served.

Your complainant is without adequate remedy in the Courts of laws, and therefore prays:

(a) That the corporation may answer this bill of complaint and that it may set forth and discover the goods and chattels, rights, and claims, moneys and effects, and real estate of every kind and description belonging to the said corporation.

(b) That your complainant and all other creditors and stockholders of the said corporation may be paid what is justly due them and that the corporation may be enjoined from exercising any corporate functions in this State, and from receiving any debts due to it and from continuing business.

(c) That the corporation may be decreed to be insolvent.

(d) That a Receiver may be appointed according to the form of the Statute in such cases made and provided, and with the usual powers to continue the business if necessary.

(e) That the assets of the said corporation and the rights of your complainant and all other stockholders and creditors of the corporation may be fully ascertained, and that all of the assets of the defendant corporation may be marshalled, and that

Bill of Complaint.

the respective liens and priorities existing against any and all parts thereof may be determined to the end that the rights of all persons be properly ascertained concerning the same.

(f) That a writ of injunction may issue, directed to the Hudson Upholstering Works, Inc., its officers, agents, and servants, enjoining and restraining them from exercising any of the privileges or franchises granted to or by the corporation, or from collecting, or receiving any debts due to the said corporation, or selling, assigning or transferring any of the estate, moneys, funds, lands, tenements or effects of the said corporation. 10

(g) That a writ of subpoena may issue directed to the said Hudson Upholstering Works, Inc., to answer this bill of complaint and to abide by such decree or order as the Court may make in the premises. 20

MAX L. ROSENSTEIN,
Solicitor for and of counsel
with the Complainant.

—————

Affidavit of Samuel Gottlieb. 30

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

Samuel Gottlieb, being duly sworn, according to law upon his oath deposes and says:

1. That he is the secretary of the Standard Parlor Suite Co. Inc., who is the complainant herein and a creditor of Hudson Upholstering Works, Inc. the defendant herein. 40

Bill of Complaint.

2. Your deponent says that the claim of the complainant is for goods sold and delivered to the said defendant corporation in excess of the sum of \$600.00, and which claim remains unpaid at the time hereof.

10 2. The said defendant corporation was engaged in business as an upholster furniture manufacturer, and maintained its place of business at 49 Fremont Street, Jersey City, Hudson County, New Jersey.

3. That the corporation was organized under the laws of the State of New Jersey, on or about the 6th day of March 1928, capitalized at \$100,000 common stock 1,000 shares at the par value of \$100.00 each.

20 4. The officers and directors of the corporation are as follows:

George Rothstein, 763 Bergenline Ave.
Union City.

Samuel J. Davidson, 512 - 1st St., Hoboken,
N. J.

Louise Saranza, 26 Hancock Ave., Jersey
City.

30 5. Your deponent further says that the said defendant corporation is hopelessly insolvent and admitted its insolvency, and its inability to continue in business, and actually suspended the payment of its obligations to its creditors on or about the 17th day of January 1930, at which date the said defendant corporation executed an assignment and transfer of its assets to one William C. Wolf, a non-resident of the State of New Jersey,
40 supposedly in trust for the benefit of its creditors.

Affidavit of Samuel Gottlieb.

6. Deponent further says upon information and belief, that the aforesaid alleged transfer and conveyance by the said defendant corporation to William C. Wolf, was not made in accordance with the laws of the State of New Jersey, relating to assignments for the benefit of creditors, and said transferee has given notice that he proposed to sell the assets of the defendant corporation on the 24th day of January 1930, and which sale, deponent says would be to the irreparable damage and injury of the defendant corporation, and its stockholders and creditors, and in violation of the laws of the State of New Jersey, relating to corporations. 10

7. Deponent further says that the defendant corporation has suspended the normal operation of its business because of lack of funds with which to operate the same, and it is unable to raise any funds with which to discharge its obligations by the ordinary use of its credit. 20

8. Deponent further says that the business of the said defendant corporation has obviously been conducted at a great loss and greatly prejudicial to the interest of its creditors and stockholders, and that its inability to meet past due obligations has materially effected the credit of the said defendant corporation, which is obviously without funds and without any means to raise any funds except by disposing of its assets to the damage and detriment of the stockholders and creditors, and that it is therefore unable to operate its business with safety to the stockholders and the public. 30

9. Deponent further says that it would be to the best interest of the stockholders and creditors, 40

Affidavit of Samuel Gottlieb.

that a Receiver be appointed for the said corporation for all of the assets and property of every kind and description, and that unless all of the assets of the said defendant corporation are properly marshalled by a Receiver to be appointed by this Court, the said corporation may be subject to
10 vexatious and costly litigation, and in the event of a forced sale, the said assets may bring far less than their fair and reasonable value, all of which would be of great detriment to the stockholders and creditors of the said corporation.

10. That unless this Court, in view of the facts above set forth shall take the said property of the corporation into judicial custody for the protection of every interest, individual creditors will exert their rights and remedies in different courts
20 and the result will be a multiplicity of suits and race of diligence.

11. Deponent believes that unless this Court, in view of the inability of the said corporation to meet its due and maturing obligations, will deal with the property as a single trust fund, said property may be dissipated to such an extent that its stockholders will realize little or nothing from
30 their holdings of their stock, and that in all probability, the creditors of the corporation will be unable to collect their claims or any substantial part thereof from said corporation and that the intervention of this Court is necessary for the protection of said stockholders and creditors of said corporation, to the end that its property may not be

Affidavit of Samuel Gottlieb.

dissipated, and that the interest of all concerned may best be served.

SAMUEL GOTTLIEB.

Sworn to before me this 20th
day of January, 1930.

Ben L. Krieger,
An Attorney at Law
of N. J.

10

Order Appointing Custodial Receiver.

Filed Jan. 20, 1930.

IN CHANCERY OF NEW JERSEY.

Between
STANDARD PARLOR SUITE Co.,
INC.,
Complainant,
and
HUDSON UPHOLSTERING WORKS,
INC.,
Defendant.

On Bill.

Order
Appointing
Custodial
Receiver.

20

30

This matter being opened to the Court by Max L. Rosenstein, solicitor for and of counsel with the Complainant, and it appearing from the allegations from the Bill of Complaint that the corporation has assets, according to its books, in excess of its liabilities, but that the said corporation is unable to pay its past due and maturing obligations, and it further appearing that the said defendant corporation cannot operate its business in 40

Affidavit of Samuel Gottlieb.

10 this State to the safety of the public and the advantage of its stockholders, and it further appearing that it is absolutely necessary to the interests of the creditors and stockholders of the said defendant, in order to avoid irreparable injury and damage to the said corporation, its stockholders, and creditors, that the relief prayed for in the Bill of Complaint be granted; it is on this 20th day of January, 1930, on motion of Max L. Rosenstein, solicitor as aforesaid,

20 ORDERED, that the Hudson Upholstering Works, Inc., be and it is hereby restrained and enjoined according to the prayer of the Bill of Complaint, and that the said Hudson Upholstering Works, Inc., its officers, servants, agents, and employees, absolutely desist and refrain and they are hereby enjoined and restrained from collecting or receiving its debts, or paying out, selling assigning or transferring any of its estate, moneys, funds, lands, tenements, or effects, except to a Receiver appointed by this Court, and it is further

30 ORDERED, that Joel Gross, in this State be and he hereby is appointed Custodial Receiver for the benefit of creditors and stockholders of the said defendant corporation, with all the powers incident thereto, and it is further

40 ORDERED, that the said Custodial Receiver before he shall enter upon his duties as such Receiver, shall take the oath prescribed by law and give bond to the Chancellor of the State of New Jersey in the sum of \$5,000.00, conditioned for the faithful performance of his duties, to be approved as to form and security thereof by any one of the Special Masters of this Court, and it is further

Order Appointing Custodial Receiver.

ORDERED, that Hudson Upholstering Works, Inc., and the creditors and stockholders of the said corporation as they shall become known to the Custodial Receiver, show cause before this Court, on the 27th day of January, 1930, at ten o'clock in the forenoon of that day, or as soon thereafter as the matter can be heard, at the Chancery Chambers, 1 Exchange Place, Jersey City, New Jersey, why an injunction should not issue and a Receiver be appointed according to the prayer of the bill, and that a copy of this order, (which need not be certified) be mailed to the Hudson Upholstering Works, Inc., and to all the creditors and stockholders of the said defendant corporation, at their last known post office addresses within two days of the date hereof. 10

E. R. WALKER, 20
C.

Respectfully advised,
JOHN BENTLEY,
V. C.

30

40

Affidavit of Mailing.

Filed Jan. 27, 1930.

IN CHANCERY OF NEW JERSEY.

10	Between STANDARD PARLOR SUITE Co., INC., Complainant, and HUDSON UPHOLSTERING WORKS, INC., Defendant.	}	On Bill. Affidavit of Mailing.
----	--	---	--------------------------------------

20 State of New Jersey, }
 County of Essex, } ss.:

Clarice Burstein, being duly sworn upon her oath deposes and says:

1. That she is employed in the office of Max L. Rosenstein, solicitor for the Complainant herein.
2. That on the 22nd day of January, 1930, she mailed in the lobby of the Military Park Building, 60 Park Place, Newark, N. J., envelopes addressed to all known creditors containing copies of the Order Appointing Custodial Receiver, a copy of which is hereto attached and made a part hereof, which envelopes carried proper postage prepaid thereon.

CLARICE BURSTEIN.

Sworn and subscribed to before me
 this 23rd day of January, 1930.

Ben L. Krieger,
 An Attorney at Law
 of N. J.

40

Affidavit of Service.

Filed Feb. 11, 1930.

IN CHANCERY OF NEW JERSEY.

Between STANDARD PARLOR SUITE Co., INC., Complainant, and HUDSON UPHOLSTERING WORKS, INC., Defendant.	}	On Bill, Etc. 10 Affidavit of Service.
--	---	---

State of New Jersey, { County of Essex, } ss.:	20
--	----

Abram A. Golden, being duly sworn, according to law, upon his oath deposes and says:

1. That he is employed as a clerk in the Office of Max L. Rosenstein, the solicitor for the complainant in the above entitled matter.

2. That on the 23rd day of January 1930, I served a copy of the Bill of Complaint, and the Order appointing Custodial Receiver on the Registered Agent of the defendant corporation, one George Rothstein, 763 Bergenline Avenue, Union City, New Jersey, by leaving same at his office, at the above address, between the hours of 10:00 A. M. and 4:00 P. M. 30

ABRAM A. GOLDEN.

