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Notice of Appeal.

(Filed, June 15, 1938.)

IN CHANCERY OF NEW JERSEY

114-316

On Bill, &c.

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BETWEEN

RICHARD J. NORRELL,
Complainant,

and

ELNORA (OR ELINORA) SMITH *et al.*,
Defendants.

To the Complainant, and/or Robert S. Hartgrove, Esq., his Solicitor.

20

PLEASE TAKE NOTICE, that the defendant, Raymond Chasan, hereby appeals from the Final Decree made in the above entitled cause on March 15th, 1938, by the Chancellor on the advice of Vice Chancellor Vivian M. Lewis and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

30

Dated: May 17th, 1938.

RICHARD DOHERTY,
Solicitor for and of Counsel with
Defendant, Raymond Chasan.

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

RICHARD DOHERTY,
Of Counsel with Defendant,
Raymond Chasan.

40

Petition of Appeal.

(Filed, July 5, 1938)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10 On Appeal from the Court of Chancery.

BETWEEN

RICHARD J. NORRELL,
Complainant-Respondent,

and

RAYMOND CHASAN,
Defendant-Appellant,

and

20 ELNORA (OR ELINORA) SMITH, WILLIAM A. BYRD,
as Executor and Trustee under the Last
Will and Testament of Margaret Ethridge
&c., CHARLES H. ETHRIDGE,
Defendants.

*To the Honorable Court of Errors and Appeals
of last resort in all causes:*

30

The petition of Raymond Chasan, the defend-
ant-appellant in the above entitled cause, re-
spectfully shows that:

1. Petitioner finds himself aggrieved by the
Final Decree made in the Court of Chancery by
His Honor, Luther A. Campbell, Chancellor of
the State of New Jersey, on the advice of the
Hon. Vivian M. Lewis, bearing date March 15th,
40 1938, in a certain cause in the said Court of
Chancery, wherein Richard J. Norrell was com-

Petition of Appeal.

plainant and Elnora Smith, William A. Byrd, etc., were defendants, in these respects, to wit:

(a) The said Final Decree ordered, adjudged and decreed that the defendant, Raymond Chasan, now holds in his custody, possession and control, as trustee and for the benefit of the complainant, Richard J. Norrell, and the defendant, Elnora Smith, the sum of \$1576.54, together with legal interest thereon from June 15th, 1934. 10

(b) The said Final Decree further ordered, adjudged and decreed that the said Raymond Chasan pay to the said Richard J. Norrell, judgment creditor of the said Elnora Smith, the sum of \$671.86, together with legal interest thereon from the 21st day of September, 1934, and out of the funds and moneys now held in his possession and control and for the benefit of the said Richard J. Norrell and Elnora Smith. 20

(c) The said Final Decree further ordered, adjudged and decreed that if the said Raymond Chasan does not have, hold or possess sufficient moneys received by him from the Clerk of the Court of Chancery on June 15th, 1934 for the benefit of Elnora Smith in the Chancery proceedings of *Charles H. Ethridge v. Elnora Smith, et al.*, docket 92-344, to pay and satisfy the judgment debt of Richard J. Norrell, as aforesaid, then and in that event the balance of said judgment remaining unpaid and unsatisfied be charged as a lien upon the interest of Elnora Smith in the estate of the decedent, Margaret Butler, also known as Margaret Ethridge. 30

(d) The said Final Decree further ordered, adjudged and decreed that a counsel fee be 40

Petition of Appeal.

allowed to Robert S. Hartgrove, solicitor for complainant, Richard J. Norrell, in the sum of \$100, the same to be paid by Raymond Chasan, personally, together with taxed costs in this suit.

10 2. Petitioner appeals from the whole and every part of the said Final Decree of the Chancellor, upon the ground that the same is erroneous in that:

(a) The Court of Chancery should not have granted to the complainant-respondent the relief prayed for in the Bill of Complaint.

20 (b) The Court of Chancery should have dismissed the complainant's Bill of Complaint because he had an adequate remedy at law.

30 (c) The Court of Chancery should have dismissed the complainant's Bill of Complaint because the decree in the original suit in which the fund in controversy came into being had been reopened, was pending and indeterminate in the Court of Chancery, and the rights and equities of the complainant, if any, should properly have been adjudicated in the said pending and undetermined suit of *Ethridge v. Smith et al.*, docket 92-344.

(d) The Court of Chancery should not have decreed that the defendant, Raymond Chasan, held in trust for Elnora Smith or her creditors the sum of \$1576.54, with interest.

40 (e) The Court of Chancery should not have decreed that the said Raymond Chasan pay to the said Richard J. Norrell, judgment creditor of defendant, Elnora Smith, the sum of \$671.86 and interest.

Petition of Appeal.

(f) The Court of Chancery should not have decreed that the said Raymond Chasan pay the said sum of \$671.86 with interest out of the funds received by him from the Clerk of the Court of Chancery in the matter of *Charles H. Ethridge v. Elnora Smith et als.*, docket 92-344, and in the event of a balance of said judgment debt remaining unpaid, that the sum be charged as a lien upon the interest of Elnora Smith in the estate of Margaret Butler, also known as Margaret Ethridge. 10

(g) The Court of Chancery should not have awarded costs and counsel fees to the complainant-respondent.

(h) The Court of Chancery should have ordered, adjudged and decreed that the defendant-appellant, Raymond Chasan, had a lien for a general balance due him for professional services upon moneys in hand belonging to his client, Elnora Smith, which had come to him in the course of, and with reference to, his professional employment in the matter of *Charles H. Ethridge v. Elnora Smith et al.*, docket 92-344. 20

(i) The Court of Chancery should have ordered, adjudged and decreed that the said lien of defendant, Raymond Chasan, for a general balance for professional services upon moneys belonging to his client, the defendant Elnora Smith, which came to him in the course of, and with reference to, his professional employment, was not dependent upon any statute. 30

(j) The decree of the Court of Chancery appealed from is inequitable and unjust.

Your petitioner, therefore, prays that the said decree may be reversed, set aside and for 40

Bill of Complaint.

as Margaret Butler, deceased, had, during her lifetime obtained an illegal divorce from Charles H. Ethridge, one of the defendants herein.

3.—The said Margaret Ethridge, known also as Margaret Butler, died testate, leaving a last Will and Testament, a copy of which is hereto annexed and made a part of this Complaint, under which instrument she devised and bequeathed all of her property, both personal and real, to her sister, the said Elnora (or Elinora) Smith—the personal estate in fee and the real estate for the term of the natural life of the said Elnora (or Elinora) Smith. 10

4.—After the death of the said Margaret Ethridge, known also as Margaret Butler and prior to the probate of her said last Will and Testament, the said Charles H. Ethridge, her husband, on or about the 9th day of September 1932 filed a Bill of Complaint in the Chancery Court of New Jersey and against Elnora (or Elinora) Smith, et als, seeking to have it decreed that both the real and personal property of the said Margaret Ethridge, known also as Margaret Butler belonged and descended to the said Charles H. Ethridge. 20 30

5.—After the filing of the said Bill of Complaint the said Charles H. Ethridge through his counsel obtained a Restraining Order enjoining the probate of the said last Will and Testament, and also enjoining and preventing the payment of any and all moneys accruing to the Estate of the said Margaret Ethridge, known also as Margaret Butler, deceased, a copy of which Restraining Order is annexed to this Complaint and made a part thereof. 40

Bill of Complaint.

6.—While the said Bill of Complaint was pending in the Chancery Court of New Jersey your complainant did on or about the 30th day of June, 1933, institute a suit against the said Elnora (or Elinora) Smith and Charles H. Ethridge for the recovery of the moneys due and owing to him for the burial of the remains of the said Margaret Ethridge, known also as Margaret Butler, and as aforestated.

7.—Thereafter and on or about the 4th day of June, 1934 a Final Decree was entered in the said Chancery Court proceedings dismissing the Bill of Complaint as filed by the said Charles H. Ethridge and releasing the restraints thereunder as to the personal property of the said Margaret Ethridge, known also as Margaret Butler and also permitting the probate of the said last Will and Testament, a copy of which Final Decree is hereto annexed and made a part of this Complaint.

8.—The said last Will and Testament was probated on or about the 7th day of June, 1934 in the Surrogate's Court of Hudson County and one William A. Byrd, another defendant herein, was duly appointed executor thereof, as the records of the said Surrogate's Court will more fully show.

9.—After the entry of the said Final Decree in the said Chancery Court and on or about June 15, 1934 there was paid to Raymond Chasan, Esquire, solicitor of record for the said Elnora (or Elinora) Smith in the said Chancery Court proceedings, the sum of \$1576.45, for her benefit, the said sum of money having been deposited in the Chancery Court under a Bill of

Bill of Complaint.

Interpleader filed by the Prudential Life Insurance Company of America in the said proceedings, as the records of the said Chancery Court will more fully show.

10.—The said sum of \$1576.45 represented the benefits under a policy of insurance issued by the said Prudential Life Insurance Company of America to the said Margaret Ethridge, known also as Margaret Butler during her lifetime, under which policy of insurance the said Elnora (or Elinora) Smith was named as beneficiary. 10

11.—Thereafter and on or about the 21st day of September, 1934 a judgment by confession was taken against the said Elnora (or Elinora) Smith in complainant's said action in the Common Pleas Court of Hudson County and for the sum of \$564.74 with taxes costs and interest amounting in all to \$671.86. 20

12.—After the entry of the said judgment in the said Common Pleas Court of Hudson County an execution was issued thereon under which execution a levy was made on September 24, 1934 upon the moneys and funds paid to the said Raymond Chasan, Esquire, by the Clerk of the Chancery Court of New Jersey and as above set forth, the said moneys being the property of the said Elnora (or Elinora) Smith. 30

13.—A return was made by the Sheriff of Hudson County after the making of the levy as aforesaid, as the records of the said Sheriff's Office will more fully show. 40

Bill of Complaint.

10 14.—After the execution and levy were made as aforesaid, the said Raymond Chasan refused to pay complainant's said judgment debt charging and declaring that he held only the sum of \$311.83 as property of the said Elnora (or Elinora) Smith, the sum of \$1164.62 having been deducted by him for legal services claimed to have been rendered to the said Elnora (or Elinora) Smith, as shown by a copy of a letter and statement sent by the said Raymond Chasan and to the said Elnora Smith on September 13, 1934, a copy of which letter and statement is hereto annexed and made a part of this Complaint.

20 15.—The other items, moneys and personal estate of the said deceased as set forth in the said statement of the said Raymond Chasan were not collected by him and passed under the said last Will and Testament of the said deceased.

30 16.—On or about the 24th day of October, 1934 an Order was made by the Common Pleas Court of Hudson County directed to the said Raymond Chasan, commanding him to pay over to your complainant, a judgment creditor in execution, the amount of his said judgment debt as aforestated together with costs, to wit, the sum of \$621.52, as the records of the said Common Pleas Court of Hudson County will more fully show. A copy of the said Order is hereto annexed and made a part of this Complaint.

40 17.—Subsequently and on a certiorari proceeding, the Supreme Court of New Jersey on or about the 9th day of April, 1935 reversed the

Bill of Complaint.

said Order of the Common Pleas Court of Hudson County made as aforesaid.

18.—Upon the reversal of the said Order of the said Common Pleas Court of Hudson County, costs were awarded to the said Raymond Chasan and the said Richard J. Norrell, complainant herein, was compelled to outlay and expend in satisfaction of the aforesaid costs the sum of \$192, the same being paid to the said Raymond Chasan. 10

19.—The acts of the said Raymond Chasan in denying that he held moneys of Elnora (or Elinora) Smith sufficient in amount to pay the said judgment debt of the said complainant and as above set forth and his refusal to pay the said judgment debt of your complainant were unfair, unreasonable, unconscionable and inequitable and subjected your complainant, by virtue of the said certiorari proceedings, to reverses and losses which otherwise would not have been inflicted upon the said complainant. 20

20.—At the time of the execution and levy under the said judgment in the said Common Pleas Court of Hudson County and as above set forth the said Raymond Chasan held sufficient moneys to pay complainant's said judgment debt together with costs and interest. 30

21.—No part of complainant's said judgment debt has been paid.

22.—After the appointment of the said William A. Byrd as executor of the said last Will and Testament of the said Margaret Ethridge, known also as Margaret Butler, the said Wil- 40

Bill of Complaint.

10 liam A. Byrd as executor entered upon the collection of the personal property of the Estate of the said deceased and for the benefit of the said Estate. There was collected by him from the Trust Company of New Jersey the sum of \$687.54; from the Commercial Trust Company of New Jersey, Mercantile Branch, \$89.05; from the New Jersey Title Guarantee and Trust Company, Lafayette Branch, \$196.63; from the Phoenix Building and Loan Association, the sum of \$300; as your complainant is informed and verily believes.

20 23.—The said Margaret Ethridge, known also as Margaret Butler by her said last Will and Testament charged the funeral debt of complainant upon her said Estate.

30 24.—After the appointment of the said William A. Byrd as executor as aforesaid your complainant made repeated efforts to serve upon him a verified claim of his funeral debt and against the Estate of the said deceased but the said William A. Byrd avoided and evaded service of the said claim and your complainant was unable to serve him with such verified claim until the 27th day of May, 1936.

25.—The said William A. Byrd ever since his appointment as executor as aforesaid has failed and refused to file an inventory of the said Estate of the said deceased or to make an accounting of any kind concerning the same in the Surrogate's Court of Hudson County or elsewhere.

40 26.—The said William A. Byrd since his collection of the sums of money as above set forth

Bill of Complaint.

has expended and utilized the same for his personal benefit, and is avoiding and refusing to pay the funeral bill or judgment debt of complainant.

27.—The said Charles H. Ethridge, husband of the said deceased, has refused to pay complainant's funeral bill or judgment debt and is, as your complainant is informed, the person secondarily liable to pay complainant's said funeral bill. 10

28.—The said Charles H. Ethridge is claiming an interest in the personal property of the said deceased and is solvent and financially able to pay complainant's said funeral bill.

29.—The said Elnora (or Elinora) Smith and the said deceased at the time of the latter's death were the joint owners of ten shares of stock in the Phoenix Building and Loan Association, which shares of stock the said Association was paying off and to the joint order of William A. Byrd, executor as aforesaid, and the said Elnora (or Elinora) Smith at the rate of \$50 per month. There is now a withdrawal value upon the said shares of stock amounting to \$316.60, as your complainant is informed and verily believes, and as shown by a letter from the legal representative of the said Building and Loan Association, an exact copy of which is hereto annexed and made a part of this Complaint. 20 30

30.—On the 15th day of May 1935 your complainant as plaintiff in the said law action in the Common Pleas Court of Hudson County caused an execution to be issued upon his said judgment, under which execution a levy was 40

Bill of Complaint.

made upon the said moneys held by the said Phoenix Building and Loan Association to the credit and for the benefit of the said deceased and to the credit and for the benefit of the said Elnora (or Elinora) Smith, and for the purpose of satisfying complainant's said judgment debt.

31.—On the 4th day of June, 1935 an Order was made by the Chancellor of the State of New Jersey in the aforesaid Chancery Court proceedings wherein Charles H. Ethridge was complainant and Elnora (or Elinora) Smith et als were defendants, and upon the application of the said Charles H. Ethridge, restraining Elnora (or Elinora) Smith and William A. Byrd, executor of the last Will and Testament of the said Margaret Ethridge, known also as Margaret Butler, and individually, from paying over, assigning, transferring or in anywise disposing of any moneys received by them under the said Final Decree of June 4th, 1934, and also continuing the restraints originally established and set up under the Bill of Complaint filed in the said Chancery Court proceedings and as above referred to, the purpose of the aforesaid application being to open up the said Final Decree in the said Chancery Court proceedings, and to have a further determination by the Chancellor in respect to personal properties belonging to the Estate of the said deceased.

32.—By reason of the restraints issued on the 4th day of June, 1935 and as above set forth the said William A. Byrd, as executor as aforesaid, the said Elnora (or Elinora) Smith and the said Raymond Chasan, Esquire are claiming

Bill of Complaint.

and declaring that they are unable to pay and satisfy any part or parts of complainant's said judgment debt; and your complainant is unable by reason of the said restraints to proceed on the execution issued upon his said judgment for the satisfaction of the same.

10

33.—The said Elnora (or Elinora) Smith has no property of any kind or character except that which was devised and bequeathed to her under the said last Will and Testament of the said deceased and that which she derived as beneficiary under the said policy of insurance issued by the said Prudential Life Insurance Company of America and as above set forth. She is now in indigent circumstances, being dependent upon private charity for her care, maintenance and support.

20

34.—Under the Order of Restraint issued on the 4th day of June, 1935 and upon application of the said Charles H. Ethridge as above set forth it was directed that four copies of the Transcript of the Testimony given at the trial and hearing in the aforesaid Chancery Court proceedings be paid out of the Estate of the said deceased.

30

35.—Your complainant is informed and verily believes that the property belonging to the Estate of the said deceased is now being wasted by the said William A. Byrd as executor as aforesaid and fears that the said Estate will be dissipated and depleted by the said Chancery Court proceedings as above set forth, and without leaving sufficient moneys to pay and satisfy his said judgment debt.

40

Bill of Complaint.

36.—The said Raymond Chasan, Esquire, the other defendant herein, is holding the aforesaid sum of \$1576.45 in trust and for the benefit of the said Elnora (or Elinora) Smith and is acting fraudulently in refusing to apply the same to the payment of complainant's said judgment debt.

37.—There are no other creditors of the Estate of the said deceased.

Complainant is without adequate remedy in the courts of law and therefore prays:

(1) That Elnora (or Elinora) Smith, William A. Byrd as executor and trustee under the last Will and Testament of Margaret Ethridge, known also as Margaret Butler, deceased, Charles H. Ethridge and Raymond Chasan, Esquire, defendants herein, answer this Bill of Complaint and each statement therein made.

(2) That William A. Byrd as executor and trustee as aforesaid file his accounting of the moneys and properties belonging to the Estate of Margaret Ethridge, known also as Margaret Butler, deceased, in this Court.

(3) That Raymond Chasan, Esquire be decreed to hold in trust and for the benefit of Elnora (or Elinora) Smith the sum of \$1576.45 said moneys having been received by him and from the Clerk in Chancery in the suit of Charles H. Ethridge against Elnora (or Elinora or Eleanora) Smith (No. 92/344), as set forth in the said Bill of Complaint.

Bill of Complaint.

(4) That it be decreed that complainant under the execution and levy made upon his judgment debt has a first lien upon the said moneys held by the said Raymond Chasan and for the benefit of the said Elnora (or Elinora) Smith.

(5) That the said Raymond Chasan be directed and commanded to pay over to the complainant his judgment debt amounting to \$671.86 and out of the moneys held by him and in trust and for the benefit of the said Elnora (or Elinora) Smith. 10

(6) That it be decreed that the said Elnora (or Elinora) Smith has a vested interest in the proceeds of the said Estate of Margaret Ethridge, known also as Margaret Butler and subject to be applied to the payment of complainant's said judgment debt. 20

(7) That it be decreed that complainant has a prior and first lien on the proceeds belonging to decedent's Estate for payment of his said judgment debt.

(8) That the said William A. Byrd as executor and trustee as aforesaid be directed and commanded to pay and satisfy complainant's said judgment debt. 30

(9) That Charles H. Ethridge be decreed to be secondarily liable as husband of the said deceased for complainant's said judgment debt.

(10) That a receiver be appointed to collect sufficient moneys from the said William A. Byrd as executor and trustee as aforesaid and from the said Raymond Chasan or any other creditor 40

Bill of Complaint.

or creditors of the said Estate of the said deceased, to pay and satisfy the said judgment debt and costs of your complainant.

10 (11) That a master be appointed to determine the amount of complainant's judgment debt and costs, as well as the amount of moneys held by the said Raymond Chasan for the benefit of the said Elnora (or Elinora) Smith, and also the amount of moneys held by the said William A. Byrd as executor and trustee as aforesaid, and the extent of the lien of complainant's said judgment debt upon the same.

20 (12) That the said William A. Byrd as executor and trustee as aforesaid be restrained and enjoined from filing an account in his representative capacity in any other court except the Chancery Court of New Jersey.

(13) That a writ of subpoena may issue commanding the defendants to answer this Bill of Complaint, and to abide by such decree as this Court may make in the premises.

30 And that your complainant might have any and all other and further relief that to this Honorable Court might seem equitable and just.

ROBERT S. HARTGROVE,
Solicitor and of Counsel With
Complainant.

WILL, ANNEXED TO COMPLAINT.

IN THE NAME OF GOD, AMEN :

I, MARGARET S. BUTLER of the City of Jersey City, County of Hudson and State of New Jersey being of sound mind, memory and understanding, do make, publish and declare the following as and for my last Will and Testament, that is to say: 10

FIRST—I do order and direct that all my just debts and funeral expenses be paid and satisfied as soon as can be conveniently done after my decease.

SECOND—I give and bequeath to my sister ELNORA SMITH her heir and assigns forever, all the personal property of which I may die possessed or have any interest in, and all the real estate of which I may die seized and any interest in such real estate, I devise to my said sister for and during the term of her natural life; at her death it is my will that my said real estate be sold by my executor and trustee, hereinafter named, either by private or public sale and the money arising from said sale, I give and bequeath to the following named person and church: 20 30

Mrs. Blanch Lancaster, one hundred (\$100) dollars, Willie Dawkins, fifty (\$50) dollars, Catherine Dawkins, Fifty (\$50) dollars and to the church of which I am a member or an attendant, at or prior to my death, three hundred (\$300) dollars, as to the church to which the said three hundred is to be paid I leave to be decided by my executor and trustee.

THIRD—All the rest, residue and remainder of any property I may die seized or possessed of 40

Will, Annexed to Complaint.

whatever nature or kind, I, give, bequeath and devise to Mrs. Annett Wooton, now of Chicago, Ill. to her and to her heirs forever.

10 FOURTH—I hereby nominate, constitute and appoint Rev. William A. Byrd executor and trustee of this my last Will and testament and request that no official bond be required of him for the faithful performance of his duties.

In witness Whereof, I have hereto set my hand and seal, this Nineteenth day of July, A. D. 1930.

MARGARET S. BUTLER SEAL

20 Formerly MARGARET S. ETHRIDGE.

30 Signed, sealed, published and declared by the said testatrix, Margaret S. Butler—(the name "Butler" being her name before her marriage to her divorced husband, Chas. H. Ethridge) as and for her last will and testament, in the presence of us, who at her request and in her sight and presence, and in the sight and presence of each other have hereto affixed our names as subscribing witnesses to the said last will and testament.

TRAVERSE A. SPRAGGINS Residing at 24 McAdoo Avenue, Jersey City.

ALICE M. DAWKINS Residing at 176 Pine St. Jersey City, New Jersey.

RESTRAINING ORDER, ANNEXED TO
COMPLAINT.

IN CHANCERY OF NEW JERSEY.

Between

CHARLES H. ETHRIDGE,
Complainant,
—and—

10

ELINORA (OR ELEANORA) SMITH, *et al.*,
Defendants.

Upon reading and filing the bill of complaint
in the above entitled cause

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IT IS, on this 9th day of September, A. D. 1932, on motion of Edmund S. Johnson, solicitor for and of counsel with complainant, ORDERED that the defendants Elinora (or Eleanora) Smith, William A. Byrd, individually and as executor and trustee under an alleged last will and testament of Margaret Butler, also known as Margaret Ethridge, dated July 19, 1930, Blanch Lancaster, Willie Dawkins, Catherine Dawkins, Mrs. Annett Wooton, and the Community Church, show cause before the Chancellor, at the Chancery Chambers in the City of Paterson, New Jersey, on the 19th day of September, A. D. 1932, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the proceedings pending before the Orphans' or Surrogate's Court of Hudson County, New Jersey, relating to the probate of the alleged last wills and testaments of Margaret Ethridge should not be enjoined and restrained pending the determination by

30

40

Restraining Order, Annexed to Complaint.

