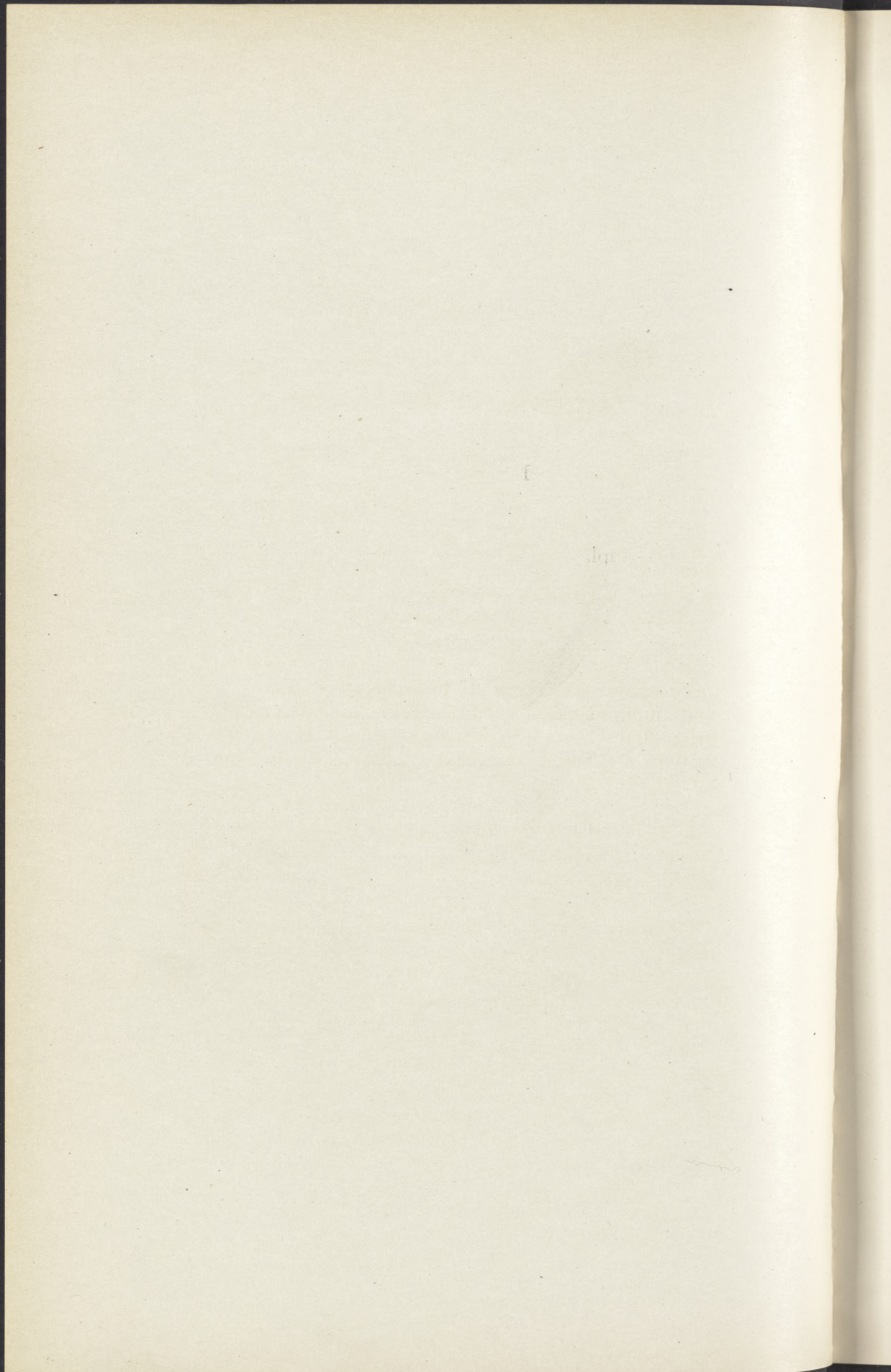


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BILL OF COMPLAINT.

(Filed March 23, 1926.)

IN CHANCERY OF NEW JERSEY.

*To the Honorable Edwin Robert Walker, Chancellor
of the State of New Jersey:*

The complainant, Commercial National Trust and Savings Bank of Los Angeles, a National Bank duly organized under the laws of the United States and having its principal office at Los Angeles, in the State of California, respectfully shows that:

10

1. On June 23, 1925, one Huyzinga Hamilton executed and delivered to H. Tyree Chemical Company, his promissory note for \$8000, payable to the order of and endorsed by himself, payable October 31, 1925, with interest at six per cent per annum from the date of said note.

20

2. By subsequent endorsements and delivery, complainant became the owner of said note before maturity.

3. On said June 23, 1925, the said Huizinga Hamilton was seized in fee simple of three certain tracts of land and premises situate in the village of Leesburg, County of Cumberland and State of New Jersey, bounded and described as follows:

30

No. 1. BEGINNING at a stone in the northwest line of the road leading from Leesburg to Dorchester standing near a crooked wild cherry tree; thence running along said line of road south thirty-five degrees and forty minutes west one chain and

sixty-eight links to a stone; thence north fifty-four degrees and twenty minutes west two chains and twenty-three links to a stone; thence north forty-nine degrees east one chain and seventy-four links to a stone; thence south fifty-four degrees and twenty minutes east one chain and eighty-five links to the place of beginning:

CONTAINING thirty-four hundredths of an acre of land, be the same more or less.

- 10 No. 2. BEGINNING at a point in the middle of the main road leading from Leesburg to Dorchester, three rods and eight hundredths of a rod northeasterly along said road from the corner of formerly William S. Ward, now or formerly Emma Godfrey's lot, the same being a corner of one Laura T. Powell's land, and runs thence along the line of said Laura T. Powell's land south forty-eight degrees east ten rods and thirty-six hundredths of a rod to a corner in the line of formerly James Ward, now or formerly Emma Godfrey's land;
- 20 thence along the line of same north forty-two degrees east three rods to a corner of formerly Samuel Foster now or formerly Mary Shaw's land; thence along the line of now or formerly said Mary Shaw's land north forty-eight degrees west ten rods and seventy-two hundredths of a rod to a corner in the middle of the aforesaid Leesburg and Dorchester Road; thence along the middle of said road south thirty-five degrees west three rods and eight hundredths of a rod to the place of beginning.
- 30

CONTAINING thirty-one and sixty-two hundredths square perches of land, be the same more or less.

No. 3. BEGINNING at a corner of other lands of the said Anson J. Camp in the middle of Ward Avenue and running along the middle of the said

Avenue to a corner of Henry Reeves Jr. south forty-five and ten one hundredths degrees east one chain; thence along the said Henry Reeves line north forty-four and fifty-hundredths degrees east three chains forty-five hundredths to a line John W. Harris Sr., deceased; thence along the said line north fifty-three and one-half degrees west one chain and one-hundredth to a corner of the said Anson J. Camp; thence along his line south forty-four and fifty hundredths degrees west three chains and forty-seven hundredths to the place of beginning. 10

CONTAINING fifty-seven square perches, more or less.

The first described premises being the same which Ellsworth Hoffman *et ux.* by indenture bearing date the sixth day of November, A. D. 1922, and recorded in the clerk's office of Cumberland County on November 13, 1922, in Book 402, page 533, &c., granted and conveyed unto the said Huyzinga Hamilton in fee. 20

And the second described premises being the same which Edgar W. Davies, *et ux.*, by indenture bearing date the twenty-fourth day of December, A. D. 1921, and recorded in the clerk's office of Cumberland County on December 27, 1921, in Book 394, page 258, &c., granted and conveyed unto the said Huyzinga in fee.

And the third described premises being the same which Anson J. Camp, *et ux.*, by indenture bearing date the twelfth day of November, A. D. 1918, and recorded in the clerk's office of Cumberland County on December 4, 1918, in book 365, page 582, &c., granted and conveyed unto the said Huizinga Hamilton in fee. 30

4. The said note was not paid at maturity and on February 15, 1926, complainant recovered a judg-

ment on said promissory note against said Huizinga Hamilton in the Cumberland County Court of Common Pleas for \$8,310.67 damages and \$40.70 costs.

5. On March 16, 1926, complainant caused to be issued and delivered to the sheriff of the County of Cumberland, where the said defendant resided and where all his property and interest were, an execution directed to said sheriff commanding him to
10 make and satisfy complainant's said judgment and costs of the goods and chattels of the said Huizinga Hamilton in the said County of Cumberland, and if sufficient goods and chattels of said Huyzinga Hamilton could not be found, then out of the lands, tenements, hereditaments and real estate of the said Huyzinga Hamilton, whereof he was seized on said February 15, 1926, which said execution was before the delivery thereof duly recorded and duly endorsed with the direction to said sheriff to levy for
20 \$8,310.67 damages and \$40.70 costs, with interest thereon from February 15, 1926, besides sheriff's fees.

6. The said sheriff has duly made return on said execution that said defendant, Huyzinga Hamilton, had no goods or chattels, lands, tenements, hereditaments or real estate within his said County of Cumberland out of which to make and satisfy the said judgment, costs and interest or any part thereof.

30 7. The said judgment still remains in full force and effect and wholly unsatisfied and an amount remains due thereon exceeding \$100 exclusive of costs, to wit: the sum of \$8,310.67 damages and \$40.70 costs, with interest thereon from February 15, 1926, besides the sum of \$7.50, sheriff's fees.

8. On November 11, 1925, the said Huyzinga Hamilton and Mary D., his wife, executed a deed purporting to convey the said lands and premises above described to one Norman Thompson for the stated consideration of one dollar, which said deed bore no United States revenue stamp and was on November 12, 1925, recorded in the Cumberland County Clerk's office in Book 428 of Deeds, page 613.

