

New Jersey Court of Errors and Appeals

Between

JOHN S. IRVING,

Complainant-Appellant,

and

MUTUAL TRUST COMPANY, *et al.*,

Defendants-Respondents.

On Appeal

from

Decree

Dismissing

Bill of

Complaint.

Brief for Defendant-Respondent, Federal Trust Company.

The controversy in this case involves the right of the defendant, Mutual Trust Company, to apply the proceeds of collateral security held by it on other indebtedness to it of its debtor, John W. Crooks, than a note of \$1,700 endorsed by the complainant, Irving.

On November 12, 1908, John W. Crooks was indebted to the Federal Trust Company in the sum of \$5,247.50, and on that day he executed a demand note for that amount to his own order which he endorsed (Exhibit C. 2, p. 129). On the same day, with knowledge evidently that the note was to be sold by the Federal Trust Company to the Mutual Trust Company, Crooks executed and delivered a paper (Exhibit D. 3, p. 135) of which the following is a true copy:

“Newark, N. J., November 12th, 1908.

Mutual Trust Company,
Orange, New Jersey.

Gentlemen:—

Enclosed please find my demand note for five thousand two hundred and forty-seven dollars

and fifty cents (\$5,247.50) to be paid from the proceeds of the sale of the fifty shares of stock of the Westfield Land and Improvement Company, herewith assigned to you.

Very truly yours,

J. W. CROOKS."

It appears that by appropriate action of the Executive Committee of the Mutual Trust Company (Record, p. 66) the note of November 12th for \$5,247.50 was acquired by that company from the Federal Trust Company and that the Mutual Trust Company received the note (Exhibit C. 2) together with the letter (Exhibit D. 3) on or about the 18th of November, 1908, on which date the transaction was entered on the books of account of the Mutual Trust Company and draft given (Record, p. 65, l. 20; Exhibit C. 3, p. 129). The Mutual Trust Company acquired the note and the accompanying pledge of stock at the same time, and on the face of it there is nothing illegal or improper in this arrangement even if the maker of the note, Crooks, gave to the Mutual Trust Company when it acquired the note from the Federal Trust Company, collateral security not theretofore held by the Trust Company. The note was a demand note and it was entirely proper for the maker to secure it by collateral to the then holder at any time the maker saw fit so to do.

At the time of this transaction, whether it be regarded as of the 12th of November, the date of the note, or the 18th, the date of the record in the books of the Mutual Trust Company, Crooks was indebted in other amounts to the Mutual Trust Company, as follows:

(1) (Exhibit D. 2, p. 133) note of October 21, 1904, made by Harry W. Crooks to the order of the Bernardsville National Bank, endorsed by John W. Crooks, for \$2,800. This note was endorsed without

recourse by the Bernardsville National Bank and was held in November, 1908, by the Mutual Trust Company. It had been so held since July 1, 1905, payment having been guaranteed by the said J. W. Crooks in addition to his endorsement. There was due on it in October, 1908, \$1,600. This note was secured by ninety shares of stock of the Publishers Security Company of North America, which collateral turned out to be worthless (Exhibit C. 1, p. 124).

(2) (Exhibit C. 4a, p. 130) demand note for \$4,900, dated August 30, 1905, made by J. W. Crooks to the Mutual Trust Company, on which, in November, 1908, the whole principal sum remained unpaid. This note was a collateral note secured by fifty shares of the Westfield Land and Improvement Company, being the same fifty shares referred to in the letter of November 12, 1908, hereinabove quoted. The note (Exhibit C. 4a) is on a printed blank, the pertinent parts of which read as follows:

“On demand after date, for value received, I promise to pay to MUTUAL TRUST COMPANY, or order, at its banking house, with interest at the rate of 5% per annum, forty-nine hundred 00/100 dollars, the undersigned having deposited with said Trust Company as collateral security for payment of *this or any other liability or liabilities of the undersigned, direct or contingent, individual or firm, to said Trust Company now existing, or which hereafter may be contracted,* the following property, viz:

Fifty shares Westfield Land and Improvement Co. with full power and authority to said Trust Company, or its President, or Treasurer, to sell, assign and deliver the whole, or any part thereof, or any substitutes therefor, or any additions thereto, at any Broker's Board, or at any public or private sale, at the option of said Trust Company, or its President, or Treasurer, or its or

their or either of their Assigns, *on the non-performance of this promise, or the non-payment at maturity of any of the other liabilities aforesaid,* or at any time or times thereafter, without demand of payment, advertisement, or notice of sale, which are hereby expressly waived; and after deducting all costs and expenses for collection, sale and delivery, to apply the residue of the proceeds of such sale, or sales, to pay any or all of said liabilities to said Trust Company or its assigns, as its President or Treasurer, or assigns, shall deem proper, returning the overplus to the undersigned; * * *.”

The note further contained the usual provisions for the substitution of securities, deposit of additional collateral, etc.

(3) (Exhibit D. 1, p. 132) note dated September 3, 1908, made by J. W. Crooks to the order of Estate of T. W. Crooks, for \$1,700, payable two months after date, and endorsed, Estate of T. W. Crooks, J. W. Crooks, Ad'm. This note had become due on November 4, 1908, and had been protested for non-payment (Record, p. 73, ll. 1 to 10).

(4) Note dated September 28, 1908, for \$1,700, made by J. W. Crooks to the order of J. S. Irving, payable two months after date and endorsed by J. S. Irving (Record, p. 71, ll. 35 to 40).

As will be observed, none of these obligations other than the \$4,900 note, involved any specific pledge of the fifty shares of Westfield Land and Improvement Company stock.

On or about November 12, 1908, the Mutual Trust Company had the fifty shares of stock of the Westfield Land and Improvement Company transferred to it on the books of that corporation (Record, p. 79, l. 30). This it had a perfect right to do as pledgee.

It appears by the testimony of Mr. Irving (Record, p. 70; p. 89) that he had endorsed the \$1,700 note

for the accommodation of his son-in-law, John W. Crooks, as he had endorsed a note for a similar amount under discount in the Westfield Trust Company, and that he had taken no security of any kind for such endorsement.

No attack was made by the complainant on the validity of any of the notes involved in this controversy.

When the note of \$1,700 made by Crooks to Irving matured on the 30th day of September, 1908, a new note (Exhibit C. 5, p. 132) in the same amount was made by Crooks to the order of Irving, dated November 30, 1908, payable two months after date. This note was drawn by Crooks and sent to Irving and by Irving forwarded to the Mutual Trust Company and purchased by that Company and its proceeds applied to the satisfaction of the maturing note for the same amount.

The note dated September 30, 1908, fell due on the first day of February, 1909, and was protested for non-payment and later, after suit had been brought thereon by the Mutual Trust Company, was paid by Irving, the complainant in this case, who claims that by such payment he acquired a right to be subrogated as of September 30, 1908, the date of his endorsement, to the amount so paid to participate in the collateral security represented by the fifty shares of the Westfield Land and Improvement Company stock. This claim on the part of the complainant is disputed by the defendants, the Mutual Trust Company having applied the proceeds of such collateral to the retirement of the note for \$4,900, the note for \$5,247.50, the \$1,700 note of J. W. Crooks to the Estate of T. W. Crooks, and in part satisfaction of the Harry W. Crooks note, on none of which was the said complainant in any way liable (Record, foot of page 63).

Irving contends (Record, pp. 80 to 83) that when the stock was transferred on the books of the Westfield Land and Improvement Company (of which

Company Irving was President), Phillips, the Secretary and Treasurer of the Mutual Trust Company, said that the \$1,700 note on which he was an endorser and which did not mature until the 30th day of November then following, was to be paid out of the proceeds of the Land and Improvement Company stock, and that when he endorsed the new note of November 30, 1908 (which he subsequently paid after suit had been started thereon against him, Record, Stipulation, foot of page 66) he was again told by Phillips that the note would be paid out of the collateral. This Phillips positively denies (Record, p. 105), but it is not perceived that it is of material consequence in the disposition of the questions involved whether any such statements were made by Phillips or not, for two reasons:

(1) Because the rights of the Trust Company in the application of collateral, so far as it had any bearing on the note of \$1,700, on which Irving was an endorser, then running, were at the time already fixed beyond any right or authority in Phillips to change them either of his own accord or by agreement with Irving, both by the terms of the collateral note of August 30, 1905, signed by J. W. Crooks and still held by the Mutual Company, and by the further specific pledge of November 12, 1908, also signed by Crooks (Exhibit C. 4a, p. 130; Exhibit D. 3, p. 135); and

(2) Because it is not claimed by Irving that he declined to endorse the new note of November 30, 1908, the proceeds of which were used to retire the note maturing on that date, by reason of any statement made by Phillips, or that he imposed any condition on such endorsement of the application of any collateral then held by the Trust Company for the indebtedness of J. W. Crooks in such way as to pay the note then endorsed by him in advance of other indebtedness then held by the Trust Company. Such

an agreement would have been clearly beyond the power of Phillips to make in such way as to bind the Trust Company, but none such was made. The utmost effect that can be given to Mr. Irving's own description of what took place would be satisfied by the application of the collateral held by the Trust Company in relief of Irving's endorsement if the proceeds of such collateral should be sufficient to pay all of the indebtedness including the note endorsed by Irving.

As a matter of fact at the time the note for \$1,700, dated November 30, 1908, on which he was sued, and which he paid, and out of which must come his right of subrogation, was given, the Mutual Trust Company had by arrangement with Crooks the right to apply the collateral held by it to the demand note of \$4,900, dated August 30, 1905, the demand note of \$5,247.50, dated November 12, 1908, the note for \$1,700 to the Estate of T. W. Crooks, protested on November 4, 1908, and the demand note of Harry W. Crooks guaranteed by John W. Crooks on which \$1,600 was due.

If the situation be considered before that note was given and at the maturity of the predecessor note of \$1,700 (that is to say November 30, 1908), the result is no different, as at the time of such maturity when the liability of Irving became fixed by the failure of Crooks to pay, the Trust Company was at liberty to apply the collateral to the other notes mentioned, and both of the alleged statements by Phillips to Irving succeeded in point of time the specific pledge by Crooks, dated November 12, 1908, the first statement by Phillips being on the occasion of the transfer of the stock (November 12, 1908) and the second on the endorsement of the new note (November 30, 1908). We need not, however, go back to that point as the rights of Irving must be determined with reference to the note paid by him on which he founds his right to subrogation.

Mr. Irving at no time had any collateral to secure his endorsement to Crooks' note and certainly he had no control over Crooks' right to increase his indebtedness to the Trust Company or to prevent Crooks from securing, by the specific application of his property, a demand obligation subsequently acquired by the Trust Company. The rights of an endorser as to the application of collateral security given by the maker to the holder of a note are to be determined by the terms of the pledge as they exist at the time of the resort to the security and do not relate back to situations existing under other contract conditions, even if the other contract be regarded as renewed by the later note. Irving had no standing of any kind until his obligation matured on the protest on February 1, 1909, of the \$1,700 note dated November 30, 1908, (Exhibit C. 5, p. 132) made by Crooks and endorsed by him. Then for the first time his rights as an endorser to have anything to say about the collateral arose, and such right involved no veto on the earlier dispositions made of the collateral between Crooks and the Trust Company as applicable to other indebtedness.