Sworn to before me

 this 29th day of January 1930.

Allan L. Tumarkin,
 An Attorney at Law
 of New Jersey.

40

Order of Continuance.

Filed Feb. 25, 1930.

IN CHANCERY OF NEW JERSEY.

10	STANDARD PARLOR SUITE COM- PANY, Complainant, vs. HUDSON UPHOLSTERING WORKS, INC., a corporation, Defendant.	}	On Bill, &c. Order.
----	--	---	------------------------

20 This matter coming on to be heard upon the continuance of an order to show cause made on the 27th day of January, 1930, and continued to the 24th day of February, 1930, in the presence of Max L. Rosenstein, solicitor for complainant, and Eichmann & Seiden, solicitors for defendant, William C. Wolf;

It is on this 25th day of February, 1930,

30 ORDERED, that the said order to show cause be and the same is hereby continued to the 10th day of March, 1930, at 10 o'clock in the forenoon, or as soon thereafter as the Court can attend to the Same, at the Chancery Chambers, 1 Exchange Place, Jersey City, New Jersey.

Respectfully advised,

JOHN BENTLEY,
 V. C.

E. R. WALKER,
 C.

Petition.

Filed Jan. 27, 1930.

IN CHANCERY OF NEW JERSEY.

STANDARD PARLOR SUITE COM- PANY, Complainant,	}	10
vs.		On Bill, &c.
HUDSON UPHOLSTERING WORKS, INC., a corporation, Defendant.	}	Petition.

To the Honorable EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey. 20

The petition of William C. Wolf, Assignee for the benefit of creditors of Hudson Upholstering Works, Inc., a corporation, and Bushwick Press, Belgam Corporation, Bahlen Bros., Decorative Fabric Corporation, Eisen Bros., Joseph Gosset, Hausman Bag Company, Hauptman Feather Company, Kay Manufacturing Company, Kay & Todd Company, La France Textile Industries, North Wales Tapestry Company, National Patent Reed Company, Practical Sample Card Company, E. C. Ross, Standard Mohair Plush Company, M. Abramowitz, Seaboard Cord & Twine Company, Stewart & Sparry, Textile Supply Company, Tucker Manufacturing Company, Weston Company, F. P. Woll Company, and Max Neumann, creditors of Hudson Upholstering Works, Inc., respectfully show:

1. On January 17, 1930, the defendant Hudson 40

Petition.

Upholstering Works, Inc., executed and delivered to William C. Wolf, an instrument in writing, duly acknowledged, reciting that the said defendant is engaged in the business of manufacturing upholstered furniture at 49 Fremont Street, Jersey City, and is indebted to various of its creditors in amounts it is unable to pay at maturity, and that the defendant is desirous that all of its assets be liquidated and proportionately distributed among its creditors. Under the terms of said agreement said defendant corporation authorized petitioner William C. Wolf, to carry on the defendant's business, if deemed advisable, and liquidate the assets of said defendant in such manner as the said William C. Wolf may consider proper and necessary, and dispose of said property at public or private sale, collect and adjust accounts receivable, adjust any and all accounts payable, and other claims or demands, employ all necessary persons in the administration of the trust, and after paying all expenses, distribute the balance, pro rata, among all creditors. A copy of said agreement is hereto annexed, made a part hereof, and marked Exhibit A. A great majority of the creditors, including petitioners, have consented to the terms of said agreement Exhibit A.

2. The petitioners hereinabove mentioned as creditors of the Hudson Upholstering Works, Inc. have claims against said defendant corporation, aggregating the sum of \$15,770.24, none of which are preferred claims, out of a total of approximately \$22,279.87, general and unpreferred merchandise claims against said corporation. The claims of your petitioners who are creditors of said defendant, represent approximately 70% of the total

Petition.

outstanding general merchandise claims against said corporation. Annexed hereto and made part hereof, is an itemized list of the claims of your petitioners, showing the amounts due each of them, and marked Exhibit B. The amount of total claims is derived from an audit of the books of said defendant made under the direction of petitioner, William C. Wolf. 10

3. Upon the execution of the aforesaid assignment for the benefit of creditors, Exhibit A, your petitioner, William C. Wolf, on January 18, 1930, took possession of the assets of the defendant corporation and immediately caused an audit of the books of said corporation and an inventory to be made and completed. Attached hereto is a statement showing the assets and liabilities of said defendant corporation as derived from said audit, said statement being made part hereof, and marked Exhibit C. 20

4. On January 18, 1930, your petitioner, William C. Wolf, procured an auctioneer to lot up the merchandise for sale and had the merchandise nearly all arranged for the auction sale, when on January 21, 1930, this Court appointed a custodial receiver in the above entitled cause. 30

5. Petitioner, William C. Wolf is president of the Allied Board of Trade, Inc. a credit association serving the upholstery, furniture and decorative trade. Your petitioners, who are creditors of the defendant corporation, say that the work done by said Wolf, has been very fast and efficient, and if it had not been for the appointment of a custodial receiver, the assets of the corporation would have already been sold at a minimum expense to the 40

Petition.

creditors, including also a substantial saving in rents, insurance and similar items.

6. Your petitioners say that said Wolf, as assignee of the creditors, is thoroughly competent to administer the assets of said corporation at a minimum expense, and that the administration of said
10 assets by a receiver of this Court would result in a duplication of work entailing an unnecessary expenditure for duplicate administration.

7. Your petitioners further show that the bill herein was filed with the knowledge of the assignment for the benefit of creditors, and at the instance of a single creditor.

8. Your petitioners further show that a great
20 majority of the creditors, both in number and in amount of claims, desire that the said William C. Wolf, as assignee under Exhibit A, continue the administration of said assets.

Your petitioners therefore pray that an order may be made adding William C. Wolf, assignee for the benefit of creditors under Exhibit A, as a party defendant in this suit, and permitting the said
30 William C. Wolf, as assignee under Exhibit A to continue the administration of the assets of the defendant corporation, and that the custodial receiver appointed herein be directed to turn over said assets to the said William C. Wolf, assignee.

EICHMANN & SEIDEN,
Solicitors of William C. Wolf,
and creditors shown in Schedule
B annexed hereto.

Affidavit of William C. Wolf.

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

William C. Wolf, being duly sworn upon my oath, depose and say:

1. I am president of the Allied Board of Trade, a credit corporation serving the upholstery, furniture and decorative trade with offices at 350 Madison Avenue, New York City. 10

2. On January 17, 1930, the defendant Hudson Upholstering Works, Inc., a corporation, executed and delivered to me an instrument in writing, duly acknowledged, a copy of which is hereto annexed and marked Exhibit A. A majority of the creditors of said defendant corporation have consented to the administration of the assets of said defendant corporation under said agreement Exhibit A. The petitioners mentioned in the foregoing petition as creditors of the Hudson Upholstering Works, Inc. have general claims against said defendant corporation aggregating the sum of \$15,770.24, out of a total of general and unsecured merchandise claims of approximately \$22,279.87 against the said defendant. The claims of said petitioners who are creditors represent approximately 70% of the total outstanding merchandise claims of said defendant corporation. Annexed hereto and made a part hereof, is an itemized list of the claims of the petitioners who are creditors, said list being marked Exhibit B. Said list of claims of said petitioners and the total amount of all claims is derived from an audit of the books of said defendant made under my direction while administering the assets of said defendant corporation under the agreement Exhibit A. 20
30
40

Affidavit of William C. Wolf.

3. Upon the execution of the aforesaid agreement, Exhibit A, on January 18, 1930, I took possession of the assets of the defendant corporation and immediately caused an audit of the books of said corporation and an inventory to be made and completed. Attached hereto is a statement showing the assets and liabilities of the said defendant corporation derived from said audit, said statement being made a part hereof and marked Exhibit C.

4. On January 18, 1930, I procured an auctioneer to lot up the merchandise for sale, and had the merchandise nearly all arranged for the auction sale, when on January 21, 1930, this Court appointed a custodial receiver in this cause.

5. As soon as I took possession of the assets of the defendant corporation, I worked with all my energy to quickly liquidate the assets of the said defendant corporation. If it had not been for the appointment of the custodial receiver, the assets of said corporation would already have been sold. I believe that as assignee for the creditors under the agreement Exhibit A, I am thoroughly able to administer the assets of said corporation at a minimum expense to the creditors, and I verily believe that the administration of said assets by the receiver appointed by this Court, would result in a duplication of work entailing an unnecessary expenditure for duplicate administration.

6. I believe that the bill herein was filed with knowledge of the assignment for the benefit of creditors, said bill being filed by a single creditor. A great majority of creditors have indicated their desire, that as assignee under the agreement, Ex-

Affidavit of William C. Wolf.

hibit A, I continue the administration of the assets of the defendant corporation.

WILLIAM C. WOLF.

Sworn and subscribed to before me
this 27th day of January 1930.

Louis Stein,
Attorney at Law
of New Jersey.

10

Exhibit A.

AGREEMENT made this 17th day of January, 1930 between Hudson Upholstering Works Inc. of 49 Fremont Street, Jersey City, New Jersey, party of the first part hereinafter called the Debtor and William C. Wolf of 350 Madison Avenue, in the Borough of Manhattan, City of New York, party of the Second part hereinafter called the Trustee.

20

WITNESSETH :

WHEREAS, the debtor is engaged in the business of manufacturing upholstered furniture at 49 Fremont Street, Jersey City, New Jersey and is indebted to various of its creditors in amounts which it is unable to pay at maturity, and

30

WHEREAS, the debtor is desirous that all of its assets of every kind, nature and description pertaining to its business be liquidated and of having the same proportionately distributed among its creditors under the terms and conditions hereinafter set forth, and

WHEREAS, the party of the second part has in-

40

Exhibit A—Annexed to Affidavit of Wm. C. Wolf.

dedicated his willingness to accept a Deed of Trust of all of the assets of the debtor, including its bank account, Accounts Receivable, merchandise, wherever situated, deposits, claims of every kind, nature and description, furniture and fixtures, machinery, all books, records and memoranda used for the transaction of business,

10

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) each to each in hand paid, receipt of which is hereby acknowledged and in consideration of the mutual covenants and conditions hereinafter set forth, it is agreed as follows:

20

1. The Hudson Upholstering Works, Inc. hereby assigns, transfers, and sets over unto the Trustee all of its assets, tangible and intangible, of whatever nature and description and wheresoever situated, consisting of merchandise, fixtures, furniture, machinery, leaseholds, personal property, Accounts Receivable, cash in the bank or deposits in the bank or elsewhere, claims of every sort and description, trade names, good will, all books and records and memoranda used for the transaction of business, and all other property of every kind, nature and description belonging to it or to which it may be entitled.