9. The said conveyance was voluntary and without support of an adequate valuable consideration and was fraudulent as against complainant as a creditor of said Huyzinga Hamilton. 10

10. On March 11, 1926, the said Huyzinga Hamilton conveyed and transferred to the said Norman Thompson certain valuable oyster grounds and the oysters thereon planted, said oysters and business being of the value of \$40,000, for the purpose of protecting the same from the creditors of said Huyzinga Hamilton, and the said Norman Thompson has since held and still holds said oyster grounds and oyster business in trust for the said Huyzinga Hamilton. 20

11. Complainant is creditably informed and believes it to be true that the said defendant, Huyzinga Hamilton also has large sums of money on deposit in various banks and banking institutions, the names of which and the exact amounts of which deposits are unknown to complainant. 30

12. Complainant is credibly informed and believes it to be true that the said defendant, Huyzinga Hamilton, has debts owing him by various persons for large amounts, but complainant has been unable to

ascertain the names of such persons or the exact amount of said debts.

13. Complainant is credibly informed and believes it to be true that the said Norman Thompson has other monies and property belonging to the defendant, Huyzinga Hamilton, which he holds, together with the real estate above described, in trust for the said Huyzinga Hamilton.

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14. Complainant is credibly informed and believes it to be true that the said complainant, Huyzinga Hamilton, has equitable interest and things in action which might and should be applied to the payment of said judgment.

15. Complainant is credibly informed and believes it to be true that said defendant, Huyzinga Hamilton, has other valid debts due him and also various equitable interests.

20

16. Said Huyzinga Hamilton is a married man and his wife's name is Mary D.

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

1. That Huyzinga Hamilton and Mary D. Hamilton, his wife, and Norman Thompson, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

30

2. That the said defendants may make discovery of who has possessed and occupied said lands and premises and received the rents, issues and profits thereof since the said pretended conveyance herein above set forth was made.

3. That this Court may order the defendant, Huyzinga Hamilton, to make discovery of all property or things in action belonging to said defendant and of any property, money or thing in action due him or held in trust for him, except such property as is now reserved by law.

4. That the said fraudulent conveyance by the said defendants, Huyzinga Hamilton and Mary D., his wife, to the said defendant, Norman Thompson, may be set aside and held to be fraudulent and declared null and void and of no effect as against complainant's said judgment.

10

5. That the said lands and premises may be sold free, clear and discharged of and from the said fraudulent conveyance under the said writ of execution and the proceeds thereof or so much thereof as may be necessary applied to the payment of complainant's said judgment.

20

6. That this Court may make an order forbidding the payment or transfer to or the receipt by the said Huyzinga Hamilton of the debt due to said defendant, Huyzinga Hamilton, from said defendant, Norman Thompson, or of any money or property in possession or action held in trust by the said defendant, Norman Thompson, for him or for his use, except such property as is now reserved by law and except in trust which has been created by or where the fund held in trust has proceeded from some person other than the said Huyzinga Hamilton himself, and the income from such trust does not exceed the sum of \$4000 per annum, until the further order of this Court.

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7. That this Court may appoint a receiver *pendente lite* of all property and things in action belonging to or due to or held in trust for the said Huyzinga Hamilton by the said defendant, Norman Thompson, or by any other person; which receiver shall have authority to possess, receive and in his own name as such receiver sur for said property or things in action and shall in all respects be subject to the authority of this Court, in accordance with the practice of this Court, and shall and may dispose of said property and things in action in conformity with the final decree of this Court pursuant to the statute in such case made and provided.

8. That the Court may order said defendant, Huyzinga Hamilton, and said defendant, Norman Thompson, to convey and deliver to said receiver all such property and rights in action and the evidence thereof.

9. That this Court may order the said defendants, or some one of them, to pay the amount of said judgment with interest thereon and sheriff's fees and the costs of this suit and to apply for that purpose any property and things in action belonging or due to or held in trust for said defendant, Huyzinga Hamilton.

10. That this Court may make an order directing the said defendants, Huyzinga Hamilton and Norman Thompson, to appear and make discovery on oath concerning the property and things in action of the said defendant, Huyzinga Hamilton, before a Master of this court, to be designated in said order at a time and place in said order to be specified.

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

FRANK R. BACON,
*Solicitor for and of Counsel
with Complainant.*

10

STATE OF NEW JERSEY, }
CUMBERLAND COUNTY, } ss.

FRANK R. BACON, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am the solicitor of the complainant in the foregoing bill of complaint named and the matters and things therein contained are true to the best of my knowledge, information and belief.

20

2. On February 15, 1926, I recovered a judgment as attorney of record for complainant, Commercial National Trust and Savings Bank of Los Angeles against the defendant, Huizinga Hamilton, in the Cumberland County Court of Common Pleas for \$8,310.67 damages and \$40.70 costs. Said judgment was recovered on a promissory note dated June 23, 1925, on which said Huyzinga Hamilton was the maker.

30

3. I have examined the records in the Cumberland County clerk's office for conveyances made by the said Huyzinga Hamilton since June 23, 1925, and the record shows that on November 11, 1925, the said Huyzinga Hamilton and Mary D., his wife, executed a deed to one Norman Thompson for the stated con-

sideration of one dollar, purporting to convey the lands and premises described in the plaintiff's bill of complaint, which said deed bore no United States revenue stamp and was recorded on November 12, 1925, in the Cumberland County clerk's office in Book 428 of Deeds, page 613.

4. Execution was issued at my request on March 16, 1926, to the sheriff of the County of Cumberland and has since been returned wholly unsatisfied.

5. The said Norman Thompson stated to me before the date of the filing of this bill that the defendant, Huyzinga Hamilton, has no property in his name and any negotiations for settlement would have to be made by him, the said Norman Thompson.

FRANK R. BACON.

Sworn to and subscribed before me, this 22nd day
20 of March, 1926.

H. BYRON LORE,
M. C. C. of N. J.

ORDER FOR DISCOVERY AND RESTRAINT.

(Filed March 23, 1926.)

IN CHANCERY OF NEW JERSEY.

10

Between
COMMERCIAL NATIONAL
TRUST AND SAVINGS BANK
OF LOS ANGELES,
Complainant,
and
HUIZINGA HAMILTON, *et al.,*
Defendants.

} On Bill for Discovery,
Etc.
Order for Discovery
and Restraint.

20

The complainant having filed its bill of complaint herein duly verified wherein it alleges that it is the holder of a judgment recovered against the defendant, Huizinga Hamilton, in the Cumberland County Court of Common Pleas; that an execution has been duly issued out of said court against the property of the said defendant and returned wholly unsatisfied by the sheriff of the County of Cumberland; that there remains due upon said judgment a balance exceeding one hundred dollars exclusive of costs; that the defendant, Norman Thompson, is indebted to said defendant, Huizinga Hamilton, and holds certain property in trust for said defendant; Huizinga Hamilton, which trust was created by said

30

defendant, Huizinga Hamilton, and upon reading said bill and the affidavit thereunto annexed, it is on this twenty-third day of March, nineteen hundred and twenty-six ordered that the said defendants, Huizinga Hamilton, and Norman Thompson appear and make discovery on oath concerning the property and things in action of said Huizinga Hamilton or held by said Norman Thompson in trust for said Huizinga Hamilton before Albert R. McAllister, a
10 Master of this court, on the thirty-first day of March, nineteen hundred and twenty-six, at the hour of ten o'clock in the forenoon, at the office of said Albert R. McAllister at Bridgeton, New Jersey.

It is further ordered that the said defendant, Norman Thompson, be and he is hereby restrained from conveying, paying or transferring to the said defendant, Huizinga Hamilton, or to any other person or persons any portion of the property, money or things
20 in action due from him to, or held in trust by him, for the said defendant, Huizinga Hamilton, and that the said defendant, Huizinga Hamilton, be and he is hereby restrained from conveying, paying or transferring to any person or persons and from receiving from any person or persons any property, money or thing in action belonging to him or held in trust for him, except such property as is now reserved by law or where said trust has been created by or funds held in trust has proceeded from some person other
30 than the said Huizinga Hamilton, himself, and the income from said trust does not exceed the sum of four thousand dollars (\$4000) per annum, until the further order of this Court. This restraint shall not prevent business being conducted in its ordinary and regular course.

It is further ordered that true copies of this order, which may be certified by complainant's solicitor, be

Subpoena Ad Respondendum 13

served on the said defendants, Huizinga Hamilton, and Norman Thompson, within three days after the date hereof.

E. R. WALKER,
C.

Respectfully advised,
E. B. LEAMING,
V. C.

10

SUBPOENA AD RESPONDENDUM.

NEW JERSEY, to wit: The State of New Jersey to Norman Thompson,

GREETING: Whereas a bill of complaint has lately been exhibited against you in our Court of Chancery by Commercial (L. S.) National Trust and Savings Bank of Los Angeles, to be relieved touching the mat- 20
ters therein contained.

Therefore, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the clerk of our said court at Trenton, on or before the expiration of twenty days from and after the thirty-first day of March, 1926, and in default thereof such order or decree will be made against you as the Court shall think equitable and just. 30

Witness, his Honor, EDWIN ROBERT WALKER, Chancellor of our said State, at Trenton, the twenty-fourth day of March, in the year of our Lord, one thousand nine hundred and twenty-six.

FRANK A. BACON,
Solicitor.

SUBPOENA AD RESPONDENDUM.

NEW JERSEY, to wit: The State of New Jersey to
Huizinga Hamilton,

10 GREETING: Whereas a bill of complaint
has lately been exhibited against you in
our Court of Chancery by Commercial
(L. S.) National Trust and Savings Bank of Los
Angeles, to be relieved touching the mat-
ters therein contained.