The case of *Fall River National Bank vs. Slade*, 153 Mass., 415; 26 N. E. Reporter, 843, also reported in 12 L. R. A., 131, is an exact authority even as to the form of the collateral note used.

That case is in harmony with the general law of this State and is no contradiction of the rule of subrogation relied upon by the complainant in this case under circumstances where such rule is applicable.

A bank has a perfect right to protect itself in the application of its security and under the law of this State is under no obligation to cease trading in notes of a maker whose obligation it already holds, sufficiently secured by an endorsement not needing the support of collateral. The Mutual Trust Company did not need to worry about the note of Crooks' en-

dorsed by Irving and was not forbidden to take a new obligation in payment of the old or in renewal of the old so long as it was satisfied to be secured only by the Irving endorsement. It was perfectly free to deal with Crooks and arrange with him for new collateral, or for the application of an equity in collateral already held as related to a new indebtedness arising, while it held the note endorsed by Irving. The law affecting the application of collateral for the protection of a surety does not come into play until the obligation of the surety has matured and the proceeds of the collateral are in course of application.

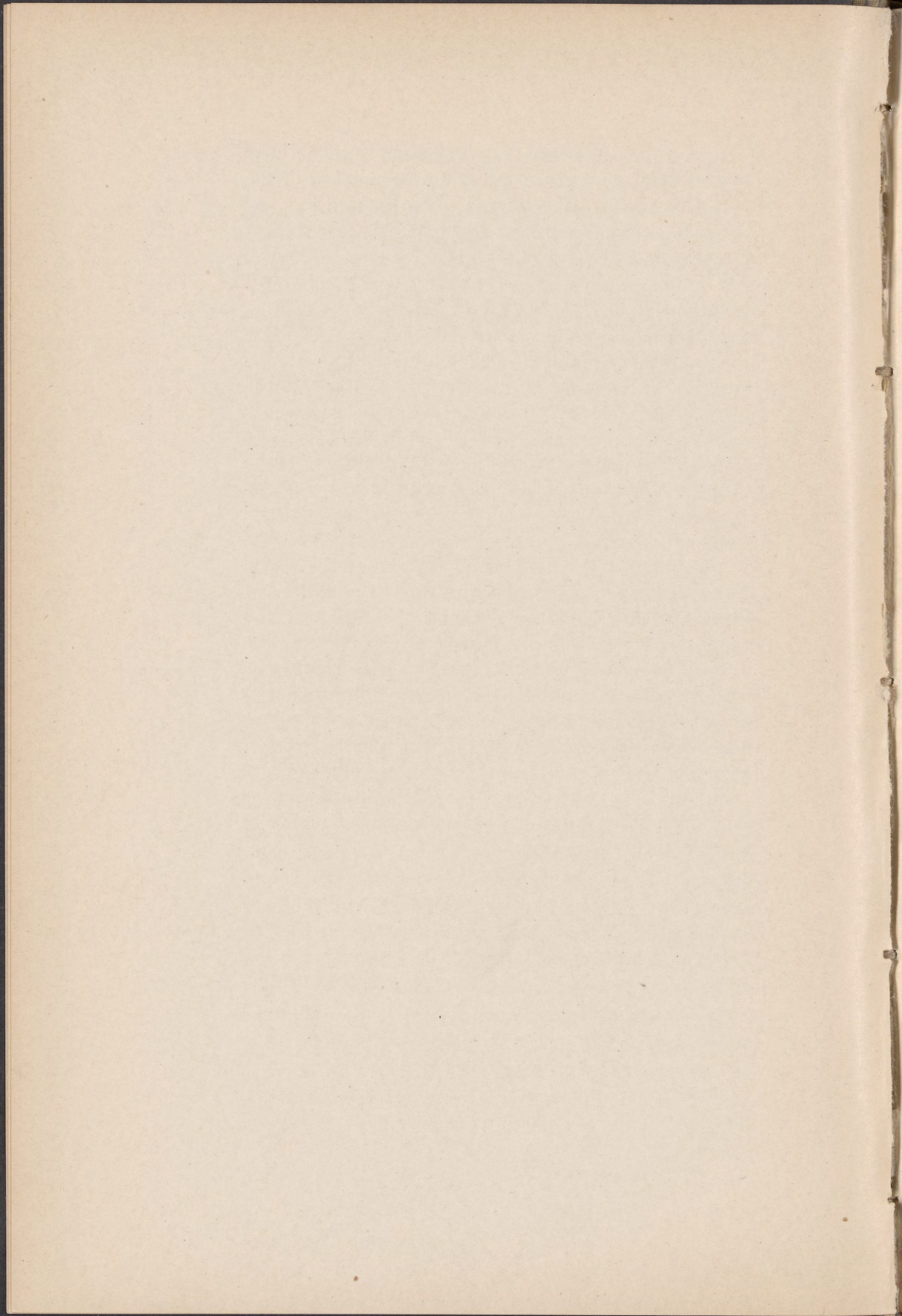
In the Massachusetts case referred to, Judge Devens properly says that the evidence as to previous transactions of the parties, and previous forms of their notes, and provisions for collateral security therein, are not important, even if admissible; that the rights of the endorser to the application of the collateral security are to be determined by the terms of the pledge as they existed at the time of the sale thereof.

Any contrary rule would interfere with the activities of banks in dealing with commercial paper and compel a bank, as holder of such paper acquired in ordinary course of business, to surrender to its own detriment, rights established by express contract.

The present case does not involve any question of insolvency law and does not justify the application of the right of subrogation appealed to by the complainant. Subrogation is never permitted except under equitable conditions and it is not equitable to deprive a creditor of his right to use his security to his own advantage so long as not in contravention of the contract relating thereto made with his debtor.

The decree of the Court of Chancery dismissing complainant's bill should be affirmed.

JOHN R. HARDIN,
Of Counsel for Defendant-Respondent,
Federal Trust Company.



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JOHN S. IRVING,

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ON APPEAL
FROM
DECREE
DISMISSING
BILL OF
COMPLAINT.

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Brief for Defendant-Respondent, Mutual Trust Company.

The complainant, John S. Irving, father-in-law of John W. Crooks, in 1906, became the accommodation maker of a note of \$2,000.00 for said Crooks, which note was endorsed by Crooks and purchased by the defendant, Mutual Trust Company. The note continued to be executed with Irving as maker and Crooks as endorser for several periods of two or three months each, whereupon subsequently the note was changed, so that Crooks became the maker and Irving the endorser. The note was for the accommodation of Crooks, and Irving demanded or held no collateral whatever for his protection. For the accommodation of Crook's, Irving's name also appeared on a \$1,500.00 note, which was purchased by the Westfield Trust Company, but which does not figure in this controversy, excepting incidentally.

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In 1905, Crooks borrowed from the Mutual Trust Company, the sum of \$4,900.00 on the usual form of collateral note, pledging for its security 100 shares of the capital stock of the Westfield Land & Improvement Company, of which Irving was the President. This collateral note, in the usual form, contained a provision that the collateral pledged should be security not only for the \$4,900.00 indebtedness, but "for payment of this or any other liability or liabilities of the

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undersigned (Crooks), direct or contingent, individual or firm, to said Trust Company, now existing or which hereafter may be contracted," and authorized the Trust Company on non-payment, to apply the proceeds of the collateral "to pay any or all of said liabilities to said Trust Company, or its assigns, as its President or Treasurer, or assigns, shall deem proper, returning the overplus to the undersigned."

10 The Westfield Land & Improvement Company liquidated its assets and paid to the Mutual Trust Company, as holder of the stock, the share of such assets to which Crooks' stock was entitled. The amount received by the Trust Company from the proceeds of the stock was not sufficient to fully pay the notes which it held, upon which Crooks was obligated, without taking into account the \$1,700.00 note, endorsed by Irving. The \$1,700.00 note was protested, and later paid by Irving, in January, 1911, C. p. 37). At the time of such payment, Irving served
20 notice on the Trust Company that he demanded to be subrogated to the right of the Trust Company in the shares of stock which it held as collateral, under the \$4,900.00 note. The Trust Company began to receive payments on the Westfield stock on June 7, 1909, and final payment on the stock was made on August 1, 1911, (C. p. 93). The Trust Company applied these payments on other notes of Crooks, which it held, but which were unpaid, and after such applica-
30 tion, there was no money left to apply to the reimbursement of Irving, for the \$1,700.00 note which Irving had paid in January, 1911, after suit against him had been begun by the Trust Company. At no time did Irving tender to the Trust Company the amount of the Crooks indebtedness, which it held against the collateral, nor did he at any time make any specific offer to pay the amount of the Crooks' indebtedness and take over the collateral.

40 The complaint which Irving makes is that the Trust Company had no right to purchase the note of Crooks

of \$5,247.50, on November 18, 1908, (for the payment of which, Crooks subsequently repledged the Westfield Land & Improvement Company stock, then held by the Trust Company), because on November 12, 1908, Irving claims to have informed the Trust Company that he was only an accommodation endorser for Crooks on the \$1,700.00 note, which was to come due on November 28, 1908, and asked an officer of the Trust Company to pay this note out of the proceeds of the Westfield Land Company stock. He claims that what transpired between him and Phillips, (an officer of the Trust Company) when Phillips called at his office to have the collateral stock transferred to the name of the Trust Company, obligated the Trust Company to make such application before applying same to the payment of the other obligation of Crooks, acquired six days after such visit, which acquisition was made also ten days before the \$1,700.00 note became due, upon which Irving was then endorser; and although when the \$1,700.00 note did mature, on November 28, 1908, instead of insisting upon its payment out of the collateral, that \$1,700.00 note was retired and paid by a new note in the same amount, made by Crooks and endorsed by Irving, dated November 30, 1908, and maturing January 30, 1909. As to this last note, no claim is made by the complainant that the Trust Company or any of its officers made any promises or representations of any sort as to the collateral; but the claim is urged by the complainant that if the Trust Company assumed any obligation regarding the application of the collateral to the payment of the predecessor note of \$1,700.00 on November 12, 1908, when it had not yet matured, that such obligation, alleged to have been assumed, inured for the benefit of the \$1,700.00 note of November 30, 1908, (payable in two months), although such last mentioned note had not then either come into being or been arranged for. In the determination of this controversy, it will become essential

to determine whether the position of the parties was changed in any way whatsoever, as the result of the visit of the Trust Company's officer to Westfield, on November 12, 1908, and the occurrences there at that time. The complainant's claim is that two things happened at Westfield on November 12, 1908, which he alleges, gave him a claim on the stock, namely:

1. A promise on the part of the Trust Company's officer to pay the then existing note of \$1,700.00 out of the proceeds of the Westfield Land Company stock.
2. An offer to buy the stock for \$10,000.00 alleged to have been made by Irving to the Trust Company's officer.