30

2. The Trustee herein accepts the trust and agrees to perform the same to the best of his ability.

40

3. The Hudson Upholstery Works, Inc. the debtor herein, gives full power to the Trustee to carry on the business in such manner and at his discretion may seem to him to be proper and necessary and when he deems it advisable, to liquidate the assets and property in such manner and at his discretion as may seem proper and necessary.

Exhibit A—Annexed to Affidavit of Wm. C. Wolf.

4. The Trustee is authorized to dispose of the merchandise and all other property transferred to him by the terms of this agreement at public or private sale which in his discretion may seem proper and necessary.

5. The Trustee may collect, adjust, compromise and settle all and any accounts receivable, claims or demands existing in favor of the debtor. 10

6. The Trustee may adjust, compromise and settle any and all accounts payable, claims or demands existing against the debtor.

7. The Trustee shall be empowered to employ any person which may seem to him best in administering the trust or in carrying on the business of the debtor or in selling the property conveyed to him and may pay from the proceeds realized by him, all expenses incident to the trust including Trustee's fees, Counsel's fees, accountants' fees, custodian's fees or any salaries or expenses which may in his discretion seem proper in carrying out the trust and any indebtedness incurred by the Trustee in the liquidation of these assets shall be entitled to priority of payment. 20

8. The Trustee shall after making such payments for expenses of either continuing the business or of administration, distribute the balance received pro rata among all creditors. 30

9. The Trustee shall not be obliged to institute or take part in any litigation but may do so in his absolute discretion.

10. The Trustee shall not be liable to any acts of omission or commission, nor for any error of 40

Exhibit A—Annexed to Affidavit of Wm. C. Wolf.

law or mistake of judgment to the debtor or to the creditors or to any other person, it being expressly understood and agreed that the Trustee shall in no wise be subject to any personal liability whatsoever except for an act of wilful misconduct on his part.

10 11. All creditors becoming parties to this agreement may be required to file verified proofs of claim with the Trustee within sixty days from date hereof. In the event that any creditor holds obligations on which someone other than the Trustee is primarily liable, such claims shall be valid and recognized only so far as the same are unsecured or cannot be collected from the parties primarily liable.

20 12. In the event that any claims filed by any of the creditors shall be objected to by the Trustee or in the event that the Trustee shall be unable to agree with any creditors and to the extent to which the claim of such creditor shall be valid and recognized, then and in that event the difference between the creditor and the Trustee shall be submitted to arbitrators; the trustee appointing one arbitrator and the creditor appointing one arbitrator and the two arbitrators thus appointed shall
30 appoint a third disinterested umpire and the decision of a majority of such arbitrators as to any differences shall be final and binding upon all the parties hereto.

40 13. This Deed of Trust shall become binding and effective upon its being signed by the Trustee and the Debtor and the signature of any creditor to any counterpart or copy thereof shall be regarded as one instrument and shall make such creditor a party to this agreement.

Exhibit A—Annexed to Affidavit of Wm. C. Wolf.

14. The execution of this Deed of Trust and the acceptance of a payment or payments by creditors from the Trustee shall not be construed to be a release on the part of the creditors of their claim as against the debtor.

15. It is also understood and agreed that any lease or leasehold now existing in debtor's name are to be construed as part of the assets now being conveyed to the Trustee herein and it is hereby, by these presents, assigned, transferred and set over to the Trustee herein any such lease-holds. 10

16. It is understood and agreed that in the event of all creditors' obligations being satisfied in full or said creditors releasing the debtor and the Trustee of any and all claims to the moneys in the hands of the Trustee, that the surplus remaining in the hands of the Trustee shall be turned over to the debtor herein and the Trust herein created be deemed completed and terminated. 20

IN WITNESS WHEREOF, the Trustee has hereunto set his hand and seal, and the debtor has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officer the day and year first above written.

HUDSON UPHOLSTERING WORKS, INC. 30

By J. Pomerantz,

Pres.

M. Kimmel,

V. Pres.

William C. Wolf,

Trustee.

Attest:

Secretary

40

Exhibit A—Annexed to Affidavit of Wm. C. Wolf.

State of New York)
 City of New York }ss.
 County of New York.)

On this 17th day of December, 1930 before me came Julius Pomeranz, to me known and who being by me duly sworn did depose and say that he
 10 resides in the Borough of Brooklyn, City of New York; that he is the President of the Hudson Upholstering Works Inc. the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

20

ANNE O'BRIEN.

State of New York)
 City of New York }ss.
 County of New York.)

On this 17th day of January, 1930 before me came William C. Wolf, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly
 30 acknowledged to me that he executed the same.

ANNE O'BRIEN.

40

Exhibit B.

M. Abramowitz—46 E. 21st St., N. Y. C.	\$619.36	
Bushwick Press—1009 Eighth Ave., Brook-		
lyn, N. Y.	46.50	
Belgam Corp.—40 E. 22nd St., N. Y. C.	177.60	
Behlen Bro.—10 Christopher St., N. Y. C.	46.01	
Decorative Fabrics Corp. 2 W. 46th St., N.		
Y. C.	1782.69	10
Eisen Bros.—1102 Jefferson St., Hoboken,		
N. J.	456.00	
J. Gosset—52 E. 21st St., N. Y. C.	957.34	
Hausman Bag Co.—203 Greenpoint Ave.,		
Brooklyn, N. Y.	90.00	
Hauptman Feather Co.—77 Wallabout St.,		
Brooklyn, N. Y.	1245.50	
Kay Mfg. Co.—2 Warren St., N. Y. C.		
(Brooklyn)	1215.85	
Kay & Todd Co.—Elks Mills, Md.	726.74	20
La France Textile Ind.—41 E. 21st St., N.		
Y. C.	1294.68	
North Wales Tapestry Co.—North Wales,		
Pa.	178.79	
National Patent Reed Co.—Erasel Bldg.,		
Phil., Pa.	6.90	
Practical Sample Card Co.—123 Bleecker		
St., N. Y. C.	22.50	
E. C. Ross—597 E. 133rd St., N. Y. C.	43.50	30
Standard Mohair Plush Co.—188 Providence		
St., Boston, Mass.	1780.60	
Seaboard Cord & Twine Co.—84 Walker		
St., N. Y. C.	233.74	
Stewart & Sparry—66 Leonard St., N. Y. C.	154.83	
Textile Supply Co.—3 W. 29th St., N. Y. C.	1732.32	
Tucker Mfg. Co.—820 E. 5th St., N. Y. C.	199.65	
Weston Co.—30 E. 21st St., N. Y. C.	2205.64	
F. P. Woll Co.—Frankford, Pa.	186.50	
Max Neumann	367.00	40

Exhibit C.

HUDSON UPHOLSTERING WORKS, INC.
TENTATIVE STATEMENT OF ASSETS & LIABILITIES
AS OF JANUARY 18, 1930

	<i>Assets</i>	<i>Book Value</i>	<i>Expected To Realize</i>
	Accounts Receivable—Unassigned	3,315.65	2,984.08
	Accounts Receivable—Assigned to Commercial Credit Corporation	9,466.25	2,910.76
	Notes Receivable	1,166.25	40.00
10	Cash—Industrial National Bank Held by Bank on account of \$1,000.00 note	279.55	
	Cash—Commercial Trust Co.	1.18	1.18
	Cash—Bank of United States	.20	.20
	Merchandise Inventory	9,010.95	9,010.95
	Machinery, Furniture & Fixtures and Equipment	458.68	225.00
	Total Assets,	23,698.71	15,172.17
20	<i>Liabilities</i>	<i>Book Value</i>	<i>Expected To Rank</i>
	<i>Secured:</i>		
	Commercial Credit Corporation (Exclusive of January charges) This amount deducted from Accounts Receivable assigned.	5,608.86	
	<i>Partly Secured:</i>		
	Industrial National Bank Holding Cash Balance of \$279.55	1,000.00	720.45
30	<i>Preferred:</i>		
	Salaries	400.00	400.00
	Salaries—N. G. checks	335.41	335.41
	<i>Not Secured:</i>		
	Merchandise Creditors	25,142.32	25,142.32
	Loans & Exchanges—Creditors	1,604.77	1,604.77
	Total Liabilities	34,091.36	28,202.95
40	Deficiency	10,392.65	13,030.78

Order Continuing Assignee.

Filed Jan. 28, 1930.

IN CHANCERY OF NEW JERSEY.

STANDARD PARLOR SUITE COM- PANY, Complainant, vs. HUDSON UPHOLSTERING WORKS, INC., a corporation, Defendant.	}	On Bill, &c. Order.	10
--	---	------------------------	----

This matter being opened to the Court by Max
 L. Rosenstein, solicitor for complainant, and
 Eichmann & Seiden, solicitors for William C.
 Wolf, assignee for the benefit of creditors of
 Hudson Upholstering Works Inc. and Bushwick
 Press, Belgam Corporation, Bahlen Bros., Decor-
 ative Fabric Corporation, Eisen Bros., Joseph
 Cosset, Hausman Bag Company, Hauptman
 Feather Company, Kay Manufacturing Company,
 Kay & Todd Company, La France Textile Indus-
 tries, North Wales Tapestry Company, National
 Patent Reed Company, Practical Sample Card
 Company, E. C. Ross, Standard Mohair Plush
 Company, M. Abramowitz, Seaboard Cord &
 Twine Company, Stewart & Sparry, Textile Sup-
 ply Company, Tucker Manufacturing Company,
 Weston Company, F. P. Woll Company, and Max
 Neumann, creditors of Hudson Upholstering
 Works, Inc., upon the return of an order directing
 the creditors and stockholders of Hudson Uphol-
 stering Works, Inc. to show cause why a Receiver
 should not be appointed for said corporation; and

20

30

40

Order Continuing Assignee.

the said Eichmann & Seiden as solicitors for the parties above set forth having on the return of the said order to show cause presented a petition showing that under an agreement, dated January 17, 1930, Hudson Upholstering Works, Inc. had executed and delivered to William C. Wolf an
10 agreement assigning the assets of said corporation for the equal benefit of all creditors, and that the said William C. Wolf had undertaken and proceeded with the administration of said trust prior to the filing of the bill for a Receiver herein, and that the great majority of said creditors desire that the said assets be administered by said William C. Wolf as assignee instead of by a Receiver of this Court;

20 It is on this 28th day of January, 1930 on motion of Eichman & Seiden, solicitors for William C. Wolf, and the various creditors hereinabove mentioned,

ORDERED that William C. Wolf, assignee for the benefit of creditors, be made a party defendant in this suit; FURTHER ORDERED that said William C. Wolf file a surety company bond with the Clerk of this Court in the sum of \$10,000 to the Chancellor of the State of New Jersey conditioned for the faithful performance of his duties under the aforesaid agreement; said bond to be approved by this Court or one of the Special Masters thereof; FURTHER ORDERED that upon filing said bond, Joel Gross, who was appointed custodial receiver in this cause, be discharged as custodial receiver and that the said Joel Gross be allowed as compensation for his services, the sum of \$150. besides disbursements incurred by him, a statement of which
30 shall be filed by him in this cause, said sum to be
40

Order Continuing Assignee.

paid by William C. Wolf, assignee for the benefit of creditors forthwith, out of the assets of said corporation.