Therefore, we command you, if you in-
tend to make a defense, that you file an answer to
said bill in the office of the clerk of our said court at
Trenton, on or before the expiration of twenty days
from and after the thirty-first day of March, 1926,
and in default thereof such order or decree will be
made against you as the Court shall think equitable
and just.

20 Witness, his HONOR, EDWIN ROBERT WALKER, Chan-
cellor of our said State, at Trenton, the twenty-
fourth day of March, in the year of our Lord, one
thousand nine hundred and twenty-six.

FRANK A. BACON,
Solicitor.

SUBPOENA AD RESPONDENDUM.

30 NEW JERSEY, to wit: The State of New Jersey to
Mary D. Hamilton,

GREETING: Whereas a bill of complaint
has lately been exhibited against you in
our Court of Chancery by Commercial
(L. S.) National Trust and Savings Bank of Los
Angeles, to be relieved touching the mat-
ters therein contained.

Notice of Appeal from Order of Discovery and Complaint 15

Therefore, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the clerk of our said court at Trenton, on or before the expiration of twenty days from and after the thirty-first day of March, 1926, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

Witness, his HONOR, EDWIN ROBERT WALKER, Chancellor of our said State, at Trenton, the twenty-fourth day of March, in the year of our Lord, one thousand nine hundred and twenty-six.

FRANK A. BACON,
Solicitor.

NOTICE OF APPEAL FROM ORDER OF
DISCOVERY AND COMPLAINT.

(Filed April 16, 1926.)

20

IN CHANCERY OF NEW JERSEY.

Between	} On Bill for Discovery, &c. Notice of Appeal from Order of Dis- covery and Re- straint.	} 30
COMMERCIAL NATIONAL		
TRUST AND SAVINGS BANK		
OF LOS ANGELES,		
<i>Complainant,</i>		
and		
HUIZINGA HAMILTON, <i>et al.,</i>		
<i>Defendants.</i>		

The defendants hereby appeal from an order made in the above stated cause bearing date on the twenty-third day of March, 1926, whereby it was ordered

16 *Notice of Appeal from Order of Discovery
and Complaint*

that the said Huizinga Hamilton and Norman Thompson appear and make discovery on oath concerning the property in question of said Huizinga Hamilton and that the defendant, Norman Thompson, be restrained from conveying, paying or transferring to the said Huizinga Hamilton or to any other person or persons any portion of the property, money or things in action due from him to, or held
10 in trust by him, and that the defendant, Norman Thompson, be restrained from conveying, paying or transferring to the said defendant, Huizinga Hamilton, and from conveying, paying or transferring to any person or persons any property, money or thing in action belonging to him or held in trust for him, except such property as is now reserved by law or where said trust has been created by or funds held in trust has proceeded from some person other than
20 the said Huizinga Hamilton, and the income from said trust does not exceed the sum of four thousand dollars (\$4000) per annum, &c; and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

Dated Millville, N. J., April 3rd, 1926.

J. ROY OLIVER,
Solicitor of Defendants.

LOUIS H. MILLER,
Of Counsel with Defendants.

30

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

LOUIS H. MILLER,
Of Counsel with Defendants.

PETITION OF APPEAL.

(Filed April 16, 1926.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

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Between	}		
COMMERCIAL NATIONAL			On Bill for Discovery
TRUST AND SAVINGS BANK			and Restraint.
OF LOS ANGELES,			On Appeal from Or-
<i>Complainant,</i>			der for Discovery,
and	&c.		
HUIZINGA HAMILTON, <i>et al.</i> ,	}	Petition of Appeal.	
<i>Defendants.</i>			

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

The petition of Huizinga Hamilton, Mary D. Hamilton, his wife, and Norman Thompson, defendants in the above stated cause, appellants in the in the above stated cause respectfully show that your petitioners find themselves aggrieved by a certain order made in the above stated cause bearing date on the 23rd day of March, 1926, by his Honor, the Chancellor, filed in the Court of Chancery on that date, in this respect, to wit:

That the said order or decree orders that the said defendants, Huizinga Hamilton and Norman Thompson, appear and make discovery on oath concerning

the property and things in action of the said Huizinga Hamilton and/or held by said Norman Thompson in trust for said Huizinga Hamilton, before Albert R. McCallister, a Master of this court on the thirty-first day of March, 1926, at the hour of ten o'clock in the forenoon, at the office of Albert R. McCallister, at Bridgeton, New Jersey; and that the defendant, Norman Thompson, be and thereby was restrained from conveying, paying or transferring to the said Huizinga Hamilton, defendant, or to any other person or persons any portion of the property and money or things in action for the said defendant, Huizinga Hamilton, and that the said defendant, Huizinga Hamilton, be and thereby was restrained from conveying, paying or transferring to any person or persons and from receiving any property or thing in action belonging to him or held in trust for him except such property as is now reserved by law or where such trust has been created by or funds held in trust has proceeded from some person other than the said Huizinga Hamilton, himself, and the income from said trust does not exceed the sum of four thousand dollars (\$4000) per annum, until the further of this Court. And your petitioners humbly appeal from the whole and every part of the decree on the ground that the same is erroneous for that:

1. The said decretal order decrees that the defendants, Huizinga Hamilton and Norman Thompson, appear and make discovery on oath in the manner prayed for in the petition, on the *ex-parte* affidavit, of plaintiff, whereas the Chancellor should have denied the application for said decretal order for discovery because the proofs by bill of complaint and affidavit were not sufficient in law to justify the allowance of said order for discovery.

2. The said decretal order for discovery was allowed without a hearing, and without the issuance of process either by order to show cause or subpoena or otherwise said order for discovery was entered without due process of law contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

3. The said decretal order for injunction was allowed without order to show cause, and without opportunity to be heard on an application to make the injunction permanent; wherefore the said decretal order for injunction was allowed without due process of law, in contravention to the Fourteenth Amendment to the Constitution of the United States. 10

4. The affidavit in support of the application for the order complained of is not sufficient to justify the allowance of the order.

And your petitioners humbly appeal from the whole and every part of said decretal order on the ground that the same is erroneous, for the reasons hereinbefore assigned. 20

Your petitioners, therefore, pray that the said decretal order of the said Chancellor may be, in all respects reversed, set aside and for nothing holden; and that your petitioners may have such relief in the premises as to this Honorable Court may seem meet.

Dated Millville, N. J., April 8, 1926. 30

J. ROY OLIVER,
Solicitor for Appellant.
LOUIS H. MILLER,
Of Counsel with Appellant.

ANSWER TO PETITION OF APPEAL.

(Filed April 28, 1926.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

Between

COMMERCIAL NATIONAL TRUST AND SAVINGS BANK OF LOS ANGELES, <i>Complainant-Respondent,</i> and HUIZINGA HAMILTON, <i>et al.</i> , <i>Defendants-Appellants.</i>	}	On Appeal from Court of Chancery. Answer to Petition of Appeal.
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The answer of Commercial National Trust and Savings Bank of Los Angeles, the above named respondent, to the petition of appeal of Huizinga Hamilton, Mary D. Hamilton, his wife, and Norman Thompson, the above named appellants.

30 This respondent, not admitting the truth of any or all of the matters in the said petition of appeal contained, for answer thereto, nevertheless, admits that an order was on March 23, 1926, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said order, this respondent begs leave to refer thereto when the same shall be produced.

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

FRANK R. BACON,
*Solicitor for and of Counsel
with Respondent.*

10

ANSWER AND COUNTER-CLAIM.

(Filed April 16, 1926.)

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill &c. Answer and Counter- Claim.	20
COMMERCIAL NATIONAL			
TRUST AND SAVINGS BANK			
OF LOS ANGELES,			
<i>Complainant,</i>			
and			
HUIZINGA HAMILTON, <i>et al.</i> ,	}		
<i>Defendants.</i>			

Defendants, residing at Leesburg, Cumberland 30
County, New Jersey, answering the bill of complaint,
say that:

1. Paragraph one is denied.
2. Paragraph two is denied.

3. Paragraph three is denied. Defendant Huizinga Hamilton held title to said lands, as in fee simple, at the date specified, but partly to the use of Mary D. Hamilton and partly to the use of Norman Thompson, and in part only to his own use.

4. Paragraph four is admitted; but defendant Huizinga Hamilton, is now seeking to open said judgment, praying leave to defend the same.

10

5. Paragraph five is admitted.

6. Paragraph six is admitted.

7. Paragraph seven is admitted, but defendant Huizinga Hamilton is now seeking to open said judgment, as stated in the answer to paragraph four.

8. Paragraph eight is admitted.

20

9. Said conveyance was made, as was the conveyance mentioned in paragraph ten, on the trusts referred to in the answer to paragraph three. Defendant Norman Thompson had been obliged to pay a \$9000 note given by Huizinga Hamilton, referred to in the counter-claim. To secure repayment of this, and to secure payment of moneys due Mary D. Hamilton the conveyance mentioned in paragraphs nine and in paragraph eleven were made.

30

10. The conveyance was made on the trusts mentioned in paragraph nine.

11. Paragraph eleven is denied.

12. Paragraph twelve is denied, except as to the rights of action set up in the counter-claim.

13. Paragraph thirteen is denied.
14. Paragraph fourteen is denied.
15. Paragraph fifteen is denied.
16. Paragraph sixteen is admitted.

COUNTER-CLAIM.