What actually took place and the effect of the same will have to be determined herein.

I.

What took place at Westfield on November 12, 1908, did not impose on the Trust Company any obligation regarding the collateral which it then held; and did not change or diminish the obligation of the complainant to the Trust Company.

To determine whether any obligation was assumed by the Trust Company, it becomes essential to determine what actually took place. Phillips, the Trust Company's officer, went to Westfield to have the collateral stock, then standing in the name of Crooks, transferred to the Trust Company. Then, for the first time, Irving ascertained that the Trust Company held these shares of stock as collateral security for obligations of Crooks, (C. p. 90, l. 10), the amount of which was not definitely known even on that day, but which was discussed as being "somewhere about \$10,000.00," (same page, l. 20; p. 90, l. 22-30). Irving's version of what Phillips said about the \$1,700.00 note is, "He said the \$1,700.00 note was included in the notes that were to be paid out of the proceeds of the stock; there was no question about that note." (C., bottom of page 81 and top of 82). Phillips denies

having made any such statement. (C., p. 105, ll. 13-28). William S. Welsh, another officer of the Westfield Land & Improvement Company, and a friend of Irving, was also present; and his version of what Phillips said is the following: "Mr. Phillips said the note would be paid * * * and if it was among the other notes to be paid and all the notes were paid, that note would be paid." (C., p. 103, ll. 18-22). In the same conversation, Irving also made an effort to get Phillips to manipulate any surplus there might be from the Westfield stock, so that a note of \$1,500.00, also endorsed by Irving, for the accommodation of Crooks, and held by the Westfield bank, could also be paid. This request appears in the testimony of Irving, as follows:

"I talked with him (Philips) about that stock, if there was a surplus, if I couldn't arrange it some way to have that (the Westfield \$1,500.00 note) paid out of the surplus, after all the obligations were paid to the Mutual Trust Company; he said he could not speak for the directors about that but he said he would use his influence; if there was a surplus, he would do what he could to have that \$1,500.00 note that I had discontinued in the Westfield Trust Company, paid out of it." (C., p. 81, ll. 9-17). The testimony of Irving that Phillips "could not speak for the directors" concerning Irving's request on the \$1,500.00 note, gives weight and corroboration to Phillips' testimony, where he denies promising anything regarding the \$1,700.00 note, and insists that he had no authority to make any such statement or promise. (C., p. 112, ll. 21-26.)

"Q. Then if you did say to Mr. Irving that this note of \$1,700.00 would be paid out of the proceeds of the sale of that stock, you don't remember it now?"

"A. I remember I didn't say that. I had no authority to."

None of the three persons present at the conversation of November 12th, attempt to give it verbatim.

They all give their recollection of the substance of it, and the farthest Phillips went in making any statement of what he thought the Trust Company could do for Irving, regarding his note, is probably contained in the testimony of Welsh, (Irving's friend), as to what Phillips said, which was, (C., p. 103, l. 20): "If it (the \$1,700.00 note) was among the other notes, to be paid, and all the notes were paid, that note would be paid." This statement, coupled with the state-
 10 ment of Irving that Phillips could not bind the Board of Directors, but would consult them, about the \$1,500.00 note, and Irving's testimony that Phillips would submit his bid of \$10,000.00 for the stock to the Board of Directors, (C., p. 86, ll. 20-30) is convincing that Irving knew that Phillips had no authority to do anything but have the shares of stock transferred.

It is very clear from the foregoing, that Phillips' visit to Westfield and the conversation related above,
 20 in no way affected the status of either Irving or the Trust Company towards the collateral. The Trust Company's rights under the collateral were not abridged by that visit, nor was any new duty cast upon it by reason of the same. Irving acquired no new rights because of the visit; he acquired only information as to where the Westfield Land Company stock was pledged, and that Crooks at that date was indebted to the Trust Company to the extent of "some-
 30 where about \$10,000.00." Phillips did not go to Westfield to make any arrangement with Irving as to the payment of the \$1,700.00 note. He went for the purpose of having the stock transferred to the Trust Company. He was clothed with no other authority, and he definitely testifies to the effect that he had no authority to make any arrangement with Irving for the specific pledge of the stock for the payment of the \$1,700.00 note. The stock belonged to Crooks, and was still within the control of Crooks, who specifically pledged the said stock for the payment of
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any note or notes which the Trust Company might subsequently acquire, upon which Crooks might be liable, should the Trust Company deem it safe, after considering the endorsements and collateral upon which it might rely, to take care of the Crooks indebtedness, past, present or future; even if Phillips intended at the time to make an absolute agreement with Irving that he would see that the \$1,700.00 note was paid out of the proceeds of the stock, it could be only his personal agreement, made without any authority from the Trust Company or its Board of Directors, and not binding upon the Trust Company in any way. The By-Laws of the Trust Company, defining the duties of Secretary and Treasurer, (which position Phillips held at the time), appear in C., p. 76. The only portions of the same which could even distantly be applicable, are the following lines, 28 etc.:

“He shall have the custody, under the control and supervision of the President, of all securities pledged as collateral for loans made by the Company; * * * He shall have power to make temporary loans upon collateral or otherwise, under such rules and restrictions as the Executive Committee may adopt.”

It can hardly be said that the “custody of the collaterals, under the control of the President,” or “power to make temporary loans upon collaterals or otherwise” would give him the power or authority to bind the Trust Company in the manner claimed by the complainant.

In the absence of express authority from the board of directors, neither the president, secretary, treasurer, or any other officer, has power to dispose of the property held by the Trust Company. Cogan & Conover Co., 3 Robb. 358 and cases cited at top of p. 363.

It is, therefore, urged that the visit of November 12, 1908, did not change the relations of the parties and that the Trust Company did not assume any new duty on that occasion, nor was the complainant ever relieved from any obligation which then rested upon him.

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II.

The complainant, Irving, did not on November 12, 1908, or at any other time, make any valid offer or tender or offer to pay the indebtedness, which the Mutual Trust Company held against the Westfield stock, and take over the stock then held as collateral.

The complainant's contention on this phase of the case is expressed in his brief, page 4, lines 14, etc., as follows:

- 10 "But it is admitted that Mr. Irving offered to pay to the Mutual Trust Company \$10,000.00 upon condition that the Trust Company turn over the collateral security to him." and states Cases, pages 80, 96, 105, 115, 117, 120 and 122, in support of that statement. This statement we emphatically deny, both as to any such statement being admitted, and as to the fact that Mr. Irving on November 12, 1908, "offered to pay \$10,000.00" and take over the collateral. Examination of the testimony referred as appearing on the
- 20 Case pages last above named, will show that the statement in the brief is not supported by such testimony.

- C. p. 80.—Irving testifies, line 20, that Phillips thought the amount that Crooks owed the Trust Company was "somewhere about \$10,000.00." And on line 32, Irving testifies that Phillips "asked me to make a bid on the stock, they wanted to sell it and he wanted to clear up these" —
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There is no other reference on this page to any offer on the stock.

- C. p. 96.—The reference to the \$10,000.00 figure is embodied in the testimony of William S. Welsh, as follows:

- "Q. You recall this, that when you said, or Mr. Irving said, you would give \$10,000.00 for the stock, that Mr. Phillips said that he didn't know if \$10,000.00 would cover all the Mutual
- 40 Trust Company had, didn't he?

A. He said he was under the impression that it would cover it.

Q. Didn't you say in answer to counsel here, that when you made the offer, or Mr. Irving made the offer, that it was stated then that he didn't know if it would cover—the \$10,000.00 would cover what the Mutual Trust held?

A. I do not think so; I said he was under the impression it would cover, and he would advise their accepting the amount and cleaning up the obligation. 10

Q. He would advise that it be taken, if it would cover their obligations, didn't he say that?

A. Yes.

Q. Are you sure of that?

A. I am sure he said he was under the impression that it would cover the amount and he would advise the board to accept our proposition if it did.

Q. That is, if it did cover their indebtedness? 20

A. Yes."

C. p. 105.—The reference to the \$10,000.00 figure is contained in the testimony of Phillips, the Bank officer, as follows:

"Q. Do you remember something about an offer of \$10,000.00 being made at that time by Mr. Irving for the shares of stock?

A. Yes, sir.

Q. And you heard what he said about that, that you would refer the matter to the executive committee. 30

A. Yes.

Q. Is that what you said?

A. I said I would take it to the Bank and refer it to the committee."

C. p. 115.—All of the testimony on this page is that of Phillips and is practically a repetition of what appears on page 105:

"Q. As a matter of fact, you were offered on 40

that day, the 12th day of November, by Mr. Irving \$10,000 for this stock?

A. He made an offer, I think, of \$10,000.

Q. Do you know whether he did, or only guess?

A. He did make that offer, yes.

Q. Are you sure of that?

A. Yes.

Q. What did you say to him?

A. I told him I would take it back to the bank
10 and submit it to the committee.

Q. Did you tell him that was sufficient to cover the amount of money that was owing by Crooks to the bank on his various notes?

A. I don't remember having said that.

Q. At that time you were the secretary and treasurer of the Mutual Trust Company, were you not?

A. Yes.

Q. You knew their business thoroughly?

20 A. Yes.

Q. You knew Crooks, didn't you?

A. Yes.

Q. Do you mean to say that a man who was a director in your bank, you didn't know how much he owed the bank?

A. I knew it.

Q. Then you knew when you were out in Westfield that that \$10,000 would cover the liabilities?

30 A. I suppose I did at that time; I don't know as I said it, though.

Q. Didn't you say to Mr. Irving that you would recommend that that offer be accepted?

A. No, I said I would submit it to the committee."

C. p. 117.—This extract is also from the testimony of Phillips:

40 Q. Didn't you report to your committee when you returned from Westfield after having the

shares of stock assigned, that those shares of stock were worth so much money, according to what you learned out there?

A. I told them there was an offer of \$10,000 made."

C. p. 120—The testimony of Welsh further discloses the following:

"Q. Mr. Phillips says that at the time of his conversation with you and Mr. Irving on the 12th of November, 1908, there wasn't anything figured up in his presence to show the value of these fifty shares of stock; what have you to say? 10

A. We figured it out and approximated the value at about two and a half a share, making it about \$12,500 as the value of the stock at that time, and we made the offer of \$10,000, because we didn't know whether the contract would carry through or not.

Q. What did Mr. Phillips say about that \$2,500 over the \$10,000 you offered? 20

A. He said, if our company accepts your \$10,000 offer, that the profits on that would protect Mr. Irving on his \$1,500 in the Westfield Bank. That came out in conversation."