FURTHER ORDERED that upon the filing of said bond, said custodial receiver turn over any and all assets of said corporation in his hands to the said William C. Wolf, assignee for the benefit of creditors, and that the said William C. Wolf, assignee as aforesaid, proceed to administer and liquidate the assets of said corporation pursuant to the aforesaid assignment for the benefit of creditors, and pursuant to law. 10

FURTHER ORDERED that the restraints contained in said order to show cause in so far as they affect William C. Wolf, assignee for the benefit of creditors, and prevent him from administering and liquidating the assets of said corporation under the agreement aforesaid for the benefit of creditors, be and the same are hereby dissolved. 20

FURTHER ORDERED that the order to show cause returnable this day, be continued to the 24th day of February, 1930, at 10 o'clock in the forenoon or as soon thereafter as the Court can attend to the same, at the Chancery Chambers, 1 Exchange Place, Jersey City. 30

E. R. WALKER,
C.

Respectfully advised,
JOHN BENTLEY,
V. C.

Notice of Appeal.

Filed Feb. 11, 1930.

IN CHANCERY OF NEW JERSEY.

10	Between STANDARD PARLOR SUITE COM- PANY, Complainant, and HUDSON UPHOLSTERING WORKS, INC., a corporation, Defendant.	}	On Bill, Etc. Notice of Appeal.
----	---	---	---

20 The complainant, Standard Parlor Suite Com-
 pany, hereby appeals from the interlocutory order
 made in the above entitled cause on January 28,
 1930, and from the whole and every part thereof,
 to the Court of Errors and Appeals in the Last
 Resort in All Causes.

Dated: February 5, 1930.

30 MAX L. ROSENSTEIN,
 Solicitor for and of Counsel with the Com-
 plainant, Standard Parlor Suite Company.

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

MAX L. ROSENSTEIN,
 Of Counsel with Complainant,
 Standard Parlor Suite Company.

40

Amended Notice of Appeal.

Filed April 19, 1930.

77-212

IN CHANCERY OF NEW JERSEY.

Between STANDARD PARLOR SUITE COM- PANY, Complainant, and HUDSON UPHOLSTERING WORKS, INC., a corporation, <i>et al.</i> , Defendants.	}	On Bill, Etc. Amended Notice of Appeal.	10
--	---	--	----

The complainant, Standard Parlor Suite Com- 20
 pany, hereby appeals from the interlocutory order
 made in the above entitled cause on January 28,
 1930, made by the Chancellor on the advice of
 Vice-Chancellor Fallon, and from the whole and
 every part thereof, to the Court of Errors and
 Appeals in the Last Resort in All Causes.

Dated: February 5, 1930.

MAX L. ROSENSTEIN, 30
 Solicitor for and of Counsel with the Com-
 plainant, Standard Parlor Suite Company.

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

MAX L. ROSENSTEIN,
 Of Counsel with Complainant,
 Standard Parlor Suite Company.

40

Amended Notice of Appeal.

Filed April 26, 1930.

77-212

IN CHANCERY OF NEW JERSEY.

10	Between STANDARD PARLOR SUITE COM- PANY, Complainant, and HUDSON UPHOLSTERING WORKS, INC., a corporation, <i>et al.</i> , Defendants.	}	On Bill, Etc. Amended Notice of Appeal.
----	--	---	--

20 The complainant, Standard Parlor Suite Company, hereby appeals from the interlocutory order made in the above entitled cause on January 28, 1930, made by the Chancellor on the advice of Vice-Chancellor Bentley, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated April 25th, 1930.

30 MAX L. ROSENSTEIN,
 Solicitor for and of Counsel with the Com-
 plainant, Standard Parlor Suite Company.

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

MAX L. ROSENSTEIN,
 Of Counsel with Complainant,
 Standard Parlor Suite Company.

40

Petition of Appeal.

Filed Feb. 25, 1930.

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

10	STANDARD PARLOR SUITE COM- PANY, Complainant-Appellant, vs. HUDSON UPHOLSTERING WORKS, INC., a corporation, Defendant-Appellee.	}	On Appeal from Court of Chancery. Petition of Appeal.
----	---	---	---

20 *To the Honorable the Court of Errors and Appeals
in the Last Resort in All Causes:*

The petition of Standard Parlor Suite Com-
 pany, the appellant in the above entitled cause,
 respectfully shows that:

1. Petitioner finds itself aggrieved by an in-
 terlocutory order made in the Court of Chancery,
 by his Honor, Edwin Robert Walker, Chancellor
 of the State of New Jersey, bearing date January
 30 28, 1930, in a certain cause in said Court of Chan-
 cery wherein the said Standard Parlor Suite Com-
 pany was complainant, and the said Hudson Up-
 holstering Works, Inc. a corporation of New Jer-
 sey, was defendant, in this respect, to wit, that the
 said order adjudges that William C. Wolf therein
 termed to be the assignee for the benefit of credi-
 tors of Hudson Upholstering Works, Inc., be made
 a party defendant in said cause and directed said
 40 William C. Wolf to file a surety company bond

Petition of Appeal.

in the sum of \$10,000.00 to the Chancellor of New Jersey, conditioned for the faithful performance of his duties as such assignee, and which Order discharges Joel Gross, Custodial Receiver of the property of the defendant corporation, upon the filing of the bond by the said William C. Wolf, as assignee as above stated, and which Order further directed the said Joel Gross as Custodial Receiver to turn over any and all assets of the defendant corporation in his hands to the said William C. Wolf, as assignee, with instructions to said William C. Wolf to proceed to administer and liquidate the assets of the said defendant corporation, pursuant to the assignment for the benefit of creditors therein referred to and which Order further dissolved a distraint against William C. Wolf as assignee from administering and liquidating the said assets of said defendant corporation,

And petitioner appeals from the Order of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that:

(A) The alleged assignment for the benefit of creditors made by the defendant corporation to said William C. Wolf as alleged assignee, was illegal and void, and contrary to law in all respects, for the reason that the same was not recorded in the manner provided for by law, and the alleged assignment to said William C. Wolf for the benefit of creditors of the defendant corporation was in contravention of Chapter 234 Laws of 1928 of New Jersey, entitled "An Act to amend an act concerning general assignments revision of 1899."

(B) The said Order of the Court of Chancery was erroneous in that William C. Wolf, the alleged assignee for the benefit of creditors of the

Petition of Appeal.

defendant corporation was not a party in interest, entitling him to be made a party defendant in said cause.

10 (C) That the Chancellor erred in that by the terms of his Order of January 28, 1930, complained of, full force and effect was given to a so-called assignment for the benefit of creditors executed by the defendant corporation to the said William C. Wolf, which alleged assignment was null and void.

20 (D) The defendant corporation being admittedly insolvent and having suspended its ordinary business for want of funds to carry on the same should have been adjudged insolvent by the Chancellor, and a Statutory Receiver of its property appointed, as provided for by the general corporation act of New Jersey, Revision of 1896.

30 (E) The Chancellor erred in discharging the Custodial Receiver, a resident of this State, and directing the said Custodial Receiver to surrender all of the property of the defendant corporation in his possession to said William C. Wolf, acting under an illegal and void alleged assignment for the benefit of creditors, said alleged assignee admittedly being a non-resident of New Jersey.

Petitioner therefor prays that the said Order of the Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to the Court shall seem proper.

MAX L. ROSENSTEIN,
Solicitor for and of Counsel with Appellant.

Answer to Petition of Appeal.

Filed Feb. 21, 1930.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

STANDARD PARLOR SUITE COM- PANY, Complainant-Appellant,	}	On Appeal from Court of Chancery. Answer to Petition of Appeal.	10
vs.			
HUDSON UPHOLSTERING WORKS, INC., a corporation, Defendant-Appellee.			

The answer of William C. Wolf, assignee for the benefit of creditors appellee, to the petition of appeal of Standard Parlor Suite Company, the above named appellant. 20

This appellee not admitting the truth of any or all of the matters in said petition of appeal contained, for answer thereto nevertheless admits that an order was on January 28, 1930, made and entered in the Court of Chancery of New Jersey in the above entitled cause, for the purposes in said petition mentioned, and as therein set forth; but as to the substance and form of said order this appellee begs leave to refer thereto when the same shall be produced. 30

This appellee is advised and believes that the said order is agreeable to equity; and he prays that the same may be affirmed with costs to be taxed in favor of this appellee.

EICHMAN & SEIDEN,
Solicitors for and of Counsel with Appellee. 40

Notice of Hearing.

Filed April 28, 1930.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10 STANDARD PARLOR SUITE COM-
PANY,
Complainant-Appellant,

vs.

HUDSON UPHOLSTERING WORKS,
INC., a corporation, and WIL-
LIAM C. WOLF, Assignee for
the Benefit of Creditors of the
Hudson Upholstering Works,
Inc.,

20

Defendants-Appellees.

On Appeal
from Court
of Chancery.Notice of
Hearing.

To the Appellee of William C. Wolf, Assignee for
the Benefit of Creditors of the Hudson Up-
holstering Works, Inc.:

30 Take Notice that the argument of the appeal in
the above entitled cause will be brought on at the
next term of the Court of Errors and Appeals to
be held at State House at Trenton, on May 20,
1930, at the hour of 11 o'clock in the forenoon or
as soon thereafter as counsel can be heard.