10 this court of the issues raised by the complainant's bill of complaint, and why they, the said defendants, should not be enjoined and restrained from taking or attempting to take possession of any property of any kind belonging to the said decedent Margaret Ethridge, also known as Margaret Butler, and why a Receiver or custodian should not be appointed by this court of the property of the decedent pending the trial and determination of the above entitled cause;

20 And it is further ordered, that the defendants The Trust Company of New Jersey and the Bank of Lafayette show cause at the time and place aforesaid, why they should not be restrained and enjoined from delivering, turning or paying over any safe deposit box or moneys on deposit with them standing in the names of Margaret Butler (also known as Margaret Ethridge) and/or Elinora (or Eleanora) Smith, to any person or corporation until the further order of this court; and

30 It is further ordered, that the Fidelity & Casualty Company, Continental Casualty Company, Commonwealth Mercantile and Investment Company, Pacific Mutual Life Insurance Company of California, Metropolitan Life Insurance Company, Brotherhood of Sleeping Car Porters' Association, The Provident Life and Accident Insurance Company, the Pullman Beneficial Association, George E. Cannon, Shelter #2 Grand United Order of Antelopes of America, Inc., Cosmopolitan Relief Association, United Aid and Benevolent Association of America, Prudential Life Insurance Company of America and East-
40 ern Star Relief Association, show cause at the same time and place aforesaid, why they should

Restraining Order, Annexed to Complaint.

not be enjoined and restrained from paying over the proceeds or benefits under the beneficial, accident and life insurance policies on the life of said Margaret Ethridge, also known as Margaret Butler, to any person or corporation until the further order of this court, and that the defendant, Pullman Company, show cause at the time and place aforesaid, why it should not be enjoined and restrained from transferring or delivering any certificates of stock of said Company held or owned by the said Margaret Butler, also known as Margaret Ethridge, to any one until the like order of this court; and

It is further ordered, that the defendant The Trust Company of New Jersey, be and it hereby is enjoined and restrained from delivering, transferring, or paying over to any person or corporation, the safe deposit box, or the contents thereof, in said bank standing in the names of Margaret Butler (also known as Margaret Ethridge), and/or Elinora (or Eleanora) Smith and also from delivering or paying over any moneys on deposit with said Trust Company of New Jersey in the names of Margaret Butler, also known as Margaret Ethridge, and/or Elinora (or Eleanora) Smith, to any person or corporation until the further order of this court, and that the defendant the Bank of Lafayette, is hereby enjoined and restrained from paying over or transferring any money on deposit with said last mentioned bank in the names of Margaret Butler (known also as Margaret Ethridge and as Margaret Smith) and/or Elinora (or Eleanora) Smith to any person or corporation until the further order of this court; and

It is further ordered, that the defendants Elinora (or Eleanora) Smith, William A. Byrd,

Restraining Order, Annexed to Complaint.

individually and as executor and trustee under the alleged will and testament of Margaret Butler, also known as Margaret Ethridge, dated July 19, 1930, Blanch Lancaster, Willie Dawkins, Catherine Dawkins and the Community Church, be, and they hereby are restrained and enjoined from taking possession of, secreting or transferring any property of the decedent, Margaret Butler, also known as Margaret Ethridge, until the further order of this court; and

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It is further ordered, that true copies of this order, which may be certified as such by the solicitor of the complainant, be served upon the resident defendants within five days from the date hereof, and that copies of said order, certified as aforesaid, be served upon the non-resident defendants by mailing copies thereof by registered mail to their last known addresses within five days from the date hereof; and

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It is further ordered, that the true copies of the bill of complaint filed herein, which may be certified to be such by the solicitor of the complainant, be served with and in the same manner and within the same time as the order to show cause, upon the defendants.

30

E. R. WALKER,
C.

Respectfully advised:

VIVIAN M. LEWIS,
V. C.

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FINAL DECREE, ANNEXED TO BILL
OF COMPLAINT.

IN CHANCERY OF NEW JERSEY

92-344.

Between

CHARLES H. ETHRIDGE,

Complainant,

—and—

ELNORA (OR ELINORA OR ELEANORA) SMITH,
et als.,

Defendants.

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This matter coming on to be heard in the presence of Edmund S. Johnson, solicitor for the complainant; Raymond Chasan, solicitor for the defendants, Elnora Smith and Annette Wooton; and John W. Ockford, solicitor for William A. Byrd, individually and as executor and trustee under an alleged last will and testament of Margaret Butler, also known as Margaret Ethridge, dated July 19th, 1930, and also solicitor for the Community Church; and it further appearing that the Clerk in Chancery was, on the 27th day of March 1933, appointed guardian ad litem of the infant defendants, Willie Dawkins and Catherine Dawkins;

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And the Court having considered the pleadings and proofs offered and the argument of the respective counsel, and being satisfied that the complainant, Charles H. Ethridge, has sustained the allegations of his said bill of complaint to the extent that he is entitled to the absolute possession and ownership of premises No. 194

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Final Decree, Annexed to Complaint.

10 Pine Street, Jersey City, N. J., which lands and premises are hereafter more particularly described; and the Court being further satisfied that the complainant, Charles H. Ethridge, has failed to sustain the allegations of his said bill of complaint as to his right or interest in the personal estate of the last Margaret Butler, also known as Margaret Ethridge, and has further failed to sustain the allegations in the bill of complaint concerning his right or interest in and to the proceeds of certain insurance policies insuring the life of the said Margaret Butler, also known as Margaret Ethridge, which are more particularly set forth in said bill of complaint;

20 And it further appearing, that the rights and interests of the said Charles H. Ethridge in and to the lands and premises No. 194 Pine Street, Jersey City, New Jersey, arise out of a transaction in which the said Charles H. Ethridge, by deed dated May 22nd, 1911, recorded in the Hudson County Register's Office in Liber 1093 of Deeds on pages 231 and 233 &c., conveyed to Margaret Ethridge, his then wife, the said premises, and the said Margaret Ethridge, also known as Margaret Butler, simultaneously executed a last will and testament, bearing even date with the said deed, in which she made him, the said Charles H. Ethridge, the sole beneficiary. And it further appearing, that the said transaction was an entire contract, the purpose and effect of which was to secure to the said Margaret Ethridge a life estate in the said real property and a remainder in the said Charles H. Ethridge;

40 And it further appearing to the Court, that the said Margaret Ethridge, also known as Mar-

Final Decree, Annexed to Complaint.

garet Butler, departed this life on August 9th, 1932, leaving another alleged last will and testament, dated July 19th, 1930, whereby she attempted to make other disposition of the said real property;

And it further appearing, that the said Margaret Ethridge was not seized of the said real estate at the time of her death, but that her estate therein was an estate for life, the remainder being in the complainant, Charles H. Ethridge, by reason of the contemporaneous execution of the deed and will heretofore mentioned and bearing date May 22nd, 1911; 10

And it further appearing, that the said deed and will contemplated and encompassed only the real estate and premises known as No. 194 Pine Street, Jersey City, N. J., and did not encompass or include the personal estate then or thereafter owned or acquired by the said Margaret Ethridge, nor the policies of insurance insuring the life of the said Margaret Ethridge, also known as Margaret Butler; 20

And it further appearing, that restraining orders have heretofore been made in this cause restraining the Trust Company of New Jersey and the Bank of Lafayette from delivering, turning over or paying out of any safe deposit boxes or moneys on deposit with them standing in the name of Margaret Butler, also known as Margaret Ethridge, and/or Elnora Smith; 30

And it further appearing, that restraining orders have heretofore been made in this cause against the Fidelity & Casualty Company, Continental Casualty Company, Pacific Mutual Life Insurance Company of California, Commonwealth Mercantile & Investment Company, Metropolitan Life Insurance Company, Brotherhood of Sleeping Car Porter's Association, The Provident 40

Final Decree, Annexed to Complaint.

Life & Accident Insurance Company, The Pullman Beneficial Association, George E. Cannon, Shelter No. 2, Grand United Order of Antelopes of America, Inc., Cosmopolitan Relief Association, United Aid and Benevolent Association, 10 Prudential Life Insurance Company of America; and Eastern Star Relief Association, restraining and enjoining the said associations and persons from paying over the proceeds or benefits under beneficial, accident and life insurance policies;

And it further appearing, that restraining orders have heretofore been made in this cause against the Pullman Company, enjoining and restraining the transfer and delivery of certain certificates of stock of the said company held or 20 owned by the said Margaret Butler, also known as Margaret Ethridge;

And it further appearing, that restraining orders have heretofore been made in this cause against William A. Byrd, individually and as executor under the last will and testament of Margaret Butler, also known as Margaret Ethridge, dated July 19, 1930, enjoining and restraining said William A. Byrd from probating the said will;

30 And it further appearing, that the Prudential Life Insurance Company of America has interpleaded with this Court the sum of \$1650 due upon a certificate of insurance on the life of Margaret Ethridge, also known as Margaret Butler, which said certificate names as beneficiary therein Elnora Smith, a sister of the said Margaret Ethridge, also known as Margaret Butler, and that the sum of \$100 was by order of this Court paid out of said fund to Perkins, 40 Drewen & Nugent, solicitors of the said Prudential Life Insurance Company of America, as a counsel fee, leaving a balance of \$1550, together

Final Decree, Annexed to Complaint.

with accumulated interest thereon since accrued, which sum still remains deposited in this Court and subject to the order and direction thereof; and it appearing to the satisfaction of the Court that Elnora Smith is the true beneficiary entitled to the said funds;

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It is, on this 4th day of June, 1934, ORDERED, ADJUDGED and DECREED that the said Charles H. Ethridge be and is hereby adjudged to be the owner in fee simple absolute of the lands and premises known as No. 194 Pine Street, Jersey City, N. J., and more particularly described as follows:

All that plot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey:

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FIRST TRACT: Beginning at a point on the southeasterly side of Pine Street, distant south westerly eighty-eight and twenty-nine one-hundredths (88.29) feet from the southwesterly side of Communipaw Avenue, running thence southeasterly at right angles to Pine Street, sixty-nine and eighty-four one-hundredths (69.84) feet; thence southwesterly twenty-one and twenty-nine one-hundredths (21.29) feet to a point distant at right angles from the southeasterly side of Pine Street, sixty-eight and ninety-one one-hundredths (68.91) feet; thence northwesterly at right angles to Pine Street to, through and beyond the centre of a party wall standing partly on the premises herein described, and partly on the premises next adjoining

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Final Decree, Annexed to Complaint.

10 southwesterly thereto, sixty-eight and ninety-one one-hundredths (68.91) feet to the southeasterly line of Pine Street, and thence northeasterly along the same twenty-one and twenty-seven one-hundredths (21.27) feet to the point or place of beginning. Being the premises conveyed to the said Charles H. Ethridge by Jacob Ruppert and wife, by deed dated September 16th, 1907, Recorded Book 997 page 256.

20 and that the said title of Charles H. Ethridge, complainant, arises out of an entire contract between Charles H. Ethridge and Margaret Ethridge, his then wife, entered into on May 22nd, 1911, under which contract the complainant executed a deed, recorded in the Hudson County Register's Office in Liber 1093 of Deeds on pages 231 and 233 &c., the effect of which was and is hereby declared to be to convey a life estate to the said Margaret Ethridge, and the said Margaret Ethridge contemporaneously executed a last will and testament, devising to the said Charles H. Ethridge the remainder in fee;

30 AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said Charles H. Ethridge became seized of an estate in fee simple absolute upon the death of the said Margaret Ethridge, also known as Margaret Butler, on August 9th, 1932 of the lands and premises No. 194 Pine Street, hereinbefore more particularly described, and that the will, dated July 19th, 1930, purporting to devise the said real estate shall be invalid and ineffectual to transfer the said lands and premises to any person or persons other than the said Charles H. Ethridge; and that William A. Byrd,

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Final Decree, Annexed to Complaint.

executor and trustee under the last will, Elnora Smith, and any of the other named beneficiaries under said alleged will dated July 19th, 1930, are hereby perpetually restrained and enjoined from taking possession of or transferring the said real property hereinabove more particularly described; 10

AND IT IS FURTHER ORDERED that the defendant, Elnora Smith, now occupying a portion of the said premises, shall vacate same within thirty days after the date of this decree, and that any other tenants or occupants shall vacate said premises within fifteen days from the date of this order.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said bill of complaint be and the same is hereby dismissed in so far as the same concerns the personal estate or life insurance policies standing in the name of the said Margaret Ethridge, also known as Margaret Butler, or of which she died possessed. 20

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the restraining orders heretofore made against the Trust Company of New Jersey, the Bank of Lafayette, the Fidelity & Casualty Company, Continental Casualty Company, Pacific Mutual Life Insurance Company of California, Commonwealth Mercantile & Investment Company, Metropolitan Life Insurance Company, Brotherhood of Sleeping Car Porter's Association, The Provident Life & Accident Insurance Company, The Pullman Beneficial Association, George E. Cannon, Shelter No. 2, Grand United Order of Antelopes of America, Inc., Cosmopolitan Relief Association, United Aid and Benevolent Association, Prudential Life Insurance Company of America, Eastern Star Relief As- 30
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Final Decree, Annexed to Complaint.

sociation; and The Pullman Company, be and the same are hereby discharged, vacated and for nothing holden.

10 AND IT IS FURTHER ORDERED, ADJUDGED AND
 DECREED, that the Last Will and Testament of
 Margaret Ethridge, also known as Margaret
 Butler, dated July 19th, 1930, shall be valid and
 effectual only to the extent that the personal
 estate of which the said Margaret Ethridge,
 also known as Margaret Butler, died seized or
 possessed shall pass under and by virtue of the
 said Last Will and Testament, but that the said
 Last Will and Testament, dated July 19th, 1930,
 shall not pass or transfer title thereunder to
 20 the lands and premises hereinabove mentioned
 to any person mentioned in said Will, but that,
 so far as the said Will dated July 19th, 1930,
 attempts to devise or transfer title to the afore-
 said lands and premises known as #194 Pine
 Street, Jersey City, New Jersey, the said Will
 dated July 19th, 1930 shall, and is hereby de-
 termined to be invalid and void.

30 IT IS FURTHER ORDERED that the executor named
 in said last will and testament, dated July 19th,
 1930, may probate said will as to personalty only,
 and he is hereby restrained from attempting
 to probate or offer the same for probate as to
 the real property known as #194 Pine Street,
 Jersey City, aforesaid.

40 AND IT IS FURTHER ORDERED, that the said lands
 and premises known as 3194 Pine Street, Jersey
 City, New Jersey, be and they are hereby de-
 clared and determined to be the property in fee
 simple absolute of the said Charles H. Ethridge,
 his heirs and assigns, forever.

Final Decree, Annexed to Complaint.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a certain paper writing, purporting to be the last will and testament of the said Margaret Ethridge, also known as Margaret Butler, and dated May 19th, 1917, be and the same is hereby declared to be null and void and of no effect; and the same is hereby ordered to be cancelled and destroyed, and the Surrogate of Hudson County is hereby perpetually enjoined and restrained from probating the said paper writing dated May 10th, 1917;

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AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, Elnora Smith, was and is entitled to the sum of \$1,550 interpleaded by the defendant, Prudential Life Insurance Company of America and so paid into Court, together with all accumulated interest thereon; and that the balance of the said sum paid into this Court, as aforesaid, and now remaining deposited there, together with all interest accumulated thereon, after deducting the lawful commissions of the Clerk of this Court, be paid to the defendant, Elnora Smith, or to Raymond Chasan, her solicitor.

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AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a counsel fee of \$250.00 be allowed to Edmund S. Johnson, solicitor of the complainant herein, to be paid out of and to be a lien upon the lands and premises hereinabove described, which shall be in lieu of a certain counsel fee allowed to him under an order of May 12th, 1927, hereinafter referred to, and that a like counsel fee of \$250.00 be allowed to Robert S. Hartgrove in lieu of and in satisfaction of any claim for counsel fees by reason of an order dated May 12th, 1927, made and entered in the

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Letter Dated Sept. 13, 1934, Annexed to Complaint.

10 case of *Margaret Ethridge v. Charles H. Ethridge* (54-223), to be paid out of and to be a lien upon the aforesaid real estate, and a counsel fee of \$125.00 to John W. Ockford, one of the solicitors herein, also to be a lien upon and to be paid out of said real property.

Respectfully advised,

LUTHER A. CAMPBELL,
C.

VIVIAN M. LEWIS,
V. C.

20 LETTER, DATED SEPTEMBER 13, 1934,
ANNEXED TO COMPLAINT.

RAYMOND CHASAN
Attorney at Law,
910 Trust Co. of N. J. Building,
Jersey City, N. J.

30 Removed to Labor Bank Building, 26 Journal
Square, Jersey City, N. J.

September 13th, 1934.

Miss Elnora Smith,
178 Pine St.,
Jersey City, N. J.

Re: *Ethridge v. Smith.*

Dear Miss Smith:

40 I find that our appointment for tomorrow
morning must be cancelled of necessity as I
have been called to try three cases tomorrow

Letter Dated Sept. 13, 1934, Annexed to Complaint.

out of town, and will probably be occupied the entire day. It is, therefore, impossible for me to see you until Monday at 2 P. M.

Under the circumstances, and since you will no doubt be in some measure disappointed at the instant delay in settling up this matter, I am enclosing the statement which I promised you for Friday, and on Monday afternoon will turn over to you the check or cash, according to the tenor of the within statement. You will note that under the statement I have received the sum of \$1,576.45 out of the entire amount involved, namely, the sum of \$3,493.87. Since our arrangement is a fee of $33\frac{1}{3}\%$ or $\frac{1}{3}$ of the total, there would be a total balance of \$1,164.62 due to me and a balance of \$411.83 coming to you out of the cash in hand. 10 20

I believe that the enclosed statement is self-explanatory. I have renewed my efforts again to obtain the papers held by Dr. Byrd and hope, perhaps, to have them for you when you come to see me on Monday.

Yours very truly,

RAYMOND CHASAN. 30

STATEMENT, ANNEXED TO COMPLAINT.

RAYMOND CHASAN
 Attorney at Law,
 910 Trust Co. of N. J. Building,
 Jersey City, N. J.

September 13th, 1934.

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Re: *Ethridge v. Smith.*

Received from Court of Chancery proceeds of Prudential policy interpleaded	\$1,576.45
Fee 33 $\frac{1}{3}$ % of total interest of Elnora Smith in the litigation <i>Ethridge v. Smith</i>	1,164.62

BALANCE ON HAND	\$ 411.83
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*Interest of Elnora Smith in Chancery Suit
 Ethridge v. Smith.*

Prudential Insurance Company policy	\$1,576.45
Phoenix Building & Loan Association shares	561.00
Cosmopolitan Relief Association	100.00
United Aid and Benevolent Association	80.00
Eastern Star	100.00
George E. Cannon Shelter	100.00
30 Savings Acct. Trust Company of New Jersey	687.54
Savings Acct. Commercial Trust Co., Mercantile Brch.	83.85
Savings Acct. Commercial Trust Co., Mercantile Brch.	5.20
Savings Acct. New Jersey Title Guarantee & Trust Company, Lafayette Branch	199.83

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TOTAL	\$3,493.87
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Total fee 33 $\frac{1}{3}$ % of total interest of Elnora Smith in suit	\$1,164.62
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ORDER, ANNEXED TO COMPLAINT.
 COMMON PLEAS COURT OF HUDSON
 COUNTY.

Action at Law.

On Judgment.

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RICHARD J. NORRELL,

Plaintiff,

v.

ELNORA (OR ELEANORA) SMITH, and CHARLES H.
 ETHRIDGE, jointly or in the alternative, or
 ELNORA (OR ELEANORA) SMITH, individually
 OR CHARLES H. ETHRIDGE, individually,
 Defendants.

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This matter coming on to be heard upon the Rule to Show Cause entered herein on the 2nd day of October, 1934 and in the presence of Robert S. Hartgrove, attorney for the plaintiff herein, Elnora Smith, judgment debtor and one of the defendants herein and Raymond Chasan, holder and custodian of moneys and funds belonging to the said judgment debtor; and it appearing that a judgment was entered in this cause on the 21st day of September, 1934 in behalf of the said plaintiff, Richard J. Norrell, and against the said defendant, Elnora Smith, in the sum of \$564.74 together with costs amounting to \$56.78; and it further appearing that a Writ of Execution issued upon the said judgment, under which said Writ a levy was made on the 24th day of September, 1934 upon moneys and funds amounting to

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Order, Annexed to Complaint.

\$1567.45 in the possession and custody of the said Raymond Chasan and for the use and benefit of the said Elnora Smith, judgment debtor herein; and it further appearing that the said Raymond Chasan acted as solicitor and
10 counsel for the said Elnora Smith in a proceedings in the Chancery Court of New Jersey wherein Charles H. Ethridge was complainant and the said Elnora Smith and others were defendants and filed an answer in behalf of the said Elnora Smith; and it further appearing that after the entry of a decree in the said Chancery Court proceedings the said Raymond Chasan did receive the sum of \$1567.45 from the Prudential Life Insurance Company which
20 said company interpleaded in the aforesaid Chancery Court proceedings; and it further appearing that under an agreement entered into between the said Elnora Smith and the said Raymond Chasan the said Raymond Chasan was to receive a one-third ($\frac{1}{3}$) share of all the moneys received and recovered by the said Elnora Smith and through him under the decree of the said Chancery Court proceedings; and it further appearing that by the computations
30 of the said Raymond Chasan the said Elnora Smith should under the decree of the said Chancery Court proceedings receive the sum of \$3493.87, but has only recovered and received under the aforesaid decree the sum of \$1567.45 now held by the said Raymond Chasan and levied upon under the Writ of Execution issued under the judgment entered herein and as above set forth; and it further appearing that the said Raymond Chasan claims as due to him out
40 of the aforesaid sum of \$1567.45 the sum of \$1164.62 as counsel fee, the last mentioned

Order, Annexed to Complaint.

amount of money being a one-third ($\frac{1}{3}$) share and part of the said sum of \$3493.87 due to the said Elnora Smith under the said Chancery Court decree as above set forth; and it further appearing that the judgment aforesaid entered in behalf of the said plaintiff herein and against the said defendant is for the funeral bill for the burial of Margaret Ethridge known also as Margaret Butler, the deceased sister of the said Elnora Smith, and that the said Margaret Ethridge known also as Margaret Butler during her lifetime held a policy of insurance in the said Prudential Life Insurance Company under which policy of insurance the said Elnora Smith was named as beneficiary; and the Court having heard the arguments of the respective parties herein;

It is on this 24th day of October, 1934 ORDERED that the said Raymond Chasan has and holds a lien and claim upon the funds and moneys levied upon and in his custody and possession and belonging to the said Elnora Smith, to the extent and in the sum of \$525.49.

IT IS FURTHER ORDERED that the said Raymond Chasan after deducting the aforesaid sum of \$525.49 and from the moneys and funds held in his possession and belonging to the said Elnora Smith, pay over and surrender to Robert S. Hartgrove, Esquire, agent and attorney of record for Richard J. Norrell, the plaintiff herein, in satisfaction of the judgment entered herein in behalf of the said plaintiff and against Elnora Smith, the said defendant, the sum of \$564.74, the amount of the judgment debt together with the sum of \$56.78, the amount of the taxed costs.

Order, Annexed to Complaint.

IT IS FURTHER ORDERED that there be charged against the said moneys and funds in the custody of the said Raymond Chasan and belonging to the said Elnora Smith after the deduction of the aforesaid sum of money, all costs of these proceedings to be taxed, the amount thereof to be paid to Robert S. Hartgrove as attorney for the said Richard J. Norrell, plaintiff herein;

IT IS FURTHER ORDERED that the payment of the aforesaid sums of money to the said Robert S. Hartgrove as agent and attorney for the said Richard J. Norrell and as above set forth in satisfaction of the said judgment entered herein and the proceedings thereunder, be made forthwith upon the service of a copy of this Order upon the said Raymond Chasan together with a taxed bill of costs of these proceedings.

ROBERT V. KINKEAD,
Judge.

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LETTER, DATED MAY 25, 1935, ANNEXED
TO COMPLAINT.

(copy)

ERWIN AND DAVIDSON
Counsellors at Law
99 Lembeck Avenue
Jersey City, N. J.

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May 25, 1935.

Robert S. Hartgrove, Esq.,
576 Newark Avenue,
Jersey City, N. J.

Dear Sir:

Your letter of May 21st addressed to Mr. 20
Walter Clarke, Secretary of the Phoenix Loan
and Building Association, has been handed to
me as counsel for the Association, for reply.

There was a subscription for ten shares of
stock which was put in for withdrawal some-
time ago, on which until recently when restraint
was served on the Association, payments were
being made of \$50.00 per month to the joint
order of Dr. Byrd, Executor of the Estate of 30
Margaret S. Butler and Eleanor Smith. The
balance due on the withdrawal value of these
shares at the present time, is \$316.60.