C. p. 122.—This testimony is that of the complainant, Irving, and is as follows:

"Q. Mr. Irving, on November 12, 1908, when you, Welsh and Phillips were together, did you and Mr. Welch figure out what you thought would be the approximate value of the fifty shares of stock, so that you might make an offer to purchase it? 30

A. Yes, sir.

Q. Did you inform Phillips what in your opinion it was worth?

A. He was there and knew as much about the figuring as we did.

Q. Did you tell him what you figured?

A. I suppose we told him; he could see the 40

figures himself, he stood there at the desk alongside of me.

Q. He was right there and saw the figures?

A. Yes.

Q. Did he make any remark about the \$2,500 in excess of the \$10,000 you were offering?

A. No, I don't remember that he did any more than about the surplus would pay the \$1,500 that I had in the bank, in the Westfield Trust Company.

10

Q. Who said that?

A. I think Mr. Phillips spoke of it, as he knew that was what we were buying the stock for, to cover that note, trying to make something out of it over and above paying Crooks' obligations to the Mutual Trust Company."

20

The sum total of all of the above testimony is that Phillips asked Irving to make a bid on the stock; Irving and Welsh figured the matter out and determined that the stock was worth at least \$12,500.00, and made a bid of \$10,000.00 for the stock admittedly worth \$2,500.00 more, in the hope that if the indebtedness due the Trust Company was paid and the \$1,500.00 Westfield note was paid, there would still be a good chance for him to "make something out of it;" that Phillips said he would submit the bid to the Board of Directors or Executive Committee; that he did report the bid to the Bank authorities and they did nothing towards accepting the same, thereby rejecting it; that Irving did nothing to follow up his bid; never made a formal offer or tender, or even made an effort to find out how much the Bank held against the collateral, with the idea of tendering that amount and taking over the collateral; that the rejection of his bid of \$10,000.00 for collateral, which the complainant admitted was worth \$12,500.00, and which actually produced \$13,697.38, (C., p. 66, l. 31), was not only justified but was the proper thing to have done at the time. There never has been made by or on behalf

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40 of the complainant any valid "offer to pay" or tender

to the Trust Company of the amount of the Crooks obligations, about which the complainant raises no question whatsoever. Nowhere in the case does any such "offer to pay" or tender appear. The complainant's case rests upon the assumption that there was an obligation imposed upon him to pay, offer to pay or tender to the Mutual Trust, the amount rightfully due it. If the complainant and the Trust Company disagreed on what that amount was, then it was his duty to tender the amount which he claimed to be due. 10 He did none of these things, and it is respectfully urged that the testimony referred to in the complainant's brief absolutely disproves the statement which he makes the basis of his prayer for relief.

III.

The defendant Trust Company was entirely within its rights in purchasing the Crooks note of \$5,247.50, on November 18, 1908, and having purchased the note, accompanied as it was, by the repledge of the Westfield 20 Land Company stock, as collateral security for its payment, it was the duty of the Trust Company to apply the proceeds of the stock to its payment before applying the same to the payment of the \$1,700.00 note.

Giving the complainant credit for the full force of this argument, it can amount only to this, that on November 12, 1908, ten days before the note, upon which he was obligated, came due, he offered to pay the indebtedness due to the Trust Company and take over the collateral. While this contention is emphatically denied, still if absolutely true, it would not 30 be sufficient to warrant granting the prayer of the complainant's bill. If the complainant should be considered in the light of a surety, his right to pay the debt and take over the collateral would not come into existence until the note became due and owing, and was unpaid by the principal debtor. *Brick v. Freehold Banking Company*, 8 Vr. 308. Therefore, on November 12, even if willing to pay, and actual payment was made, before the note came due, the Bank would not have 40

any authority to turn over the collateral pledged for the payment of the note, which had yet some time to run. The case at bar is identical with *Brick v. Freehold Banking Company*, because in that, the offer to pay, if made at all, was made before the obligation to pay had arrived. The Court, at page 309, holds such an offer to pay amounted to nothing. It says, "It is hardly necessary to add that the defendant's offer to pay the note, prior to its maturity, on condition that

10 the collaterals should be at once assigned to him, was of no effect, especially in view of the fact that the complainants were under written stipulation, executed and delivered simultaneously with that given to the defendant, to convey the collaterals to the wife of one of the makers of the note, on payment of the note by him." In the case at bar, it was the duty of the Trust Company to turn back the collaterals to the maker of the notes, in case the obligations for which they were held were paid by him. Until the note came due, it

20 was not known whether the maker would or would not pay.

The purchase of the \$5,247.50 note, made on November 8, 1908, in the usual course of business, was in line of the practice of the Bank in the purchase of commercial paper. The repledge of the Westfield stock by the maker of the last mentioned note, who was the owner of the stock, and the acceptance of the repledge by the Trust Company did not violate any of the laws governing the banking business or any

30 of the usual banking customs. All the notes which the Bank held against the stock and upon which notes John W. Crooks' name appeared, were the debts of Crooks, as principal debtor. On some he was endorser or guarantor; and the Bank held other security, (to wit, the names of other makers and endorsers), besides the Crooks stock as security for the money advanced on the various notes. There was no restriction placed upon the Trust Company that it could not purchase

40 any notes of Crooks subsequent to November 12, 1908,

—the date of the conversation of Phillips with Irving. For all that appears in this case, there was no reason to believe that the notes were not perfectly good in every respect. Within the legal limit, it could have purchased notes of Crooks, both before and after November 12, 1908. Certainly the complainant made no effort to ascertain definitely to what extent the Bank held the notes of Crooks, or when its purchase of the notes began or ended. Even had the complainant forbidden the Bank to make any additional purchase of Crooks' notes; after he became aware that the Bank held the collateral, such order or notice would have been of no avail. 10

The case of *Brick v. Freehold Banking Company* is cited approvingly in *Phila. & Reading R. R. Company v. Little*, 14 Stew., at 529; *Monroe v. De Forest*, 8 Dick., 267.

The right of subrogation cannot be enforced until the whole debt is paid; and until the creditor is wholly satisfied, there ought and can be no interference with his rights or his securities, which might even by bare possibility prejudice or embarrass him in any way in the collection of the residue of his claim. 20

Receiver of Midland Railway C. v. Wortendyke, 12 C. E. Green, at 661.

This decision reversed that of *Coe v. Railway Co.*, 12 C. E. Green, 110, which intimated that subrogation might take place even though the whole debt was not paid. The decision in 12 C. E. Green, 661, is now the law of this State, as appears by such cases as *Irich v. Black*, 2 C. E. Green, 189; *Polhemus v. Prudential Realty Co.*, 45 Vr., 570, and the cases cited at page 578. 30

In the case of *Trusdell v. Price*, 2 Stew. 620, reversing 1 Stew, 200, one Barber transferred to Trusdell all moneys payable on a City paving contract to secure indebtedness to Trusdell, represented by money advanced on notes from time to time. On several of the notes, Price was endorser for Barber, and Trusdell paid out of the paving contract moneys, notes of Bar- 40

ber, negotiated subsequently to the Price endorsements, and negotiated after Trusdell knew that Price was only an endorser on the Barber notes, and although Price claimed that Trusdell had promised that the notes on which he (Price) was endorser, would be paid out of the paving contract moneys. This case seems to be exactly in point with the case at bar. Barber later made an agreement with Trusdell, whereby Price was cut out of all right to the paving contract
 10 moneys as protection on his endorsements. This Court held that the trust was personal and that Barber had the right to release Trusdell from it at any time, and that thereafter, neither Barber nor anyone else in his place could urge any equity against Trusdell. This Court stated, at page 624:)“Nor am I able to perceive that any new equity arose by which, (upon the assumption that the Trust existed), Price, a stranger to the agreement, could ask for its enforcement. No
 20 change in the condition of the respondent (Price) is shown to have occurred by reason of the existence of such a trust, or by any act of Trusdell relating thereto.”

This case is peculiarly similar to the case at bar, where, even if Philips had been authorized to agree that the \$1,700.00 note would be paid out of the collateral, such agreement would not deprive Crooks of the right to pledge the Land Company stock, as collateral for the subsequent note of \$5,247.50.

To the same effect is *Crowell v. Hospital, etc.*, 12 C. E. Green, 650, cited in a long list of cases at the
 30 foot of page 650.

Unless the Westfield visit of November 12, 1908, had the effect of preventing Crooks from borrowing any more money, there was no reason why we should not have negotiated the note of November 18, for \$5,247.50, for which he repledged the collateral. If the Westfield visit had not taken place, this suit, so far as can be seen from the pleadings and testimony, would not have been instituted. Unless the Westfield
 40 visit gave the complainant the right to control, Crooks'

subsequent notes and the application of the collateral to the payment of Crooks' indebtedness, this case must fail. There was no idea on the part of the complainant or Crooks or the Trust Company that Crooks must stop issuing notes. In fact, the complainant himself was a party to the issue of a new note on November 30th, to take up the note which he was then on as endorser, and he again endorsed the note which Crooks sent to him. He was also on the Westfield note of \$1,500.00, which was unpaid at that time, and he suspected that Crooks must have been indebted to the Federal Trust Company, in an amount unknown to him. (C p. 80, 1. 10
30.) Crooks' original note of \$4,900.00, of August 30, 1905, was pledged not only for the then existing indebtedness, but for indebtedness "which hereafter may be contracted." It expressly stated the possibility of future notes being taken up by the Trust Company. When on November 18, 1908, he sold the \$5,247.50 note to the Trust Company, and directed that it should be specifically paid out of the Westfield Land Com- 20
pany stock, such action was directly in line with the original pledge of the stock, which was subsisting since 1905. The complainant cannot successfully contend that anything which the Trust Company or any of its officers may have done, induced him to alter his position in any way. In fact, he never did alter his position, but continued to endorse for his son-in-law after that date, as he had done before.

The Massachusetts case of Fall River National Bank v. Slade, harmonizes with the New Jersey doctrine as to the application of collaterals. 30

The case of Fall River National Bank v. Slade, 153 Mass. 415, referred to in the brief of counsel for the Federal Trust Company, is a case outside of New Jersey, exactly in point and follows the reasoning of the New Jersey Courts, as to the application of such collateral. The decision in the Massachusetts case is as follows: 40

“If shares of stock are pledged to a Bank by the Maker of a promissory note, given in renewal of earlier notes ‘as collateral security for the payment of this note, or any of my liabilities to said bank, due or to become due, now, or hereafter contracted or incurred’ with authority ‘to sell the stock, the proceeds above all sums due to the Bank, including its expenses, to be credited to such maker, no special pledge of the
10 stock exists for the payment of the note above any other indebtedness of the maker to the Bank at the time of a lawful sale thereof; and extrinsic evidence of prior transactions between the parties, and of previous forms of the note and of the provisions therein respecting the collateral security, even if admissible, is immaterial.”