10

By way of counter-claim against complainant and H. Tyree Chemical Company, a corporation of the State of Delaware; J. W. Heilig, P. H. Kelly Company, Inc., H. Tyree, Helen K. Tyree and John Robinson, third parties, defendants say that:

1. Defendant Huizinga Hamilton says that he is an old man seventy-six years of age and for many years has been so enfeebled bodily and mentally that he has not been able to nor accustomed to transact his ordinary affairs in business. For a number of years a young man named Norman Thompson, who has been reared from early childhood by the defendant, and this defendant's wife, Mary D. Hamilton, have transacted defendant's ordinary business affairs and the said Norman Thompson has defendant's power of attorney for that purpose. In June, 1925, one H. Tyree, President of the Tyree Chemical Company, of Millville, New Jersey, made representations to the defendant that the Tyree Chemical Company was the owner of real estate at Millville, New Jersey, worth \$150,000, besides other property elsewhere of the value of \$1,000,000; that its operation in the manufacture of certain merchandise was so profitable that it was earning profits aggregating \$1,720,000 in immediate prospect, and that the company then had an annual income of at least \$1,000,-

000 net. Upon the basis of those representations defendant Huizinga Hamilton was led to sign some documents which the said H. Tyree told him would not bind or oblige him to pay out any sum whatsoever, because H. Tyree Chemical Company would take care of and pay off the notes, obligations or documents above referred to, whatever they were. Said H. Tyree said further that, nevertheless, by reason of having signed these documents defendant
10 Huizinga Hamilton would become a stockholder in the Chemical Company and entitled to share its profits. By reason of the representation referred to, this defendant was induced to sign papers among which, he afterward learned, were documents in the nature of promissory notes and checks for sums aggregating upwards of \$58,000. A paper writing, delivered to defendant Huizinga Hamilton by the said H. Tyree at the time said notes were secured is
20 illustrative and probative of the representations made as aforesaid and a copy of that document is annexed and marked "A."

All of the transactions of defendant Huizinga Hamilton with H. Tyree and his associates were had privately and in the absence of defendant's said confidants and agents, Mary D. Hamilton and Norman Thompson, upon whom defendant was accustomed to rely in the transaction of his business affairs. And defendant charges that the said H. Tyree and his associates purposely so arranged that
30 said business and transaction should be done in the absence of defendant's confidential agents, said Mary D. Hamilton and Norman Thompson.

2. Upon signing the documents referred to defendant Huizinga Hamilton was issued or promised delivery of several hundred shares of worthless stock in the Tyree Chemical Company and Frazer

Tablet Company. All of the representations made in the circular marked Exhibit "A," and the other representations of like character made by H. Tyree and his associates including P. H. Kelly, John H. Kelly, J. W. Heilig, John Robinson and one Tiffeny were false and fraudulent; the H. Tyree Chemical Company in fact has no assets whatever in excess of its liabilities, and its real estate holdings at Millville, alleged to be worth \$150,000, consist of a \$10,000 equity subject to a \$30,000 mortgage; and it makes no profits and never has made profits. The Frazer Tablet Company is a corporation, also, without any real business, and its stock is worthless. The said H. Tyree and his said agents are professional fraudulent stock selling agents and said Tyree is so called by reliable National Reporting and Commercial agencies. All of the transactions of the said H. Tyree and his associates and agents were had and their said false representations made for the purpose of swindling defendant by procuring the cash, securities, notes and obligations above referred to, without any consideration whatsoever moving to this defendant.

6. In connection with his transactions with the H. Tyree and his associates and the H. Tyree Chemical Company, defendant Huizinga Hamilton delivered to the said H. Tyree various shares of capital stock in divers corporations and has a receipt in evidence of such delivery of stock having been given to this defendant, a copy of which is attached and marked Exhibit B. The shares of stock referred to in Exhibit "B" of the value of \$20,000, the property of defendant Huizinga Hamilton were delivered to the said H. Tyree to be held by him as collateral, and used for the payment of the obligations of this defendant, whatsoever they may have been, given by

him on the occasion or occasions of the purchase or purchases of said worthless stock; but that the said H. Tyree and said complainant never have nor has either of them, made application of the said stock for the purposes expressed in the declaration of trust Exhibit "B," but on the contrary said complainant and said Tyree have converted said collateral to their own use.

10

7. H. Tyree, the Tyree Chemical Company, P. H. Kelly, Frazer Tablet Company and Helen K. Tyree, complainant, and John H. Kelly, P. H. Kelly Company, Inc.; J. W. Heilig and John Robinson fraudulently came into possession of said stocks and securities of defendant Huizinga Hamilton, being the same stocks and securities referred to in Exhibit "B," of great value, to wit, of the value of \$30,000.

20

8. The said H. Tyree, Helen K. Tyree, H. Tyree Chemical Company, Frazer Tablet Company, P. H. Kelly, John Kelly, P. H. Kelly Company, Inc., J. W. Heilig, John Robinson and their agents, associates and confederates by means of the artifices hereinbefore set forth fraudulently procured from defendant Huizinga Hamilton divers sums of money and stocks, securities and obligations, aggregating
30 in value over seventy thousand dollars. By reason of his age and mental infirmities said Huizinga Hamilton is not enabled to state accurately what cash, securities and notes, obligations and things of value have been obtained from him by said persons in their paragraph named, but he charges that in-

cluded in his payments and deliveries of cash and securities are the following:

Paid to H. Tyree and his stock salesman,	
cash	\$14,500
Paid to Frazer Tablet Company, check....	5,000
Notes to the amount of, approximately....	38,000
	<hr/>
Securities delivered, as per Exhibit "B,"..	\$57,500

9. Exhibit C. attached, contains a general statement of said cash and securities and notes. Exhibits A, B and C are made part hereof. 10

10. Defendants have demanded of the complainants and said third parties an accounting of said cash, securities and property acquired by them from said Huizinga Hamilton fraudulently, as aforesaid; but they have refused to render an accounting for the same.

11. Defendants, also, have offered to surrender up said worthless stock certificates and have prayed that any subscriptions therefor defendant Huizinga Hamilton may have made be cancelled and made void. 20

These defendants are without adequate remedy at law in the premises and therefore pray:

1. That the complainant, Commercial National Trust and Savings Bank of Los Angeles, and said third parties H. Tyree Chemical Company, a corporation of the State of Delaware, J. W. Heilig, P. H. Kelly Company, Inc., H. Tyree, Helen K. Tyree, P. H. Kelly, John H. Kelly and John Robinson, who are joined with complainant as defendants in this their counter-claim, may answer this counter-claim without oath, and each statement therein made. 30

2. That said complainant and third parties may account to defendants for the said cash, checks, notes, obligations and securities fraudulently procured by them from said Huizinga Hamilton.

3. That said complainant may be permanently restrained from prosecuting its said suit, or from taking further proceedings for enforcement of its said judgment, either at law or in equity, and that said
10 judgment be decreed fraudulent and void.

4. That said complainant and third parties, or some of them, may be decreed to pay to said Huizinga Hamilton the divers sums of money shown on said accounting to be due to him from complainant and said third parties.

5. That complainant and said third parties, or some of them, be decreed to surrender up to said
20 Huizinga Hamilton the securities described in Exhibit B, or decreed to pay him the value of the said securities.

6. That a writ of subpoena may issue directed to the said third parties H. Tyree Chemical Company, a corporation of the State of Delaware, Frazer Tablet Company, J. W. Heilig, P. H. Kelly Company, Inc., H. Tyree, Helen K. Tyree, P. H. Kelly, John H. Kelly and John Robinson, commanding them to
30 answer this counter-claim and each statement therein made, and to abide by such decree as this court may make in the premises.

J. ROY OLIVER,
Solicitor of Defendants.

LOUIS H. MILLER,
Of Counsel with Appellants.

EXHIBIT "A."

H. TYREE CHEMICAL COMPANY, A CORPORATION.

CAPITAL:

The H. Tyree Chemical Company is a Delaware corporation with an authorized capital stock of one hundred thousand (100,000) shares of no par value common stock, full paid and non-assessable, and five thousand (5,000) shares par value one hundred dollars (\$100) each of eight per cent. (8%) cumulative preferred stock. 10

The corporation has issued sixty thousand (60,000) shares of common stock. Remaining forty thousand (40,000) shares are for sale. No preferred stock has yet been issued.

ASSETS:

FIRST: The company owns TALC MINES at Acme, San Bernadine County, California and products and factory equipment in Los Angeles, factory in Millville, New Jersey, trade marks, copyrights, and formulae protecting the products manufactured and to be manufactured. 20

SECOND: The talc deposits were valued by engineers, representing the Citizens' Trust and Savings Bank of Los Angeles, and by the GENERAL APPRAISAL COMPANY, all of whom claim the deposit in sight of TALC in these mines is worth net ONE MILLION DOLLARS (\$1,000,000). They gave no reports on the speculative value of deposits not yet uncovered. 30

THIRD: The total value of assets as stated by the GENERAL APPRAISAL COMPANY, is one MILLION FIFTY-THREE THOUSAND DOLLARS (\$1,053,000.00) to which we add factory building and site in Millville, New

Jersey, valued at ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) making total assets to date ONE MILLION TWO HUNDRED THREE THOUSAND DOLLARS \$1,203,000.00).

FOURTH: We consider the present value of trademarks, copyrights and formulae to be at least FIFTY THOUSAND DOLLARS (\$50,000.00) as the business develops and our products become generally known, then, of course, the value of the trademarks and copyrights become much greater.

PRODUCTS:

The H. Tyree CHEMICAL COMPANY will begin manufacturing in Millville, New Jersey, at an early date, the following:

“HI-TY” Antiseptic Compound.

“HI-TY” Antiseptic “Foot Relief.”

20 Tyree’s “Lost Angeles Rose” Talcum Powder.
Tyree’s “California (Fluers d’Ouest)” Talcum Powder.

Tyree’s “Dream of the Desert” Talcum Powder.