MAX L. ROSENSTEIN,
Solicitor for and of Counsel with Appellant.

New Jersey Court of Errors and Appeals.

Between

STANDARD PARLOR SUIT COMPANY,
Complainant-Appellant,

and

HUDSON UPHOLSTERING WORKS, INC.,
A Corporation, ET AL.
Defendant-Appellee.

On Appeal from the
Court of Chancery.

**BRIEF FOR COMPLAINANT-
APPELLANT.**

Statement of the Case.

On January 20, 1930, the complainant, as a creditor of the defendant, Hudson Upholstering Works, Inc., a New Jersey Corporation, in a sum in excess of \$600, filed a bill in the Court of Chancery of New Jersey, seeking among other things, an adjudication of insolvency of said corporation, the appointment of a Statutory Receiver, with the usual powers and for discovery to be made of all the property of the defendant corporation, for the benefit of all of its creditors in the manner provided for by Statute (S. C. pp. 2-5).

The basis of the Bill of Complaint was that the defendant, Hudson Upholstering Works, Inc., had maintained its place of business at 49 Freeman Street, Jersey City, Hudson County, New Jersey, had become insolvent and had admitted such condition and its inability to continue in business, and had actually suspended the payment of its obligations to its creditors on or about the 17th day of January 1930, at which date, the defendant corporation transferred all of its assets to one, William

C. Wolf, a non-resident of this State, supposedly in trust for the benefit of its creditors, and which conveyance was not made in accordance with the Laws of this State, relating to the assignment for the benefit of creditors.

It was alleged in the Bill, that the transferee had given notice of a proposed sale of the assets of the said corporation, and that such a sale would be to the irreparable damage to the defendant, its stockholders and creditors, and that the assignment and transfer of said assets to said William C. Wolf, was in violation of the Laws of this State (S. C. p. 2, Pars. 5 and 6).

Upon consideration of the Bill, and affidavit in support thereof, an Order was made by the Chancellor on the 20th day of January 1930, restraining the defendant corporation from transferring any of its property, excepting to a Receiver appointed by the Court, and appointing Joel Gross, who is a member of the bar, and a resident of this State, Custodial Receiver of the defendant corporation, with all the powers incident thereto. This order by its terms, directed the defendant, its creditors, and stockholders as they became known to the Custodial Receiver, to show cause on the 27th day of January 1930, before the Chancellor why an injunction should issue and Receiver be appointed, according to the prayer of the Bill (S. C. pp. 9-11).

On the return day of the Order to show cause, above referred to, after service of notice thereof upon all parties in interest, an appearance was made in behalf of William C. Wolf, the alleged assignee for the benefit of creditors for the defendant corporation, and certain creditors of the defendant by the presentation of a petition (S. C. pp. 15-18).

The petition was verified only by William C. Wolf, the alleged assignee (S. C. pp. 19-21). Attached thereto, marked exhibit "A" (S. C. pp. 21-26) was a copy of the agreement by the terms of which, all of the assets of the defendant corporation were con-

veyed or attempted to be conveyed to the said William C. Wolf, and an examination of this document, and the affidavit of the transferee therein named does not disclose that the same was ever recorded up to that time or intended to be recorded or that the assets of the defendant corporation were to be dealt with under the Laws of New Jersey.

The said assets were to be distributed under the terms and conditions of the said agreement (S. C. p. 21, lines 32-38). Likewise attached thereto, was a statement marked Exhibit "C" (S. C. p. 28), indicating clearly the insolvency of the defendant corporation.

Upon the return of the Order to show cause on January 27, 1930, solicitor of the complainant, moved for an adjudication of insolvency, the defendant being admittedly insolvent, and for the appointment of a Statutory Receiver.

The Court upon consideration of the petition, affidavit, and exhibits submitted in behalf of said William C. Wolf, and supposedly for creditors, made an Order on January 28, 1930, directing that the said William C. Wolf be made a party defendant in this suit, and that he file a surety company bond with the Clerk of the Court of Chancery, in the sum of \$10,000 in favor of the Chancellor, conditioned for the faithful performance of his duties *under the agreement exhibit "A"*, and discharged Joel Gross, Custodial Receiver, upon the filing of the aforesaid bond and directed the said Custodial Receiver to turn over all of the assets of the defendant to the said William C. Wolf to administer the same (S. C. pp. 29-31).

In particular the said Order dissolved the injunction contained in the original Order to show cause, *which prevented the said William C. Wolf from administering and liquidating the assets of said corporation under the agreement aforesaid* (S. C. p. 31, lines 16-22).

It is from this Order that this appeal is taken. The appellant relies on the following grounds of appeal:

1. The alleged assignment for the benefit of creditors made by the defendant corporation to said William C. Wolf, as alleged assignee, was illegal and void and contrary to law, in all respects for the reason that the same was not recorded in the manner provided for by law, and the alleged assignment to said William C. Wolf for the benefit of creditors of the defendant corporation was in contravention of chapter 234 of the Laws of 1928 of New Jersey, entitled "an Act to amend an Act concerning General assignments (Revision of 1899)".

2. The Court erred in making William C. Wolf, a party defendant to said cause for the reason that the said William C. Wolf, was not a party in interest as contemplated by Law, entitling him to be heard in the cause.

3. That the Court erred in giving full force and effect to the alleged assignment exhibit "A" and which assignment was by express statutory provision, null and void.

4. That the Court erred in failing to adjudge the Hudson Upholstering Works, Inc., insolvent as provided for by General Corporation Act of New Jersey (Revision of 1896), and in failing to appoint a Statutory Receiver of its property, in view of the defendant's admitted insolvency, and its actual suspension of business for want of funds to carry on the same.

5. The Court erred in discharging the Custodial Receiver, a resident of this State and directing him to surrender all of the property of the defendant in his possession to the said William C. Wolf, a non-resident, to administer the same under the terms of an illegal and void instrument.

POINT ONE.

The alleged assignment for the benefit of creditors made by the defendant corporation to William C. Wolf as alleged assignee, was void in its inception, and contrary to law, in all respects.

The General corporation Act of New Jersey (Revision of 1896), and in particular Section 64, provides:

“Whenever any corporation should become insolvent or shall suspend its ordinary business for want of funds to carry on same, neither the directors, officers or any agent of the corporation shall sell, convey, assign, or transfer any of its estates, choses in action, goods, chattels, rights or credits lands or tenements; nor shall they or either of them make any such sale, conveyance, assignment, or transfer in contemplation of insolvency, and every such sale, conveyance, assignment or transfer shall be utterly null and void as against creditors, provided that a bonafide purchaser for a valuable consideration before the corporation should have actually suspended its ordinary business by any person without notice of such insolvency, or of the sale being made in contemplation of insolvency should not be invalid or impeached (Laws 1896, chapter 185, p. 298, Sec. 64 C. S. p. 1638, Sec. 64).”

This section of the Law has been considered by the Courts and it has been interpreted to mean that a general assignment for the benefit of creditors is permitted by (P. L. 1899, Sec. 24, p. 146), the assignee in such case being removable by the Court of Chancery, upon the appointment of a Receiver. (Barnett vs. Perth Amboy, 73 N. J. Eq. 62.) The

law relating to assignments for the benefit of creditors, entitled "an Act concerning General Assignments (Revision of 1899) (Sec. 3 thereof, C. S. 115), sets out in detail the duties of an assignee, to be as follows:

"The said assignee, upon receiving such general assignment mentioned in the preceding section of this act, *shall forthwith record the same*, if the same has been acknowledged or proved according to law, in the county where such assignor resides, and in any other counties or states where he may deem it necessary to record the same, and shall also forthwith give public notice by advertising at least once a week for four weeks successively in one of the newspapers printed in this State, circulating in the neighborhood where such creditors reside, making known thereby that such general assignment has been made, and when made, and setting forth a general description of any business carried on by the assignor and the place where the same was so carried on, and that all claims of creditors against said estate must be presented under oath or affirmation to the said assignee within three months from the date of said general assignment, or the same will be barred from coming in for a dividend of said estate; and the said assignee shall also, within thirty days after the date of said general assignment, mail a copy of said notice, with postage prepaid, to every creditor or said assignor, addressed to such creditor at his usual post office address, so far as said assignee can ascertain the same; and the said assignee shall forthwith exhibit to the Surrogate of the County wherein such assignor resides, under oath or affirmation, a true inventory and valuation of said estate so far as has come to his knowledge, and shall, after exhibiting such inventory and valuation, forthwith enter into bond to the ordinary of this state, in such amount and with such sufficient security as the Orphan's Court of the said County, or any Judge thereof, may ap-

prove, for the faithful performance of his trust, which bond shall be filed in the office of the Surrogate of the said County; *until such inventory, valuation and bond shall be filed the said assignee shall not proceed to the discharge of his trust under the said general assignment*, further than may be necessary for the preservation of the assigned estate; provided, however, that the said Orphan's Court, or any Judge thereof, before such inventory, valuation and bond shall be filed, may, by order, authorize the said assignee to perform such other acts in the administration of said trust as said Court or Judge may deem necessary for the protection of said creditors upon such terms as said Court or Judge may impose; in case of failure to give such notice, or mail the same as above provided, the same Orphan's Court may extend and fix the time for the presentation of claims, and the giving and mailing notice thereof as aforesaid (P. L. 1899, p. 147.)" (Italics ours).

In 1928 the Legislature apparently recognized that the Act relating to assignments for the benefit of creditors required strengthening. Such recognition must be deemed to have come as a result of abuses which may have arisen in administering insolvent estates. The law was amended by "an Act to amend an Act concerning General assignments (Revision of 1899), Laws of 1928, chapter 234, which provides, *inter alia*, Sec. 22, Par. 6:

"Any and all assignments for the benefit of creditors not made in accordance with the provisions of the act to which this act is amendatory shall be null and void."

The instrument under which the alleged assignee in the case at bar took possession of the property of the defendant corporation was never intended to be an assignment for the benefit of creditors as contemplated by the Laws of New Jersey, and a mere reading of this instrument, exhibit "A" (S. C.

pp. 21-25), discloses an amazing lack of intent to deal with the property of this corporation in the manner provided for by law. Indeed the language of this instrument (S. C. p. 21, lines 32-38) discloses that it is intended that the property of the defendant corporation be liquidated and distributed "under the terms and conditions hereinafter set forth". An examination of these terms as compared with the obligations imposed upon an assignee for the benefit of creditors as provided for by law, demonstrates most forcibly the illegality and invalidity of the supposed trust attempted to be created.