The doctrine urged against the above and against the trend of judicial decisions in New Jersey, on the subject of collateral, is the case of National Exchange
20 Bank v. Silliman, 65 N. Y., 475. In that case, the Bank purchased the past due note of the debtor. Collaterals had been deposited, which belonged to the wife of the debtor, and the deposit of collaterals was made at the time the account was opened. There was no written agreement as to the terms of the pledge and there was no evidence in the case on the intent of the parties as to the use to be made of the collaterals. The Court held that in the absence of such evidence, the
30 presumption was that the securities were given to cover only such loans as were beneficial to the debtors rather than covering all claims which the bank might in any way acquire; and the decision of the Court favored the application of the collaterals to the payment of a note endorsed by the defendant, and whose liability had been fixed thereon, before the purchase of the past due and dishonored note; the remaining portion of the decision in the New York case, to the effect that the surety acquired an equitable lien upon
40 the collateral, and which right accrued as soon as his

liability attached, and could not be affected by the creditor, while apparently dicta in the New York case, may not be so much out of harmony with the New Jersey rule as it at first may appear. Whatever equity the endorser might have in the collateral would be subject to the lien thereon of the Bank at the time the collateral was realized upon.

The case at bar differs from the New York case in the material point that the evidence here is very plain regarding the terms of the pledge of the collateral, those terms being substantially the same as the terms of the pledge in the Massachusetts case; in the New York case there is no evidence as to the terms of the pledge and the Court was forced to presume, from the lack of evidence, what the intention was. It is very likely that had the same case arisen in New Jersey, upon the same facts as the New York case, that the decision would probably have been the same, omitting the dicta.

The case of *Forbes v. Jackson*, 21 E. R. C., 615, supports the New Jersey doctrine, in holding, "If a creditor holding a claim, for which he has both collateral security from the principal debtor, and also the engagement of a surety, acquires an additional claim against the same principal, *to which the agreement, upon which the security was taken does not extend*, the the surety will be entitled to the benefit of such security on payment of the first indebtedness alone, and can require the proceeds of such security, when realized by the creditor, to be applied upon the first indebtedness, etc."

It is quite plain that the crux of the case of *Forbes v. Jackson* is the point that the collateral was to be specially applied to a particular debt, in the agreement pledging it.

A very exhaustive collection of notes and cases on the subject of almost every phase of collaterals, will

be found in the foot note to *Nelson v. Webster*, (a Nebraska case), 68 L. R. A., 513.

The rule established in *Fall River National Bank v. Slade*, which is in harmony with all of the New Jersey decisions, is respectfully urged as the rule which should appeal to this Court as the proper doctrine to be applied in this case. The application of any other
10 doctrine, in view of the authority given to the Bank by the terms of the collateral note, and the well known practices of banks in taking such notes and acting thereunder, would revolutionize the banking practices in the State of New Jersey. If the complainant's position is correct, banks would have to limit the amount of credit to be given to a person, even one who presented endorsements, by the amount of collateral which he was able to pledge. It would have to consider the equities of endorsers in the collateral, in
20 the order in which they originally became endorsers, and it would open the door for endless litigation and trouble. It would force the banks to be a sort of guardian for endorsers like Mr. Irving, who assumed his obligation for the accommodation of his son-in-law, without either the hope, or apparently the desire, that he should be protected in any way. The establishment in this State of a doctrine, that regardless of the endorser's desire, expectation, or course of conduct, that
30 banks holding collateral under a collateral note in the general form, must in the application of such collateral, first ascertain the equities of all names appearing on the debtor's paper, decide what those equities are, the order in which they should be considered, and then apply the proceeds of the collateral in such a way as to extinguish the liability of the endorsers in the order of their particular equities, would be placing upon the banks an obligation which neither the makers nor endorsers of notes ever anticipated or expected to
40 have placed upon them. It would jeopardize the wel-

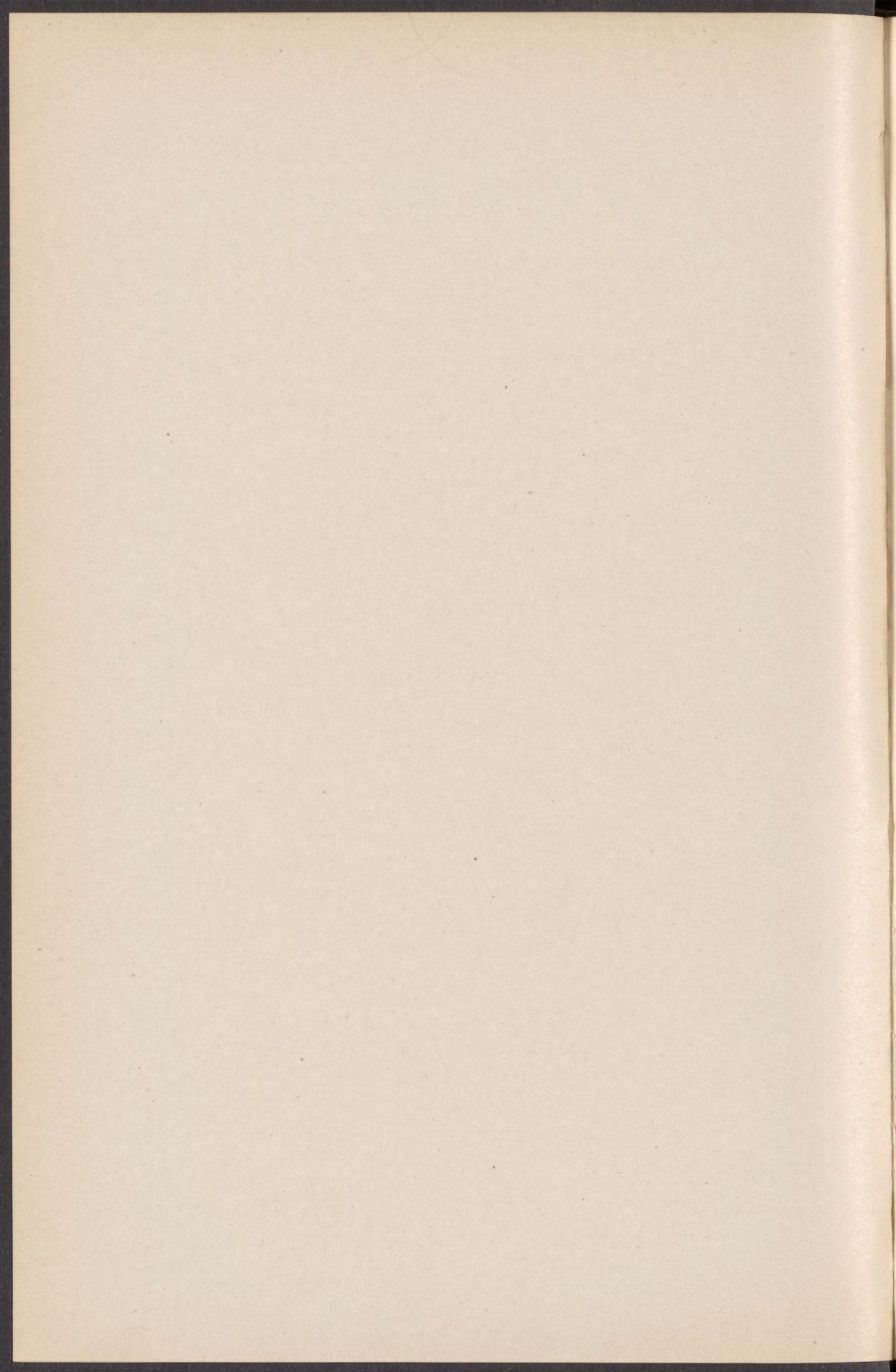
fare of all banks and would prevent fair credit being given to individuals, even upon apparently adequate collateral.

It is respectfully urged that there is not the slightest evidence of any fraud in this case, and the Court of Chancery has so found; and that the decree of the Court of Chancery, dismissing the bill of complaint, should be affirmed.

HOWE & DAVIS,

IO

*Solicitors for and of Counsel
with the Defendant-Respondent,
Mutual Trust Company.*



IN CHANCERY OF NEW JERSEY.

Between

JOHN S. IRVING,
Complainant,

and

MUTUAL TRUST COMPANY,
et als.,
Defendants.

Memorandum of
Conclusions of
A d v i s o r y
Master.

JOHN FRANKLIN FORT, ADVISORY
MASTER.

For the complainant: Samuel Koestler.

For the Defendant, Federal Trust Company:
John R. Hardin.

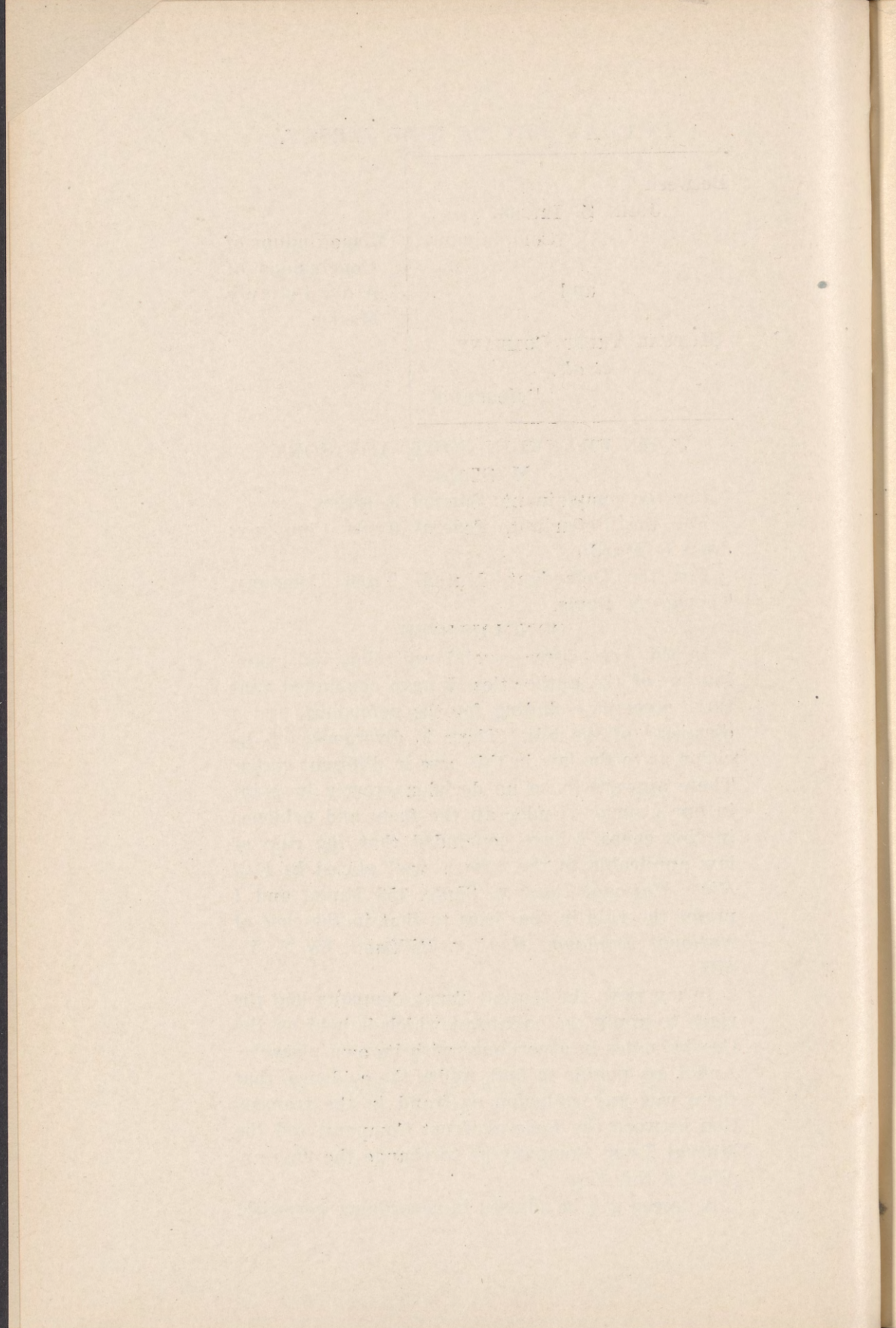
For the Defendant, Mutual Trust Company,
Thomas A. Davis.