You will note from the above that these shares
are in the joint names of the Estate and Mrs.
Smith.

Yours very truly,

THOMAS B. DAVIDSON.

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Answer of Defendant, Raymond Chasan.

IN CHANCERY OF NEW JERSEY.

On Bill, &c.

10 Between

RICHARD J. NORRELL,
Complainant,
and
ELNORA (or Elinora) SMITH et als.,
Defendants.

20 Raymond Chasan, residing in the City of Jersey City, Hudson County, New Jersey, answering the Bill of Complaint herein, says that:

1. He admits so much of Paragraph 1 as alleges that the complainant is a duly licensed undertaker and embalmer on information and belief, and has no knowledge or information as to the balance of Paragraph 1.

30 2. He admits that a divorce was obtained by Margaret Butler, deceased, during her lifetime, but denies the balance of Paragraph 2.

3. He admits the making of a Last Will and Testament and the incorporation of the terms thereof by reference, and with regard to the particulars of the same refers to the said Exhibit.

40 4. Paragraph 4 is admitted, and defendant states that the said Bill of Complaint further sought a decree that Charles H. Ethridge be decreed to be the beneficiary under certain insurance policies and death benefit certificates, in

Answer of Defendant Raymond Chasan.

which the defendant, Elnora Smith, was designated as the named beneficiary.

5. Paragraph 5 is admitted.

6. Paragraph 6 is admitted upon information and belief, except that this defendant does not know the date upon which the said suit was instituted. 10

7. Paragraph 7 is admitted, but this defendant states that the said decree vacated the restraints against the collection of the insurance policies and death benefit certificates naming the defendant, Elnora Smith, as beneficiary, and for greater particularity refers to the copy of the said decree annexed to the Bill of Complaint. 20

8. Paragraph 8 is admitted on information and belief.

9. Paragraph 9 is admitted.

10. Paragraph 10 is admitted.

11. Paragraph 11 is admitted. 30

12. Paragraph 12 is admitted, insofar as it alleges the service of a fi. fa. upon this defendant, but denied insofar as it alleges that the said money was the property of Elnora Smith, and this defendant states that at the time of the said levy, there was in his possession to the credit of the said Elnora Smith the sum of \$311.82.

13. Paragraph 13 is admitted on information and belief. 40

14. Paragraph 14 is admitted.

Answer of Defendant Raymond Chasan.

15. Paragraph 15 is admitted insofar as it states that no other moneys of the decedent came into the possession of this defendant, but denies the legal implications that the said funds passed under the Last Will and Testament of the said decedent, and further states that this defendant was retained as solicitor for the defendant, Elnora Smith, to defend a Chancery suit brought by Charles H. Ethridge to avoid the provisions of a will of Margaret Butler constituting the said Elnora Smith as devisee and legatee thereunder, and to defend against the entry of a decree declaring the said Charles H. Ethridge to be the true beneficiary entitled to the proceeds of certain insurance policies and death benefit certificates, and was not retained for the collection of any sum or sums.

16. Paragraph 16 is admitted insofar as it alleges the making of an order dated October 24th, 1934 by the Judge of the Hudson County Court of Common Pleas, but denies the legality of the said order and the legal implications stated by the complainant, and for greater particularity as to the provisions of the said order makes reference to the original or copy thereof annexed to the Bill of Complaint.

17. Paragraph 17 is admitted.

18. Paragraph 18 is admitted.

19. Paragraph 19 is denied, and this defendant states that at the time of the service of the fi. fa. upon him, he had in his possession the sum of \$311.83, which he still retains, and that the losses, costs and reverses incident to the certiorari proceedings were occasioned by the

Answer of Defendant Raymond Chasan.

insistence of this complainant in attempting to enforce an invalid and illegal order.

20. Paragraph 20 is denied.
21. Defendant has no knowledge or information as to Paragraph 21. 10
22. Defendant has no knowledge or information as to Paragraph 22.
23. This defendant has no knowledge or information as to Paragraph 23, except that he refers to the Last Will and Testament of Margaret Butler for the provisions thereof.
24. This defendant has no knowledge or information as to Paragraph 24. 20
25. Paragraph 25 is admitted on information and belief, but this defendant states that there has been and still is a restraining order out of the Court of Chancery of New Jersey against the said executor in the cause of Ethridge vs. Smith et al., which said cause is still pending and undetermined. 30
26. This defendant has no knowledge or information concerning Paragraph 26.
27. This defendant has no knowledge or information concerning Paragraph 27.
28. This defendant has no knowledge or information as to Paragraph 28, except that he admits that Charles H. Ethridge is still claiming an interest in the personal property of the deceased. 40

Answer of Defendant Raymond Chasan.

29. This defendant has no knowledge or information as to Paragraph 29, except that he admits that the deceased and defendant, Elnora Smith, were the joint owners of ten shares of stock in the Phoenix Building & Loan Association at the time of the decedent's death.

30. This defendant has no knowledge or information as to Paragraph 30.

31. Paragraph 31 is admitted, and for greater particularity reference is made to the original order of June 4th, 1935, or copy thereof.

20 32. Paragraph 32 is admitted insofar as it alleges the restraining orders and the inability of Elnora Smith and Raymond Chasan to pay or satisfy any part of the complainant's claim by reason thereof, and the balance of said paragraph is denied. This defendant is ready, able and anxious to interplead or tender to this Court the fund of \$311.83 held by him to the credit of Elnora Smith upon release of the restraints with respect to the said fund, and has offered and undertaken to hold the same available to proper proceedings under the execution of the Hudson County Court of Common Pleas, heretofore served upon him, at such time or times as the complainant in this cause shall legally proceed on his said execution.

30 33. This defendant has no knowledge or information as to Paragraph 33.

40 34. Paragraph 34 is admitted on information and belief.

35. This defendant has no knowledge or information as to Paragraph 35.

Answer of Defendant Raymond Chasan.

36. Paragraph 36 is denied, except that this defendant admits holding to the credit of Elnora Smith the sum of \$311.83, subject to restraining orders heretofore issued out of this Court.

37. Defendant has no knowledge or information as to Paragraph 37. 10

ANSWER IN LIEU OF PLEA.

This defendant further says, in lieu of plea, that the defendant has an adequate remedy at law.

OBJECTIONS IN POINT OF LAW.

Defendant reserves the following objections in point of law to the Bill of Complaint filed herein and his right to strike the said Bill of Complaint at or before final hearing, for the following reasons: 20

1. The said Bill of Complaint and the allegations thereunder are sham, and particularly the allegations stating that this defendant at any time subsequent to September 13th, 1934 held or is holding in trust for Elnora Smith, or to her credit, any sum or sums of money other than the sum of \$311.83, which this defendant expressly admits holding to the credit of Elnora Smith. 30

2. There is still pending and undetermined in this Court a controversy between Charles H. Ethridge and Elnora Smith and others, in which the right and ownership to the said sum of \$311.83 held by this defendant is in controversy, and in which suit the rights and equities of this 40

Replication to Answer of Deft., Raymond Chasan.

complainant, if any, should properly be adjudicated to avoid a multiplicity of suits.

10 3. The said Bill of Complaint does not disclose equity or grounds for the granting of equitable relief, or the exercise of equitable jurisdiction, and the complainant has an adequate remedy at law.

RAYMOND CHASAN,
Solicitor Pro Se.

**Replication to Answer of Defendant,
Raymond Chasan.**

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IN CHANCERY OF NEW JERSEY.

114/316.

On Bill, &c.

Between

RICHARD J. NORRELL,

Complainant,

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and

ELNORA (OR ELINORA) SMITH et als.,

Defendants.

The complainant joins issue on the allegation of facts set forth in the Answer of the defendant, Raymond Chasan.

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ROBERT S. HARTGROVE,
Solicitor and of Counsel
with Complainant.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between

RICHARD J. NORRELL, 10
Complainant,
and

ELNORA (OR ELINORA) SMITH, et als.,
Defendants.

Transcript of testimony taken in the above
entitled cause before the Hon. Vivian M. Lewis,
Vice Chancellor, at the Chancery Chambers, 20
Court House, Paterson, on Tuesday, the 11th
day of May, 1937.

APPEARANCES:

ROBERT S. HARTGROVE, for the Complainant.

SAMUEL S. STERN, for defendant Charles H.
Ethridge.RAYMOND CHASAN, for defendant Elnora Smith 30
and pro se.JOHN W. OCKFORD, for defendant William A.
Byrd, as administrator of the estate of
Margaret Ethridge, deceased.

Mr. Hartgrove: This is a matter which comes
before your Honor on a bill of complaint filed
by Robert J. Norrell, an undertaker and judg-
ment creditor, for the moneys due to him under 40
a judgment for the burial of the remains of
one Margaret Ethridge. The facts revealed by

Colloquy of Counsel.

the bill filed in the original case are that Margaret Ethridge died August 9, 1932 testate, leaving a last will and testament. Richard J. Norrell, an undertaker, at the request of the sister, Elnora Smith, buried the remains for
10 \$660.00. After the burial of the remains and before the will of the testatrix was probated, Charles H. Ethridge filed a bill in Chancery for the purpose of having declared that particular will null and void and that the personal property and real estate devised under that will should come to him.

While that bill was pending and on June 30, 1933 Richard J. Norrell started a suit in the Hudson County Court of Common Pleas for
20 the payment of his funeral bill and thereafter obtained a judgment by confession on the part of Elnora Smith, and before this—

The Court: That was the sister of Mrs. Ethridge?

Mr. Hartgrove: Yes, sir.

Before this judgment was entered and on June 4, 1934, a final decree was entered in the Chancery Court proceedings, advised by your Honor, and that final decree lifted the restraint
30 which had been placed upon the probate of the will and the paying of any funds to Elnora Smith, the sole legatee under that last will and testament. He was given the real estate, however.

The Court: That is, Ethridge was given the real estate?

Mr. Hartgrove: Yes, sir.

Thereafter and on September 24, 1934 an execution issued upon Richard J. Norrell's judgment out of the Common Pleas Court and we
40 levied upon funds in the hands of Raymond

Colloquy of Counsel.

Chasan the lawyer of record for Elnora Smith in the Chancery Court proceedings. The funds we levied upon were funds Mr. Chasan had obtained from your Honor in Chancery, amounting to \$1500.00, as a result of a bill of interpleader by an insurance company. After we had levied upon these funds Mr. Chasan made a claim that he had taken out of the funds or there was due to him out of the funds \$1100.00 and some odd for his counsel fees and he predicated that upon what he said was the extent of the estate or the moneys involved in the litigation in the Chancery Court proceedings. After we had levied then there was an order made for Mr. Chasan to pay us our judgment and that was certioraried to the Supreme Court and because of the informality of the proceedings that order was reversed and thereafter and for the purpose of satisfying our judgment we again proceeded to take our execution, but in the month of June, 1935, which was before a year had expired after the making of the final decree Mr. Ethridge again comes into Court and files pleadings or on a petition to have that decree opened up and your Honor reinstated all of the restraints previously laid upon the funds coming into Elnora Smith and especially the funds coming from the will. In that position we couldn't go up or down so far as our execution was concerned and that restraint is still there, therefore we come in as a judgment creditor because of our inability to proceed by virtue of that restraint either against the funds in Mr. Chasan's hands or against any funds in the hands of the executor who had probated the will after the granting of the decree.

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Colloquy of Counsel.

The Court: All right, put in your evidence. What about the record?

Mr. Hartgrove: I think, aside from the contract, everything is admitted in the proceedings. Here are the records from the Chancery Court in the previous proceedings.

10 The Court: Is there any dispute about him having a judgment?

Mr. Morris Stern: I appear from Mr. Stern's office, appearing for Mr. Ethridge in this action instituted by Mr. Hartgrove. We were made a defendant in this case. The bill of complaint alleges an agreement was made between Norrell and Miss Smith, Elnora Smith, a sister of the deceased woman. We contend that no agreement, or any agreement between Elnora Smith and Mr. Norrell has no binding effect upon this defendant and we are therefore not responsible for that funeral bill and further than that we contend the suit instituted in the Hudson County Court of Common Pleas was against both Elnora Smith and Ethridge, but judgment was taken only against Elnora Smith, and we say if this action lies—

20 The Court: You are a party to this proceeding and I gather you say you are not a proper or necessary party?

Mr. Stern: We say as a matter of fact that we shouldn't be in it, but I only want to make one further thing clear as to this previous action that counsel has referred to. Mr. Ethridge made it clear to me that Mr. Kelsey still represents him in that action and they were waiting a decision of your Honor upon some application they made and so far as—

40 The Court: Mr. Kelsey represents Mr. Ethridge, but he is awaiting nothing from me.

Colloquy of Counsel.

Mr. Ockford: Mr. Kelsey informed me Mr. Stern had been substituted and he no longer represented Ethridge.

Now I want to state on behalf of the executor, Dr. Byrd, that it seems to me, if your Honor please, there is no question the undertaker should be paid but in the first instance Ethridge should pay it because the husband is liable for his wife's funeral bill. 10

The Court: I have heard that enunciated before, that Ethridge should pay it.

Mr. Ockford: I think he should certainly pay something.

The Court: Is he around today?

Mr. Ockford: Yes, sir. He has had the proceeds of this property at Pine Street for thirty years on an investment of \$600.00, which runs about five and one-half cents a day. He has been living in that house right along and I think it is time he did pay something. Here is a chance to pay the funeral bill or it should be a lien against his share of the property and the property should be sold and the money brought into Court for distribution as the Court may order. 20

Mr. Samuel Stern: Mr. Ockford states that Mr. Kelsey states he had substituted me for himself. That is not the fact. We are only in here on this particular suit of Norrell against Smith. We had nothing to do with any other proceeding; don't know anything about it. 30

The Court: Who do you appear for?

Mr. Samuel Stern: Mr. Ethridge, in this particular suit.

The Court: And Mr. Kelsey, you think, is in the other suit? 40

Mr. Stern: I don't know.

Mr. Chasan: I have been made a defendant

Elnora Smith—for Complainant—Direct.

and I want to state to your Honor that I have available and to the credit of Miss Smith the sum of \$311.83 which I would like to turn over in Court for such distribution as a final adjudication of the entire matter will bring.

10 The Court: This matter?

Mr. Chasan: No, the initial matter.

The Court: This is a different case developing under a judgment for a funeral bill. We don't want to confuse that with the Ethridge case.

Mr. Chasan: He does, in the bill of complaint, your Honor.

The Court: I am going to take the proof and I will see what order I will make.

20 Put in the proof.

ELNORA SMITH, duly sworn.

Direct examination by Mr. Hartgrove:

Q. Miss Smith, where do you live? A. 178 Pine Street.

30 Q. Jersey City? A. Yes.

Q. And you are the sister of Margaret Ethridge, who is dead? A. Yes, sir.

Q. And after the death of Margaret Ethridge did you employ Richard J. Norrell to bury the remains of your deceased sister? A. I did.

Q. And he obtained a judgment against you for the moneys due to him, did he not? A. Yes.

40 Q. And after he buried your sister Charles Ethridge instituted suit against you in the Court of Chancery, didn't he? A. Yes.

Elnora Smith—for Complainant—Direct.

Q. And your sister left a last will and testament, did she not? A. Yes.

Mr. Hartgrove: I want to offer the original copy of the last will and testament.

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(Received in evidence and marked Exhibit C-1.)

Q. Who appeared for you as your lawyer in the Chancery Court proceedings which Mr. Ethridge started against you, who was your lawyer? A. Mr. Chasan.

Q. How did you happen to go to Mr. Chasan?

Mr. Chasan: I object, it is immaterial how she happened to come to me.

20

The Court: I will allow it.

A. I was sent by lawyer———

Q. Before that you had never seen Mr. Chasan before, had you? A. I didn't.

Q. He appeared in the Chancery Court proceedings of Ethridge against you? A. Yes.

Q. Did you, at the time you engaged Mr. Chasan, make any agreement with him as to what his fees should be? A. Did not.

30

Q. Did you talk to him? A. I asked him how much——

Q. What was the conversation and where did it take place? A. I would always ask him what the fees would be and he would say he couldn't tell but he would be reasonable.

Q. And how soon did that conversation take place after you had first seen Mr. Chasan? A. Not so long after, a short time after.

40

Q. And during the time that this Chancery

Elnora Smith—for Complainant—Direct.

Court proceeding was pending against you did you ever have any other talk with Mr. Chasan about what his fees should be? A. Constantly.

10 Q. What were those other conversations? A. Always that he would be fair but he couldn't tell. He would be reasonable.

Q. No amount was stipulated? A. No.

Q. You obtained a decree June 4, 1934 in that case; did you thereafter have any talk with Mr. Chasan as to what his fees would be? A. I did.

Mr. Chasan: I don't see the relevancy of all this testimony.

20 The Court: It might be; I should think you wouldn't object to it.

Mr. Chasan: I haven't objected to the type of testimony but it is protracting this hearing.

The Court: I will rule on that afterwards.

30 A. Afterwards he said he would charge one-third of all the money there was and I said to him I thought it was an awful amount but he said all that was coming to me.

Q. He said he would take one-third? A. Yes, sir.

Q. I show you a letter on the letter head of Raymond Chasan addressed to you and dated September 17, 1934, at 178 Pine Street and did you receive that letter? A. I did.

40 Q. And I show you also a letter in the nature of a bill upon the letterhead of Mr. Raymond Chasan dated September 13, 1934 attached to the letter and ask you was that bill attached to the letter when you received it? A. It was.

Elnora Smith—for Complainant—Direct.

Mr. Hartgrove: I want to offer that in evidence, any objection?

Mr. Chasan: No objection.

(Papers referred to received in evidence and marked Exhibit C-2.)

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Q. While the suit was pending in the Chancery Court against you did you ever have any talk with Mr. Chasan about a funeral bill you owed?

A. Yes, sir.

Q. What did you tell him if anything? A. In fact he asked me about bills and I said there was a funeral bill I had made for my sister, and he asked "why"? and I said "because she was my sister and I was the only one to see after her".

20

Q. When did that conversation take place?

A. Oh, in the early part when I first went to see him, I told him that was what I had to pay.

Q. After you had received the decree, June 4, 1934, did you have any other conversation with him about the funeral bill? A. Sure, I said I was anxious to get whatever was coming to me that I might pay my bills.

30

Q. Now, Miss Ethridge (Miss Smith) you said you received this bill marked Exhibit C-2?

The Court: Have you got the records of your judgment?

Mr. Hartgrove: It is admitted, your Honor.

The Court: You want to get it in; you can never tell what might happen, there might be an appeal and then you will want it in the record, won't you?

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Elnora Smith—for Complainant—Direct.

Mr. Hartgrove: Yes. I offer the judgment record.

(Received in evidence and marked Exhibit C-3.)

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The Court: The bill hasn't been paid, has it?

The Witness: No.

The Court: Do you know what the balance of the bill is?

The Witness: Only I paid \$150.00.

The Court: Do you know what the balance is, if any?

The Witness: If any? Yes, there is.

20

The Court: How much?

The Witness: Five hundred and some odd dollars, I think.

The Court: Is that right?

Mr. Hartgrove: No, \$680.00, judgment and costs.

Q. After you received the letter from Mr. Chasan did you go to see him?

30

The Court: What do you want to go further into that for?

Mr. Hartgrove: I want to show your Honor—

The Court: Mr. Chasan says he will willingly turn over anything he has to the Clerk in Chancery for distribution.

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Mr. Hartgrove: That is true, but I want to show if you will permit me, and if I am wrong, rule me out, I want to show your Honor that the failure of Mr. Chasan to pay that funeral bill after execution was served upon him, claiming

Colloquy of Counsel.

eleven hundred and some odd dollars belonged to him, out of the \$1500.00, was unreasonable.

The Court: Well, that might be? That is a matter of fees, but you can put the facts in. Is that the fact, is that why he didn't turn it over? 10

Mr. Hartgrove: The fact is he didn't turn it over, and wanted \$1100.00.

The Court: That is admitted, isn't it?

Mr. Chasan: Yes, your Honor.

The Court: Why bother her about it, then?

Mr. Hartgrove: That is our case, your Honor.

The Court: Do you want to put in any defense at all? I suppose Mr. Chasan wants to say something about that money? 20

Mr. Chasan: I guess I will have to be sworn, your Honor.

The Court: I think so.

Mr. Hartgrove: In as much as we have Mr. Byrd, the executor, as a party defendant, and he also holds funds of Elnora Smith, as they admit in their pleadings, we will ask under our notices for Mr. Ockford to produce the bank books. 30

The Court: Have you got them?

Mr. Hartgrove: They admit they collected funds belonging to Elnora Smith.

The Court: Have you got the bank books?

Mr. Ockford: No, I haven't any. As I understand the executor is restrained from doing anything and he hasn't anything in his hands. 40

The Court: Has he got any money in his hands?

R. Chasan—for Defendants—By the Court.

Mr. Ockford: I don't think so. It is under restraint. Your Honor lifted the restraint to pay the stenographer; outside of that there is some money in the bank.

10 The Court: What do you say is in there, if you know?

Mr. Hartgrove: We say from the statement of Elnora Smith Mr. Byrd has in his hands some \$680.00. They deny that but they say he has some money.

RAYMOND CHASAN, duly sworn.

20 The Court: How much money, Mr. Chasan, do you say you got from the Clerk in Chancery?

30 The Witness: I received \$1576.45 pursuant to the decree of June 4, 1934. At the time I called Miss Smith in and we made final arrangements with reference to the fee that I was to charge her, and I apprised her at the time of the fact my fee would be one-third of the amount I had preserved to her from the attack of Charles H. Ethridge. She was acquiescent about it, made no comments about it, and I think I asked her whether she wanted me to voluntarily collect and get together the balance coming to her under the will and all policies of insurance. It wasn't a necessary part of my work but I told her I was willing to get it all together for her. She said that wasn't necessary she would be able to attend to that herself and I questioned her again,

40

R. Chasan—for Defendants—By the Court.

as I had in the past concerning what the precise items in the estate were but she said she didn't know precisely because the records were in a safe deposit box, and I told her as soon as she would be able to get me the information I would be able to prepare her a proper bill deducting therefrom my one-third and turning over the other two-thirds to her. 10

This dragged along about a week and then she came in with some comment about Doctor Byrd's conduct and she was accompanied on one occasion by Miss Dawkins and she said she had lost some confidence in Doctor Byrd and now wanted me to assist her in getting certain bank books or both bank accounts from Doctor Byrd and in order to put myself properly on record I had her sign an additional and new retainer in which I specifically set forth that the new services I was to render were to be without charge. 20

This went along for several months, with the funds deposited in my trust account during that period, until finally in order to ascertain precisely what was in the estate there was a proceeding had before the Inheritance Tax Supervisor at which time Dr. Byrd was subpoenaed, together with all books and records and at that time I first ascertained the precise amount involved in the estate. 30

The very next day I prepared a statement showing the items and deducting therefrom one-third for my fee, I sent her the letter Mr. Hartgrove introduced together with a statement crediting her with \$486.11 from 40

R. Chasan—for Defendants—By the Court.

which she had withdrawn, through me, by my check, \$100.00, the balance to constitute my fee and—

The Court: For what?

10 The Witness: My fee for representing her in the protracted action of Ethridge against Smith. Since that time I have been willing and anxious to turn over—

The Court: Is that the matter I heard?

The Witness: Yes, sir.

The Court: Was there a decree or order for the payment of the \$1500.00 to you?

20 The Witness: The decree ordered payment of the \$1500.00 to me as Miss Smith's solicitor.

The Court: The ordinary form?

The Witness: Right, sir.

The Court: Didn't you regard that as a fund in your hands as trustee?

30 The Witness: I regarded it as a fund proceeding out of this litigation against which I could exercise an attorney's lien for my fees and I credited Miss Smith with the balance. Since that time I have been willing and anxious to turn over the balance to her or to the Clerk for distribution.

The Court: Why not have turned over the whole amount and then let them pay you?

The Witness: My experience has been sad about turning over the proceeds of litigation.

40 The Court: With Miss Smith?

The Witness: No, other litigation.

The Court: Don't give us that; that is irrelevant. Why didn't you turn the

Raymond Chasan—for Defendants—Cross.

money over to Miss Smith and let her pay you? You knew she was somewhat ignorant? Did you regard that \$1200.00 as your fee?