The relationship between the defendant corporation and said William C. Wolf in its inception, was illicit in the eyes of the law, and the mere naming of the said William C. Wolf in the instrument referred to as "trustee", did not sanctify the relationship.

Assuming for the sake of discussion alone, that the instrument was an assignment for the benefit of creditors in substance, if not in form, the law relating to assignments for the benefit of creditors was grossly violated by the assignee, for he failed to perform the duties imposed upon him by law. The instrument was not recorded prior to the filing of the Bill of Complaint against the defendant corporation, and indeed, there is no claim on the part of the alleged assignee, that the instrument was recorded at any time prior to the appointment of the Custodial Receiver, nor was there an inventory, valuation and bond filed by the assignee as provided for by law, prior to the appointment of the Custodial Receiver. The conduct of the assignee discloses either willful violation of the law in this respect, or gross negligence.

On the other hand, the complainant-appellant acted with due diligence and on the 20th day of January 1930, caused its Bill of Complaint to be

filed in the Court of Chancery, and, upon the appointment of the Custodial Receiver, and the filing of the Bill of Complaint, the property of the defendant corporation passed into *custodia legis*. From that moment on, no conveyance, or attempted conveyance of the property, of the defendant corporation could have been legal in any respect, and any subsequent attempt to comply with the law relating to the assignment for the benefit of creditors, is as much a nullity, as the instrument itself.

This instrument, having by express statutory declaration fallen within the category of void and illegal acts, cannot thereafter by any move be validated.

In Re Knight vs. Packer, 12 Eq. 214, Chancellor Williamson passed upon the validity of the assignment for the benefit of creditors which had been attacked by judgment and execution creditors of the assignor. The assignment was made on the eve of the recovery of a judgment by the complainant against the assignor.

The instrument of assignment contained directions with respect to the liquidation of the property of the assignor, in contravention of the language of the statute, relating to assignments for the benefit of creditors. The Chancellor found the assignment to be in equity a legal fraud, and declared it void in the following language at page 217:

“This Act is for the benefit of creditors and not of the debtor. It is not to prevent the debtor’s property from being appropriated by the creditors by due course of law, but it provides a due course of law by which it may be so appropriated. But the debtor in this cause has not availed himself of the benefit of the statute. He has chosen his own mode of assignment. He has directed his trustees to sell his property at public auction or private sale, and to pay such creditors as shall within a year exhibit their claims under oath or to hold the surplus for his benefit.”

At page 219, the Chancellor said:

“The assignment on the face of it is made for the benefit of creditors, but it is unreasonable and prejudicial to their interest. It puts the property beyond their reach. It is an assignment for the benefit of creditors, and yet deprives them of the benefit of the statute regulating such an assignment. It dictates terms to the creditors at variance with the protection afforded them by the statute. There is *no* list of creditors or any intimation as to their number or as to the amount of their debts and it does not give to them what they are entitled to by law—security from the trustees for the faithful execution of the trust.

I think such a deed is void against the creditors. Whether the debtor executed it with a fraudulent intent or not, it is in violation of the rights of creditors. It delays them in the collection of their debts, and must be regarded, in equity, as a legal fraud, and as such, declared void as against them.”

In the case at bar, the assignment, if one may call it such, was made during insolvency, which condition is admitted on the face of the instrument.

Although the law provides the means by statute under which the property of the defendant could be administered, the defendant and the assignee chose their own method of assignment.

The instrument deprived the creditors of the benefit of the statute regulating assignments. It dictates terms to the creditors at variance, with the protection afforded them by statute. The facts in the case at bar are analagous substantially to the facts in *Knight vs. Packer, supra*, and in the language of the Chancellor in that case, this assignment having been attacked in equity, must be regarded as a legal fraud, and as such declared void as against the complainant-appellant as a creditor.

POINT TWO.

The alleged assignee, in law, was a stranger to the proceedings, and was not entitled to be made a party defendant or to be heard in the cause.

(Sec. 24) of the Act concerning assignment for the benefit of creditors (Revision of 1899) provides:

“Any corporation organized under the Laws of this State, may make a General Assignment under the provisions of this act, etc. * * *”

and it is further provided that if an adjudication of insolvency shall be made of such corporation, that the assignee shall present his accounts to the Court of Chancery.

“The Assignee may be made a party defendant in any appeal or petition filed in said Court of Chancery, to have such corporation adjudicated insolvent, and a Receiver thereof appointed, and may be restrained, enjoined and removed in such proceeding, and subjected to all Orders and decrees therein.”

Applying these provisions of the law to the case at bar, it is perfectly obvious, that the assignee, so called, is not entitled to be heard in respect to these proceedings. He was not entitled to be made a party defendant in the cause, for the act specifically says, that any corporation organized under the Laws of this State, may make a general assignment *under the provisions of this Act.*

The assignment for the benefit of creditors in the present instant, was not only made not under the

provisions of the Act referred to, but in distinct violation thereof. Section 24 further clearly provides:

“but in case the said corporation shall at any time after the making of such General assignment be adjudged insolvent and a Receiver thereof be appointed by the Court of Chancery of this State * * * the said assignee may be made a party defendant * * *”

In this case, this further legal requirement, necessary to entitle William C. Wolf to be made a party defendant is lacking. The Court below failed to adjudge the defendant corporation insolvent, so that the two essential pre-requisites to the naming of the assignee as party defendant, are notoriously absent:

- A. No assignment was made under the provisions of the assignment Act.
- B. There is no adjudication of insolvency in the cause.

POINT THREE.

The Court erred in discharging the Custodial Receiver, reinstating the assignee under the void assignment, and subjecting the property of the defendant to dual administration and expense.

In point of time in equity and law, the Complainant-Appellant was diligent and the equitable maxim that “as between equal equities the first in time will prevail,” may be suitably applied in this instance, charitably assuming that the Complainant-Appellant and the defendant-assignee stood on the same basis.

Complainant-Appellant was the first to assert its legal rights by applying to the Court of Chancery as a Court of Equity, to have the property of the defendant corporation administered as provided for by law.

The Complainant-Appellant seeks not an advantage for itself, but the benefit of the application of the provisions of the Corporation Act of New Jersey for all creditors, including itself.

When its Bill of Complaint in the Court of Chancery was filed, and the Court assumed jurisdiction, by appointing a Custodial Receiver, and issued an injunction, *pendente lite*, the property of the defendant passed into *custodia legis*.

Re Scranton Button Co. vs. Neonlite Corp., 105 N. J. Equity 208, 149 Atl., p. 369.

In the Scranton Button case, the Chancellor had before him for consideration, an application to dismiss a bill against the defendant alleged to be an insolvent corporation, and to discharge the Receiver appointed. It appears that a Bill of Complaint for the same relief had been filed by a creditor on November 23, 1929, and upon consent of the defendant corporation, Receivers were appointed.

On November 25, 1929, a Bill of Complaint was filed by the Scranton Button Co. against the same defendant, and upon the advice of another Vice Chancellor, a Receiver was subsequently on December 2, 1929, appointed in the second cause.

The question before the Chancellor was, which of the two different Bills having for their object the appointment of a Receiver, for a corporation alleged to be insolvent, should prevail, and rules of

practice were interpreted by the Chancellor at page 370. The Chancellor said:

“Receivers are arms of the Court of Chancery — (See *Seidler vs. Branford Restaurant*, 97 N. J. Eq., pp. 531-535, 128 Atl., p. 166) and the appointment of Receivers in the first suit put the property of the defendant corporation into *custodia legis* (31 C. J. 356)”

“Where a Court has acquired jurisdiction over the funds of an insolvent corporation, and has appointed Receivers to administer them, a coordinate branch of the same Court cannot take the funds out of the hands of such Receivers, and place them in possession of others appointed by it in another proceeding.”

“*People vs. Murry Hill Bank* (10 App. Div. 328, 41 N. Y. S. 804).” (Italics ours.)

In the instant case, the property of the defendant had properly passed into the custody of the Court of Chancery, and in directing that the Custodial Receiver, appointed to take charge of said property, turn over the same to the assignee under an illegal assignment, the law as interpreted by the Courts was clearly violated.

Furthermore, the discharge of the Custodial Receiver was a gross abuse of discretion, for it has been held that a Receiver should not be discharged except for cause, and that such discharge should not be arbitrary and capricious (see *McCullough vs. Merchants Loan & Trust Co.*, 29 N. J. Eq. 217).

Grounds for removal of a Receiver are discussed at considerable length in *Street vs. Maryland* (58 Fed. 47), in which case it was held that a Receiver, who is competent, efficient and impartial, will not be removed, merely because he is objectionable to one of the parties, even though he is a controlling stockholder.

In the case at bar, the Custodial Receiver, who was discharged, is a member of the bar, in whom

the Court obviously had full and complete confidence in the first instance, and whose integrity and fitness has at no time been challenged.

The Order of the Court below, sought to be reversed, has had a paralyzing effect upon the Bill of Complaint of the Complainant, and has left it inanimate and suspended. The Court failed to adjudge the defendant corporation insolvent, although it is admittedly so, and thereby deprived the Complainant-Appellant of the right to seek its remedies under the Corporation Act of New Jersey.

The same Order authorized the assignee to file a bond to the Chancellor in the sum of \$10,000, for which there is no provision whatever under any law of this State. *The bond is conditioned for the faithful performance of the assignee's duties under the agreement Exhibit "A" (C. S. p. 30, lines 24-33).*

If the assignee were to attempt to perform the duties required of him by the terms of this agreement, he would be openly violating the laws of this State on this subject.

It is significant to note from the Order complained of, that the assignment proceedings have not been terminated, although Section 24 of the Act concerning general assignments of 1899 provides:

“the jurisdiction of the said Orphan's Court in the premises, shall terminate, and the said estate shall be administered as assets of an insolvent corporation, in the same manner as if no such General assignment had been made (P. L. 1899, p. 156).”

We therefore have a most unusual situation. The proceedings in the Court of Chancery are suspended, and rendered powerless, and the assignee is attempting to administer and liquidate the assets of the defendant corporation under the assignment proceedings.

There is a duplicity of proceedings, dual expense and an unlawful deprivation of the rights of Complainant-Appellant (see *Steinberg vs. Wolff*, 57 N. J. Eq. 389, p. 399).

Conclusion.

For the reasons advanced in the foregoing argument, it is respectfully urged that the Order of January 28, 1930, made by the Court of Chancery, in this cause, should be reversed, with costs to the Complainant.