Tyree’s “California Orange Blossom” Talcum Powder.

“Hi-Ty” Skin Lotion.

“Hi-Ty” Hand Lotion.

“Hi-Ty” “NU HAIR” Tonic and Color Restorer.

30 “Hi-Ty” Tonic and Hair Restorer.

“Hi-Ty” Boudoir Powder.

“Hi-Ty” PECHE-DORRE Face Powder.

“Hi-Ty” Compacts and Rouges.

SUPPLY:

Thousands of tons of TALC have been shipped from the property of the H. Tyree Chemical Company and engineer’s statements show there

are ONE HUNDRED THOUSAND TONS (100,000) in sight. With further developments, they advise many hundreds of thousands of tons will be available.

Owning its own raw material for its TALC products assuring uniform quality and lost cost from year to year, places H. Tyree Chemical Company in a most advantageous position.

DEMAND:

The United States consumes about eighty per cent. (80%) of the world's supply of TALC, the bulk of which has, until recently, been shipped from Europe. The uses of TALC are so numerous that one scarcely realizes how many points it reached in this modern age. Besides being used in face powder and toilet articles trade, it has many specified uses in the industrial world, such as paper filling, scouring of rice, making paints, etc. We expect to be active mining operation in the very near future on a uniform scale of producing and delivering about three (3) carloads of TALC, or one hundred (100) tons per day.

EARNINGS:

At a profit of ten dollars (\$10.00) per ton in Los Angeles the foregoing would show a net profit of three hundred thousand dollars (\$300,000.00) annually, but we expect to ship large quantities of TALC to the East where the profits for commercial purposes will be very much greater from fifteen dollars (\$15.00) to twenty-five dollars (25.) per ton more than at Los Angeles.

We estimate that our sales of manufactured products for the first year will be one million three hundred seventy-five thousand dollars (\$1,375,000.00) and that our net profits will be

three hundred sixty-three thousand five hundred dollars (\$363,500.00) after having profited one hundred thirty-four thousand six hundred dollars (\$134,600) for advertising and overhead expenses.

10 After the first year we expect to use annually ONE THOUSAND (1,000) tons of TALC in our talcum powder products. This tale converted into manufactured products should produce a net profit of one thousand four hundred twenty dollars (\$1,420.00) per ton or ONE MILLION FOUR HUNDRED TWENTY THOUSAND DOLLARS (\$1,420,000.00) annually. To this add three hundred thousand dollars (\$300,000) net income from the sale of tale, and from products containing TALC, we have a net income of at least (\$1,720,000.00).

20 To this must be added the earning on the other products manufactured by the company, such as "Nu Hair," Hair Grower, Antiseptic Powder, Foot Relief, Skin Lotion, Hand Lotion, Compacts and Rouges, which would be at least equal to the above. This should show an annual profit of three million four hundred forty thousand dollars (\$3,340,000.00) after the company is well under way in its factory at Millville, New Jersey.

DIVIDENDS:

30 The present actual tangible assets of the company, as stated above, are ONE MILLION TWO HUNDRED THREE THOUSAND DOLLARS (\$1,203,000.00) and the present value of trademarks, copyrights and formulae, fifty thousand dollars (\$50,000.00), making a total of one million two hundred fifty-three thousand dollars (\$1,253,000.00).

There are only sixty thousand (60,000) shares of No. par value common stock now outstanding, which gives a value of over twenty dollars and eighty cents (\$20.80) per share on the issued capital stock.

These are estimates and not guarantees, but it is interesting to consider the earnings on the invested capital in this enterprise.

Respectfully submitted,

H. TYREE CHEMICAL COMPANY,

10

Per H. TYREE,

President.

Dated this fourteenth day of April, 1925.

EXHIBIT B.

H. TYREE CHEMICAL COMPANY.
PHARMACEUTICAL AND TOILET
PREPARATIONS.
PRESSER BUILDING.

20

1713 Sansom St.

Philadelphia, Pa., Nov. 2, 1925.

Mr. Huizinga Hamilton,
Leesburg, N. J.

Dear Sir:

This letter is to acknowledge the receipt from you, personally, to me of the following certificates of stock owned by you. The certificates are accepted 30
by me as security or collateral and to be used as such in payment for stock of the H. Tyree Chemical Company, now in your possession.

The said certificates are to be used in the protecting or paying of notes given by you as payment for the purchase of said stock of H. Tyree Chemical Company.

LIST OF STOCK.

Name	Cert. No.	No. of Shares	Date	Stock
Fire Association of Phila.	#17204	2	1-5-25	Capital
do	18548	2	12-20-21	"
do	14014	1	7-20-21	"
do	8591	1	7-15-1892	"
Reliance Inst. Co.	A-2190	3	2-5-25	"
" " "	A-2210	1	2-21-25	"
10 " " "	A-569	10	12-12-21	"
Central Ice and Storage Co.	150	24	12-18-23	Preferred
do	2	40	1-17-22	Preferred
do	150	24	12-18-23	Common
Universale Mfg. Co. of N. J.	1	100	4-14-24	Preferred
do	6	200	4-14-24	Common
Reliance Ins. Co.	A-152	25	10-29-21	Capital

20 It is also understood that in the event of your failure to meet notes given, it is agreeable, that the several certificates be sold and the proceeds credited in payment, or on account of payment of the indebtedness due on H. Tyree Chemical Co.'s stock—sales of any certificates not to be made, however, before February 1st, 1926.

H. Tyree

Approved, accepted and signed by—

Huizinga Hamilton.

Witness: M. McGrath.

30

EXHIBIT C.

April 6, 1925.

Statement of cash paid, notes given and securities surrendered by Huizinga Hamilton to H. Tyree

and others for stock in the H. Tyree Chemical Company and Frazer Tablet Co., alleged to be worthless so far as known at this time.

CASH.

Paid Tyree on account stock Tyree Chemical Co.	\$750.00	
Check to Robinson & Tiffney, for Tyree Chemical Co. stock.....	2,500.00	
Paid H. Tyree and J. W. Heilig, for Tyree C. Co. stock.....	2,593.00	10
Norman Thompson paid his note, given for Tyree &c stock.....	9,000.00	
Check for Frazer Tablet Co. stock.....	5,000.00	
Sept. 1925, paid note for Tyree Chemical Co. stock	1,000.00	

Paid J. W. Heilig, Tyree Stock, Total cash \$20,843.00

NOTES, YET UNPAID, EXCLUSIVE OF \$9000 NOTE TAKEN UP BY NORMAN THOMPSON. 20

Notes held by P. H. Kelly for Tyree stock	7,500.00	
“ “ by Los Angeles Bank, for same	8,000.00	
“ “ by McKeever and others, for Frazer Tablet Co. stock.....	\$22,500.00	

Total notes \$38,000.00

SECURITIES.

See statement of securities set out in Exhibit B., annexed to proposed answer, total value not known.

RECAPITULATION. 30

See statement of securities set out in Exhibit B.	
Total cash of which defendant has been defrauded	\$20,843
Notes	38,000

\$58,843

Besides the securities specified in Ex. B.

State of New Jersey }
 County of Cumberland } ss.

Norman Thompson, being duly sworn according to law on his oath deposes and says:

I found among my fathers papers, documents which indicate that Tyree is interested personally in the notes sued on and is the holder thereof at this time. The documents read as follows:

Philadelphia, Pa, Oct. 19th, 1925.

10 Mr. Huizinga Hamilton,
 Leesburg, N. J.

Dear Mr. Hamilton:

I am pleased to inform you that we have begun operations in the factory at Millville, and I instructed our superintendent, Mr. Zeigler, about your two nieces of whom you told him a few days ago.

I trust they will be satisfied with their new connections, and that you personally keep in touch with us.

20 We are going to turn out a large quantity of goods there, and I know that you will be satisfied.

Mr. Heilig has told me something about his conversations with you and I am writing this to call your special attention to the note of \$8,000.00 due November 1st, 1925. I sold this note in Los Angeles and it will come through the banks and it is payable at the Corn Exchange National Bank, Central City Office, just above 15th Street on Chestnut Street, Philadelphia. This note cannot be renewed,

30 so I am informing you in time for you to arrange to take care of it promptly upon its presentation, it may be better for you to come to Philadelphia, to arrange your finances without taking it up with the Millville Bank, unless you have sold oysters and

have credit enough to do it. I am only making this as a suggestion.

With kind regards, I am,

Yours very truly,
H. Tyree,
President.

Philadelphia, Pa. 10
November 10th, 1925.

Mr. Huizinga Hamilton,
Leesburg, N. J.

Dear Sir:

I was very much disappointed at the way matters turned out at our meeting in the factory building the other day. I did not know anything about the transaction you had with Mr. Heilig wherein you purchased three hundred shares of the common capital stock of this company for the sum of \$3750.00. The checks you exhibited was a part payment on this purchase. You also gave him some notes and a letter to the bank requesting them to discount these notes. This is why the report from the bank about the number of notes they had discounted, for us was not correct. 20

Mr. Heilig should have told me about this transaction. It is true that this was his own personal stock that he to you, and which he said you understood and he had a right to sell it, but I had questioned the propriety of doing so to you since he knew you had a large obligation to us for the stock you had purchased from the company, and we needed all the money you could spare in our business. This, however, is past now and cannot be helped. 30

Mr. Heilig brought in a report yesterday and showed a complete statement of all his transactions,

which would have cleared the matter up had he been there at the meeting. He also saw Senator Reeves last evening, as he told me over the telephone this morning.