Mr. Chasan: Yes, sir, and I paid myself.

10

The Court: All right, gentlemen, are there any questions you want to ask?

Cross examination by Mr. Hartgrove:

Q. Mr. Chasan, you charged Mrs. Ethridge one-third of the moneys you had saved her in the Chancery Court proceedings, is that right?

A. One-third of the money I preserved from the attack of Mr. Ethridge, sir.

20

Q. So that you were charging her one-third upon the amount of the estate rather than the services you rendered? A. That was the basis of the computation, yes, sir.

Q. Didn't you think it would have been best for you to charge her on the basis of your services? A. I think the character of my services were beyond question. I was successful and got a decree for her.

Q. But don't you think the charge should have been based upon your services? A. I couldn't possibly have been compensated to the extent of my services in the Chancery Court.

30

Q. If you thought you couldn't be compensated why did you charge her the sum of money you got? A. I beg your pardon.

Q. If you thought you couldn't be compensated, why didn't you charge her a larger amount than one-third? A. I wanted to charge a fee that would be fair and I thought one-third of the estate I preserved was a fair fee.

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Raymond Chasan—for Defendants—Cross.

Q. And you thought of fairness based upon your services in the Chancery Court proceedings? A. They were based upon my services and upon the amount of money involved, both.

10 Q. So that if \$10,000.00 had been the extent of the estate you still wanted one-third? A. That was our agreement and Miss Smith agreed to it.

The Court: Was it in writing?

The Witness: No, sir.

The Court: Nothing is in writing?

The Witness: No, but she acquiesced in this arrangement and the subsequent steps that were taken.

20 Q. After you got that testimony showing the extent of the estate—

The Court: What proceedings were taken?

Mr. Hartgrove: Proceedings under the judgment I had taken, against Mr. Chasan.

30 Q. You referred to an agreement you made with Mrs. Ethridge as to the work you would voluntarily do, have you got that agreement with you? A. No, it is contained in this state of case and I would like to offer the entire state of case, your Honor.

The Court: I will look at it and see what it is.

40 Q. Why didn't you, since you had Mrs. Ethridge, or rather Miss Smith to sign an agreement in respect to your voluntary services, get her to sign an agreement in respect to your

Raymond Chasan—for Defendants—Cross.

fees? A. Our relationship was always very friendly, Mr. Hartgrove, until you somehow induced her to sign a confession of judgment and had her appear as your witness and I never deemed it necessary to reduce anything to writing until after you got into the case.

Q. What did you reduce to writing after I got into it? A. After you got into the case my relations with Mrs. Smith were unfriendly.

Q. What did you reduce to writing? A. I haven't had any business with her since you got in.

Q. Then you didn't reduce anything to writing since I got into the case? A. No.

Mr. Chasan: I would like to offer this state of case.

The Court: Let it go in.

(Received in evidence and marked Exhibit D-1.)

Mr. Ockford: I would like to call Mr. Ethridge.

Mr. Morris Stern: Before Mr. Ethridge is examined I wanted to point out that the bill of complaint says he was divorced from his wife prior to her decease and I contend as a matter of law he is only secondarily liable for any funeral expenses.

Mr. Ockford: That is why I am going to call him.

The Court: It isn't what he claims he is, it is what the facts are. You can argue it later, counselor, I won't shut you off on any argument you want to make.

CHARLES H. ETHRIDGE, duly sworn:

Direct examination by Mr. Ockford:

Q. Mr. Ethridge you still live at 194 Pine Street, Jersey City? A. Yes, sir.

10 Q. And were you living there when your wife died? A. I was.

Mr. Morris Stern: I object to that question of where he lived when his wife died.

The Court: I will allow it and you may note an objection to it, but I will allow that question.

Q. Were you living there when your wife died? A. Yes, sir.

20 Q. And when did your wife die? A. On August 9, 1932.

Q. And you were still married to her at that time, were you not? A. Yes.

Q. You were never divorced from her, were you? A. No.

Q. So that when she died she was still your wife? A. Yes, sir.

Q. And have you paid for her funeral expenses? A. No.

30 Q. Have you contributed at all to her funeral expenses? A. No.

Q. And as far as you know they haven't been paid, you know that, don't you? A. I do not know.

Q. You don't know that, but you haven't paid anything, have you? A. No.

Q. Is anyone else living there at the present time? A. No.

40 Q. And the property has been sold for taxes has it not? By Jersey City? A. It is in the city's hands, yes.

Charles H. Ethridge—for Defendant Byrd—Direct.

The Court: Have they got a tax title?
The city?

The Witness: Why they took it over a
little more than a year ago.

Q. And have you been paying the city any
rent? A. No, sir. 10

Q. Has the property been condemned by the
board of health? A. Not that I know of.

Q. Has there been any health officer around
there to order you out? A. I haven't seen any.

Q. Do you know whether any health officer has
been around there that you haven't seen? A. I
haven't seen any.

Q. Did you get any notice from the city, to
move out? A. I have not. 20

Q. And is the house—what state of repair
is the house in? A. Very bad.

Q. Getting ready to fall apart, isn't it?

Mr. Morris Stern: If your Honor please,
I object to this line of questioning, what
has that got to do with it?

The Court: Note the objection; I de-
sire to hear this myself. Note an ob-
jection on the ground it is immaterial, ir-
relevant and incompetent and everything 30
else, but I desire to hear it.

Mr. Morris Stern: The question is who
should pay the funeral bill.

The Court: The objection is noted.

Q. It is in a very bad state of repair? A. Yes.

Q. Have you paid any money out for repairs,
yourself, since your wife died? A. No, sir.

Q. Have you paid any fire insurance policies
on the house since your wife died? A. No, sir. 40

Q. Or before either; you didn't pay anything
before, either, did you? A. Yes.

Charles H. Ethridge—for Defendant Byrd—Cross.

Q. Is there any other property you own besides your interest in this real estate? Do you own any other property? A. Why since you ask that I will tell you everything that I have.

10 The Court: That is no answer, answer the question directly, do you own any other property, yes or no.

Q. Do you own any other property besides your interest in this real estate 194 Pine Street, Jersey City? A. Yes.

Q. Real estate? A. No, sir.

Q. Personal property? A. Yes.

20 Cross examination by Mr. Morris Stern:

Q. Did you make any agreement with Mr. Norrell with reference to the burial of Margaret Ethridge? A. I tried to bargain with him but he would not bargain with me, he stated I had no authority.

Q. Mr. Ethridge, prior to the time that Margaret Ethridge died did she obtain a divorce from you from the state of Missouri? A. It is on record but I didn't know anything about it.

30 Q. Isn't it a fact that there is such a divorce against you?

The Court: Is there a record of such a divorce?

The Witness: There is such a paper, but it is not recognized in New Jersey.

Q. That is your opinion, isn't that so, Mr. Ethridge? A. Yes, sir.

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Charles H. Ethridge—for Deft. Byrd—Re-direct.

Re-direct examination by Mr. Ockford:

Q. At all times you have asserted and still assert the divorce in Missouri is absolutely illegal as against you, isn't that so? A. Yes, sir.

Q. And you still say so, don't you? A. Yes, sir.

10

Mr. Hartgrove: The only thing I want to get squarely on the record is an admission by the defendant William A. Byrd that as the executor of the will of the deceased, Mrs. Ethridge, he has certain funds in his hands belonging to Mrs. Smith because under the will she is the sole legatee entitled to those funds.

Mr. Ockford: She is not the sole legatee but I offer to supply the Court with the condition of the estate for your guidance in determining this matter so far as we can give it to you. I think possibly the books are still with the Inheritance Tax Department but I will furnish your honor with a statement of the condition of the estate.

20

The Court: To what extent does the estate go? Outside of this house, what does it amount to, offhand?

Mr. Ockford: There are some building and loan shares upon which they pay off under the statute, instead of paying off the accrued principal they pay off so much a month. They made two or three payments then the restraint came along and they haven't paid anything since. I imagine there is about \$1500.00 available.

30

The Court: You will get me a statement?

Mr. Ockford: Yes, sir.

The Court: Mr. Hartgrove will write me a letter and state his views. He thinks he has a right to go against Mr. Chasan and Mr. Eth-

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Colloquy of Counsel.

ridge and the estate and to that letter you can all reply.

Mr. Samuel Stern: I have a memorandum I would like to furnish now.

10 The Court: I would rather you wait until Mr. Hartgrove has written his letter then you mail a copy of Mr. Hartgrove in reply, or you can give it to him now.

Mr. Stern: It is the same memorandum we served on him when we moved to dismiss the bill.

20 Mr. Hartgrove: May I make a statement? Some of the moneys in the hands of the Reverend Byrd are moneys which came to Elnora Smith under a withdrawal by her from the bank account, there being a joint bank account held for the survivor, and when she withdrew the money because she was the survivor she turned those moneys over to Dr. Byrd which don't belong to the estate and I wish the statement Mr. Ockford is going to make will clearly set up how those moneys were arrived at by Mr. Byrd.

30 The Court: He is going to give me a full statement of the financial affairs of the estate and you will see it and you can write about it.

Exhibit C-1.

Copy of Last Will and Testament of Margaret Ethridge.

(This exhibit is identical with the will annexed to the complaint printed herein at pp. 19 to 20.) 10

Exhibit C-2.

Letter dated September 13, 1934, with statement attached.

(This exhibit is identical with the letter and statement annexed to complaint printed herein at pp. 34 to 36.) 20

Exhibit C-3.**Judgment Record.****SUMMONS.**

THE STATE OF NEW JERSEY TO:

ELNORA (OR ELEANORA) SMITH 30
176 Pine St., J. C.
c/o Alice Dawkins

(Seal) and

CHARLES H. ETHRIDGE,
15 Oak St., J. C.

YOU ARE SUMMONED to answer the annexed Complaint of RICHARD J. NORRELL, in an action at law in the Hudson County Court of Common Pleas. AND TAKE NOTICE that unless you file your answer to said Complaint with the Clerk of the Hudson County Court of Common Pleas, at 40

Exhibit C-3.

Jersey City, within 20 days after service upon you of this writ and the annexed complaint the plaintiff may proceed in this suit and judgment may be entered against you.

10 WITNESS, Honorable Robert V. Kinkead, Presiding Judge of the Hudson County Court of Common Pleas, this 29th day of June, 1933.

GUSTAV BACH,
Clerk.

ROBERT S. HARTGROVE,
Attorney.

COMPLAINT.

20

COMMON PLEAS COURT OF HUDSON
COUNTY.

Action at Law.

RICHARD J. NORRELL,

Plaintiff,

vs.

30

ELNORA (OR ELEANORA) SMITH, and CHARLES H. ETHRIDGE, jointly or in the alternative, or ELNORA (OR ELEANORA) SMITH, individually or CHARLES H. ETHRIDGE individually,
Defendants.

40

The plaintiff herein, Richard J. Norrell, residing in Jersey City, County of Hudson and State of New Jersey, complaining against Elnora (or Eleanora) Smith and Charles H. Ethridge, de-

Exhibit C-3.

fendants herein, jointly or in the alternative says that:

COUNT I.

1. He is a licensed undertaker and embalmer of the State of New Jersey, having his business offices at 355 Pacific Avenue, Jersey City, County of Hudson and State of New Jersey. 10

2. On or about the 9th day of August 1932 Margaret Ethridge, known also as Margaret Butler, died and while a resident of Jersey City, county and state aforesaid.

3. On or about the 9th day of August 1932 the said Elnora (or Eleanora) Smith and the said Charles H. Ethridge hired, employed and engaged the said Richard J. Norrell to take charge of and bury the remains of the said Margaret Ethridge, known also as Margaret Butler. 20

4. The said Elnora (or Eleanora) Smith was the sister of the said deceased, Margaret Ethridge, known also as Margaret Butler, and the said Charles H. Ethridge the alleged husband of the said deceased.

5. It was stipulated and agreed between the said Elnora (or Eleanora) Smith and the said Charles H. Ethridge and the said Richard J. Norrell that the said Richard J. Norrell would be paid the sum of \$660.00 for labor, services and material furnished in and about the burial of the said Margaret Ethridge, known also as Margaret Butler. 30

6. The said plaintiff after the making of the contract aforesaid fully performed his contractual obligations. 40

Exhibit C-3.

7. Annexed to this complaint and made a part thereof is an exact copy of the bill setting forth labor, services and material furnished in and about the burial of the said Margaret Ethridge, known also as Margaret Butler.

10 8. The contract price, to wit, \$660.00, for labor, services and materials furnished in the manner as aforesaid is reasonable and proper.

9. The Estate of the said deceased, Margaret Ethridge, known also as Margaret Butler, is solvent.

10. No administrator or executor has been appointed of the said Estate of the said Margaret Ethridge, known also as Margaret Butler.

20 11. The defendants, Elnora (or Eleanora) Smith and Charles H. Ethridge, have failed and refused to pay the aforesaid moneys due and owing to plaintiff.

Plaintiff demands judgment against the said Elnora (or Eleanora) Smith and the said Charles H. Ethridge in the sum of \$660.00 together with interest, or, in the alternative,

COUNT II.

30

1. Plaintiff repeats paragraphs One (1) and Two (2) of Count I of this complaint.

2. On or about the 9th day of August 1932 the said Elnora (or Eleanora) Smith hired, employed and engaged the said Richard J. Norrell to take charge of and bury the remains of the said Margaret Ethridge, known also as Margaret Butler.

40

3. The said Elnora (or Eleanora) Smith was the sister of the said deceased, Margaret Ethridge, known also as Margaret Butler.

Exhibit C-3.

4. It was stipulated and agreed between the said Elnora (or Eleanora) Smith and the said Richard J. Norrell that the said Richard J. Norrell would be paid the sum of \$660.00 for labor, services and material furnished in and about the burial of the said Margaret Ethridge, known also as Margaret Butler. 10

5. Plaintiff repeats paragraphs six (6), seven (7), eight (8), nine (9) and ten (10) of Count I of this Complaint.

6. The defendant, Elnora (or Eleanora) Smith, has refused and failed to pay the aforesaid moneys due and owing to the plaintiff.

Plaintiff demands judgment against the said Elnora (or Eleanora) Smith in the sum of \$660.00 together with interest, or, in the alternative, 20

COUNT III.

1. Plaintiff repeats paragraphs one (1) and two (2) of Count I of this Complaint.

2. On or about the 9th day of August 1932 the said Charles H. Ethridge, one of the defendants herein, hired, employed and engaged the said Richard J. Norrell to take charge of and bury the remains of the said Margaret Ethridge, known also as Margaret Butler. 30

3. The said Charles H. Ethridge is and was the alleged husband of the said deceased, Margaret Ethridge, known also as Margaret Butler.

4. It was stipulated and agreed between the said Charles H. Ethridge and the said Richard J. Norrell that the said Richard J. Norrell would be paid the sum of \$660.00 for labor, services 40

Exhibit C-3.

and material furnished in and about the burial of the said Margaret Ethridge, known also as Margaret Butler.

5. Plaintiff repeats paragraphs six (6), seven (7), eight (8), nine (9) and ten (10) of Count I of this Complaint.

6. The said defendant, Charles H. Ethridge, has failed and refused to pay the aforesaid amount of money due and owing to the plaintiff.

Plaintiff demands judgment against the said Charles H. Ethridge in the sum of \$660.00 together with interest, or, in the alternative,

COUNT IV.

1. Plaintiff repeats paragraphs one (1) and two (2) of Count I of this Complaint.

2. Charles H. Ethridge, the other defendant herein claims to be and is the lawful husband of Margaret Ethridge, known also as Margaret Butler, and now deceased.

3. After the death of the said Margaret Ethridge, known also as Margaret Butler, on or about the 9th day of August 1932, the said plaintiff, at the direction of the said Charles H. Ethridge, buried the remains of the said Margaret Ethridge, known also as Margaret Butler.

4. Annexed to and made a part of the complaint is a copy of the bill setting forth the work, labor and material furnished in and about the burial of the said Margaret Ethridge, known also as Margaret Butler, and charges the same.

5. The charges for the funeral services as above set forth, to wit, \$660.00, are reasonable and just.

Exhibit C-3.

6. The said Charles H. Ethridge is solvent and, as husband of the said deceased, is liable for the funeral bill for funeral services rendered as above set forth.

7. The said Charles H. Ethridge claims to be the sole beneficiary of the Estate of the said deceased, Margaret Ethridge, known also as Margaret Butler, under an alleged Last Will and Testament dated May 22, 1911. 10

8. The defendant, Charles H. Ethridge, has failed and refused to pay the aforesaid funeral bill.

Judgment will be asked for against Elnora (or Eleanora) Smith and Charles H. Ethridge jointly, or, in the alternative, against Elnora (or Eleanora) Smith individually or Charles H. Ethridge individually, in the sum of \$660.00 together with interest thereon and costs of suit. 20

ROBERT S. HARTGROVE,
Attorney for Plaintiff.

30

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Exhibit C-3.

EXHIBIT, ANNEXED TO THE COMPLAINT.

Tel. Montgomery 5-7198

Jersey City, N. J.

Aug. 15, 1932.

(Seal)

10

RICHARD J. NORRELL
Undertaker and Embalmer
355 Pacific Avenue

Funeral of Margaret Butler, deceased.

	Removal	\$ 10.00	
	Embalming	25.00	
	Casket	375.00	
	Outside Box	65.00	
	Hearse to cemetery	15.00	
20	3 Limousines to cemetery	30.00	
	Grave	115.00	
	Funeral services	25.00	
		—————	\$660.00

PROOF OF SERVICE.

I hereby deputize Frank Mormann to serve the within Writ. Witness my hand and seal this 30th day of June, 1933.

30

JOSEPH E. COLFORD,
Sheriff.

By THOMAS J. PRIOR,
Under Sheriff.

Served within summons and complaint July 3rd, 1933, personally on the defendants Elnora (or Eleanora) Smith, and Charles H. Ethridge, at 194 Pine Street, Jersey City.

JOSEPH E. COLFORD, Sheriff,

By FRANK WORMANN, S. D. S.

40

Filed Clerk's Office

July 5, 1933.

Hudson County, N. J.

GUSTAV BACH,
Clerk.

*Exhibit C-3.*ANSWER OF DEFENDANT CHARLES H.
ETHRIDGE, READ IN OPPOSITION TO
MOTION.

HUDSON COUNTY COMMON PLEAS COURT.

Action at Law.

10

 RICHARD J. NORRELL,

Plaintiff,

vs.

ELNORA (OF ELEANORA) SMITH, and CHARLES H.
ETHRIDGE, &c., et al.,

Defendants.

 20

Defendant, Charles H. Ethridge, of Jersey
City, Hudson County, New Jersey, says that:

1. He denies all of the allegations of the first
count of the complaint except the first and second
paragraphs thereof, and that portion of the
fourth paragraph thereof which describes this
defendant as the husband of the late Margaret
Ethridge.

30

2. Answering Count II, this defendant has
not any knowledge or information thereof suffi-
cient to form a belief, except that he admits the
death of said Margaret Ethridge on August 9,
1932 while a resident of Jersey City aforesaid.

3. Defendant denies the allegations of Count
III except the third paragraph thereof; he also
admits that the said Margaret Ethridge died at
the time and place mentioned in said complaint.

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Exhibit C-3.

4. Defendant denies the allegations of Count IV except that he admits paragraphs 2 and 7 thereof and also that the said Margaret Ethridge died at the time and place mentioned in said complaint.

10

EDMUND S. JOHNSON,
Attorney for Defendant,
Charles H. Ethridge.

Filed Clerk's Office
July 22, 1933.
Hudson County, N. J.

GUSTAV BACH,
Clerk.

20

NOTICE OF TRIAL.

COMMON PLEAS COURT,

HUDSON COUNTY.

Action at Law.

30

RICHARD J. NORRELL,

Plaintiff,

vs.

ELNORA (OR ELEANORA) SMITH, and CHARLES H.
ETHRIDGE, &c., et al.,

Defendants.

Sir:

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PLEASE TO TAKE NOTICE, that the trial of the issue joined in this cause will be moved before said

Exhibit C-3.

Court, in the presence of such Judge or Justice thereof, as shall then be holding said Court, on the third Tuesday of September, A. D. 1933, at the Court House, in Jersey City in and for the County of Hudson at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same. 10

Dated August 7th A. D. 1933.

ROBERT S. HARTGROVE,
Attorney for Plaintiff.

To Edmund S. Johnson, Esq., Attorney of Defendant, Charles H. Ethridge:

Service of the within Notice of Trial is hereby acknowledged this 9th day of August, A. D. 1933. 20

EDMUND S. JOHNSON,
Attorney for Defendant,
Charles H. Ethridge.

Filed Clerk's Office
Aug. 16, 1933.
Hudson County, N. J.

GUSTAV BACH,
Clerk. 30

Exhibit C-3.

ORDER TO PLEAD.

COMMON PLEAS COURT OF HUDSON
COUNTY.

10

Action at Law.

 RICHARD J. NORRELL,

Plaintiff.

VS.

20

ELNORA (OR ELEANORA) SMITH, and CHARLES H.
ETHRIDGE, jointly or in the alternative, or
ELNORA (OR ELEANORA) SMITH, individually
OR CHARLES H. ETHRIDGE individually,
Defendants.

30

The Summons and Complaint in this cause hav-
ing been duly served upon Elnora (or Eleanora)
Smith, one of the defendants in this cause, on the
3rd day of July 1933, and the said defendant hav-
ing failed to file an answer or taken any other
step in response to said Complaint within the
time limited by the rule of the Court; and the
plaintiff herein having failed to take a judgment
by default within the time limited by the Law and
the Rules of this Court;

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IT IS ORDERED that the defendant, Elnora (or
Eleanora) Smith, file her answer to the said Com-
plaint filed herein within five (5) days from the
day and date of service of a copy of this Rule
upon her, or in default thereof judgment may be

Exhibit C-3.

taken against her in accordance with the Rules
and Practice of this Court.

On Motion of

ROBERT S. HARTGROVE,
Attorney.

10

ROBERT V. KINKEAD,
Judge.

Rule entered this 19th day of September, 1934.

Filed Clerk's Office
September 18, 1934.
Hudson County, N. J.

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GUSTAV BACH,
Clerk.

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Exhibit C-3.

AFFIDAVIT FOR CONFESSION OF
JUDGMENT.

COMMON PLEAS COURT OF HUDSON
COUNTY.

10 Action at Law.

RICHARD J. NORRELL,

Plaintiff,

VS.

20 ELNORA (OR ELEANORA) SMITH, and CHARLES H.
ETHRIDGE, jointly or in the alternative, or
ELNORA (OR ELEANORA) SMITH, individually
OR CHARLES H. ETHRIDGE individually,
Defendants.

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

30 ELNORA SMITH KNOWN ALSO AS ELEANORA
SMITH, of full age, being duly sworn upon her
oath, according to law, deposes and says:

1. I am a resident of Jersey City, County of Hudson and State aforesaid, residing at No. 178 Pine Street.
2. I am also one of the defendants named in the above-entitled cause of action and was served with Summons and Complaint in this cause on or about the 3rd day of July, 1933; after the service of the said papers I did not make any answer to the said Complaint or take any other steps in
40 this matter.

Exhibit C-3.

3. I am informed and verily believe that no judgment by default or otherwise has been taken against me in this cause and that the matter is now pending in the Common Pleas Court of Hudson County and untried.

4. I am the sister of Margaret Ethridge known also as Margaret Butler, who died on or about the 9th day of August, 1932. After the death of the said Margaret Ethridge I employed and engaged Richard J. Norrell, the plaintiff in the above-entitled cause, as undertaker and funeral director to take care of and bury the remains of the said Margaret Ethridge known also as Margaret Butler.

5. It was stipulated and agreed between the said Richard J. Norrell and me that I should pay him the sum of \$660.00 for labor, services and material furnished in and about the burial of the remains of the said Margaret Ethridge known also as Margaret Butler.

6. The said Richard J. Norrell performed his contractual obligations as aforesated and I became indebted to him in the sum of \$660.00.

7. After the institution of the suit herein for the amount of the contractual debt, to wit, \$660.00, I paid on account of said indebtedness the sum of \$158.71.

8. At the present time I am indebted to the said Richard J. Norrell in the sum of \$501.29 the same being the amount due and owing as a balance upon the aforesaid contractual debt together with interest thereon from the 14th day of August, 1932.

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Exhibit C-3.