CONCLUSIONS.

In this case, after careful reflection and examination of the authorities, I have concluded that there must be a finding for the defendant, and a dismissal of the bill. There is divergence of decision as to the law in this case in different states. There appears to be no decision exactly in point in our Courts. Under all the facts and evidence in this cause I have concluded that the rule of law applicable to the case is well stated in *Fall River National Bank v. Slade*, 153 Mass., and I prefer the rule in that case to that in the case of *National Exchange Bank v. Silliman*, 65 N. Y., 475.

In my view, the Mutual Trust Company had the right to apply the collateral which it held on the Crooks' notes in accordance with its own pleasure. And I am unable to find, under the evidence, that there was any collusion or fraud in the transaction between the Federal Trust Company and the Mutual Trust Company as to change the rule applied in this case.

A decree will be advised in accordance herewith.



New Jersey Court of Errors and Appeals

Between

John S. Irving,
Complainant-Appellant,

and

Mutual Trust Company, et als.,
Defendants-Respondents.

On Appeal

BRIEF FOR APPELLANT.

The defendant, Crooks, was the son-in-law of the complainant, John S. Irving. In the year 1908 Crooks was also Secretary and Treasurer of the Federal Trust Company (C. p. 78).

In 1902 Crooks became the owner of fifty shares of stock of the Westfield Land and Improvement Company (C. p. 90), of which Company Irving was director and president, and the owner of seventy shares of stock (C. p. 78).

On July 1, 1905, the Mutual Trust Company got the demand note of Crooks for \$4,900 (C. p. 62), with which was deposited as collateral security the fifty shares of stock of the Westfield Land and Improvement Company (C. pp. 72, 130). Subsequently, Crooks had other dealings with the Mutual Trust Company, and on September 27, 1907, Irving for the accommodation of Crooks, made a note of \$2,000 (C. pp. 78, 127); on May 29, 1907, the obligation was reduced to \$1,800, and thereupon Crooks became the maker, and Irving the endorser (C. p.

127), the Mutual Trust Company being the holder of the note. Matters remained in that situation until November 11, 1908, when Gordon B. Phillips, the secretary and treasurer of the Mutual Trust Company, went to Westfield to have the stock transferred to the name of the Mutual Trust Company on the books of the Westfield Land and Improvement Company, and has the transfer made on November 12th, under the circumstances as hereinafter related (C. p. 79). The note on which Irving is then endorser is renewed for the same amount of \$1,700 and when the renewal came due on February 1, 1909, was protested (C. pp. 66, 72). Irving does not hear from this note, although protested, until January 31, 1910 (C. p. 84). Suit is brought against Irving in the New Jersey Supreme Court, on June 21, 1910, after which the original bill in this case was filed and subsequently the rule to show cause why said suit should not be restrained was dismissed under *Polhemus v. Prudential Realty Co.*, Vr. 570, and Irving was obliged to pay the note by his check dated January 19, 1911, for \$1,940.54 (C. pp. 66, 67). The original bill of complaint was filed for an accounting, marshalling of assets, subrogation and general equitable relief (C. pp. 1 to 8, inclusive).

The Mutual Trust Company between June 7, 1909, and August 1, 1911, received from the Westfield Land and Improvement Company \$13,697.38 dividends in full settlement of the fifty shares of stock held by it as collateral security (C. p. 93). Because of these payments and by reason of learning of givor the note of \$5,247.50 by Crooks to the Federal Trust Company and the alleged transfer thereof, to the Mutual Trust Company, under leave of the Court of Chancery, obtained on November 14, 1911 (C. p. 28), the complainant filed its supplemental bill setting up said facts which

arose subsequent to the filing of his original bill and alleging conspiracy between the two Trust Companies, and that his rights might be adjudged as against said stock to be prior to the rights and claims against the same by the Mutual Trust Company on account of the aforesaid promissory note of \$5,247.50, and praying for repayment and for general equitable relief (C. pp. 29 to 43, inclusive). Answers were filed by the two companies denying fraud or conspiracy and praying for dismissal of the bill (C. pp. 45 to 53, inclusive). The case was heard before Hon. J. FRANKLIN FORT as advisory Master, and a decree entered dismissing the bill of complainant (C. p. 136).

Appellant insists most respectfully that there was error in the determination of the Court in that it did not properly consider the equities of the case and that its conclusion is contrary to law.

Mr. Irving contends that by reason of the occurrences of November 12, 1908, the representation of G. B. Phillips and the facts of the case three equities existed or arose: a representation to satisfy his liability as endorser, second the refraining by Irving from taking legal proceedings to protect himself, and third Irving's offer to pay more than the amount then due and owing to the Mutual Trust Company. In addition to this, it is contended that there was fraud and conspiracy between the two companies in the charging of the note of \$5,247.50 against the collateral security, and lastly the determination is contrary to equity and law.

I. The Equities which Arose and Existed on November 12, 1908.

On November 12, 1908, there was due and owing to the Mutual Trust Company upon all of the Crooks papers the sum of \$9,900 (C. p. 96). The

day preceding, Mr. G. B. Phillips, the secretary and treasurer of the Mutual Trust Company, went to Westfield to have the collateral security transferred and he had a talk with the complainant, Mr. John S. Irving, the president of the Westfield Land and Improvement Company; owing to the absence of Mr. Welch, the secretary and treasurer, Mr. Phillips was obliged to return the following day, the 12th of November, and then and there in the presence of the complainant and Mr. Welch, Phillips had the stock transferred, and made certain statements, promises and representations which became binding on the Mutual Trust Company. Just what he said is somewhat in dispute, but it is admitted that Mr. Irving offered to pay to the Mutual Trust Company \$10,000 upon condition that the Trust Company turn over the collateral security to him (C. pp. 80, 96, 105, 115, 117, 120, 122). The complainant's case shows that the value of the stock was figured up in the presence of Phillips to be \$12,500; that Phillips said that he would advise the acceptance of the offer; that he then and there promised that Mr. Irving's liability as endorser on Crooks's note would be paid out of the proceeds of the stock (C. pp. 80, 82, 86, 91, 92, 95). All of this is sworn to by two reputable witnesses whose conduct and manner on the stand have been most convincing. On the other hand, Phillips denies that there was any conversation about notes; he says no note was specifically mentioned, but on cross examination he admits that there was talk about the \$1,700 note. If Phillips had not at that time made the promise that the complainant and Mr. Welch say was made, Mr. Irving would not have sat by, had his note protested, and not sought legal advice until after he was sued. Examine Phillips's affidavit (C. p. 20).

According to the complainant's evidence, Phillips

promised that Irving's liability on the \$1,700 note would be satisfied out of the proceeds of the stock. This, Phillips denies, but his denial is not entitled to any weight, because his evidence and demeanor is not convincing; he is contradicted by his own statements and by Irving and Welch. As a matter of fact, if Irving was not promised that his endorsement would be taken care of, and paid out of the stock, he would probably have refused to transfer the stock (C. p. 82), would have immediately gotten legal advice and instituted proceedings in attachment or bankruptcy which would have absolutely protected him against liability on the \$1,700 endorsement and given him full or partial satisfaction on his \$1,500 endorsement in the Westfield Trust Company (C. p. 88). As I have previously stated, the mere fact that Irving has his endorsement protested, that he sat by and did not do anything until after suit was commenced, must bring conviction to any unprejudiced mind that his, Irving's, story of what took place on November 12th is true. Is it not probable and most reasonable that Phillips and Irving said something about the \$1,700 endorsement? For all these reasons, I insist that credence must be given to the testimony of Irving and Welch, and the case must be viewed upon the assumption that Phillips made the statements and promises on November 12th, that are imputed to him. Phillips had authority as secretary and treasurer (C. p. 104) to make loans on collateral or otherwise and the custody of all securities pledged as collateral (C. p. 76). The whole proposition may be determined by the correct answer to this question: Why did Phillips on November 12th go to Westfield and have the collateral in his possession? My learned adversaries will say to have it transferred on the books of the Company. That was not the real object, the real object was to better secure

the repayment by means of that stock of \$9,900 due to the Mutual Trust Company. That could be done in no better way than by having accepted Irving's offer of \$10,000. Phillips, himself, says that when he was at Westfield, he knew that \$10,000 would cover the liabilities (C. p. 115); he says that he told the executive committee of the offer of Mr. Irving of \$10,000 and that nothing was done (C. p. 117). Now certainly with the facts as they all are Mr. Irving should not be prejudiced by the fact that he did not make an actual legal tender of \$10,000; he was relying on the promise of an officer who had actual possession of the collateral. Phillips was not a messenger boy or a clerk sent to have this stock transferred, as a matter of form. He was the secretary and treasurer of the Mutual Trust Company, actually conducting the business of the Mutual Trust Company.

The knowledge of the agent is imputed to the principal.

Stanley v. Chamberlin, 10 Vr. 565.

Camden Safe, etc., Co. v. Lord, 1 Rob. 489.

Sooy v. State, 12 Vr. 394.

Boice v. Conover, 65 Atl. R. 191.

Phillips as treasurer did not have only a limited power as agent of the Mutual Trust Company, such as a cashier of a Savings Bank would have, but his power was greater.

5th Ward Savings Bank v. 1st National Bank, 48 N. J. L. 513.

Kelly ads. Jersey City Water Supply Co., 45 Vr. 734.

Stokes v. N. J. Pottery Co., 17 Vr. 240.