10 Now your failing to make any payment on this \$8,000 note out West has put me in a bad and difficult position. I had to endorse that note and sold it, now since it is protested they are looking for the money from me, and if suit is to be brought I would have to do it, which I do not wish to do. I think you should give me two notes for this \$8000 and you and your nephew both sign them, payable in three months and four months' time respectively from date. The young man seems to be interested with you and had a whole lot to say at the meeting, and no doubt he will be interested with you in the stock which you already have and which you will get. It is your paper, Mr. Hamilton, and your obligation, that has to be met and not mine, and I want you to
20 attend to it promptly.

I spent the better part of three days down at Millville trying to get this matter adjusted. It is not up to me to come around and make explanations, it is your business to see me and make satisfactory settlement on your paper.

30 Mr. Kelly wrote you today about the \$3,000.00 note which he discounted in the bank and which he falls due on the 15th of this month, and I believe he suggested part payment and a note for the balance. I hope you will be able to do this, if not Mr. Kelly will have to pay the full \$3,000.00, which certainly is not fair.

You are a large stockholder and a member of the Advisory Sales Committee in the company, and we look to you to help us out instead of putting difficulties in our way.

I do not believe you wish to do this but there was so much misunderstanding at the meeting in the factory the other day that I am confused about intentions.

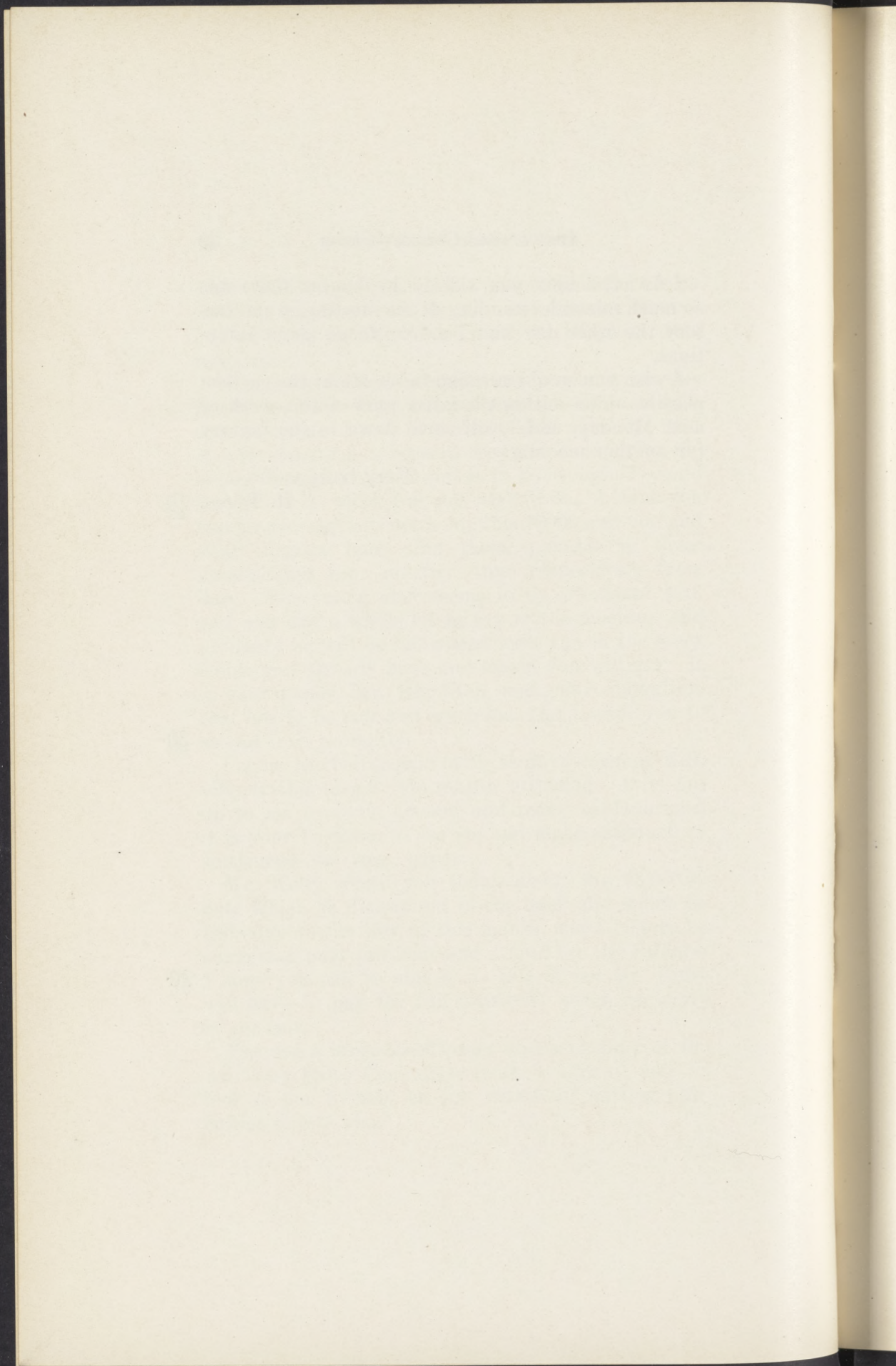
I wish you would arrange to see me at the earliest possible date—either the latter part of this week or next Monday, and I will come down to the factory for another meeting.

Very truly yours,

H. Tyree. 10

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30



NEW JERSEY COURT OF ERRORS AND
APPEALS.

THE COMMERCIAL NATIONAL TRUST AND SAVINGS
BANK OF LOS ANGELES,
Complainant-Respondent,
and
HUYZINGA HAMILTON, MARY D. HAMILTON and
NORMAN THOMPSON,
Defendants-Appellants.

ON BILL FOR DISCOVERY, &C.

ON APPEAL FROM DECRETAL ORDER FOR DISCOVERY
AND RESTRAINT.

BRIEF OF DEFENDANTS-APPELLANTS.

On filing the bill for discovery, with affidavit of complainant's solicitor attached, the order for discovery and restraint appealed from was peremptorily allowed, without process or hearing, under color of Sections 71, 72 and 73 of the Chancery Act (1 C. S. 437) which reads as follows:

71. *Power to compel discovery.* The Court shall have power to compel such discovery, and to prevent such transfer, payment or delivery,

and to decree satisfaction of the sum remaining due on such judgment out of any personal property, money or thing in action belonging to the defendant, or held in trust for him, with the exception above stated, which shall be discovered by the proceedings in chancery; provided, if the personal property, money or thing in action, which shall be discovered as aforesaid does not amount to the sum of one hundred dollars, no costs shall be recovered by the plaintiff against the defendant in such proceeding.

72. When a bill is filed for the purpose aforesaid, and shall be duly verified by the oath of the complainant therein, or his solicitor or agent, that he believes the contents thereof are true, it shall be lawful for the chancellor, in term, time or vacation, forthwith to make an order requiring the judgment debtor to appear and make discovery on oath concerning his property and things in action, before a master of said court, to be designated in such order at a time and place in said order to be specified.

73. *Order to prevent transfer of property.* If it shall appear by said bill, or by one supplemental thereto, and by proof by the oath of the complainant, or that of any other person, that any person owes the said judgment debtor, or holds money or property in possession or action, in trust for him or for his use, except such property as is now reserved by law, or when such trust has been created by, or the fund so held in trust has proceeded from some person other than the debtor himself, and the income from such trust does not exceed the sum of four thousand dollars, it shall be lawful for the Chancellor to make an order forbidding the payment of such

debt, or the transfer of said property or money by or to the said debtor, until further order to be by him made.

The order appealed from reads as follows:

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill for Discovery, &c. Order for Discovery and Restraint.
Commercial National		
Trust and Savings		
Bank of Los Angeles,		
Complainant,		
and		
Huyzinga Hamilton, <i>et</i>	}	
<i>al.</i>		
Defendants.		

The complainant having filed its bill of complaint herein duly verified wherein it alleges that it is the holder of a judgment recovered against the defendant, Huyzinga Hamilton, in the Cumberland County Court of Common Pleas; that an execution has been duly issued out of said court against the property of the said defendant and returned wholly unsatisfied by the sheriff of the County of Cumberland; that there remains due upon said judgment a balance exceeding one hundred dollars exclusive of costs; that the defendant, Norman Thompson, is indebted to said defendant, Huyzinga Hamilton, and holds certain property in trust for said defendant, Huyzinga Hamilton, which trust was created by said defendant, Huyzinga Hamilton, and upon reading said bill and the affidavit thereunto annexed, it is on this twenty-third day of March, nineteen hundred and twenty-six, ordered that the said defendants, Huyzinga

Hamilton, and Norman Thompson appear and make discovery on oath concerning the property and things in action of said Huyzinga Hamilton or held by said Norman Thompson in trust for said Huyzinga Hamilton before Albert R. McAllister, a Master of this court, on the thirty-first day of March, nineteen hundred and twenty-six, at the hour of ten o'clock in the forenoon at the office of said Albert R. McAllister at Bridgeton, New Jersey.

It is further ordered that the said defendant, Norman Thompson, be and he is hereby restrained from conveying, paying or transferring to the said defendant, Huyzinga Hamilton, or to any other person or persons any portion of the property, money or things in action due from him to, or held in trust by him, for the said defendant, Huyzinga Hamilton, and that the said defendant, Huyzinga Hamilton, be and he is hereby restrained from conveying, paying or transferring to any person or persons and from receiving from any person or persons any property, money or thing in action belonging to him or held in trust for him, except such property as is now reserved by law or where said trust has been created by or funds held in trust has proceeded from some person other than the said Huyzinga Hamilton, himself, and the income from said trust does not exceed the sum of four thousand dollars (\$4000) per annum, until the further order of this Court. This restraint shall not prevent business being conducted in its ordinary and regular course.