9. I am confessing my indebtedness to the said Richard J. Norrell in the manner as afore-stated and am willing that a judgment by confession be entered against me in this cause and that the said Richard J. Norrell have all rights thereunder as he would have and if the judgment had been taken against me, either by default or upon a trial of the above-stated matter.

ELNORA SMITH.

Subscribed and sworn to before me this
21st day of September, 1934.

20 C. HOWARD SLATER,
Notary Public of New Jersey.
(N. P. Seal)

Filed Clerk's Office
Sept. 21, 1934
Hudson County, N. J.

GUSTAV BACH,
Clerk.

30

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Exhibit C-3.

AFFIDAVIT OF ROBERT S. HARTGROVE.

COMMON PLEAS COURT OF HUDSON
COUNTY.

Action at Law.

 RICHARD J. NORRELL,

Plaintiff,

vs.

ELNORA (OR ELEANORA) SMITH, and CHARLES H.
ETHRIDGE, jointly or in the alternative, or
ELNORA (OR ELEANORA) SMITH, individually
OR CHARLES H. ETHRIDGE individually,
Defendants.

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

ROBERT S. HARTGROVE, being duly sworn on his
oath, according to law, deposes and says:

1. I am an attorney and counsellor at law of
the State of New Jersey with law offices at 576
Newark Avenue, Jersey City, and am the attor-
ney of record for Richard J. Norrell, the plain-
tiff herein.

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2. On or about the 30th day of June, 1933, I
instituted suit in this matter and against the de-
fendants herein, service being made upon the
said defendants.

3. At no time after service was made in this
matter was any answer filed by Elnora (or
Eleanora) Smith, one of the defendants herein.

4. Thereafter and on or about the 21st day of
September, 1934, a judgment by confession was
taken in this cause and against the said Elnora

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Exhibit C-3.

(Eleanora) Smith, her affidavit confessing her indebtedness to the said plaintiff being filed of record.

10 5. The said plaintiff herein is an undertaker and funeral director with funeral parlors at 355 Pacific Avenue, Jersey City, New Jersey, and has been engaged in the undertaking business for a number of years last past.

6. The aforementioned suit was predicated upon a contract made by the said Elnora (or Eleanora) Smith and with the said plaintiff herein for the burial of the remains of Margaret Butler also known as Margaret Ethridge, the sister of the said Elnora (or Eleanora) Smith.

20 7. After judgment was entered in this cause and against the said Elnora Smith a levy was made under execution upon the said judgment on the 24th day of September, 1934, upon moneys and funds in the possession and custody of Raymond Chasan, an attorney at law of the State of New Jersey with law offices at 26 Journal Square (Labor Bank Building), Jersey City, the said funds and money belonging to the said Elnora Smith. After the levy was made as aforesaid a
30 return was made by the Sheriff of Hudson County as the records of his office will more fully show.

8. As the attorney and agent for the said plaintiff herein I have made a demand upon the said Raymond Chasan to satisfy the judgment in this cause amounting to \$564.74 together with costs amounting to \$56.78, total \$621.52, as shown by an exact copy of a letter written by me to the
40 said Raymond Chasan attached hereto and made a part of this affidavit.

Exhibit C-3.

9. The said judgment remains unpaid and unsatisfied.

ROBERT S. HARTGROVE.

Subscribed and sworn to before me this
2nd day of October, 1934. 10

BEATRICE MELTZER,
Notary Public of New Jersey.

LETTER OF NOTICE OF LEVY TO
RAYMOND CHASAN.

September twenty-seventh, 1934.

Raymond Chasan, Esq., 20
26 Journal Square,
Jersey City, N. J.

Re: Norrell v. Smith & Ethridge.

Dear Sir:

The Sheriff of Hudson County has made a levy under a judgment in behalf of the plaintiff in the above entitled matter, upon moneys held by you and for Elnor Smith, defendant, I wish you would let me know, by return of mail, if you will pay this money over or will it be necessary for me to proceed in Court against you? 30

Thanking you for the courtesy of an early reply, I am,

Yours very truly,

ROBERT S. HARTGROVE.

RSH L.

Filed Clerk's Office
Oct. 2, 1934 40

Hudson County, N. J.

GUSTAV BACH,
Clerk.

Exhibit C-3.

RULE TO SHOW CAUSE.

COMMON PLEAS COURT OF HUDSON
COUNTY.

Action at Law.

10

 RICHARD J. NORRELL,

Plaintiff,

vs.

ELNORA (OR ELEANORA) SMITH, and CHARLES H.
ETHRIDGE, jointly or in the alternative, or
ELNORA (OR ELEANORA) SMITH, individually
OR CHARLES H. ETHRIDGE individually,

Defendants.

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This matter coming on to be heard in the presence of Robert S. Hartgrove, attorney for the plaintiff herein, and it appearing from the affidavit submitted that a judgment was entered in this cause in behalf of the plaintiff and against the defendant, Elnora Smith, on the 24th day of September, 1934, after which an execution was issued upon the said judgment and a levy made upon moneys and funds held by Raymond Chasan, Esquire, an attorney at law of the State of New Jersey and belonging to the said Elnora Smith, one of the defendants herein; and it further appearing that the said Raymond Chasan although called upon has failed and refused to pay and satisfy out of the moneys and funds so held by him the judgment debt amounting to \$501.29 together with interest amounting to \$63.45 and costs amounting to \$56.78 amounting in all to \$621.52.

It is thereupon on this 2nd day of October, 1934, on motion of Robert S. Hartgrove, Esquire,

Exhibit C-3.

ORDERED that the said Raymond Chasan and Elnora Smith one of the defendants herein, show cause before me, at the Courthouse in Jersey City, on the 5th day of October, 1934, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, why the said Raymond Chasan should not be ordered and directed to pay out of the funds so held by him and for the benefit of the said Elnora Smith sufficient moneys to pay and satisfy the judgment entered herein in behalf of Richard J. Norrell and against Elnora Smith, one of the defendants herein.

10

IT IS FURTHER ORDERED that in the meantime and until the further Order of this Court the said Raymond Chasan be restrained and enjoined from paying over or surrendering to the said Elnora Smith, her agents or assigns any of the funds or moneys so held by him for the benefit of or as belonging to the said Elnora Smith.

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IT IS FURTHER ORDERED that exact copies of this Order be served upon the said Raymond Chasan and Elnora Smith within two (2) days from the date of this Order.

ROBERT V. KINKEAD,
Judge.

30

Filed Clerk's Office
Oct. 2, 1934
Hudson County, N. J.

GUSTAV BACH,
Clerk.

40

Exhibit C-3.

ORDER.

COMMON PLEAS COURT OF HUDSON
COUNTY.

Action at Law.

10

 RICHARD J. NORRELL,

Plaintiff,

vs.

 ELNORA (OR ELEANORA) SMITH, and CHARLES H.
 ETHRIDGE, jointly or in the alternative, or
 ELNORA (OR ELEANORA) SMITH, individually
 OR CHARLES H. ETHRIDGE individually,

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Defendants.

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This matter coming on to be heard upon the Rule to Show Cause entered herein on the 2nd day of October, 1934, and in the presence of Robert S. Hartgrove, attorney for the plaintiff herein, Elnora Smith, judgment debtor and one of the defendants herein and Raymond Chasan, holder and custodian of moneys and funds belonging to the said judgment debtor; and it appearing that a judgment was entered in this cause on the 21st day of September, 1934, in behalf of the said plaintiff, Richard J. Norrell, and against the said defendant, Elnora Smith, in the sum of \$564.74 together with costs amounting to \$56.78; and it further appearing that a Writ of Execution issued upon the said judgment, under which said Writ a levy was made on the 24th day of September, 1934, upon moneys

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and funds amounting to \$1,567.45 in the possession and custody of the said Raymond Chasan and for the use and benefit of the said Elnora

Exhibit C-3.

Smith, judgment debtor herein; and it further appearing that the said Raymond Chasan acted as solicitor and counsel for the said Elnora Smith in a proceedings in the Chancery Court of New Jersey wherein Charles H. Ethridge was complainant and the said Elnora Smith and others were defendants and filed an answer in behalf of the said Elnora Smith; and it further appearing that after the entry of a decree in the said Chancery Court proceedings the said Raymond Chasan did receive the sum of \$1,567.45 from the Prudential Life Insurance Company which said company interpleaded in the aforesaid Chancery Court proceedings; and it further appearing that under an agreement entered into between the said Elnora Smith and the said Raymond Chasan the said Raymond Chasan was to receive a one-third ($\frac{1}{3}$) share of all the moneys received and recovered by the said Elnora Smith and through him under the decree of the said Chancery Court proceedings; and it further appearing that by the computations of the said Raymond Chasan the said Elnora Smith should under the decree of the said Chancery Court proceedings receive the sum of \$3,493.87, but has only recovered and received under the aforesaid decree the sum of \$1,567.45 now held by the said Raymond Chasan and levied upon under the Writ of Execution issued under the judgment entered herein and as above set forth; and it further appearing that the said Raymond Chasan claims as due to him out of the aforesaid sum of \$1,567.45 the sum of \$1,164.62 as counsel fee, the last mentioned amount of money being one-third ($\frac{1}{3}$) share and part of the said sum of \$3,493.87 due to the said Elnora Smith under the said Chancery Court decree as above set forth; and it further appearing that the judgment aforesaid entered

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Exhibit C-3.

in behalf of the said plaintiff herein and against the said defendant is for the funeral bill for the burial of Margaret Ethridge known also as Margaret Butler, the deceased sister of the said Elnora Smith, and that the said Margaret Ethridge known also as Margaret Butler during her lifetime held a policy of insurance in the said Prudential Life Insurance Company under which policy of insurance the said Elnora Smith was named as beneficiary; and the Court having heard the arguments of the respective parties herein;

10 It is on this 24th day of October, 1934, ORDERED that the said Raymond Chasan has and holds a lien and claim upon the funds and moneys levied upon and in his custody and possession and belonging to the said Elnora Smith, to the extent and in the sum of \$525.49.

20 IT IS FURTHER ORDERED that the said Raymond Chasan after deducting the aforesaid sum of \$525.49 and from the moneys and funds held in his possession and belonging to the said Elnora Smith, pay over and surrender to Robert S. Hartgrove, Esquire, agent and attorney of record for Richard J. Norrell, the plaintiff herein, in satisfaction of the judgment entered herein in behalf of the said plaintiff and against Elnora Smith, the said defendant, the sum of \$564.74, the amount of the judgment debt together with the sum of \$56.78, the amount of the taxed costs.

30 IT IS FURTHER ORDERED that there be charged against the said moneys and funds in the custody of the said Raymond Chasan and belonging to the said Elnora Smith after the deduction of the aforesaid sums of money, all costs of these proceedings to be taxed, the amount thereof to be paid to Robert S. Hartgrove as attorney for the said Richard J. Norrell, plaintiff herein.

40

Exhibit C-3.

IT IS FURTHER ORDERED that the payment of the aforesaid sums of money to the said Robert S. Hartgrove as agent and attorney for the said Richard J. Norrell and as above set forth in satisfaction of the said judgment entered herein and the proceedings thereunder, be made forthwith upon the service of a copy of this Order upon the said Raymond Chasan together with a taxed bill of costs of these proceedings. 10

ROBERT V. KINKEAD,
Judge.

Filed Clerk's Office
Oct. 25, 1934
Hudson County, N. J.

GUSTAV BACH,
Clerk. 20

JUDGMENT.

COMMON PLEAS COURT OF HUDSON
COUNTY.

Judgment entered October 25, 1934.

RICHARD J. NORRELL,
Plaintiff, 30

—vs—

ELNORA SMITH,
Defendant.

Debt	\$564.74
Costs	56.78
Total	621.52

ROBERT S. HARTGROVE,
Attorney. 40

Judgment on order in the above entitled cause was entered in this Court on the 25th day of Octo-

Exhibit C-3.

ber in the year of our Lord One Thousand Nine Hundred and Thirty-four, in favor of the plaintiff, Richard J. Norrell, and against the defendant, Elnora Smith, in a plea of action at law, for the sum of Five Hundred Sixty-four Dollars
 10 Seventy-four Cents debt and Fifty-six Dollars and Seventy-eight Cents costs of suit.

Judgment entered and signed this 25th day of October, 1934.

ROBERT V. KINKEAD,
 Judge.

AFFIDAVIT OF ROBERT S. HARTGROVE.

20 COMMON PLEAS COURT OF HUDSON
 COUNTY.

On Judgment. Affidavit.

RICHARD J. NORRELL,

Plaintiff,

vs.

30 ELNORA (OF ELEANORA) SMITH, and CHARLES H.
 ETHRIDGE, jointly or in the alternative, or
 ELNORA (OF ELEANORA) SMITH, individually
 or CHARLES H. ETHRIDGE individually,
 Defendants.

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

ROBERT S. HARTGROVE, of full age, being sworn upon his oath, according to law, deposes and
 40 says:

1. I am an attorney and counsellor-at-law of the State of New Jersey with law offices situated

Exhibit C-3.

at 576 Newark Avenue, Jersey City, county and state aforesaid, and am the attorney of record for Richard J. Norrell, the plaintiff herein.

2. After the entry of judgment in this cause and the taxation of costs in respect thereto I caused a writ of execution to be issued herein and for which I paid the sum of \$2.00. For the service of the said writ of execution I paid Sheriff's fees of \$6.16. After a levy was made under the said writ of execution a Rule to Show Cause was issued in this matter dated the 2nd day of October, 1934, for the filing of which Rule I paid the sum of \$2.00. After the return day of the said Rule to Show Cause I caused another Order to be made herein dated the 24th day of October, 1934, for the filing of which said Order I paid an additional sum of \$2.00.

3. The total amount of fees which I paid out after the taxation of costs under the aforesaid judgment amounted to the sum of \$12.16.

ROBERT S. HARTGROVE.

Subscribed and sworn to before me this
24th day of October, 1934.

JULIUS J. SEIDEN,
Master in Chancery of New Jersey.

Exhibit D-1.

DEPOSITIONS.

NEW JERSEY SUPREME COURT.

On Certiorari. Depositions.

10

 RAYMOND CHASAN,

Prosecutor,

vs.

THE COURT OF COMMON PLEAS IN AND FOR THE
 COUNTY OF HUDSON, GUSTAVE BACH, Clerk of
 the County of Hudson, ELNORA SMITH and
 RICHARD J. NORRELL,

20

Respondents.

30

Depositions taken before me, Isidore Horn-
 stein, a Supreme Court Commissioner, at my
 office, #921 Bergen Avenue, Jersey City, this
 12th day of December, 1934, at 4 o'clock in the
 afternoon, pursuant to a writ of certiorari al-
 lowed by Hon. Thomas J. Brogan, Chief Justice
 of the New Jersey Supreme Court, and pursuant
 to notice, the original of which is hereto annexed
 and made a part hereof.

APPEARANCES:

HON. RICHARD DOHERTY, Attorney for the Prose-
 cutor.

HON. ROBERT S. HARTGROVE, Attorney for the
 Respondent, Richard J. Norrell.

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ISIDORE HORNSTEIN, Supreme Court Commissioner.

ESTHER COHEN, stenographer, duly sworn.

*Exhibit D-1.**Deposition of Elnora Smith—Direct.*

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

I, ESTHER COHEN, do solemnly swear that I will faithfully and truly take stenographically and reproduce in typewriting testimony to be given in an action now pending in the New Jersey Supreme Court, wherein Raymond Chasan is Prosecutor and The Court of Common Pleas in and for the County of Hudson, *et als.*, are Defendants. 10

So help me God.

ESTHER COHEN.

Sworn and subscribed to before me this 12th day of December, 1934. 20

ISIDORE HORNSTEIN,
Supreme Court Commissioner.

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

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ELNORA SMITH, of full age, being duly sworn, according to law, upon her oath, testifies as follows:

Direct examination by Mr. Hartgrove:

Q. Mrs. Smith, you were the sister of Margaret Ethridge during her lifetime? A. Yes.

Q. She died when? A. August 9th, 1932.

Q. She was buried by Richard J. Norrell, the undertaker? A. Yes. 40

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Deposition of Elnora Smith—Direct.

Q. You employed Mr. Norrell to bury your sister, did you? A. I did.

Q. And thereafter a judgment was obtained against you? A. Yes.

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By Mr. Hartgrove: We agree on the date of judgment, Judge?

By Judge Doherty: Yes, it is in the return.

By Mr. Hartgrove: It was the 21st day of September, 1934, in the sum of \$564.74 and costs amounting to \$56.78, in the Hudson County Court of Common Pleas.

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By Mr. Hartgrove: I offer this in evidence. (Indicating letter of Mr. Chasan.)

By the Commissioner: Letter on the stationery of Raymond Chasan, Attorney at Law, dated September 13th, 1934, addressed to Miss Elnora Smith, 178 Pine Street, Jersey City, N. J., is received in evidence and marked Exhibit D-1.

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(The bill for services on the stationery of Raymond Chasan, the prosecutor, dated September 13th, 1934, is received in evidence and marked Exhibit D-2.)

By Mr. Hartgrove:

Q. Mrs. Smith, Mr. Chasan appeared for you in the Chancery Court matter of Ethridge v. Smith, et al., did he? A. He did.

40 Q. After you had received the letter from Mr. Chasan marked Exhibit D-1, did you go to see Mr. Chasan? A. I did.

Q. Did you have a conversation with him with

*Exhibit D-1.**Deposition of Elnora Smith—Direct.*

respect to what is set forth in this letter? A. I did.

Q. Do you recall what that conversation was?

A. We spoke about the price and the amount of money that was on hand. 10

Q. What did he tell you the amount of money was on hand? A. The amount set forth in the letter.

Q. Did you say anything to him or did he say anything to you with respect to what his charges would be for his services to you in the Chancery Court proceedings? A. One-third of the amount that I would receive.

Q. And at this time did you direct Mr. Chasan's attention to any of the items set forth in the statement marked Exhibit D-2, which I now show you? A. I did. 20

Q. What items did you direct his attention to?

A. Indicating to counsel the figures \$199.83, which, on the statement appears to be the amount in the savings account in the New Jersey Title Guarantee & Trust Company, Lafayette Branch.

Q. What did you tell him as to that? A. That there was only \$100.00 there. The \$99.83 had been drawn out. 30

Q. What other item did you direct his attention to, if anything else? A. That the George E. Cannon Shelter had been paid already and this amounts to \$100.00.

Q. What else? A. That the \$83.85 representing the amount in the savings account, Commercial Trust Company, Mercantile Branch, that \$77.00 had been drawn out of that.

Q. Was there any other item you directed his attention to? A. No, that was all. 40

Q. Did you have any talk with him at this time in respect to the moneys on hand as to what

*Exhibit D-1.**Deposition of Elnora Smith—Direct.*

should be paid to you? A. I said that I was willing that he should have one-half of what there was, but he said he was entitled to his full fee out of the money which was on hand.

10 Q. Amounting to \$1,576.45? A. Yes. That he wanted his full fee out of that amount of money and that I would have what was left.

Q. Do you remember anything else that was said? A. I was not willing.

Q. Did you tell him that? A. I said that I wanted one-third of all that was coming and that he take one-third of this and the other as it came in, but he said he was entitled to take out his full fee.

20 Q. Before you had this conversation with Mr. Chasan had you and he agreed as to what the amount of his fee should be out of the Chancery Court decree? A. Not until in June.

Q. 1934? A. Yes.

30 Q. What did he say to you and what did you say to him with respect to the amount of his fee in the Chancery Court proceeding? A. I asked him, now, Mr. Chasan, before the one-third, what would the fee be. He said that he could not tell, that he would be reasonable, up until June, and then in June, when the money had been paid—

40 Q. What money? A. The \$1,500.00. He then had that money in his possession, and after that he said it would be one-third of what I would receive. I thought it was steep, but I did not object to it, and I asked him to take one-third and let me have the rest and one-third of whatever I would get. He wanted to collect it in a lump, but it did not come, and when I asked him whether he would take one-third of the \$1,500.00 he said

*Exhibit D-1.**Deposition of Elnora Smith—Cross.*

he wanted to get it all in a lump. He said that I would receive a statement, and this is the statement.

Cross examination by Judge Doherty:

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Q. Did Mr. Chasan represent you in any proceedings in any court except the Court of Chancery? A. Yes, in July, in the First Criminal Court.

Q. Did he represent you in the First Criminal Court? A. Yes.

Q. Did he represent you in any other court? A. No.

Q. Now, those proceedings related to money that had been left to you by your sister's will, didn't they? Money and property left to you by your sister's will? A. Yes.

20

Q. And insurance money was also left to you? A. Yes.

Q. And then your sister's husband started these proceedings against you, didn't he? A. Yes.

Q. In those proceedings he tried to get away from you the property that your sister had left you, isn't that right? A. Yes.

30

Q. So then you went to Mr. Chasan to have him prevent your brother-in-law from getting this property away from you, isn't that true? A. Yes.

Q. What you wanted Mr. Chasan to do was to hold for you what you already had, wasn't that it? A. I wanted Mr. Chasan to have the restraint lifted that I might have these bank books and whatever was coming to me.

Q. Then your brother-in-law did put a restraint on it? A. Yes.

40

Q. And had you all tied up? A. Yes.

Deposition of Elnora Smith—Cross.

Q. And you went to Mr. Chasan to have that restraint lifted so that you could have the control and use of the bank books and the other things?

A. Yes.

10 Q. So it was not a case where you hired a lawyer to get you something, but it was a case where you hired a lawyer to hold for you what you already had? A. I wanted it to come into my possession.

Q. There were appearances in the Court of Chancery, weren't there? You were in the court several times? A. Yes.

Q. And then there was a judgment in your favor in the Court of Chancery? A. Yes.

20 Q. And that judgment allowed you certain property out of your sister's estate, did it? A. No.

By Judge Doherty: The restraint that had been imposed on the personal property was lifted so as to leave it subject to her control and that the husband of the deceased was given all the real estate subject to existing liens, is that right?

30 By Mr. Hartgrove: That is true.

By Judge Doherty:

Q. Did you understand, then, that by the decree of the Court of Chancery the restraint that had been put on your use of the money, and the insurance, and the personal property was lifted? A. Yes.

40 Q. And that your brother-in-law, that is, Mr. Ethridge, was given the real estate subject to all liens at that time? A. Right.

Q. Now, the statement that you received from

*Exhibit D-1.**Deposition of Elnora Smith—Cross.*

Mr. Chasan, dated September 13th, that contains a list of all the funds and property that came back to your control by virtue of this decree of the Court, does it? A. Yes.

Q. And you say it is erroneous in some three particulars, that is, that the George E. Cannon Shelter Fund of \$100.00 had already been paid to you? A. Yes. 10

Q. That is while the proceedings were pending it was paid? A. Yes.

Q. And you got that \$100.00 yourself? A. Yes.

Q. And you got it after you retained Mr. Chasan to be your lawyer, did you? A. Yes.

Q. Do you remember that the restraint that was served on you also included that George E. Cannon Shelter money? 20

By Mr. Hartgrove: We will agree to that.

By Judge Doherty: It is stipulated that the fund known as the George E. Cannon Shelter was included in the operation of the restraint.

Q. Your next criticism is that the \$199.83 said to have been in the Title Guarantee & Trust Company of New Jersey, and also the subject of the restraint, was in fact only \$100.00, isn't that so? A. Yes. 30

Q. Do you know how much was there when Mrs. Ethridge died? A. The \$199.83, but before the restraint \$99.83 was drawn out.

Q. Drawn out by you? A. Yes.

Q. You say that in the Mercantile Branch of the Commercial Trust Company instead of there being \$83.85 there was in fact only \$6.85 because \$77.00 had been withdrawn? A. Right. 40

Exhibit D-1.

Deposition of Elnora Smith—Cross.

Q. That had been withdrawn by you? A. Yes.

Q. While the restraint was on? A. Before the restraint.

10 Q. You understand, don't you, that if you had not been successful in the Chancery proceedings you would have to put back the \$77.00 and also the \$99.00?

By Mr. Hartgrove: I object to that as calling for a conclusion from this witness.

Q. Do you understand that? A. Yes.

20 Q. There was never any bargaining done between you and Mr. Chasan except on the basis of him getting one-third of something, is that all? A. Yes.

Q. And you said that he was to get one-third of what you would receive and you said also that you thought that was nice? A. I thought it was steep.