II. Fraud and Conspiracy.

The Federal Trust Company owned fifty-one per cent of the stock of the Mutual Trust Company (C. p. 65). Directors of the Federal Trust Company were directors of the Mutual Trust Company, and Crooks was in both companies (C. pp. 108, 109). The note \$5,247.50 was not acquired until November 18th, and Phillips had talks with officers of the Federal Trust Company a week or two weeks prior (C. p. 106); the demand note of Crooks of \$5,247.50 represented his indebtedness to the Federal Trust Company. This note and direction by Crooks to the Mutual Trust Company to pay it out of the proceeds of the stock are both dated November 12th, although payment was not made by the Mutual Trust Company until November 18th (C. p. 105); at the time Phillips went to Westfield he did not know of the existence of the Federal Trust Company note of \$5,247.50 (C. p. 111); the dividends derived from the Westfield Land and Improvement Company were applied to the Federal Trust Company note, and to all other notes except the Irving note and the Harry Crooks note. Out of these dividends \$201.80 was applied on the Harry Crooks note, leaving a balance of \$1,338.20 (C. p. 63); the Federal Trust Company took that note and paid the Mutual Trust Company for it with a draft (C. p. 64), two small payments were made to the Federal Trust Company on the \$5,247.50 note, and by it turned over to the Mutual Trust Company (C. p. 65). In speaking of the Harry Crooks note, Byrne says that the collateral did not amount to anything (C. p. 74).

Unless the arrangement by which the Federal Trust Company was paid \$5,247.50 was fraudulent against Mr. Irving, why did the Mutual Trust Company purchase so large a note of an insolvent per-

son at its face value? Why did the Federal Trust Company pay back to the Mutual Trust Company \$1,338.20, and why did not the executive committee or Phillips, the secretary and treasurer of the Mutual Trust Company, accept Mr. Irving's offer and be paid in full without any trouble? The answer is very plain, the arrangement was to protect the Federal Trust Company, which had no security, to the detriment of Mr. Irving, the only responsible endorser, and there can be no other explanation. The Mutual Trust Company was a trustee for itself and Mr. Irving.

McMullen v. Kinkle, 39 Miss. 142.

Hardin v. Eames, 5 Ill. App. 153.

Riggs v. Chapman, 46 S. W. R. (Ken.) 692.

Story Eq. Juris, Secs. 477-479.

Atwood v. Vincent, 17 Conn. 575.

37 Cyc. 417.

As such trustee, the action of the Mutual Trust Company was fraudulent; it was not equitable, and it is absolutely against the principles of justice. There were consultations and talks between the officers of the Federal Trust Company and Phillips, regarding this collateral security and the moneys due from Crooks to the Federal Trust Company. The Federal Trust Company controlled the Mutual Trust Company and when Irving was threatened with suit, he went to the Mutual Trust Company, and where was he sent? To the Federal Trust Company, and Mr. Garrison, the vice-president, promptly rejected Mr. Irving's offer of \$10,000, and said, "We will hold the stock" (C. pp. 84, 86, 87). This shows that the Federal Trust Company by reason of its controlling interest believed that it, and not the Mutual Trust Company, was the holder of the stock. The insistent on behalf of the

appellant is that the Mutual Trust Company by reason of its acquiring the Federal Trust Company note was in no better position as regards the collateral stock than a total absolute stranger, and there is no doubt that Mr. Irving's rights are superior not only to a stranger, but to a subsequent creditor.

Jacques v. Fackney, 24 Ill. 87.

While both trust companies said that the transaction was in good faith, and in the ordinary course of business, I do not think that your Honors will be misled by mere idle words.

The facts in this case are such as to stamp the transaction as a conspiracy and fraud. At the time of the consummation of the transaction, the Mutual Trust Company knew that the value of the stock was \$12,500 (C. pp. 120, 121, 122); it knew that only \$10,000 had been offered by the endorser, John Irving, because he wanted to protect himself on an outside obligation; it knew that it held in its own bank paper to the amount of \$9,900 (C. pp. 96, 97); it knew of the \$1,500 endorsement in the Westfield Trust Company (C. pp. 120, 122), and it knew that the Federal Trust Company had a claim against Crooks for \$5,247.50; can any fair-minded person say that the Mutual Trust Company paid \$5,247.50 for a worthless piece of paper unless there was some hidden or secret understanding to reimburse it in case of loss; and is not my conclusion borne out by the facts? The Mutual Trust Company received \$1,338.20 from the Federal Trust Company on August 28, 1911, after the Mutual Trust Company compelled Irving to pay the sum of \$1,940.54 on his endorsement, and was not the sum of \$1,338.20 the apparent deficit? And I venture to say without fear of successful contradic-

tion that if this Court compels the Mutual Trust Company to repay Mr. John S. Irving the Federal Trust Company will reimburse it out of the \$5,247.50, which it unrighteously received.

The facts and circumstances in the case show a fraudulent agreement and conspiracy by and between the Mutual Trust Company and the Federal Trust Company against Mr. John S. Irving.

The Law.

Prior to the decision of Lord Eldon in the now famous case of,

Copis v. Middleton, Turn and R. 224,

the law of England was such that surety upon payment of the indebtedness was entitled to subrogation not only to the collateral securities, but also to the principal indebtedness itself. Lord Eldon, however, held that a payment of the obligation destroyed the obligation and made the surety a simple contract creditor, but, that he was entitled to have any separate collateral securities. This condition of affairs was remedied in England by statute, 19 and 20 Chap. 97.

The rule in England today is that laid down in the case of

Forbes v. Jackson, 19 Ch. D. 622, 21 English ruling cases 607.

The principles laid down in that case are not changed by reason of the statute of Victoria; for the reason that the statute merely keeps alive the original obligation for the benefit of the surety and does not change the right of the surety in so far as they relate to the collaterals, and in *Forbes v. Jackson* (*supra*) the doctrine was established that

the surety has an inchoate right to the benefit of securities held by the creditor and this benefit is not prejudiced by further charges, subsequently made by the debtor in favor of the creditor over the property comprised in the securities.

A case on all fours with the case at issue is

National Exchange Bank v. Silliman, 65
N. Y. 475.

Another case also in point is

Schell City Bank v. Reed, 54 Mo. App. 94.

On the other hand, the respondents rely upon the decision of the Mass. Supreme Court in

Fall River National Bank v. Slade, 153
Mass. 415.

That case is not strictly in point because all of the notes were held by the bank holding the collateral security, and not by purchase from any other bank. However, in a much more recent case in Massachusetts the doctrines laid down in *Forbes v. Jackson* were approved.

See *Labbe v. Barnard*, 198 Mass. 553.

In our own State we have held that the endorser of the promissory note was a surety.

Young v. Vough, 8 C. E. Gr. 328.

From the cases cited we can readily see that the right of surety arises at the time he entered into and became liable upon the obligation as endorser and in the case at issue the latest date this relation

could have arisen as regard the complainant, was upon the 21st day of May, 1908.

A surety is entitled to the benefit of all securities which the creditor holds against the principal as indemnity against loss by reason of his surety. The surety's right in this respect may be modified or controlled by contract between him and his principal, but does not require any contract for its support. It is a right which results from the relation of surety and principal, independent of contract, and is founded upon the principle of natural justice of placing the charge where in equity it belongs.

Phil. & Read. R. R. Co. v. Little, 14 Stewart 519.

It has also been held that it is immaterial that the surety was unaware of the existence of the security.

Hevener v. Berry, 17 W. Va. 474.

In *Rice v. Southgate*, it was held that between the principal and surety, liability takes effect from the time the surety becomes responsible. No new contract is made when the surety pays money, but the payment relates back to the time when the contract was entered into by which the liability to pay was incurred (16 Gray 42).

Where securities are pledged to a banker for payment of a particular loan or debt, he has no lien upon such securities, for a general balance or for payment of other claims.

Wyckoff v. Anthony, 90 N. Y. 442.

Masonic Savings Bank v. Bangs, 84 Ken. 135.

The case of *National Exchange Bank v. Silliman* (*supra*) cited with approval and followed in

Gaines v. Hill, 147 Ken. 449; 144 S. W. 92.

The right of surety has been held superior to intervening rights with notice.

Pierce v. Higgins, 101 Ind. 178.

Atwood v. Vincent, 17 Conn. 575.

An old case which is in point is

Hardcastle v. Commerce Bank of Delaware

decided in the high Court of Errors and Appeals of Delaware, in the year 1831. The opinion of HARRINGTON, Chief Justice, is given in full in the case of

McDowell v. Bank of Wilmington, 1 Har. 376.

In Missouri it has been held that where a person is surety for any part of a debt and pays the same, he is entitled to subrogation and will pro-rate.

Allison v. Sutherlind, 50 Mo. 274.

Tacking of debts as against a surety was not permitted where the creditor had knowledge of the suretyship.

Orvis v. Newell, 17 Conn. 97.

In *Nelson v. Williams*, it has been held that the creditor cannot himself or by collusion with the debtor, do any act to impair the security or destroy the surety's interest in it.

22 N. C. (2 Dev. & Bat.) 118.

To the same effect is

37 Cyc. 417,

Schell City Bank v. Reed, 54 Mo. App. 94.

There are endless cases on the question of subrogation and the rights of sureties; but there are very few, if any, in which the facts are identical with the case at issue. For instance, the general doctrine of subrogation is well expounded in

Prairie v. Hitchcock, 164 U. S. 227.

A very learned, exhaustive and interesting brief on the subject will be found in

68 L. R. A. 513,

and a shorter brief will be found in

21 English Ruling Cases, 614.

But the entire matter is one which in the final analysis rests on principles of justice and equity and needs no contract for its support.

Matthews v. Aiken, 1 N. Y. 595.

Phil. & Reading R. R. Co. v. Little (*supra*)

Conclusion.

Mr. Irving's position in the case is that while he was accommodation maker and endorser for his son-in-law, John W. Crooks, the owner of the fifty shares of stock of the Westfield Land and Improvement Company, he, Irving, always depended on that stock and believed that it was the only thing that Crooks had (C. p. 89). Irving did not know that Crooks had put the stock up with the Mutual Trust Company as collateral until November 11, 1908, nor did he know until that time to what extent Crooks was indebted to the Mutual Trust Company (C. p. 90). When the Mutual Trust Com-

pany "acquired" the note of \$5,247.50 from the Federal Trust Company on November 18, 1908, it already possessed through the knowledge of its officer and agent, Phillips, information of the suretyship of Mr. John S. Irving; it knew the indebtedness of Crooks to various persons, and it knew that the value of the stock was insufficient to pay all of Crooks's obligations. Now if we simply apply the principle that the Court will place the charge where in equity and justice it belongs, should not the burden fall upon the Mutual Trust Company, which acted with knowledge of all of the circumstances? Either, Mr. Irving, or the Mutual Trust Company is to suffer? Which is the one, Irving who offered a sum of \$10,000, being in excess of the full indebtedness for which the Mutual Trust Company was entitled to hold the collateral on November 12, 1908, or the Mutual Trust Company that with knowledge of Irving's offer deliberately expends \$5,247.50 out of the trust fund and purchased from its parent trust company a worthless note? The proposition is so plain that argument seems superfluous.