It is further ordered that true copies of this order, which may be certified by complainant's solicitor, be served on the said defendants, Huy-

zinga Hamilton and Norman Thompson—within three days after the date hereof.

E. R. Walker,
C.

Respectfully advised,
E. B. Leaming.

Appellants contend that this decretal order was unlawfully allowed by the Chancellor.

POINTS.

1. The proofs are not sufficient to justify the decretal order.
2. The order or decree was allowed without due process of law.

I.

THE PROOFS ARE NOT SUFFICIENT TO JUSTIFY THE DECRETAL ORDER FOR DISCOVERY AND RESTRAINT.

1. The leading case on this subject is *Barr v. Voorhees*, 55 Eq. 561. In that case the *ex parte* order appealed from was almost identical in language with that here under review, except that it omitted to set forth the place when the defendant was directed to appear before the Master.

Mr. Justice Collins, speaking for the Court of Errors, held that the order was appealable, and that it must be held void on two grounds. First, it failed to set forth where the defendant should appear be-

fore the Master. Second, it was not sustained by sufficient proof.

The order here under review does set forth the time and place where defendant, Huyzinga Hamilton, must appear, and hence that infirmity is not present in the order.

But the proofs here will not sustain the order. The affidavit attached to the bill on which the order is based reads as follows:

State of New Jersey, }
Cumberland County, } ss.

Frank R. Bacon, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am the solicitor of the complainant in the foregoing bill of complaint named and the matters and things therein contained are true to the best of my knowledge, information and belief.

2. On February 15, 1926, I recovered a judgment as attorney of record for complainant, Commercial National Trust and Savings Bank of Los Angeles against the defendant, Huyzinga Hamilton, in the Cumberland County Court of Common Pleas for \$8,310.67 damages and \$40.70 costs. Said judgment was recovered on a promissory note dated June 23, 1925, on which said Huyzinga Hamilton was the maker.

3. I have examined the records in the Cumberland County Clerk's office for conveyances made by the said Huyzinga Hamilton since June 23, 1925, and the record shows that on November 11, 1925, the said Huyzinga Hamilton and Mary D. Hamilton, his wife, executed a deed to one Norman Thompson for the stated consideration of one dollar, purporting to convey the lands and premises described in the plaintiff's bill of complaint, which said deed bore no United

States revenue stamp and was recorded on November 12, 1925, in the Cumberland County clerk's office in Book 428 of Deeds, page 614.

4. Execution was issued at my request on March 16, 1926, to the sheriff of the County of Cumberland and has since been returned wholly unsatisfied.

5. The said Norman Thompson stated to me before the date of the filing of this bill that the defendant, Huyzinga Hamilton, has no property in his name and any negotiations for settlement would have to be made by him, the said Norman Thompson.

Frank R. Bacon.

Sworn to and subscribed, before me, this 22nd day of March, 1926.

H. Byron Lore,
M. C. C. of N. J.

The general verification set forth in paragraph one of the affidavit will not suffice. *Barr v. Voorhees*, *supra*.

The formal allegations contained in paragraphs 2, 3 and 4, purporting to present proofs of matters of record, have no probative force whatever. Chief Justice Gummere, in *Githens v. Mount*, 64 N. J. L., at p. 168, speaking for the Supreme Court, on review of an order for discovery in proceedings at law, said:

"The verification was not a compliance with the requirements of the act, and did not justify the restraining clause contained in the order now before us. The act requires proof of the facts upon which the application for injunction is based, and 'proof' when used in a legislative enactment means legal evidence upon which judicial action may be rested. *Truax v. Pennsyl-*

vania Railroad Co., 27 Vr. 277; Inglis v. Schiener, 29 Id. 120; Barr v. Voorhees, 10 Dick. Vh. Rep. 561."

The act providing for supplementary proceedings at law for discovery is substantially the same as that regulating similar proceedings in equity; and, therefore, the ruling in *Githens v. Mount* is applicable.

The allegation in paragraph five that Norman Thompson stated that Huyzinga Hamilton "has no property in his name and any negotiations for settlement would have to be made by him, the said Norman Thompson," is not provative of the jurisdictional facts declared in the bill, and is not sufficient to warrant the issuance of the restraint against Norman Thompson and Huyzinga Hamilton.

See also 45 L. J. 90.

The cases seem to dispose of the question of the restraining order, which must be supported by "proof" by the terms of the Chancery Act.

As to the order for discovery, it seems to be suggested by the cases that a decree for discovery can go, on mere *belief* of complainant, without proofs, and without process. It seems wrong, however, to make what amounts to a final decree, requiring a person to make discovery of all his property, before a Master, at a great expense, without proofs of necessary facts and without a day in court. Appellants contend that such a decretal order is not due process of law.

II.

THE DECRETAL ORDER, MADE EX PARTE, WITHOUT A DAY IN COURT, AND WITHOUT PROOFS, IS NOT DUE PROCESS OF LAW, AND IS IN CONTRAVENTION OF SECTION I OF THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, AND IS, THEREFORE, VOID.

The *sub ad resp.* was not issued until March 24, after the order was made. No other process ever has been issued in the cause.

By due process of law is meant one which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adopted to the end to be attained; and whenever it is necessary for the protection of the parties *it must give them an opportunity to be heard* respecting the justice of the judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty, or property which may result in the deprivation of either without the observance of those general rules established in our system of jurisprudence for the security of private rights.

Hagar v. Reclamation Dist., III U. S. 708.

Due process of law is afforded litigants if they have an opportunity to be heard at any time before final judgment is entered.

Wells v. Nevada, 248 U. S. 165;

Wilson v. Standefer, 184 U. S. 415.

What is due process of law in the respective States is regulated and determined by the law of each State, and this amendment in no way undertakes to control the power of a State to determine by what process legal rights may be asserted or legal obligations enforced, provided the method of procedure adopted for these purposes *gives reasonable notice and affords a fair opportunity to be heard before the issues are decided*. The courts will interfere with State action on the ground that it is repugnant to this clause only where fundamental rights have been denied.

Hallinger v. Davis, 146 U. S. 320;
U. S. v. Cruikshank, 92 U. S. 542;
In re Kemmler, 136 U. S. 448;
Hurtado v. California, 110 U. S. 535;
Walker v. Sawinnet, 92 U. S. 90;
Iowa Cent. R. Co. v. Iowa, 160 U. S. 393;
Allen v. Georgia, 166 U. S. 141.

See also:

In re Converse, 137 U. S. 624;
Marchant v. Pennsylvania R. Co., 153 U. S. 388;
Hagar v. Reclamation Dist., 111 U. S. 708;
Brown v. New Jersey, 175 U. S. 175;
Storti v. Massachusetts, 183 U. S. 138.

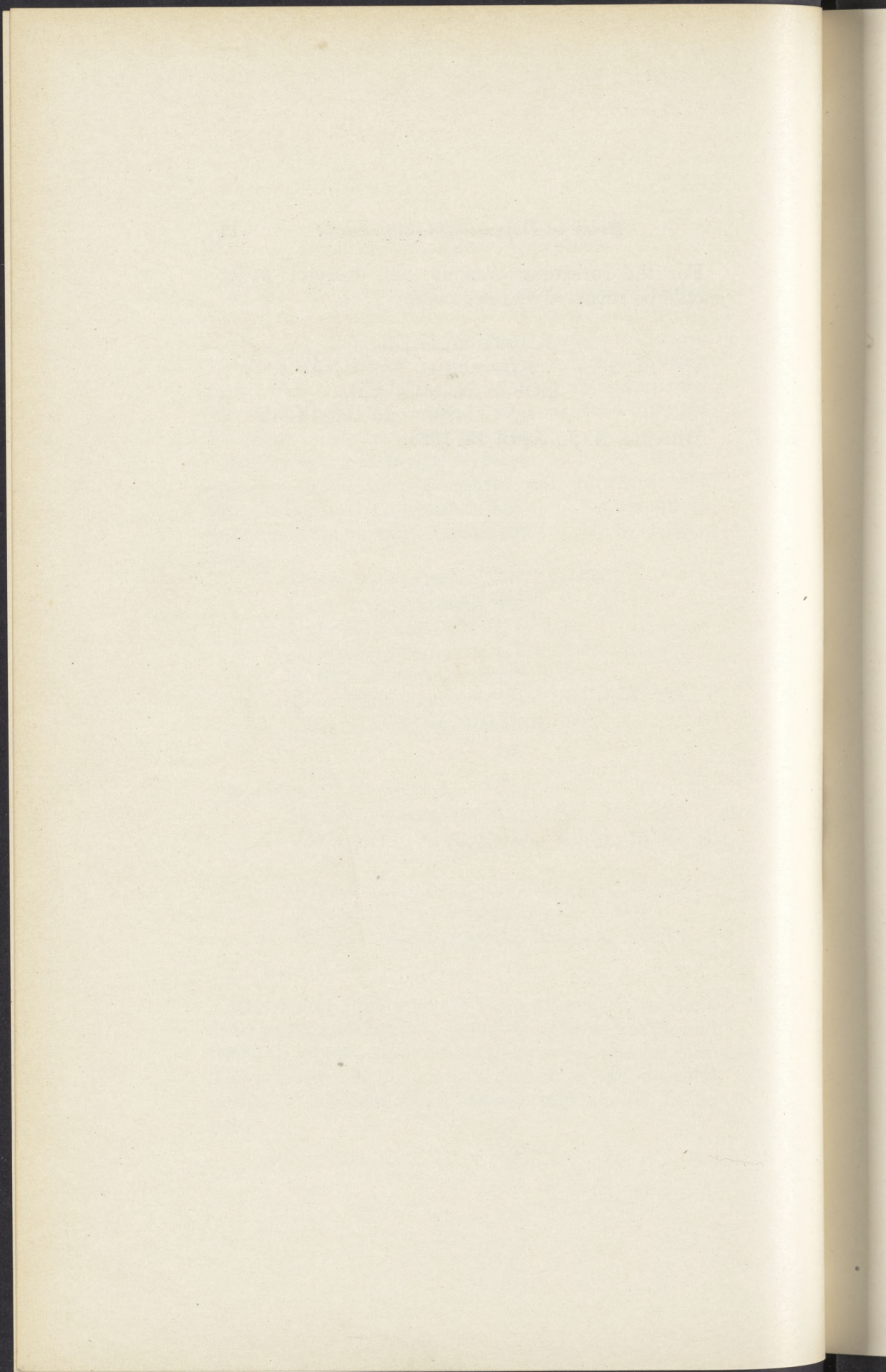
The decree for discovery is, in all essentials, final. It was made without an opportunity to be heard, and without proofs. It is not due process, and is void. The statute, if it purports to authorize such decretal order, is itself unconstitutional, and should be so held.