Q. Didn't you say in your direct testimony that you thought it was nice? A. No.

Q. You did not object to it, however, although you thought it was steep? A. That's right.

30 Q. You say that you were inclined to regret your bargain only when the money did not come in, is that what you said?

By Mr. Hartgrove: I object to that as calling for an unwarranted conclusion.

A. I did not object at all. I was willing to pay it as it came.

40 Q. And the \$1,576.00 that Mr. Chasan got, that was the proceeds of an insurance policy, wasn't it? A. Yes.

*Exhibit D-1.**Deposition of Elnora Smith—Cross.*

Q. And when that money had been paid into court did you understand that? A. Yes.

Q. And then the Court directed it to be paid over to Mr. Chasan as your solicitor?

By Mr. Hartgrove: We object to that. The decree is to pay it either to him or to her.

10

Q. He got it from the Court as your lawyer, you understood that? A. Yes.

Q. Did you get all those other funds that are mentioned in Mr. Chasan's statement? A. No, I did not.

Q. Have you gotten them yet? A. I got \$100.00 from the Eastern Star, and I told him that, and \$10.00 from the Aid.

20

Q. And the Cannon Shelter money? A. Yes, I got that before I knew about Mr. Chasan.

Q. You didn't get any money from the Phoenix Building & Loan shares? A. No, nor any money from the banks.

Q. Did you get any money from the Cosmopolitan Relief Association? A. No.

Q. Did you get any money from the savings account in The Trust Company of New Jersey? A. No.

30

Q. The money is there for you to get it if you want it? A. Mr. Chasan knows why I didn't have it or why I haven't got it. He was to get these things for me. Dr. Byrd has the books and he was the executor under the will of my sister and the bank books and the loan books were turned over to him, and when I asked for them I did not receive them, and Mr. Chasan said he would get all the moneys that were to

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*Exhibit D-1.**Deposition of Elnora Smith—Cross.*

be gotten together, and the \$77.00 that was drawn out was turned over to him, Dr. Byrd.

Q. Who turned the books over to Dr. Byrd?

A. I did.

10 Q. And did you have Mr. Chasan's advice to do that? A. I did not even have Mr. Chasan.

Q. After the Chancery proceedings were finished and after you turned the books over to Dr. Byrd did you then go back to Mr. Chasan for any purpose? A. I was going to Mr. Chasan all along to see how it was proceeding.

20 Q. Did you go back to Mr. Chasan, who, in your behalf, was to try to get the money from Dr. Byrd? A. I did, but it was all along. He was to try to get all the books for me from the beginning.

Q. I show you a paper and ask you if that is your name? A. Yes.

Q. Did you sign that? A. Yes.

By the Commissioner: Paper dated June 13th, 1934, signed by Elnora Smith, is marked Exhibit P-1 for Identification.

30 Q. This paper that you just looked at and identified was drawn by Mr. Chasan and a copy of it was given to you? A. No, I had no copy.

Q. Didn't you get a copy from Mr. Chasan? A. No.

Q. In this paper, Mrs. Smith, you appeared to hire Mr. Chasan to collect the assets that were left to you by your sister, do you remember that? A. Yes.

40 Q. And you authorized him to take all proper steps to get for you bank books standing in the joint names and to assist you in obtaining the

*Exhibit D-1.**Deposition of Elnora Smith—Cross.*

proceeds of certain insurance policies. Do you remember that? A. I do, but Judge—

Q. Do you also agree to this, that the services to be rendered by Mr. Chasan are in consummation of the litigation in the matter of Ethridge against Smith and my attorney agrees that no extra charge shall be required for collecting the assets decreed to be mine under the decree? A. I remember now, that from the beginning that what I wanted Mr. Chasan to do was to get all the books and everything for me, and I understood while the Court had adjourned, or whatever it was, that even though he had not gotten these things my impression was that there was no further charges than the one-third. 10

Q. Mrs. Smith, don't you know that what you hired Mr. Chasan for was to get your rights established in the Court? A. No, sir, because from the beginning that was what I went to him for, to get me all the things that was supposed to be mine and that is what I wanted, and this lady was with me; to get me the things that was supposed to come to me, the insurance, bank books and everything; that is what I wanted him to do for me from the start. 20 30

Q. Mrs. Smith, you have already told us that your brother-in-law was seeking to get the property away from you. You have told us that, have you not? A. Yes.

Q. And you have told us that you hired Mr. Chasan to prevent him from doing that to you, isn't that true? A. Yes.

Q. And now do you want to tell us that all you wanted Mr. Chasan to do was to get the bank books and insurance policies? A. That was all included. 40

Deposition of Elnora Smith—Cross.

Q. That was your view of what he was to do?

A. Yes.

10 Q. When Mr. Chasan sent you this statement indicating that he had on hand \$411.83, that was money that he said belonged to you, did you go to him and get that money from him? A. I did not.

Q. You never made any demand on him for that money? A. My demand was for the two-thirds.

20 Q. When you went to him after you received this statement you made the proposal to him then that he take one-third out of the amount of money that he had on hand and that he then take one-third of all money that would come to you after that, is that right? A. Yes.

Q. And he objected to that, I understood you to say, because he considered that the bargain was that he was to get one-third of whatever interest in the estate was fixed by the Court; is that right? A. I didn't understand that.

30 Q. What did you understand? A. I understood that he was to charge one-third of what I would get, not anything about what the Court would fix; one-third of the amount that would come to me.

Q. That is, he was to get one-third of your actual receipts and not one-third of the value of the property that the Court would adjudge in your favor, that is what you understood? A. Yes.

Q. Were you ever in the Court of Common Pleas before Judge Kinkead on this matter? A. Yes.

40 Q. Did you see Mr. Chasan there? A. Yes.

Q. Were you sworn in that case? A. No.

*Exhibit D-1.**Deposition of Elnora Smith—Cross.*

Q. You have never under oath, heretofore given in any Court the same testimony that you give us here today? A. No.

Q. Were you present all throughout the proceedings had in Judge Kinkead's Court on the day that you were there? A. Yes. 10

Q. Was anybody at all sworn in the case that you know of? A. No.

Q. Was Mr. Chasan there? A. He was.

Q. Did you hear what he informed the Court? A. I did.

Q. He told the Court at that time that he claimed to have a charge of \$1,164.62 against you? A. Yes.

Q. And that he had out of the funds that he had received from the insurance money \$311.00? A. Yes. 20

Q. And the amount of \$311.00 was ascertained by the fact that there was originally \$411.00 balance and you drew \$100.00 from it? A. Yes.

Q. Mrs. Smith, can you remember when it was that Mr. Chasan first told you that his charge was going to be one-third of something? A. After the Court's decision.

Q. Can you fix it sometime in this year? A. Around the 10th of June. 30

Q. And then it was that you made the agreement for the one-third? A. Yes.

Q. Was it about three days afterwards, on June 13th, that you called on him again and made this bargain with him to get the bank books and the insurance money for you? A. Yes.

Q. So the agreement that you made with him to give services in getting the bank books and the insurance money was something separate from the bargain that you made with him a few 40

*Exhibit D-1.**Deposition of Elnora Smith—Cross.*

days before? A. No, I did not, because it was all from the beginning. That is what I understood from the beginning.

10 Q. Do you remember Mr. Chasan offering to help you to get the insurance money and to fill out the necessary forms for you? Did he offer to do that? A. When they gave me the copies of this decree he said that that was to show that the restraint was lifted and I got those papers to give to the different ones.

Q. And then did he offer to help you out on the collection of the insurance money? A. Yes, when I got the decree; in presenting them that was all there was to that so far as I could see.

20 Q. And when Mr. Chasan made this offer to give this assistance to get this money in that you told him "no, that you could attend to that yourself"? A. I did.

Q. And then you found out that you had difficulty with the insurance money? A. No insurance money.

Q. You had difficulty with Dr. Byrd? A. Yes.

30 Q. And on account of the difficulty that you had with Dr. Byrd you went back to Mr. Chasan, did you not? A. I had never left him. I had been going back and forth all along.

Q. Do you remember a check that you made out to Dr. Byrd for \$348.92?

By Mr. Hartgrove: I want to object to this as immaterial if that is not included in the list already offered in evidence and marked Exhibit D-2.

40 Q. Do you remember a check for \$348.92 that you made out to the order of Dr. Byrd out of

*Exhibit D-1.**Deposition of Elnora Smith—Cross.*

the funds in the savings account in the Commercial Trust Company? A. I do.

Q. Do you remember after making out that check calling on Mr. Chasan to discuss the matter with him? A. I mentioned that I had made it out. 10

Q. Did you tell Mr. Chasan that you wanted him to give attention to that matter and to save you from having advantage being taken of you?

By Mr. Hartgrove: I want to object to all evidence in this case in respect to any matters except the agreement made by Mr. Chasan with Elnora Smith concerning the amount of his fee as should be paid to him by Elnora Smith, on the ground that the same is irrelevant and immaterial. 20

A. I did not state those words.

Q. But you did ask him to give attention to that matter? A. I asked him to get those books.

Q. And that was after you had made the bargain for the one-third for his services, was it?

A. Yes.

Q. Was it also on the same date when you signed this agreement that you have seen, and dated June 13th? It was that same day, was it not? 30

By Mr. Hartgrove: I want my objection noted for the same reason as to this character of testimony being asked for.

By Judge Doherty: That's all.

By Mr. Hartgrove: That's all. 40

Exhibit D-1.

MARY ALICE DAWKINS, of full age, being duly sworn, according to law, upon her oath, testifies as follows:

10 By the Commissioner: You live where, Mrs. Dawkins? A. 176 Pine Street, Jersey City.

Direct examination by Mr. Hartgrove:

Q. Mrs. Dawkins, you heard the testimony of Mrs. Smith in respect to a will left by her sister, Margaret Ethridge? A. I did.

Q. Were you a witness to that will? A. Yes.

20 Q. Is that your signature on there (indicating)? A. Yes.

Q. Is that the will? A. Yes.

Q. Did you see the other witness sign? A. I did.

By Mr. Hartgrove: I offer this in evidence.

By Judge Doherty: Objected to as immaterial.

30 By the Commissioner: A paper purporting to be the last will and testament of Margaret S. Butler, dated July 19th, 1930, and bearing the names of Travers A. Spraggins and Alice M. Dawkins as witnesses, this exhibit consisting of two pages, is received in evidence and marked Exhibit D-3.

40 Q. Mrs. Dawkins, were you present with Mrs. Smith at the office of Mr. Chasan on or about June 10th, 1934? A. I was at the office, yes, but I did not see Mr. Chasan on that date, but I called him by phone.

*Exhibit D-1.**Deposition of Mary Alice Dawkins—Direct.*

Q. Did you at any time thereafter go to the office of Mr. Chasan in company with Mrs. Smith? A. I have.

Q. Did you hear any conversation which he had with Mrs. Smith concerning his fee? A. I did. 10

Q. Will you relate just what you heard in this conversation? A. In the conversation as to the amount of Mr. Chasan's bill it was that he wanted one-third of what was to be collected and this amount that Reverend Byrd had drawn Miss Smith mentioned after when Mr. Chasan decided that his amount would be one-third, Miss Smith said that "you get in all the moneys that are out, including the \$300.00 that Reverend Byrd drew out of one bank and \$77.00 that was paid to him from another." 20

Q. And what was said by Mr. Chasan concerning the amount of money that was already collected? A. Concerning the \$1,500.00 Miss Smith asked Mr. Chasan if he would kindly accept one-third of what he had on hand and turn the remainder over to her and Mr. Chasan said that it was the attorney's authority that whenever a lawyer had proceedings in his hands he had authority to take out his amount that he charged and that he could not trust anyone, and that he did not trust anyone to pay him as he got it. He said if you will give me one-third of what you have I will be honest with you and pay you the one-third as I collect. 30

Q. Did he say one-third or two-thirds? A. Two-thirds. He said "I will give you one-third of what I collect as I get it."

Q. Did Mrs. Smith say anything about two-thirds? A. One-third out of the \$1,500.00 check of the Prudential Life Insurance Company. 40

*Exhibit D-1.**Deposition of Mary Alice Dawkins—Cross.*

Q. Were you present at any time when the agreement was drawn marked Exhibit P-1, dated June 13th, 1934, and signed in the name of Elnora Smith? A. I cannot recall that.

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Cross-examination by Judge Doherty:

Q. Mrs. Dawkins, can you recall the date of this conversation? A. I cannot recall the exact date, it was timely in June.

Q. But you are able to recall that Reverend Dr. Byrd had gotten a check from Mrs. Smith? A. Yes.

20

Q. You were able to recall that this conversation that you overheard was after Dr. Byrd had gotten a check from Mrs. Smith? A. Yes, I think it was.

Q. And that he had gotten a check was part of the conversation that you heard? A. Yes.

Q. And it was after Mr. Chasan had received the \$1,500.00 from the Prudential, was it not? A. Yes.

Q. Mrs. Smith stated to Mr. Chasan what was then her desire in the matter? A. Yes.

30

Q. Namely, that he should give her two-thirds of the amount that he had and then as she came into possession of the balance of the funds that she would give him one-third of those receipts? A. Right.

Q. And Mr. Chasan, you say, rejected that offer and told her it was a lawyer's authority or prerogative when there was a fee due to him to deduct the fee from whatever amount he had on hand? A. Yes.

40

Q. And Mr. Chasan told Mrs. Smith that his fee at that time was \$1,164.00? A. Yes.

*Exhibit D-1.**Deposition of Mary Alice Dawkins—Cross.*

Q. Now, what further did Mrs. Smith say to him? A. She said, "Mr. Chasan, I cannot conceive you taking that amount of money and you have not collected it; supposing I never get it, where will I get off at?"

10

Q. Mrs. Smith indicated to you that she was in some doubt as to whether she would get that money or not? A. Whether or not there was any doubt, that was her remarks.

By Mr. Hartgrove: I want my objection noted to the previous question.

Q. Dr. Byrd was the executor of the estate of Mrs. Ethridge? A. Yes.

20

Q. You have had some legal difficulty yourself with Dr. Byrd? A. No, I have simply been a friend to this woman because I know the case from years' standing.

Q. Is it true that you brought Mrs. Smith specially down to Mr. Chasan? A. No, it is not true. I had never brought Mrs. Smith to Mr. Chasan on any particular occasion. Whenever Mrs. Smith had occasion to go to Mr. Chasan's office I went with her.

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By Judge Doherty: That's all.

By Mr. Hartgrove: No more questions.

By the Commissioner: Case closed for the respondent, Richard J. Norrell.

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Exhibit D-1.

RAYMOND CHASAN, Prosecutor, of full age, being duly sworn, according to law, upon his oath, testifies as follows:

Direct examination by Judge Doherty:

10 Q. Mr. Chasan, you are the prosecutor named in this case? A. I am.

Q. And you are seeking the review of an order by the Hudson County Court of Common Pleas? A. That is correct, sir.

Q. Which is contained in the return and purports to have been made by the Court on the 24th day of October, 1934? A. Yes.

20 Q. Were you present in court at the time of the making of the order? A. I was not present when the order was signed.

Q. Were you present in court on that date? A. I had no knowledge that any proceedings were taking place on that date.

Q. Were you served with an order to show cause why funds in your hands should not be turned over by you to the satisfaction of a judgment obtained by one, Norrell, against Mrs. Smith? A. I was.

30 Q. When was the order served? A. I believe on the same day it was made, October 2nd, 1934.

Q. And the order is contained in the return? A. It is.

Q. Did you receive any other citation or notice, or anything in the nature of process except that order? A. I received no process of any sort, and the only notification that I had of any proceedings in this matter was the rule to show cause that you mentioned before.

40 Q. Was there an affidavit served upon you along with the rule to show cause? A. To my best recollection, there was not. There may

Deposition of Raymond Chasan—Direct.

have been, I am not certain about it. May I see the records, please? (Inspected the records.) No, there was no affidavit served, just the rule to show cause.

Q. Did you make a personal appearance in court in obedience with the direction of the rule? 10
A. I did, sir.

Q. The rule was returnable on October 5th, 1934. Was that the date upon which you appeared? A. I am sure there was a continuance until October 9th, and on that day I appeared before Judge Kinkead in Chambers.

Q. Up to the time of your appearance before Judge Kinkead were you apprised, otherwise than by the language of the order to show cause, of the nature of the proceedings that was being conducted against you? A. I at no time up until October 9th, knew of any proceedings against me except as contained in the notification, the rule to show cause. 20

Q. Was there, in the form of any pleading or allegation of any character, anything to inform you of a claim that the amount of money which you had in your possession was claimed by Mrs. Smith? A. I did not know until October 9th, nor did I know on that day, either by any pleadings or in any other manner, that there was any claim against any moneys of mine, other than that I had been served with a writ of execution for funds purporting to be in my hands to the credit of Miss Smith. 30

Q. When was that execution served on you?
A. The execution was served on me on October 24th, as I recollect.

Q. By serving the execution you mean that there was a fi. fa. delivered to you? A. A copy 40

Exhibit D-1.

Deposition of Raymond Chasan—Direct.

of the fi. fa. was delivered to me by a Deputy of the Sheriff's office, and I told him at the time——

10 By Mr. Hartgrove: I object to that on the ground that whatever he told the Constable is not binding on us, it was outside of our presence, and is immaterial and irrelevant.

A. —I told him at the time that I had no such sum of money as was mentioned in the fi. fa.

20 Q. Which was what? A. \$621.52, but I apprised him that I did have in my possession the sum of \$311.83 to the credit of Miss Smith, which I was willing to turn over to abide the order of the Court of Common Pleas.

Q. Was it acceptable by the officer? A. The officer said that he would so notify Mr. Hartgrove.

30 Q. Were the proceedings of October 9th before Judge Kinkead conducted elsewhere than in his Chambers? A. The only proceedings that were had by Judge Kinkead on October 9th were in his Chambers; they were informal. No testimony of any kind was taken; no affidavits were submitted; it was merely an oral declaration on my part that I had \$311.83 in my possession to the credit of Miss Smith and that that was the balance of a larger fund of \$1,576.45 against which I had exercised some time prior an attorney's lien for the amount of \$1,164.62, which sum I had actually withdrawn.

40 Q. Were you then apprised by any means whatever, that the Judge of the Court of Common Pleas was assuming jurisdiction to fix and determine the amount of your lien? A. Yes.

*Exhibit D-1.**Deposition of Raymond Chasan—Direct.*

Q. You were apprised? A. I was apprised only in this respect, that the Judge indicated that he thought I should not have a lien for so great an amount but that my lien should be for some lesser amount and, of course, I challenged the Court's jurisdiction in that respect and he said that some order would be made. That is my knowledge of what the Court thought. 10

Q. You say there was no testimony submitted? A. There was no testimony of any sort, either oral or by affidavit.

Q. Was any information furnished to you by Judge Kinkead, which, if sworn to, would have been the basis of a judgment fixing the amount of a lien? 20

By Mr. Hartgrove: I object.

A. There was no testimony of any sort introduced at the argument of the rule; it was merely an informal statement on my part and a statement by Mr. Hartgrove.

Q. At that time did you make any admission to the Court that you held in your possession money belonging to Mrs. Smith of the amount of the judgment and costs? A. I at all times maintained my original position, that I had in my possession the amount of \$311.83, which I was willing to turn over to the Court and I continued to maintain that whatever funds that had been in my possession were mine and not Mrs. Smith's. 30

Q. Did you conduct for Mrs. Smith any proceedings in the Court of Common Pleas so as to determine the amount of your lien? 40

By Mr. Hartgrove: I object.

Deposition of Raymond Chasan—Direct.

A. There were no pleadings of any sort ever submitted to me.

10 Q. Did you conduct for Mrs. Smith in the Court of Common Pleas any proceedings whatever? A. No.

Q. You heard the testimony of Mrs. Smith given here today? A. I have.

20 Q. Is it true that there was ever any agreement between her and you that you would charge her for the services that you rendered in the Court of Chancery one-third of actual avails of those proceedings or one-third of the amount that she actually collected? A. There was never any such agreement. I was retained to preserve for
30 Miss Smith certain moneys that were willed to her under a will of her deceased sister and certain insurance policies in which she was named beneficiary, from the attack of her brother-in-law in an injunction proceeding in the Chancery Court. After the injunction proceeding was over the case was finished, and in fact, my voluntary suggestion that I help Miss Smith in the preparation of insurance policies and other matters incident to the mechanics of collection was turned
down. She said she could handle that herself and it was only subsequently when she became apprehensive that Dr. Byrd was taking advantage of her that she came to my office; that was on June 13th, and I undertook, in spite of the fact that my work was finished, to do this work for her gratis.

Q. Was there any written agreement to that effect? A. There was a written agreement dated June 13th, 1934.

40 Q. Is it the paper offered as P-1 for Identification?

*Exhibit D-1.**Deposition of Raymond Chasan—Direct.*

By Mr. Hartgrove: That is objected to as immaterial.

A. Yes.

By Judge Doherty: I offer it in evidence. 10

By the Commissioner: It will be received subject to the objection of Mr. Hartgrove and marked Exhibit P-1.

Q. Tell us what transpired with respect to any agreement that you had with Mrs. Smith that your compensation should be one-third of the amount adjudicated to her in the Chancery Court proceedings? A. After I was successful in obtaining a decree in Miss Smith's favor I called Miss Smith to my office. She wanted to know how quickly I could dispose of the matter now that the decree had been rendered. I told her that I would dispose of it when the check given me by the Clerk in Chancery and drawn on a Trenton depository had cleared, except that I was in some doubt, in fact, in great doubt as to the exact amount of the estate that I conserved for her because the books in the savings banks, the shares of stock in the Building & Loan, the certificates of insurance with the insurance companies had never been in my possession and I did not know the amounts. I asked her if she would furnish me with those documents so that I could determine the exact amount. She then apprised me that without consulting me she turned those documents over to Dr. Byrd because he told her that he should have them. I told her he was not entitled to those documents because they were all held jointly by her and her sister 20 30 40

*Exhibit D-1.**Deposition of Raymond Chasan—Direct.*

and were not a part of the estate. I could not conclude the proper settlement of the estate until after a hearing in the Inheritance Tax Supervisor's Office. At that hearing Dr. Byrd produced
10 all the documents in question and I was then in a position to prepare my statement. After I had prepared my statement I learned that there was other personal property that had come into the hands of the executor, which consisted of some jewelry and household effects, and since the statement had been prepared I would forego the rendering of any bill as an extra charge for preserving these assets. There was never any conversation that I would collect anything; as a matter of
20 fact, she refused my assistance to corral and get together this estate after the decree was signed.

Q. Mrs. Smith mentioned an occasion when she and Mrs. Dawkins were present in your office and it was proposed by Mrs. Smith that you be content to hold one-third of the amount of the insurance money that you had collected and then to obtain possession of the other assets of the estate, and that she would thereafter pay you one-third of what she obtained as it was forthcoming. Do
30 you remember such a proposal being made by her? A. She did want me to turn over two-thirds of the proceeds that I had in my possession. I explained to her that I had already exercised my attorney's lien; that it would be an impossible situation with the policies in her possession for me to determine the exact amount, and she said as she was expecting the return any day, for me to wait until she collected those moneys and be dependent upon her honesty as to whether she
40 would turn those funds in to me. I explained to her that I expected to exercise my lien against

*Exhibit D-1.**Deposition of Raymond Chasan—Direct.*

the funds now in my possession and apparently there was no explanation forthcoming from her and she left contented.

By Mr. Hartgrove: I want to object to that part of the answer which refers to his expecting to exercise his lien as it is merely an assumption on his part. 10

Q. That conversation took place in June? A. That conversation took place in June.

Q. And did you then inform her that you had \$411.00 in your possession subject to her demand? A. I so informed her, and as a matter of fact, she drew \$100.00 from that on account, and I never had any knowledge until today that she was dissatisfied with the arrangement. 20

Q. You sent her a statement under date of September 13th, 1934. What was the occasion of the delay in sending her that statement? A. The delay was occasioned because of my lack of precise knowledge of money in savings bank accounts, the amounts forthcoming to her under the several insurance policies, the values of the shares of stock in the Building & Loan, all of which documents had been in her possession, which I had never seen. I sent her the statement on that date, after the hearing in Mr. Ewald's office when I first learned the precise amounts in question. 30

Q. So that in June you did not know what the assets of the estate were to be? A. I did not know the assets until the day before the statement was prepared.