Respectfully submitted,

MAX L. ROSENSTEIN,
Of counsel with
Complainant-Appellant.

New Jersey Court of Errors and Appeals

Between STANDARD PARLOR SUIT COMPANY, Complainant-Appellant, and HUDSON UPHOLSTERING WORKS, INC., a corporation, <i>et al.</i> , Defendant-Appellee.	}	On Appeal from the Court of Chancery.
--	---	--

**BRIEF OF
DEFENDANT-APPELLEE.****Statement.**

On January 17, 1930, the defendant, Hudson Upholstering Works, Inc., a New Jersey corporation, made and executed an assignment of all its assets and property to William C. Wolf, as assignee for the equal benefit of its creditors, which assignment was made in New York City, on that day. On January 20, 1930, complainant filed a bill in the Court of Chancery of New Jersey, seeking to declare the corporation insolvent, and praying for the appointment of a receiver for said corporation. Upon the filing of the bill, the Court of Chancery on January 20, 1930, made an order restraining the corporation from exercising any of its powers and appointed Joel Gross, custodial receiver of the corporation, and further ordering creditors and stockholders to show cause on January 27, 1930, why an injunction should not issue and a receiver be appointed according to the prayer of the bill of com-

plaint. Upon the return of that order to show cause on January 27, 1930, a petition was filed on behalf of William C. Wolf, as assignee for the benefit of creditors of said corporation and on behalf of a number of the creditors, which petition prayed that William C. Wolf, as assignee aforesaid, be admitted as a party defendant, and further prayed that the custodial receiver turn over the assets of the corporation to the assignee, and that the assignee be permitted to administer the estate according to the statute concerning assignments for the benefit of creditors. The Court at that time made an order directing William C. Wolf, as assignee for the benefit of creditors, to be made a party defendant in the suit and ordering that said assignee file a bond with the Clerk in Chancery in the sum of \$10,000. conditioned for the faithful performance of his duties as such assignee, and further ordered that the custodial receiver be discharged and be directed to turn over the assets to the assignee and directing the assignee to proceed to administer and liquidate the assets pursuant to law, and further continued the order to show cause originally made. It is this order (S. C., p. 29) which the complainant-appellant seeks to have reversed.

For a more complete understanding of the situation it is necessary to state what took place pursuant to that order. The assignee immediately upon the making of the order complained of, recorded the assignment in the Register's Office of Hudson County and filed with the Surrogate of that County a true inventory and valuation of the estate and a list of creditors, and filed a bond to the Ordinary of that State, pursuant to the statute in such case made and provided. It may further be stated that the evident purpose of the Court below in requiring the assignee to file a bond with the Chancellor, was to insure all parties interested that

the assignee would perfect his assignment and proceed to administer the estate under the assignment for the benefit of creditors, and pursuant to law.

POINT ONE.

The assignment for the benefit of creditors is perfectly valid and effectual and cannot be attacked in these proceedings.

An assignment for the benefit of creditors need not be in any special form (5 C. J., p. 1036, sec. 2). All that is necessary for a valid assignment for the benefit of creditors is that the assignment should transfer all of the assets and property of the assignor for the equal benefit of the creditors. The fact that an assignment is inartfully drawn does not make it invalid as long as it does not, in any manner, violate the requirements of the law relating to such assignments by giving preference to certain creditors or reserving any property or any rights to the assignor.

Section 1 of the Act concerning general assignments (Revision of 1899) C. S. Page 114, section 1 provides:

“Every conveyance or assignment made by a debtor of his entire estate in trust to an assignee or assignees, for the creditors of such debtor, shall be made for their equal benefit in proportion to their several demands, to the net amount that shall come to the hands of such assignee for distribution, and all preferences attempted to be made in such assignment of one creditor over the other, or whereby any one creditor shall be first paid or have a greater proportion in respect of his claim than another, shall be deemed fraudulent and void, and shall render such assignment void.”

Section 2 of the same Act, C. S. page 115, section 2 sets forth the requirements of the contents of the assignment and provides as follows:

“Every debtor residing in this state making a conveyance or assignment of his entire estate, in trust, to an assignee or assignees, for the creditors of such debtor (the said debtor being hereinafter referred to as the assignor, and the said conveyance or assignment as a general assignment) shall acknowledge the same, or cause the same to be proved according to law, so that the same may be recorded as a deed of land, and shall annex to such general assignment an inventory, under oath or affirmation, of his estate, real and personal, together with a list of his creditors and the amount of their respective claims according to the best of his knowledge, but such inventory shall in no wise be conclusive as to the quantum of the assignor's estate, real and personal, but the assignee shall be entitled to any other property which may belong to the assignor at the time of making such general assignment; in case such assignor shall willfully violate any of the provisions of this section, the said general assignment shall not thereby be rendered invalid or be excluded from the operation of this act, but in such case such assignor shall remain liable to his creditors for any remaining indebtedness after distribution by the assignee, and shall not receive any of the benefits hereinafter provided for assignors in the twenty-second section of this act.”

Outside of the above sections there are no other statutory provisions in this state regarding the form of an assignment for the benefit of creditors. It is quite evident that the assignment made in this case does not violate the provisions of the sections of the statute above cited as the assignment made in this case transfers to the assignee all of the assets and property of the defendant corporation to be ad-

ministered and distributed equally for the benefit of all creditors.

The argument that the assignment here is invalid because it was not recorded forthwith may be answered in two ways; section 3 of the Act concerning assignments, C. S. page 115, section 3 sets forth the duties of the assignee and among other things provides that the assignee upon receiving the assignment shall forthwith record the same. This section does not provide, nor does it intend to provide that an assignment not recorded forthwith is void, as it is merely a regulation of the duties of the assignee. It is quite evident that the Court below realizing that the same question as to the validity of the assignment might be raised, required the assignee to file a bond to the Chancellor before he would be permitted to obtain possession of the assets from the custodial receiver, so that the assignee may complete his duties as required by this section, which duties the assignee had been prevented from completing by reason of the restraint contained in the order appointing the custodial receiver (S. C., p. 9).

The assignment in this case was made and executed on a Friday afternoon in New York City on January 17, 1930, but before the assignee could fulfill the duties imposed upon him by section 3 of the Act concerning assignments, before entering into the administration of the estate, the complainant obtained the order appointing the custodial receiver, which contained a general restraint, and the assignee therefor could not complete his duties until such a restraint was lifted. It may be well to add here that as soon as the restraint was lifted, the assignee immediately performed the duties required of him before he could enter into the administration of the estate. It was the complainant's own act which prevented the assignee from perfect-

ing his assignment, if there was any question of its validity before that time. It is further contended by this defendant that the complainant cannot complain of any alleged invalidity of the assignment made for the benefit of creditors in these proceedings. The bill of complaint in this cause was filed for the purpose of declaring the defendant corporation to be insolvent and for the appointment of a receiver according to the statute authorizing the appointment of a receiver for an insolvent corporation. The only question therefor that could properly come before the Court of Chancery in such proceedings is whether or not the corporation is insolvent and whether or not it is for the best interests of the creditors, stockholders or the public in general to appoint a receiver. No collateral question can be decided in such a proceeding.

Pierce vs. Old Dominion Copper Mining & Smelting Co., 67 N. J. Eq. 399. In that case a bill for the appointment of a receiver was also coupled with an ordinary equity bill and the Court held it to be multifarious.

V. C. Stevenson says at page 403:

“The two proceedings are entirely different in their nature * * *. One proceeding has in view the preservation of the corporate existence and corporate property of the Old Dominion Copper Mining & Smelting Co., and the prevention of injuries inflicted or threatened to be inflicted upon this corporation and its property by the other defendants; the other proceeding is aimed directly at what is practically the corporate life of the Old Dominion Copper Mining & Smelting Co., and seeks to suspend, and then possibly to destroy, the life of that corporation—terminate its corporate existence—and distribute its assets among its creditors and stockholders—in my judgment, the joinder of two such different and in many respects inconsistent remedial proceed-

ings is not convenient, but tends to great embarrassment and confusion to our practice, and ought not to be tolerated."

For the Court of Errors to pass upon the question of the validity of the assignment for the benefit of creditors would be to determine two entirely different causes of action in one proceeding, to wit: (1) a proceeding for the appointment of a receiver for an insolvent corporation under the corporation act; (2) the construction and determination of the validity of the assignment for the benefit of creditors. This assignment is a collateral matter which ought not to be adjudicated upon in a bill for the appointment of a receiver.

In *Rawnsley vs. Trenton Mutual Life Insurance Co.*, 9 N. J. Eq. 95, at page 96, the Court says that where in a bill for the appointment of a receiver there is not sufficient proof in the bill itself for the appointment of such a receiver, no affidavits or proofs respecting *collateral matters*, though they tend to prove the company insolvent, will justify the Court in granting the prayer of the bill.

POINT TWO.

It was entirely discretionary with the Court whether to appoint a receiver or continue the order to show cause.

It is clearly shown that the only question to be decided by the Court was the advisability of the appointment of a receiver for the defendant corporation. No citation of authorities is necessary to show that the appointment of a receiver for an insolvent corporation is based upon the exercise of sound discretion of the Court of Chancery, and an

order made by the Court of Chancery in any such case is not reversible except for a gross abuse of discretion.

Even though a corporation is insolvent it is entirely discretionary with the Court whether or not it will appoint a receiver.

Rawnsley vs. Trenton Mutual Life Insurance Co.,
9 N. J. Eq. 95, at page 96;

“The Court is authorized by the Act, whenever an incorporated company has been declared insolvent by petition or bill exhibited by a creditor or stockholder setting forth the facts and circumstances of the case, to hear the matter in a summary way upon the affidavits, proofs and allegations by or on behalf of the parties. If upon such inquiry it shall be made to appear that said company has become insolvent, it shall be lawful for the Chancellor to restrain the company and its officers by injunction from exercising the privileges and franchises granted, and if the circumstances of the case and the ends of justice require it, to appoint a receiver etc.”

“The powers conferred upon the Court are extraordinary powers, and are to be exercised with caution, and only when the circumstances of the case and the ends of justice require it.”

“Where a creditor or stockholder comes into Court under this act, it is not his particular grievance the Court is to redress or his individual interest to be protected; but the very object of the act is to protect the public at large from imposition and to promote and secure the general interest of the stockholders and creditors.”