For the foregoing reasons the decretal order should be reversed and set aside.

J. ROY OLIVER,
Attorney of Appellants.

LOUIS H. MILLER,
Of Counsel with Appellants.

Millville, N. J., April 19, 1926.



NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between
COMMERCIAL NATIONAL TRUST AND SAVINGS BANK OF
LOS ANGELES,
Complainant-Respondent,
and
HUIZINGA HAMILTON, *et al.*,
Defendants-Appellants.

ON APPEAL FROM COURT OF CHANCERY.

BRIEF FOR RESPONDENT.

This is a statutory bill for discovery in aid of a judgment creditor.

The pertinent portions of the Chancery Act are Sections 70, 71, 72 and 73 (1 *C. S. of N. J.* 435-437).

I. IS THE ORDER JUSTIFIED BY THE
PROOFS?

Appellants challenge the sufficiency of the verification of the bill to support the order made by the Chancellor, and this subject divides itself into two parts.

(a) ORDER FOR DISCOVERY.

Section 72 expressly provides that as the foundation for such an order the bill need only be verified by the oath of the complainant, or his solicitor or agent, "that he believes the contents thereof are true." This was done.

Section 24 of the "Act respecting executions" (2 C. S. of N. J. 2250), contains provisions quite similar, and the foundation for the order is the oath of the creditor or his agent as to his "belief" that the judgment debtor has property concealed.

The proceeding is obviously *ex parte*, and the sole jurisdictional requirement for the order for discovery, in Chancery as well as in the law courts, is the affidavit as to belief of the truth of the allegations of the bill or petition.

See *Seyfert v. Edison*, 47 N. J. L. 423;
Gallagher v. Asphalt Co., 65 N. J. E. 258,
at page 268.

In *Barr v. Voorhees*, 55 N. J. E. 561, Mr. Justice Collins, speaking for this Court, said (page 562):

"Verification on belief is sufficient for an order for discovery, but not for an order forbidding transfer or payment."

(b) RESTRAINING ORDER.

To warrant such an order, Section 73 provides that upon proof by the oath of the complainant, or that of any other person, that, *inter alia*, any person holds property in possession for the judgment debtor, it shall be lawful for the Chancellor to make an order forbidding the transfer of such property by or to the said debtor, until further order to be by him made.

Counsel for appellants says in his brief, page 5, that the order disapproved in *Barr v. Voorhees*, 55

N. J. E. 561, is almost identical in language with that in the case at bar.

Comparison of the order on page 561 of the Barr case with the order on pages 11 and 12 of the State of the Case demonstrates that this statement is erroneous. In the Barr case the order not only failed to specify a place for defendant's appearance, but the restraint was a general one and not specific as in the case at bar.

The affidavit which is criticised contains the distinct allegation that affiant is the solicitor of the complainant; that he had examined the records in the county clerk's office and discovered of record a deed dated November 11, 1925, made by the defendant, Hamilton, to the defendant, Thompson, for a stated consideration of one dollar, purporting to convey the lands described in the bill of complaint, which deed was not stamped; and that the defendant, Thompson, had stated to affiant that the defendant, Hamilton, did not have any property in his name and that negotiations for settlement of complainant's judgment must be made with the defendant, Thompson.

Vice-Chancellor Leaming was apparently satisfied with this proof and made the order in question, which by its express terms does not prevent business being conducted in its ordinary and regular course. It does, however, restrain the defendant, Thompson, from making any transfer of the property alleged to have been conveyed to him, without consideration, by the defendant, Hamilton.

In 45 *N. J. L. J.* 89, Mr. Justice Parker is quoted as having said for the information of the bar:

“There is no difficulty about an attorney deposing from personal knowledge that a judgment was entered and execution issued and returned, as these things are matters of record.”

The deed from Hamilton to Thompson was also a matter of record, and for the purposes of this order, no good reason is apparent why the attorney could not depose as to those facts from his examination of the record.

We respectfully submit that the order in question was amply justified by the proofs.

II. DOES THE ORDER VIOLATE THE CONSTITUTION?

The pertinent portion of the 14th Amendment to the Federal Constitution reads as follows:

“Nor shall any State deprive any person of life, liberty, or property, without due process of law.”

Do ordinary discovery proceedings, in aid of execution, with *ad interim* restraint, based on statutory proof, operate to deprive the defendant of his property?

“The essential elements of due process of law are notice and opportunity to defend. In determining whether such rights were denied we are governed by the substance of things, and not by mere form.”

Simon v. Craft, 182 U. S. 427, at page 436.

In *Haney v. Compton*, 36 N. J. L. 507, this Court held that the seizure of a vessel without judicial process first issued, preparatory to regular trial and condemnation for violation of the oyster laws, is not a deprivation of property without due process of law.

In *Shaw v. Standard Piano Co.*, 87 N. J. E. 350, this Court held that the statute purporting to authorize the appointment of a receiver for an insolvent

corporation without notice was in conflict with the constitutional inhibition against taking of property without due process of law but this was only because upon the appointment of such receiver, title to the property of the corporation thereby became vested in the receiver.

We have not been able to find any case in which this question has been directly passed upon by the courts of this State, but there are many decisions of this court, and of the Court of Chancery and the Supreme Court in which discovery proceedings in equity and in the law courts have been enforced.

Many of the cases are cited in the notes under the respective statutes in the compiled statutes above cited.

In *Wilkinson, Gaddis & Co. v. Markert*, 65 N. J. L. 518, it was held that discovery in aid of execution may be ordered against a judgment debtor of unsound mind.

In *White v. White*, 94 N. J. E. 278, the Chancellor held that an installment execution may issue on an order or decree of the Court of Chancery as well as on a judgment of a court of law.

For a collection of cases on the subject of such orders, see opinion of Mr. Justice Parker in *Oetjen v. Hintemann*, 91 N. J. L. 429.

In *New Jersey Lumber Co. v. Ryan*, 57 N. J. E. 330, Mr. Justice Collins, speaking for this court, said, at page 332:

“There can be no dispute that to the statutory discovery and relief authorized in Chancery in behalf of a judgment creditor may be joined, under one bill, relief against persons to whom the judgment debtor may have made voluntary or fraudulent transfers or who hold property or things in action in trust for him.

The general powers of a court of equity extend to such a jurisdiction, and it is an everyday practice to exercise it."

In *Barr v. Voorhees*, 55 N. J. E. 561, relied upon by appellants, there is not found any suggestion as to lack of power in the court to make the order.

With the very many opinions in the reports relative to discovery proceedings, both at law or in Chancery, it seems impossible to believe that the alleged defect in the statute should have been overlooked, had it existed.

Assuming that due process of law requires only notice and an opportunity to defend, the proceedings at bar demonstrate that the defendants did have such notice and opportunity to defend.

They had ample notice to appear before the Special Master.

They did not appear because of this appeal.

They had opportunity to defend, and exercised it by filing the answer and counter-claim, which for some unexplained reason is printed as part of the State of the Case.

The fact that the counter-claim was struck out (4 N. J. Adv. Rep. 1184) does not prevent the defendants from presenting full proofs before the Special Master on the issues raised by the bill.

Defendants have not yet been *deprived* of any property.

In the recent case of *Endicott-Johnson Corporation v. Encyclopedia Press, Inc.*, 266 U. S. 285, the Supreme Court of the United States held that:

"The established rules of our system of jurisprudence do not require that a defendant who has been granted an opportunity to be heard and has had his day in court should, after a

judgment has been rendered against him, have a further notice and hearing before supplemental proceedings are taken to reach his property in satisfaction of the judgment. Thus, in the absence of a statutory requirement, it is not essential that he be given notice before the issuance of an execution against his tangible property; after the rendition of the judgment he must take 'notice of what will follow,' no further notice being 'necessary to advance justice.' "

"There is no more reason why the judgment debtor should be entitled to notice before the issue of an execution provided by statute as supplemental process to impound, in satisfaction of the judgment, choses in action due to him which cannot be reached by an ordinary execution. No established rule of our system of jurisprudence requires that such notice be given. On the contrary, it has been frequently held in the State courts that, in the absence of a statutory requirement, it is not essential that the judgment debtor be given notice and an opportunity to be heard before the issuance of such garnishment."

"We conclude that the provision of paragraph 1391 of the Code, authorizing the issue of a garnishment execution on the *ex parte* application of the judgment creditor, is not in conflict with the due process clause."

For these reasons, we respectfully submit that the order in question be affirmed.

February term, 1927.

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WALTER H. BACON,
Of Counsel.