Q. You then had the insurance money in your possession? A. The insurance money was in my possession and Miss Smith was content to so leaving it. 40

*Exhibit D-1.**Deposition of Raymond Chasan—Direct.*

By Mr. Hartgrove: I object to that
"Miss Smith was content to so leaving it."

10 Q. What did she say? A. I asked her on several occasions after this statement had been submitted if she desired to have the funds turned over to her and she said that as long as I had undertaken to help her collect the entire amount she would rather that I collected them and hold the \$311.00 until such time, so that she would know where she stood.

20 Q. You not having ascertained until shortly before September 13th what the full scope of the estate was, did you at the time of the conversation in June, know what the amount of the balance out of that \$1,500.00 would be that would be available to Miss Smith? A. I had no idea.

Q. At the time when you turned the \$100.00 over to her did you know then what the exact amount of the estate would be? A. I did not know what the exact amount of her interest would be and every time she came to my office, which was several times a week, I asked her for information regarding the several amounts involved.

30 Q. And at the time of your conversation in June did you know that the amount would be eleven hundred and some odd dollars? A. I had no idea what the amount would be, and that was precisely my purpose in making it one-third, so that it would benefit Miss Smith, and if, on the other hand, she got nothing, I was willing to give my services gratis.

40 Q. Do you remember the occasion on which Mrs. Dawkins was at your office? A. Mrs. Dawkins came to my office the first time after the decree without Miss Smith. She apprised me of the incident with Dr. Byrd.

*Exhibit D-1.**Deposition of Raymond Chasan—Cross.*

By Mr. Hartgrove: We object to that as not being binding on Miss Smith as to what Mrs. Dawkins said.

She asked me to intercede in Miss Smith's behalf and as she put it, "somebody was seeking to take advantage of her." 10

Q. I asked about the occasion when Mrs. Dawkins and Miss Smith called there in company, did you on that occasion agree to charge Miss Smith for your services only one-third of the amount that she actually would receive and as she received it? A. There was no such agreement entered into on that occasion or any other occasion.

Cross examination by Mr. Hartgrove: 20

Q. After you had been served with a writ of execution, as you testified here, you got in touch with Elnora Smith, did you not? A. Yes, I did.

Q. You had her at your office? A. I did.

Q. And you tried to get her to permit you to set aside the judgment which Ethridge obtained against her? A. I did, because I thought she had a legal defense. 30

Q. And Mrs. Smith told you at that time that she owed the amount of that judgment for a funeral bill? A. She did not.

Q. Had she ever told you that she owed Norrell for a funeral bill? A. She did not.

Q. Didn't Mrs. Smith tell you after she had engaged you that she had employed Mr. Norrell and had not paid the funeral bill? A. She had not. She told me that there was a funeral bill owing by the estate. 40

Q. At the time you appeared in Judge Kinkead's Chambers on October 9th, 1934, you did

*Exhibit D-1.**Deposition of Raymond Chasan—Cross.*

not request that any testimony be taken under oath? A. I made no requests.

Q. And that was a formal hearing, was it not?

A. I saw no formal hearing.

10 Q. Was it an informal hearing? A. Yes, sir.

Q. You made a statement to Judge Kinkead at this time? A. I answered several questions.

Q. Didn't you tell Judge Kinkead in my presence and in the presence of Mrs. Smith that you had made an agreement with Mrs. Smith that you were to receive one-third of the entire amount that was decreed to her in the Chancery Court proceedings? A. No, I told him at that time—

20 Q. Your answer is "no". Didn't I show to Judge Kinkead your letter dated September 13th, 1934, and marked in evidence Exhibit D-1?

A. You showed him my letter and my statement. Where you got it I don't know.

Q. And didn't Judge Kinkead ask you then, after looking at this letter marked D-1 in these proceedings, that your agreement was as stated to him, to wit, that you were to receive one-third of the entire amount decreed to Mrs. Smith under the Chancery Court proceedings? A. Judge Kin-

30 kead asked me no such question.

Q. Didn't Judge Kinkead tell you in the proceedings before him that if your agreement was to receive one-third of the entire amount as decreed to Elnora Smith in the Chancery Court proceedings it would be unconscionable for you to take it out of the entire amount before it was collected, the entire amount of \$1,100.00? A. Judge Kinkead made some statement as to that, but I questioned his jurisdiction.

40 Q. Didn't I ask you in Judge Kinkead's presence if this was your letter marked Exhibit D-1?

A. Yes.

*Exhibit D-1.**Deposition of Raymond Chasan—Cross.*

Q. And you admitted it? A. Yes.

Q. And you admitted that the facts that you set forth in that letter were true before Judge Kinkead? A. I was never asked.

Q. Didn't I ask you at the hearing before Judge Kinkead if the letter marked D-1 in this proceeding set forth your agreement with Mrs. Smith? A. You asked me no questions. I was not a witness and gave no testimony. 10

Q. While you were not a witness and not sworn, is it not true that I asked you in front of Judge Kinkead if the exhibit marked Exhibit D-1 in this proceeding set forth your agreement with Mrs. Smith? A. You asked me no such question. I informed Judge Kinkead that I had \$311.83; that whatever other funds had been in my possession were mine under an attorney's lien. 20

Q. Didn't Judge Kinkead tell you after looking at your letter marked Exhibit D-1 that you should not take out of the funds in your hands, to wit, \$1,576.46, the entire one-third amount that you were charging on the Chancery Court decree? A. Judge Kinkead expressed an opinion that I—

By Mr. Hartgrove: I object as to what the witness terms an opinion. The question should be answered "yes" or "no". 30

A. No.

Q. Didn't Judge Kinkead at that time tell you that it would be unconscionable for you to take out of that \$1,576.46 the one-third that you were charging Miss Smith as to the entire amount of the decree, yes or no? A. He didn't say that, no.

Q. You didn't deny in front of Judge Kinkead that your letter of September 13th was correct 40

Exhibit D-1.

Deposition of Raymond Chasan—Re-direct.

as to your agreement with Mrs. Smith? A. I didn't deny it before Judge Kinkead and I don't deny it today.

10 Q. And the letter dated September 13th is correct as to your agreement with Mrs. Smith? A. It is my letter and I stand by it.

Q. Does this letter set forth truthfully your agreement with Mrs. Smith? A. Of course it does.

Re-direct examination by Judge Doherty:

20 Q. Did you give Judge Kinkead on the occasion of your appearance before him any explanation of the service that you had rendered to Miss Smith in detail? A. No.

Q. Did Judge Kinkead have before him anything either in the way of your informal statement or otherwise, from which he could form a judgment as to what would constitute a reasonable charge to Mrs. Smith? A. There was no evidence on the subject at all.

Q. Did he voluntarily criticize your bill? A. He did.

30 Q. And you stood by your charge which you thought was just and reasonable? A. I thought it was fair then and I think it is fair now, and I can only say what Vice-Chancellor Lewis said—

By Mr. Hartgrove: We object to what Vice-Chancellor Lewis said on the ground that there is a specific agreement between these two parties as to what the charges should be.

40 By Judge Doherty: I submit it is proper as Vice-Chancellor Lewis would be the one to judge and determine what is reasonable in proceedings in his Court and Judge

*Exhibit D-1.**Deposition of Raymond Chasan—Re-cross.*

Kinkead's opinion was highly improper. I understand that these remarks were made in the presence of Mrs. Smith and are therefore proper.

By Mr. Hartgrove: These remarks were not make in the presence of Miss Smith and are hearsay. It is therefore objected to as Judge Kinkead's statement was not a criticism as to the character of the contract, it was a criticism directed toward the satisfaction of the contract. 10

Q. Was the proper amount of the fee that you should charge Mrs. Smith for services rendered by you to her in the Court of Chancery ever the subject of judicial expression by a Vice-Chancellor in the Court of Chancery? A. It was. 20

By Mr. Hartgrove: I object to that as immaterial and on the ground that we are proceeding on a specific contract made by Mr. Chasan and Mrs. Smith.

Q. What was the ruling of Vice-Chancellor Lewis in respect to the fee that was to be charged? A. At the time that Vice-Chancellor Lewis signed the final decree he stated in open court that if each solicitor in the case of Ethridge against Smith were to receive as compensation the entire amount involved he would not be sufficiently compensated. 30

Re-cross examination by Mr. Hartgrove:

Q. You stated, Mr. Chasan, that you obtained a decree for Miss Smith in the Chancery Court proceeding? A. That is correct. 40

*Exhibit D-1.**Deposition of Raymond Chasan—Re-cross.*

Q. And this is an exact copy of the decree signed in your name, Raymond Chasan? A. That is correct.

10 Q. And under the terms of this decree no award was made to you as a counsel fee? A. No.

Q. Under this decree an award was made to Edmund S. Johnson, Robert S. Hartgrove, myself, and also John W. Ockford, that is true, is it not? A. That is correct.

Q. You did not ask for a counsel fee in the Chancery Court in these proceedings because you had made an agreement with Mrs. Smith that you were going to receive one-third of the amount? A. That is correct.

20 Q. And you thought that was reasonable? A. I thought it was reasonable.

EXHIBIT D-1.

Letter Dated September 13, 1934.

30 (This exhibit is identical with the letter annexed to the complaint and printed herein at pp. 34 to 35.)

EXHIBIT D-2.

Statement.

40 (This exhibit is identical with the statement annexed to the complaint and printed herein at p. 36.)

Exhibit D-1.

EXHIBIT D-3.

Will of Margaret S. Butler.

(This exhibit is identical with the will annexed to the complaint and printed herein at pp. 19 to 20.)

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EXHIBIT P-1.

June 13, 1934.

I, ELNORA SMITH of #194 Pine Street, Jersey City, New Jersey, do hereby authorize my attorney RAYMOND CHASAN of 921 Bergen Avenue, Jersey City, New Jersey, who represented me in the matter in the Court of Chancery entitled Ethridge against Smith, to collect the assets left to me by my sister Margaret Butler and adjudged to be mine under the terms of a decree in the Court of Chancery in the above mentioned cause entered and made June 4, 1934.

20

And I do authorize my said attorney to take all the proper steps and measures to procure for me certain saving bank books standing in the joint names of Margaret Butler, deceased and/or Elnora Smith, and to assist in the obtaining of the proceeds of certain policies of insurance on the life of the said Margaret Butler, and in which said policies I am named as beneficiary.

30

It is expressly understood and agreed that the services to be rendered by my said attorney are in consummation of the litigation in the matter of Ethridge against Smith, and that my said attorney does hereby agree that no extra charge or legal fee shall be required for the collecting of the assets decreed to be mine under the above mentioned decree.

40

ELNORA SMITH.

Exhibit D-1.

STENOGRAPHER'S CERTIFICATE.

10 I certify that the foregoing testimony was taken
by ESTHER COHEN, a stenographer selected by me,
and by me duly sworn faithfully and truly to take
stenographically and reproduce in typewriting,
testimony given, and that such testimony was
taken in my immediate presence and hearing by
said stenographer, sworn as above stated, and I
believe that it accurately states the said evidence.

Isidore Hornstein,
ISIDORE HORNSTEIN,
Supreme Court Commissioner.

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Opinion of Lewis, V. C.

IN CHANCERY OF NEW JERSEY,

114-316.

December 3, 1937.

Between

RICHARD J. NORRELL,

Complainant,

—and—

ELNORA (OR ELINORA) SMITH, et als.,

Defendants.

10

(Syllabus)

20

An attorney's lien is strictly construed and limited to the terms of the statute and is not valid from sums collected in litigation, where the person claiming the lien either instituted an action at law or equity, nor filed a counterclaim in an action at law.

ROBERT S. HARTGROVE, Esq., Solicitor and of
Counsel with Complainant;

30

CHARLES H. ETHRIDGE, Esq., Pro Se.

RAYMOND CHASAN, Esq., Pro Se.

LEWIS, V. C.

Complainant brings this suit to collect a judgment obtained by him against Elnora Smith, one of the defendants, for services as an undertaker for the funeral of one Margaret Ethridge, furnished at the request of Elnora Smith. Defendant, William A. Byrd, is made a party defendant

40

Opinion of Lewis, V. C.

as Executor of Margaret Ethridge, who, by her Will, left her Estate to Elnora Smith. Raymond Chasan was made a defendant on the ground that he has in his possession a sum of money received by him for the account of Elnora Smith in a prior action in the Court of Chancery.

10 Raymond Chasan claims that he has an attorney's lien on the funds collected on the claim of Elnora Smith in the suit of Ethridge vs. Smith. This position is untenable since a lien exists only by statute and as has been held in the case of *McCarthy v. McCarthy*, 117 N. J. E. 22, the Act providing for a lien should not be extended beyond its terms. The Act specifies the conditions under which such a lien exists and limits it to

20 cases in which the person claiming it files a bill in an action at law or equity or files a counterclaim in an action at law. Defendant, Chasan, has not done any of these things and therefore has no lien and is therefore in the position of holding these funds as Trustee for the benefit of Elnora Smith and complainant. They are entitled to payment therefrom. It is therefore unnecessary to determine whether the sum claimed by him for services is excessive or not.

30 As to the Estate of Margaret Ethridge, it would have been liable for the funeral bill had not Elnora Smith undertaken the payment thereof as a primary liability. Since Elnora Smith is the sole legatee of Margaret Ethridge, her obligation is payable out of any sums coming to her as such legatee. This Estate has not been settled, but it will be charged to the extent of Elnora Smith's interest therein with payment of any balance remaining uncollected from defendant,

40 Chasan.

A decree will be advised accordingly.

Final Decree Appealed From.

(Filed March 16, 1938.)

IN CHANCERY OF NEW JERSEY,

114-316.

On Bill, &c.

10

Between

RICHARD J. NORRELL,

Complainant,

and

ELNORA (OF ELINORA) SMITH, et als.,

Defendants.

20

This matter coming on to be heard in the presence of Robert S. Hartgrove, solicitor for the complainant herein, Richard J. Norrell; Raymond Chasan, defendant and solicitor pro se; Charles H. Ethridge, defendant and solicitor pro se; and John W. Ockford, solicitor for William A. Byrd, as Executor and Trustee under the last Will and Testament of Margaret Butler also known as Margaret Ethridge, said last Will and Testament being dated July 19, 1930; and it appearing that the complainant's bill filed herein having been heretofore taken as confessed against the other defendant, Elnora (or Elinora) Smith;

30

And the Court having considered the pleadings and proof offered and the arguments of the respective counsel, and being satisfied that the complainant, Richard J. Norrell, has sustained the allegations of his bill, that he is a judgment creditor of Elnora (or Elinora) Smith in the sum of \$671.86, judgment having been entered against her in the Hudson County Court of Common

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Final Decree Appealed From.

Pleas on the 21st day of September, 1934, for funeral services rendered at her request in and about the burial of Margaret Butler known also as Margaret Ethridge;

10 And the Court being satisfied that the said defendant, Raymond Chasan, as solicitor for Elnora (or Elinora or Eleanora) Smith in the Chancery Court proceedings instituted in the Chancery Court of New Jersey in the case of Charles H. Ethridge v. Elnora (or Elinora or Eleanora) Smith, et als., as defendants, numbered 92/344, received from the Clerk of the Chancery Court on July 15, 1934 the sum of \$1576.41 for the benefit of the said Elnora (or Elinora or Eleanora) Smith, and is now in control and possession of
20 the same;

And it further appearing that the said defendant, William A. Byrd, was on June 7, 1934 duly appointed as executor of the said last Will and Testament of the said Margaret Butler known also as Margaret Ethridge, by the Surrogate of Hudson County, under which said instrument the said William A. Byrd was named as trustee, and the said Elnora (or Elinora) Smith was the sole legatee of the personal property of
30 the decedent, Margaret Butler known also as Margaret Ethridge;

And it further appearing that the Estate of the said decedent, Margaret Butler known also as Margaret Ethridge, remains open and unsettled by the said executor, William A. Byrd;

It is on this 15th day of March, 1938, ORDERED, ADJUDGED AND DECREED that the defendant, Elnora (or Elinora) Smith is indebted to the complainant, Richard J. Norrell, in the sum of \$671.86, together with interest thereon from September 21,
40 1934;

Final Decree Appealed From.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, Raymond Chasan, now holds in his custody, possession and control as trustee and for the benefit of the complainant, Richard J. Norrell, and the defendant, Elnora (or Elinora) Smith, the sum of \$1576.45, together with legal interest thereon from June 15, 1934; 10

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said Raymond Chasan pay to the said Richard J. Norrell, judgment debtor of the said Elnora (or Elinora) Smith, the sum of \$671.86, together with legal interest thereon from the 21st day of September, 1934, and out of the funds and moneys now held in his possession and control and for the benefit of the said Richard J. Norrell and Elnora Smith, as aforesaid, said payment to be made within ten (10) days from the day and date of service upon him of a certified copy of this Decree; 20

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if, and in case, the said Raymond Chasan does not have, hold and possess sufficient money and funds received by him from the Clerk of the Chancery Court of New Jersey on June 15, 1934 for the benefit of Elnora (or Elinora or Eleanora) Smith in the Chancery Court proceedings of Charles H. Ethridge v. Elnora (or Elinora or Eleanora) Smith, et als., numbered 92/344, to pay and satisfy the judgment debt of Richard J. Norrell amounting to \$671.86 with legal interest as aforesaid, then and in that event the balance of said judgment debt, remaining unpaid and unsatisfied, be charged as a lien upon the interest of Elnora Smith in the Estate of the decedent, Margaret Butler known also as Margaret Ethridge; 30 40

Final Decree Appealed From.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that counsel fee be allowed to Robert S. Hartgrove, solicitor for the complainant, Richard J. Norrell, in the sum of \$100.00 the same to be paid by Raymond Chasan, personally, together with taxed costs of this suit.

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Respectfully advised:

LUTHER A. CAMPBELL,
C.

VIVIAN M. LEWIS,
V. C.

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New Jersey Court of Errors and Appeals.

Between

RICHARD J. NORRELL,
Complainant-Respondent,

and

RAYMOND CHASAN,
Defendant-Appellant,

and

ELNORA (OR ELINORA) SMITH,
WILLIAM A. BYRD, as Ex-
ecutor and Trustee under
the Last Will and Testa-
ment of Margaret Ethridge,
&c., CHARLES H. ETHRIDGE,
Defendants.

On Appeal from
Court of
Chancery.

BRIEF FOR APPELLANT.

Statement.

This is an appeal from a decree in Chancery requiring the appellant, an attorney at law, to pay to complainant below a debt due from appellant's client out of funds in appellant's possession, against which he asserted an attorney's lien, and overruling his claim to such lien.

Facts.

Margaret Ethridge in her lifetime took out a policy of insurance on her life in the Prudential Life Insurance Company and in several other companies and death benefit societies, and made her sister, Elnora Smith, the beneficiary (p. 9, ll. 10-17). She was possessed of personal

property in the form of savings accounts, building and loan shares, etc., as well as a parcel of real estate. By her Will she gave all her personal property to Elnora Smith, which, together with insurance policy and death benefits, came to a value in excess of \$3493.87, as subsequently disclosed (p. 36).

Extensive and long drawn out litigation had taken place in the Court of Chancery between Margaret Ethridge and Charles H. Ethridge, her husband, during the former's lifetime (Ethridge v. Ethridge, 54-223) (p. 34, ll. 5-6), affecting property rights between the parties. Upon her death, her husband, on September 9th, 1932, instituted proceedings in Chancery (Ethridge v. Smith, 92-344), contending that by reason of the former proceedings he was the legal owner of all her realty and personalty, including the proceeds of the life insurance policies and death benefit certificates mentioned, and procured an *ad interim* restraint against the probate of the Will, against the payment by the Prudential Life Insurance Company and other companies of the proceeds of the policies, and against all other disposition of the personal estate (pp. 21-24). The Prudential Life Insurance Company interpleaded, and the amount of the policy was paid into court (p. 8, l. 35-p. 9, l. 9). On June 4th, 1934, after final hearing, the Bill of Complaint was dismissed, and the Clerk was directed to pay to the appellant, as solicitor of Elnora Smith, the net amount of the policy which had been interpleaded (\$1576.45), which was done (p. 8, l. 35-p. 9, l. 8; p. 60, l. 23). The Will was thereupon probated. Since Elnora Smith had turned over to the executor all bank-books, certificates, passbooks, etc. constituting

evidence of title to the personal estate to which she became entitled (p. 123, l. 24-p. 124, l. 18), and the executor was not communicative as to the total amount of the personal estate, it was not until the Inheritance Tax Department, on appellant's request, conducted an inquiry, that the amount of such estate was ascertained to be \$3493.87. This total was arrived at by including the amount of the insurance policies and death benefit certificates (p. 36), and excluding jewelry, personal and household effects, the existence of which Elnora Smith did not disclose to appellant, her solicitor (p. 124, ll. 11-18).

At the inception of the litigation, Elnora Smith retained the appellant to preserve for her all rights which she had under the insurance policies, death benefit certificates and the Will, all of which were being assailed by Charles H. Ethridge (p. 122, ll. 19-24). Being in poor circumstances, she was incapable of paying a fee, and the retainer agreement was for the compensation of appellant to the extent of one-third of what assets his defense might save for her (p. 60, ll. 23-27; p. 101, ll. 17-18; p. 102, l. 33; p. 103, l. 8; p. 106, ll. 28-29; ll. 37-38; p. 124, l. 22-p. 125, l. 7). When the extent of the personalty was determined, as stated, appellant notified his client that the amount of his fee was computed at \$1164.62, and notified her that he held, awaiting her pleasure, the sum of \$411.83. The date of such notification was September 13th, 1934 (p. 34). After the favorable outcome, the client had informed him that he need not concern himself with the actual collection of the property secured to her by the Chancery decree, since she was capable of attending to the same

(p. 112, ll. 16-23). Shortly thereafter, however, she called upon appellant to aid her in what had been an unsuccessful effort to get her property from the executor, and appellant agreed to render such additional service, gratis (p. 122, ll. 25-36). There is no contradiction of the agreement to pay one-third of the amount preserved to Elnora Smith, although she feebly testifies that she expected to pay the one-third "as it came" (p. 106, ll. 28-29, ll. 37-38).

Soon after appellant's agreement to collect the property for her without compensation, their relations became strained as the result of the invidious attitude of the client as hereafter stated. The present controversy arose as follows:

Upon the death of Mrs. Ethridge on August 9th, 1932, Elnora Smith (notwithstanding the competency of decedent's estate and the secondary legal liability of decedent's husband), contracted with one Norrell, an undertaker, for the funeral expenses. The latter amounted to \$660, and \$150 was paid on account (p. 58, l. 15). July 29th, 1933, the undertaker commenced suit in Hudson County Court of Common Pleas against Elnora Smith and the husband, Charles H. Ethridge. Both defendants were served July 3rd, 1933, the husband answered, but the issue thus joined was never tried. Elnora Smith did not appear and answer, but no default judgment was entered against her, and the action was dormant until September 18th, 1934, *five days subsequent to the letter sent by appellant to Elnora Smith* stating the amount that he was retaining out of the insurance proceeds for his fee. On that date the undertaker's attorney obtained a rule that Elnora Smith plead within five days

(pp. 82-83), and on September 21st, 1934, plaintiff's attorney, strangely, obtained from Elnora Smith, and filed in the cause, an affidavit, wherein she acknowledged indebtedness to the undertaker in the sum of \$501 and avowed her willingness to have a judgment entered against her (pp. 84-86). A rule for judgment against Elnora Smith alone was entered and signed more than a month later, October 25th, 1934 (pp. 95-96), but in the interim between the filing of the affidavit and the entry of the judgment much forensic activity ensued. September 24th, 1934, prior to the filing of the rule for judgment, an execution was issued upon a supposed judgment and a copy of it served upon the appellant for the purpose of garnisheeing in his hands the entire amount that had come to his hands in the Chancery proceedings. This was appellant's first intimation of his client's hostile activity. The appellant notified the officer that he did not have to the credit of Elnora Smith the full amount called for by the execution, and the Common Pleas Judge made an order that appellant show cause why he should not be directed to pay the entire judgment out of the funds (pp. 90-91). Upon return of the order on October 24th, 1934, appellant denied being indebted to the defendant in the sum of the judgment, but, notwithstanding, on the same day the Judge undertook, without hearing or proof, to evaluate appellant's service, ruled that appellant was entitled to retain only \$525.49, and made an order that he pay the judgment out of the surplus (pp. 92-95). As stated, the judgment itself was not entered until the following day.