“Nor is the Court bound, as a matter of course, to issue an injunction, though it is made satisfactorily to appear that the company is insolvent. The Chancellor must exercise his best discretion, and exert the powers conferred for the safety of the public and the advantage of the stockholders and creditors.”

This case is cited with approval in *Hudson Mattress Mfg. Co. vs. Hingher Mfg. Co.*, 105 N. J. Eq. 607, at 608:

“Neither is it mandatory on this Court under the corporation act to issue an injunction or appoint a receiver although the corporation is shown to be insolvent. *Rawnsley vs. Trenton Mutual Life Insurance Co.*, 9 N. J. Eq. 95.”

“Since it does not appear necessary or advisable for the safety of the public or to the advantage of creditors or stockholders, the application for an injunction will be denied.”

In the present case the only question which can properly come before the Court is whether or not a receiver should be appointed. No collateral question can be decided in this case. The question raised by the complainant that the assignment for the benefit of creditors is void, is a collateral question which should be determined in an independent proceeding, and it would be multifarious to have the determination of that question included in a bill for the appointment of a receiver.

It has been held by the Court of Errors and Appeals in the case of *City Pottery Co. vs. Yates*, 37 N. J. Eq. 543, and by the Court of Chancery in the case of *Sternberg vs. Wolf*, 56 N. J. Eq. 555, that a receiver would not be appointed if such an appointment would serve no useful purpose. In this case, the Court below in exercise of its sound discretion found it unnecessary and inadvisable for the protection of creditors or any persons interested to appoint a receiver on the return of the order to show cause, but continued the order to show cause and in the meantime discharged the custodial receiver and directed the assignee upon filing a surety company bond for \$10,000. to proceed with the performance of his duties and to administer the estate of the defendant corporation according to the

agreement and according to the law. The object of continuing the order to show cause was to leave open the question whether or not a receiver should be appointed, and giving the Court an opportunity to determine whether or not the assignee is administering according to law. The appeal in this case is really from an order of continuance. Surely the Court of Chancery is permitted to exercise its sound discretion in continuing an order to show cause in order to determine at a later date whether or not it will appoint a receiver.

Section 24 of the Act concerning assignments, C. S. page 123, section 24 permits an assignment for the benefit of creditors to be made by a corporation of this state, and provides

“but in any case the said corporation shall at any time after making the said general assignment, be adjudged insolvent and a receiver thereof be appointed by the Court of Chancery of this state, the said Court of Chancery shall have the power at any time when it may deem it for the interest of the stockholders or creditors of said corporation, to remove the assignee * * *.”

The statute is clear that by reason of this power given to it, the Court of Chancery is under no obligation or duty to remove the assignee and appoint a receiver unless it finds that it is for the best interests of the stockholders or creditors of the corporation to do so.

It was said by V. C. Buchanan in the recent case of *Hudson Mattress Mfg. Co. vs. Hingher Mfg. Co.*, 105 N. J. Eq. page 607, as follows:

“Section 24 of the Assignment Act expressly provides that a corporation may make an assignment for the benefit of creditors under that act. It further provides that notwithstanding the making of such an assignment, this Court

may issue injunctions and appoint receivers superseding assignees—but such action is not mandatory. Neither is it mandatory on this Court under the corporation act to issue an injunction or appoint a receiver although the corporation is shown to be insolvent. *Rawnsley vs. Trenton Mutual Life Insurance Co.*, 9 N. J. Eq. 95.

“Since it does not appear necessary or advisable for the safety of the public or to the advantage of creditors or stockholders, the application for injunction will be denied.”

It is therefore clearly shown that when an order made by the Court below is purely discretionary, and as there is no proof of a gross abuse of discretion, the order should not be reversed.

POINT THREE.

There was no error in admitting the defendant William C. Wolf as a party defendant to the suit.

There can be no doubt that an assignee for the benefit of creditors of a corporation that has made an assignment for the benefit of its creditors is a proper party to a bill filed in the Court of Chancery for the appointment of a receiver of the corporation.

Section 24 of the Act concerning assignments, C. S. page 123, expressly provides that an assignee may be made a party defendant. In fact such an assignee would be a necessary party to a bill for the appointment of a receiver for a corporation that has previously made an assignment for the benefit of creditors, if the Court is to have the power to direct or control his actions or to remove him if found necessary. The Court could not order such an assignee to turn over the assets in his hands to

a receiver that may have been appointed, unless the assignee was a party to the action and subject to the jurisdiction of the Court. There is no merit to the contention that the assignment in this case was not made under the Act referred to, and there was no obligation upon the Court to adjudge the corporation insolvent at the time the order complained of was made. It will be recalled that this order was not a final order and contained a continuance so that an adjudication of insolvency may be made at a later date.

It was therefore perfectly proper for the Court to admit the assignee to be made a party defendant.

POINT FOUR.

The Court did not err in discharging the custodial receiver and refusing to appoint a receiver and in permitting the assignee for the benefit of creditors to administer the estate.

The argument that a receiver should have been appointed rather than to permit the assignee to continue to administer the estate because of the diligence of the complainant in prosecuting his remedy, is absolutely fallacious. The contention is made that the assignee was not diligent because he did not immediately record his assignment, but it may be well to note that the complainant who now seeks to take advantage of its diligence caused an injunction to issue, which prevented the assignee from proceeding with his assignment.

The complainant after having prevented the assignee from perfecting his duties under the assignment, cannot now claim that its application should

prevail because the assignee was less diligent than it.

The action of the court in refusing to appoint a receiver and permitting the assignee for the benefit of creditors to administer the estate of the defendant corporation, was an exercise of its sound discretion, and made with a view to protect the best interest of creditors and other persons interested. It may be noted in this connection from the petition filed (S. C., p. 115) that the action of the assignee was with the consent and approval of the majority of the creditors in this corporation. In fact the moving parties in this petition are a majority of the creditors of the corporation.

There is no doubt that a corporation may make a valid assignment for the benefit of its creditors (Section 24, Act concerning assignment, C. S., p. 123) section 24 provides that in the event a bill is filed in the Court of Chancery to adjudge such a corporation insolvent and for the appointment of a receiver, the Court of Chancery has a discretionary power to remove the assignee and appoint a receiver only if such action is deemed to be for the best interest of the creditors and stockholders. Such action by the Court of Chancery is purely discretionary and where, as in this case, such action is prayed for by a majority of the persons interested, the action of the Court in making the order complained of was a very proper exercise of sound discretion.

It is contended by the appellant that as the property of the corporation passed into *custodia legis* by reason of the appointment of a custodial receiver, that it was erroneous to permit such possession to be given to the assignee, and that it was erroneous to discharge the custodial receiver except for a good cause. The order appointing a custodial receiver was made ex-parte, and because of the evi-

dent necessity of such case, he must be immediately vested with possession of the property, but this does not mean that because a custodial receiver is vested with possession of property on an ex-parte order that he could not be removed thereafter if the Court finds the appointment of the custodial receiver to be unnecessary upon the assignee filing a surety bond for \$10,000. At the time this order was made there was no opportunity given to determine the propriety of the appointment of a receiver, and it therefore cannot be said that because the possession of the property passed into the custody of the Court of Chancery that the Court of Chancery cannot subsequently divest itself of such possession.

It is also contended that the Court abused the discretion reposed in it by removing the custodial receiver in spite of the fact that there was no objection to the action appointing him. Such a contention is unsound as a custodial receiver is appointed ex-parte for the sole purpose of preserving the assets until all the parties interested can have an opportunity to be heard on the propriety of the appointment of a receiver for the corporation.

It is sufficient cause to remove a custodial receiver if the Court thinks it is for the best interest of the creditors and stockholders that no receiver should be appointed and that the assets should be administered by an assignee. Such a discharge of a custodial receiver cannot be said to be arbitrary or capricious.

The appellant seems to contend that once a custodial receiver is appointed he cannot be removed if the Court finds a receiver to be unnecessary. If this were true an impossible situation would exist, in cases such as the case at Bar.

It is further contended by the appellant that the proceedings under the assignment for the benefit of creditors should have been terminated since appli-

cation was made to the Court of Chancery for the appointment of a receiver, and the appellant cites section 24 of the Act concerning assignments in part as follows:

“The jurisdiction of the Orphans’ Court in the premises shall terminate and the said estate shall be administered as assets of an insolvent corporation in the same manner as if no such general assignment had been made.”

The appellant fails to state by a fuller quotation of the statute that the jurisdiction of the Orphans’ Court shall terminate only when the Court of Chancery removes the assignee and appoints the assignee as receiver of the corporation under that statute.

It is therefore respectfully submitted that the order complained of was proper in every respect, and as the making of the order rested in the sound discretion of the Court of Chancery, and as there does not appear to be any abuse of discretion exercised by the Court below, the order should be affirmed with costs to the defendants appellee.

Respectfully submitted,

EICHMANN & SEIDEN,
Solicitors for and of counsel with
Defendant-Appellee.

...to the Court of Chancery for the
...of a receiver, and the application for
...of the Court. And certain assignments in fact
... as follows:

...the Court shall be satisfied that the
...of the Court shall be satisfied that the
...of the Court shall be satisfied that the
...of the Court shall be satisfied that the
...of the Court shall be satisfied that the

...of the Court shall be satisfied that the
...of the Court shall be satisfied that the
...of the Court shall be satisfied that the
...of the Court shall be satisfied that the
...of the Court shall be satisfied that the
...of the Court shall be satisfied that the
...of the Court shall be satisfied that the
...of the Court shall be satisfied that the
...of the Court shall be satisfied that the
...of the Court shall be satisfied that the

Respectfully submitted,

FORNAN L. FURNAN
Solicitor for and of counsel with
Johnston & Appleton

INDEX.

	PAGE
Notice of Appeal	1
Petition of Appeal	2
Bill of Complaint	5
Commissioners' Award to M. & E. R. R. Co.	19
Estimate Filed to M. & E. R. R. Co.	24

COMPLAINANT'S AFFIDAVITS.

Affidavit of Richard Bordo	25
Affidavit of Absalom Crampton	28
Affidavit of George E. Crampton	29
Affidavit of George W. Stickle	31
Affidavit of Leslie Todd	33
Affidavit of Michael S. Malone	34
Answer	35

DEFENDANT'S AFFIDAVITS.

Affidavit of George J. Ray	40
Schedule A	44
Affidavit of John Sexton	47
Affidavit of Thomas Wallace	50
Affidavit of William Hill	53
Affidavit of William Sluman	56