The order of the Judge was reviewed in the

Supreme Court on certiorari, and was set aside (p. 10, l. 39; p. 11, l. 7). The report of the case, opinion by Chief Justice, states by way of *res adjudicata*:

“It appears without dispute that there was an agreement between him and his client that he should receive one-third of the amount recovered as and for compensation for his legal services” (13 N. J. Misc. 300, 178 Atl. 61).

In June, 1935, two months after the disposition of the certiorari, on the application of Charles H. Ethridge, the decree dismissing the bill of complaint was opened and all the restraints originally prescribed on the filing of the bill were reinstated (p. 14, ll. 13-35). The suit, thus revived, was pending at the time of the hearing herein. In consequence the undertaker was hampered in his enterprise to collect from any source in the normal way, and in this situation he filed a bill in Chancery in the proceedings now under review, joining as parties Elnora Smith, William A. Byrd, as Executor and Trustee under the Last Will and Testament of Margaret Ethridge &c., Charles H. Ethridge and Raymond Chasan, the appellant. His prayers were against the executors for an accounting; that appellant be decreed to hold in trust for the benefit of Elnora Smith the full sum of \$1576.45; that complainant have a first lien on said money; that appellant be directed to pay the amount of the judgment; that the judgment be declared to be paramount to the interest of Elnora Smith in the proceeds of the estate; that executor be directed to pay the judgment debt; and that Charles H. Ethridge, husband,

be decreed to be secondarily liable for payment of the same (pp. 16-18).

Appellant answered setting up that there was in his possession to the credit of Elnora Smith the sum of \$311.83 and no more, and making tender of the same (pp. 42-48). At the hearing the appellant's retainer and performance of service were admitted (p. 55, ll. 14-18; p. 56 ll. 12-14), and the fact that he was entitled to a lien upon the funds was not disputed beyond an assertion by complainant's counsel that his refusal to pay the funeral bill was "unreasonable" (p. 58, l. 36-p. 59, l. 6). The appellant's proof was succinct as to the terms of the contract, services rendered, the contractual propriety of the charge made by him, and the existence and enforcement of his lien. The testimony used in the certiorari proceedings was offered in evidence, and the Vice Chancellor had before him, in effect, the same facts as underlay the ruling of the Supreme Court.

No contention was made by complainant (if, indeed, he was competent to make such), that the amount of appellant's charge was unreasonable, no ruling was sought thereon, and the Vice Chancellor was not called upon to deal with the subject.

In this state of the matter, the Vice Chancellor made the following ruling, which is the sole point involved in the present appeal:

"Raymond Chasan claims that he has an attorney's lien on the funds collected on the claim of Elnora Smith in the suit of Ethridge v. Smith. This position is untenable since a lien exists only by statute

and as has been held in the case of *McCarthy v. McCarthy*, 117 N. J. E. 22, the Act providing for a lien should not be extended beyond its terms" (p. 136, ll. 11-26).

By the decree appellant was held to possess the entire fund, with interest, as trustee, in total disregard of any right he might have to compensation; was directed to pay the amount of complainant's judgment, and personally mulcted for costs and counsel fees.

POINT I.

It was error to hold that an attorney's lien exists only by statute.

The opinion below adverts to Chapter 201, P. L. 1914, giving to a solicitor in Chancery a lien upon the cause of action after the filing of a bill of complaint or petition. Discerning that the appellant had not done any of the things which by the statute would secure a lien, he was held to be in the position of holding the funds as trustee for the benefit of his client and her creditor. The ruling was, in effect, that the enactment of the statute abolished the other earlier forms of attorney's lien, *i. e.*, retaining, or possessory, lien, and charging lien. The cited case of *McCarthy v. McCarthy*, 117 N. J. E. 22; 174 A. 751 is not authoritative because (a) the lien was there sought to be enforced by a solicitor in a divorce suit *against property not in possession of the solicitor*; (b) the solicitor represented a counterclaimant in Chancery, which is not covered by the Act; and (c) the purpose and spirit of the act was not applicable.

An attorney has a general or retaining lien that extends to any general balance that may be due him, either in the particular matter with which he came into possession of the things retained, or in any other matter. 6 C. J., p. 765, 766, par. 362, 363; *Braden v. Ward*, 42 N. J. L. 518; *Delaney v. Husband*, 64 N. J. L. 275.

The purpose of the statute was not to curtail, but to broaden, the rights of attorneys in the matter of their compensation, and to impress a lien upon a client's cause of action therefor, even in the event of a clandestine, collusive or amicable settlement. *McCarthy v. McCarthy*, *supra*; *In re McCormick's Estate*, 14 N. J. Misc. 73, 182 Atl. 485.

Full recognition by this court of the persistence of all common law rights of lien subsequent to the statute is contained in *Pennsylvania Fire Ins. Co. v. Rinaolo*, 108 N. J. E. 167, 154 Atl. 528, this court therein approving the following verbiage of Berry, V. C.:

"It seems clear that if the attorneys have any lien, it is either a common law lien or statutory lien. Obviously the statute (P. L. 1914, p. 410) does not apply and the common law lien will not attach unless the fund comes into the hands of the attorney."

In 1932 it was observed by Backes, V. C., that enjoyment of a lien for a general balance by an attorney upon moneys in hand belonging to his client, which have come to him in the course of, and with reference to, his professional employment, is "settled law" on the authority of

Delaney v. Husband, supra. Ideal Tile Corp. v. N. T. Inv. Co., 111 N. J. E. 241, 162 Atl. 111.

The act of 1914 contains no expression whatever in the form of a repealer and was patently supplemental of pre-existing rights.

It is respectfully submitted that the decree below be reversed, with costs.

RICHARD DOHERTY,
Solicitor for and of Counsel with Defendant-Appellant, Raymond Chasan.

(M212)

222OCT.T.1938

New Jersey Court of Errors and Appeals

Between

RICHARD J. NORRELL,
Complainant-Appellee,

and

RAYMOND CHASAN,
Defendant-Appellant,

and

ELNORA (OR ELINORA) SMITH,
WILLIAM A. BYRD, as Executor
and Trustee under the Last
Will and Testament of MAR-
GARET ETHRIDGE, &C., CHARLES
H. ETHRIDGE,

Defendants.

On Appeal from
Court of
Chancery.

BRIEF OF COMPLAINANT-APPELLEE.

Statement.

The appellee, Richard J. Norrell, under a contract made with Elnora Smith on the 9th day of August, 1932, buried the remains of her deceased sister, Margaret Ethridge, at the agreed contract price of \$660. On the 21st day of September, 1934, having obtained a judgment against the said Elnora Smith in the Common Pleas Court of Hudson County for services rendered under the aforesaid contract, appellee under an execution levied upon funds in the control of Raymond Chasan, the appellant herein, to satisfy the aforesaid judgment debt. The funds levied upon and

amounting to \$1,576.45, were received by the appellant from the Clerk of the Chancery Court in the Chancery Court proceedings of *Charles Ethridge v. Elnora Smith, et al.*, docket number 92/344.

The said Margaret Ethridge died testate leaving a Last Will and Testament under which she made Elnora Smith the sole legatee of her personal property. Under this said Last Will and Testament William A. Byrd, one of the defendants in the Chancery Court proceedings below, qualified as executor. In the Chancery Court proceedings a decree *pro confesso* was entered against the judgment debtor, Elnora Smith.

See State of the Case, p. 6, ll. 31-39; p. 7, ll. 9-19; p. 8, ll. 27-32; p. 9, ll. 18-35.

POINT I.

The appellant holds no statutory attorney's lien on the funds collected from the Chancery Court, because:

1. In the proceedings in the Chancery Court, *Ethridge v. Smith, et al.*, docket number 92/344, appellant filed neither a bill, petition, complaint nor answer with counterclaim annexed, a prerequisite to such a lien.

See:

McCarthy v. McCarthy, 117 N. J. Eq. 22.

The funds received from the Chancery Court in the aforesaid proceedings were held by Raymond Chasan as trustee and for the benefit of Elnora Smith under a decree of the Chancery Court dated June 4, 1932.

See State of the Case, p. 29, l. 33; p. 33, ll. 17-29.

The right of a statutory attorney's lien was the only question raised by the appellant in the Chancery Court proceedings below.

POINT II.

Appellant held no common law lien upon the said trust funds justifying an appropriation by him of \$1,164.62, because:

1. The prerequisites of a common law lien were not present.

It has been held that:

“Derivatively the word ‘lien’ means a ‘string,’ a ‘tie,’ a ‘bind’. Century Dictionary. *Stanbury v. Patent Cloth Manufacturing Co.*, 5 N. J. Law, 433. In its pure legal sense it ‘implies that one is in possession of property of another, and that he detains it as security for some demand which he has in respect to it. A lien, therefore, implies: First, possession by the creditor; second, title in the debtor; and, third, a debt arising out of the specific property.’ *Jones on Liens*, (3d Ed. of 1916) Paragraph 20, citing Grant, M. R. in *Gladstone v. Birley*, 2 Mer. 404.”

See:

Lanterman v. Luby, 96 N. J. Law, 255
(Ct. Err. & App.).

“A lien is neither a right of property in a thing, nor a right of action for a thing; it is simply a right of detainer.”

See:

Brace v. Marlborough, 2 P. W. 491, (cited with approval in *Lanterman v. Luby*, *supra.*).

Applying this law to the case *sub judice*, a right of detainer is not a right of appropriation. Before the appellant could lawfully appropriate, his "right of property in the thing" would have to be determined. Appellant arrogated unto himself the exclusive right to make this determination and under disputed facts as to the terms of the contract.

Again, appellant's alleged debt did not arise out of the specific property, to wit, the trust fund. It arose, if anywhere, out of the property which he claims to have "preserved" for Elnora Smith. See State of Case, page 60, lines 22-40. The property "preserved" was never possessed by Chasan.

As to the personal property falling under the Will of the decedent, Margaret Ethridge, title to the same vested in William A. Byrd, the executor, and title would be in the appellee, Elnora Smith, only after a proper accounting by the executor and distribution under order.

The absence of the essentials of a common law lien as declared by our court of last resort destroys the argument of appellant that he was vested with such a right. The appellant's right of a common law lien under the terms of the contract would equitably extend only to a one-third interest in the moneys actually possessed by him and actually owned by Elnora Smith. That fund was specific, and none other.

See State of the Case, p. 36, ll. 1-19.

If "a lien is a right to hold; how can that be held which was never possessed?"

See:

Heywood v. Warring, 4 Camp. 291
(quoted in *Lanterman v. Luby, supra*).

2. The contract between appellant and appellee did not justify the acts of Raymond Chasan, since:

(a) The Supreme Court on *certiorari* proceedings in an opinion by Chief Justice Brogan, had determined that:

“It appears without dispute that there was an agreement between him (Chasan) and his client (Elnora Smith) that he should receive one-third of the amount RECOVERED as and for compensation for his legal services.”

See:

Chasan v. Ct. of Common Pleas in and for the County of Hudson, 178 Atl. 61.
(Not officially reported.)

State of the Case, p. 10, ll. 39-40; p. 11, ll. 1-2.

Appellant in his brief states that the opinion of the Supreme Court in the *certiorari* proceedings was *res adjudicata* as to the terms of the contract. If this is true then, did the Supreme Court by the use of the word “recovered” mean the same thing as “preserved” ingeniously used by the appellant in his statement of what was the nature of his contract with Elnora Smith? Moneys passing under the Will of testate might have been discovered but certainly not “recovered” by appellant, especially in view of the fact that he admits that he only recovered and got into his possession the trust fund out of the Chancery Court.

It is very significant in the case of *Chasan v. Cour of Common Pleas in and for the County of Hudson*, *supra*, that, while the Supreme Court reversed the lower court solely in respect to procedure, it stated, and very pointedly:

“He (Chasan) contends that he retains only \$311.83 of Miss Smith’s money and that the balance belongs to him for services. Whether he is within his rights in so doing is another matter, not before us.”

Manifestly the court would not have made this statement if by the use of the expression “recovered”, it referred to the paper statement of Raymond Chasan annexed to the complaint, in face of the undeniable fact that the only moneys recovered by Raymond Chasan were the trust fund aforesaid.

See State of the Case, p. 36, ll. 1-40.

(b) The testimony adduced on cross examination of Elnora Smith by counsel for Raymond Chasan in the *certiorari* proceedings shows that her understanding of the terms of the contract is in harmony with the Supreme Court’s ruling aforesaid, to wit:

“Q. When Mr. Chasan sent you this statement indicating that he had on hand \$411.83, that was money that he said belonged to you, did you go to him and get that money from him? A. I did not.

Q. You never made any demand on him for that money? A. My demand was for two-thirds.

Q. When you went to him after you received this statement you made the proposal to him that he take one-third out of the amount of money that he had on hand and that he then take one-third of all money that would come to you after that, is that right? A. Yes.

Q. And he objected to that, I understood you to say, because he considered that the bargain was not that he was to get one-third of whatever interest in the estate was fixed by the court; is that right? A. I didn’t understand that.

Q. What did you understand? A. I said that he was to charge one-third of what I would get, not anything about what the court would fix; one-third of the amount that would come to me.

Q. That is he was to get one-third of your actual receipts and not one-third of the value of the property that the court would adjudge in your favor, that is what you understood? A. Yes.

See State of the Case, p. 110, ll. 8-23.

POINT III.

The contract as alleged by Raymond Chasan is unfair, unreasonable and unconscionable, because:

1. Raymond Chasan never told Elnora Smith at any time what his charges would be until the Chancery Court proceedings of *Ethridge v. Smith*, docket number 92/344, were terminated. She requested many times during these proceedings a fixing of fees, and when Raymond Chasan fixed these fees after the receipt of the aforesaid trust fund from the Chancery Court, Elnora Smith objected to these charges.

See State of the Case, p. 55, ll. 19-41; p. 56, ll. 1-30; p. 111, ll. 26-31.

2. Raymond Chasan as trustee for moneys, held for the benefit of Elnora Smith, contracted with an ignorant woman.

See State of the Case, p. 62, ll. 2-42.

3. Raymond Chasan's charges were never based upon the character and quality of his services.

See State of the Case, p. 63, ll. 12-23; p. 64, ll. 1-19.

4. The Chancery Court as to the said trust funds interpleaded would have been the proper tribunal for awarding counsel fees and determining the fairness of Raymond Chasan's charges.

See:

Cicalese v. Fortunato, et al., 92 N. J. Eq. 329, 112 Atl. 508.

State of the Case, p. 33, ll. 36-40.

It is exceedingly significant that at the time the decree was made by the Chancellor in the case of *Ethridge v. Smith*, docket number 92/344, in which Vice-Chancellor Lewis sat, every counsel participating therein was awarded counsel fee except Raymond Chasan. He never sought an award of counsel fee from Vice-Chancellor Lewis who knew the character of the services rendered by counsel. Raymond Chasan waited until the decree was made and he had received the trust funds from the Chancery Court. With these moneys in his hands he then drove a harsh and unfair bargain with Elnora Smith, justifying his actions upon what he "preserved from the attack of Mr. Ethridge."

State of the Case, p. 122, ll. 19-35; p. 111, ll. 26-31.

Mr. Chasan knew then as he knows now that what he "preserved" is entirely different from what would be the amount of the estate available to Elnora Smith. The executor had not made his accounting. In such proceedings alone could there be made a legal determination of what was "preserved"?

When Mr. Chasan testifies that his statement of September 13, 1934 was obtained "after a hearing in Mr. Edwald's Office," he omitted to state that the shares of stock issued by the Phoenix

Building and Loan Association were the joint property of Elnora Smith and Margaret Ethridge. Elnora Smith's share never was "preserved" as it formed no part of the estate or moneys passing under the Will of the decedent. Mr. Chasan knew that the funds or personal estate passing to the executor would be further burdened by executor's fees, proctor's fees and other administrative charges. Nowhere does it appear that at the time of making his alleged contract with Elnora Smith, Raymond Chasan made mention of these facts to her.

See State of the Case, p. 126, ll. 29-35;
p. 41, ll. 1-40; p. 125, ll. 22-38.

The question of fairness of counsel's charges are peculiarly an equitable inquiry.

Even if it is to be conceded that Elnora Smith agreed to the charge as alleged by Chasan, yet a court of equity would not sanction it except upon proof of its perfect fairness.

See:

Brown v. Bulkley, 14 N. J. Eq. 451;
Schomp v. Schenck, 40 N. J. Law 195;
Porter v. Bergen, 54 N. J. Law 405;
Flavel v. Flavel, 189 Atl. 639 (Not officially reported).

"It is not necessary that an attorney was guilty of intentional wrong-doing. The reason why he did not disclose the material facts upon which we have commented is not important. The fact that he *did not* disclose them is significant."

See:

Crocheron v. Savage, 75 N. J. Eq. 589,
73 Atl. 33 (Ct. Err. & App.).
Lynde v. Lynde, 64 N. J. Eq. 536.

The *Lynde* case, *supra*, is instructive as to one person being sent by a lawyer to another lawyer for services. Elnora Smith was sent by a lawyer to Raymond Chasan.

“A client inexperienced in business, coming in response to an invitation, apparently reposing entire confidence in the lawyers and desiring their aid because of the information they possess, at the first interview makes an agreement binding her to pay, in the event of successful outcome of the litigation, a fee equal to one-third or one-half of the amount recovered. The client accepted without question this statement as to the share customarily charged as contingent fee. It would seem that under such circumstances the burden would rest upon attorney to show that the bargain was a fair one for the client.”

In the case *sub judice* there was an unexplained delay by Raymond Chasan as to the charges he was making against Elnora Smith. The charge was made in June 1934 and after the decree of the Chancery Court. The *Lynde* case seriously questioned a charge of one-third or one-half of the amount recovered under an agreement made prior to the trial of the case. In the case *sub judice* a charge was made of one-third of the amount “preserved” and when Raymond Chasan held the trust fund in his control.

“Such contracts will be inspected with jealous vigilance on account of the delicacy of the relationship of the parties to them; and the most transparent candor and good faith is required on the part of the attorney in these dealings with his client.”

See:

Kelly v. Swinghammer, 78 N. J. Eq. 347;
Pratt v. Booty, 55 N. J. Eq. 175;
Raimondi v. Bianci, 100 N. J. E. 448;
Grimm v. Franklin, 102 N. J. E. 198;
 State of the Case, p. 55, ll. 19-26.

The lower court had before it the reasonable-ness of Raymond Chasan's charges but left it undecided because the one question argued by appellant was his right to a statutory attorney's lien.

POINT IV.

Counsel fees claimed by appellant have no priority over the claim of appellee, because:

1. The appellee's claim was for a funeral bill, and if against the estate of the decedent, would have taken priority over all debts due by the estate.

See:

Sullivan v. Horner, 41 N. J. Eq. 299.

Appellee's judgment debt was against Elnora Smith, sole legatee to the personal property under the Will of the decedent and who, by her contract with the appellee, became primarily liable for the funeral debt.

Appellee does not contend that appellant is not entitled to a counsel fee. The dispute is in respect to the manner of payment and to his right to be paid off before rights of other parties in the funds of Elnora Smith have been determined.

Counsel fees, however, have no peculiar charm and stand on no different footing than any other lien by contract.

See:

Columbia Ins. Co. v. Artale, et al., 112 N. J. Eq. 505.

In this case the court held:

"A statutory lien given an attorney is upon his client's interest in a judgment, and it is not impressed with primacy, and, like all other liens, is acquired subject to necessity and known equities."

Payment of a funeral debt is one of public necessity.

See:

Sullivan v. Horner, supra.

Appellant knew about this funeral bill.

See State of the Case, p. 57, ll. 11-32.

If appellee has a common law lien, this lien would be subject to "necessity and known equities." Appellee's judgment debt was a claim of a superior character against the moneys belonging to Elnora Smith.

2. Elnora Smith had a prior right to appropriate funds in the hands of Raymond Chasan for the payment of the funeral debt, and she could not be deprived of this right by Raymond Chasan withholding the money claimed by him as counsel fee.

See:

Terhune v. Colton, 12 N. J. Eq. 232;

Grover v. Bd. of Education, 102 N. J. E. 415.

When Raymond Chasan failed and refused to turn over the trust funds to Elnora Smith, the beneficiary, he thereby without legal reason or right, prevented her from making the appropriation of any part of the trust fund in satisfaction of a funeral debt clothed by the law with a preference and because of public necessity.

Conclusion.

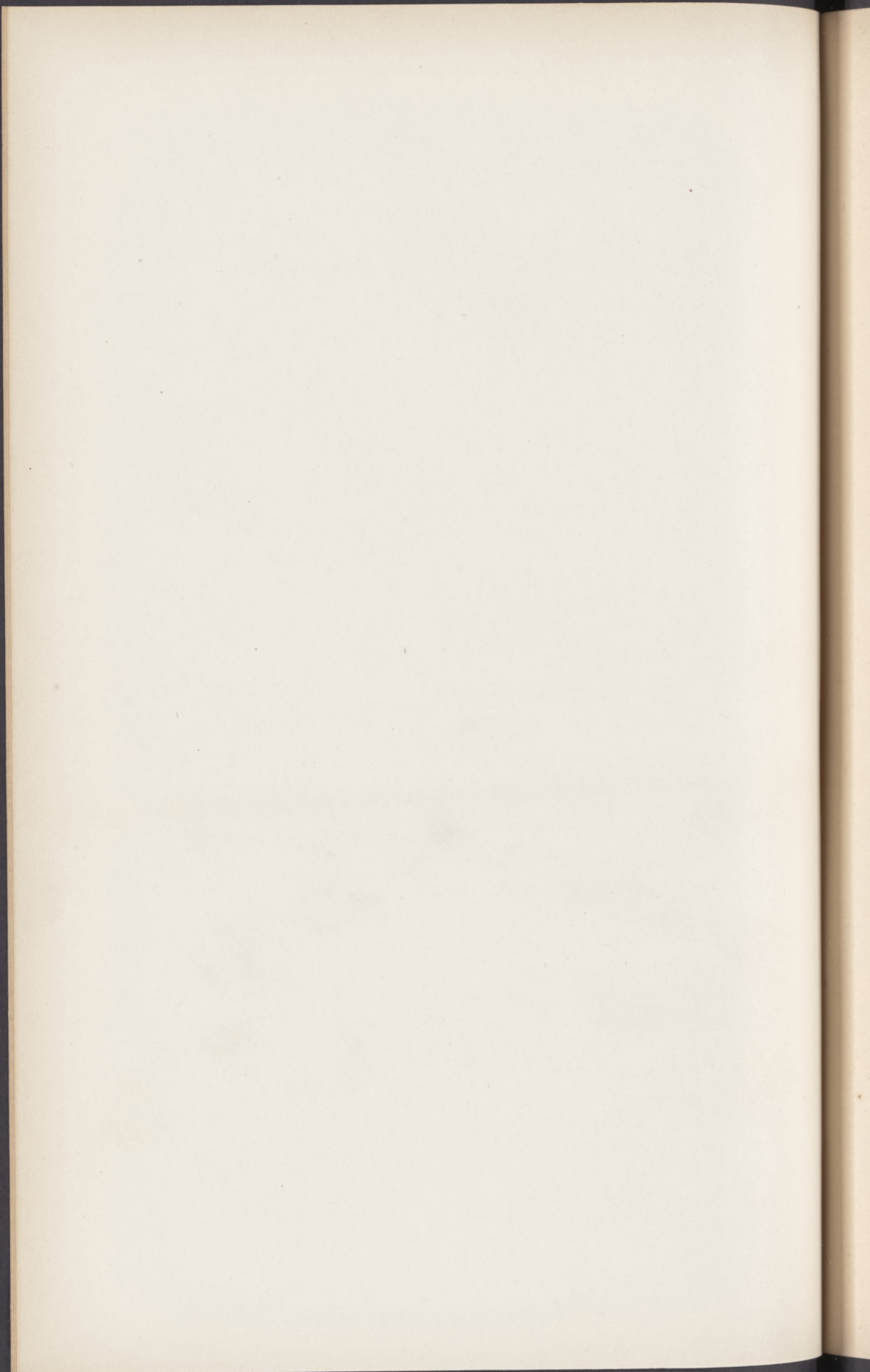
The appeal should be dismissed for the reasons aforesaid.

Respectfully submitted,

ROBERT S. HARTGROVE,
Counsel for Complainant-Appellee.







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