In conclusion, it does seem that it would be expanding the principles of banking to too great an extent to permit a bank to go out on the highways and the byways and purchase negotiable paper and charge it against any collateral which they might happen to have in their possession. That was not the intention of banking, and not its purpose. The law of New York, where more banking is done than in any other State in the Union, has put its stamp of disapproval upon such practice, and we should follow the New York law. But in this case, aside from the law, I think equity is in favor of Mr. Irving, and the Mutual Trust Company should be compelled to repay \$1,940.50 with interest from January 19, 1911, and such additional sum as the

Court believes Irving would have realized, had the Mutual Trust Company actually subrogated him as they should in equity and justice have done. The Mutual Trust Company was in a position where, by reason of its own business transactions with John W. Crooks, it could not have lost one cent, if it had acted honestly and according to regular banking business methods, but, by reason of endeavoring to take care of the Federal Trust Company, it has placed itself in a position where it may lose money, but that is nothing which should concern the standing of John S. Irving before this Court. If the Mutual Trust Company was also endeavoring to protect the Federal Trust Company, that is the exact reason why it should now be compelled to make restitution to John S. Irving.

It is, therefore, most respectfully insisted that the decree of dismissal be here reversed, and that this honorable Court may award to Mr. John S. Irving the equitable relief which the Court below in equity and justice should have granted him.

Respectfully submitted,

SAMUEL KOESTLER,
of Counsel with Appellant.

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Filed August. 23, 1910.

IN CHANCERY OF NEW JERSEY.

TO THE HONORABLE MAHLON PITNEY,

CHANCELLOR OF THE STATE OF NEW JERSEY.

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Humbly complaining shows unto your Honor your orator, John S. Irving, of the Town of Westfield, in the County of Union and State of New Jersey:

1. That on and before the fifth day of June, Nineteen hundred and two, there existed under and by virtue of the laws of the State of New Jersey a corporation by the name of "Westfield Land and Improvement Company," which was the owner of certain lands in the present Town of Westfield aforesaid; that on said Fifth day of June, Nineteen hundred and two, one John W. Crooks become the owner and possessor of fifty shares of the capital stock of said Westfield Land and Improvement Company; and that on the day of the issuing of said stock of the Westfield Land and Improvement Company, to the said John W. Crooks, your orator did then and there endorse for said Crooks a promissory note of the said Crooks to secure the payment of a sum of more than Seventeen hundred dollars, and thereafter from time to time your orator did endorse for the said Crooks several of his promissory notes as will be hereinafter more particularly and at large set forth.

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2. That among other transactions which your orator had with the said Crooks, in the endorsement of notes for the said Crooks, heretofore, to wit, on or about the Twenty-fifth day of May, Nine-

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10 teen hundred and eight, your orator, for the accommodation of said John W. Crooks, did endorse a certain promissory note, made by the said John W. Crooks for the sum of Eighteen hundred dollars, payable in four months from the date thereof; which said note was discounted for the said John W. Crooks, by the Mutual Trust Company, a Corporation of the State of New Jersey; that when said note became due, on or about the Twenty-fifth day of September, Nineteen hundred and eight, the said Crooks did pay on account thereof the sum of one hundred dollars, and thereupon your orator did endorse for said Crooks a renewal note for the sum of Seventeen hundred dollars, payable in two months from the date thereof.

20 3. That besides said note, so made by the said Crooks and endorsed by your orator, and discounted by the Mutual Trust Company for the said John W. Crooks, the said Mutual Trust Company did hold and possess certain other promissory notes and negotiable instruments which were made by the said John W. Crooks or endorsed by him, and which were discounted to the credit of the said John W. Crooks by the Mutual Trust Company, which said other promissory notes and negotiable instruments
30 amounted to the further sum of about Eight thousand dollars, as your orator is informed and believes to be true.

40 4. That shortly before the twelfth day of November, Nineteen hundred and eight, the Mutual Trust Company ascertained that the said John W. Crooks was becoming financially involved, and in order to secure payment to itself of the moneys which it had loaned to the said John W. Crooks, upon the discounting of the negotiable instruments made and

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endorsed by the said John W. Crooks, and which negotiable papers were then held and in the possession of the Mutual Trust Company, including the aforesaid note of Seventeen hundred dollars, bearing date on or about the Twenty-fifth day of September, Nineteen hundred and eight, made by the said John W. Crooks, and endorsed by your orator, did demand from that said John W. Crooks additional collateral security; and thereupon, on or about the Twelfth day of November, Nineteen hundred and eight, the said John W. Crooks did agree with the Mutual Trust Company, by its officers, agents and servants in that behalf authorized, to transfer to the Mutual Trust Company the said fifty shares of stock which he, the said John W. Crooks, held of the Westfield Land and Improvement Company, as collateral to secure the payment of the promissory notes and negotiable paper then held by the Mutual Trust Company, which promissory notes and negotiable instruments were signed or endorsed by the said John W. Crooks, and discounted by the Mutual Trust Company for the said John W. Crooks, including the promissory note of Seventeen hundred dollars, endorsed by your orator as aforesaid; and that it was then and there expressly agreed by and between the said John W. Crooks and the said Mutual Trust Company that it, the said Mutual Trust Company, would take over said fifty shares of stock of the Westfield Land and Improvement Company, dispose of the same and out of the proceeds of sale of said stock pay to itself the amount due and owing to it upon the promissory notes signed or endorsed by said John W. Crooks, including the note of Seventeen hundred dollars endorsed by your orator as aforesaid, then held by the Mutual Trust Company and discounted by it for the said John W. Crooks.

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5. That upon said agreement and understanding said John W. Crooks did, in writing, authorize and direct the Westfield Land and Improvement Company to transfer upon its books the said fifty shares of stock of the Westfield Land and Improvement Company, then held by the said John W. Crooks, to
10 said Mutual Trust Company, and upon receiving said written order of the said Crooks the Westfield Land and Improvement Company did, on or about the Twelfth day of November, Nineteen hundred and eight, transfer on its books to the said Mutual Trust Company the fifty shares of stock which had formerly been in the name of said John W. Crooks.

6. That at the time, or shortly after the time of the transfer of said fifty shares of stock of the West-
20 field Land and Improvement Company, from the said John W. Crooks to the Mutual Trust Company, the said Mutual Trust Company, by its officers and agents, did inform your orator and others of the agreement under and by virtue of which said fifty shares of stock of the Westfield Land and Improvement Company were so transferred by said Crooks to the Mutual Trust Company, and did state to your orator and to others that said Mutual Trust Com-
30 pany would sell said shares of stock and out of the proceeds of the sale thereof pay the promissory notes then held by said Company signed or endorsed by said Crooks, including the promissory note of Seventeen hundred dollars, so as aforesaid endorsed by your orator for the accommodation of said Crooks.

8. That at the time of the transfer of said fifty shares of stock of the Westfield Land and Improvement Company, by the said John W. Crooks, to the
40 Mutual Trust Company, said Company requested

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your orator to make an offer for the purchase of said fifty shares of stock, and thereupon your orator offered to pay the sum of Ten thousand dollars for the purchase of said fifty shares of stock, which sum was more than sufficient to pay all of the promissory notes and negotiable paper signed or endorsed by the said John W. Crooks, and then held by the Mutual Trust Company, including the Seventeen hundred dollar promissory note so endorsed by your orator as aforesaid; but that the said Mutual Trust Company refused to sell said stock for the sum of Ten thousand dollars. 10

9. That the promissory note of Seventeen hundred dollars, bearing date on or about the Twenty-fifth day of September, Nineteen hundred and eight, made by the said John W. Crooks, and endorsed by your orator, became due and payable sometime after the transfer of said fifty shares of stock of the Westfield Land and Improvement Company, from the said Crooks to the Mutual Trust Company, and therefore Crooks brought to your orator a renewal promissory note, bearing date the Thirtieth day of November, Nineteen hundred and eight, payable two months after its date for the sum of Seventeen hundred dollars, to the order of your orator at the Mutual Trust Company, and requested your orator to endorse the same; that your orator thereupon got into consultation with the officers of the Mutual Trust Company, and at the request of such officers did endorse said renewal promissory note, and at the request of said officers did send said promissory note to the Mutual Trust Company at Orange, New Jersey; that at that time your orator believed that the said Company had not yet had sufficient opportunity to dispose of the fifty shares of stock of the Westfield Land and Improvement Company, so 20 30 40

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transferred to it as aforesaid, and that said Mutual Trust Company desired the renewal of said promissory note for its own accommodation, and under such belief endorsed said promissory note; that said promissory note became due and payable, and was not paid by the said John W. Crooks, and your orator was informed that the same was protested for non payment, and that he always believed that said Mutual Trust Company would take care of said promissory note and pay the same out of the proceeds to be derived from the sale of said fifty shares of stock of the Westfield Land and Improvement Company, transferred to the Mutual Trust Company by the said John W. Crooks as aforesaid; and that he paid no further attention to said promissory note until on the Fourteenth day of July, Nineteen hundred and ten he was served with a summons and declaration, issued out of the New Jersey Supreme Court, at the suit of the Mutual Trust Company, a Corporation, in and by which your orator was sued for the amount of Seventeen hundred dollars of said promissory note, and interest and protest fees thereon; that in order to prevent the entry of judgment upon said suit your orator was obliged to enter an appearance therein, but as the defenses which he has to said suit are for the greater part purely equitable he would not be able to set up his defenses in said suit brought against him by the Mutual Trust Company in the New Jersey Supreme Court.

10. That your orator relied upon the statements and admissions made to him by the officers of the Mutual Trust Company as to the terms and agreements upon which said fifty shares of stock of the Westfield Land and Improvement Company had been assigned to the Mutual Trust Company, as

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hereinbefore set forth, and by reason of such reliance upon the statements made to him, by the officers of the Mutual Trust Company, your orator did not take any further or other proceedings which at that time he might have taken against the said Crooks, to protect your orator as against his endorsement upon said note of Seventeen hundred dollars. 10

11. That after said fifty shares of stock of the Westfield Land and Improvement Company had been so assigned and transferred by the said John W. Crooks to the Mutual Trust Company, the said Westfield Land and Improvement Company did declare dividends and pay the same to the Mutual Trust Company as the holder of said fifty shares of stock of the Westfield Land and Improvement Company; that said dividends amount to between Four thousand dollars and Five thousand dollars, and that in the accounting to be rendered by said Mutual Trust Company, as hereinafter prayed for, the said Mutual Trust Company may set forth and account for the moneys which it has received from said Westfield Land and Improvement Company for and on account of the dividends upon said fifty shares of stock of the Westfield Land and Improvement Company paid to it, the Mutual Trust Company; that the value of said fifty shares of stock of the Westfield Land and Improvement Company, so assigned and transferred by the said John W. Crooks, to the Mutual Trust Company, is more than sufficient to pay the sums of money due to the Mutual Trust Company, and for which said stock was assigned and transferred to it, including the said promissory note upon which the said Mutual Trust Company has brought suit against your orator in the New Jersey Supreme Court; that your orator, 20
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as hereinbefore stated, made an offer of Ten Thousand dollars to the Mutual Trust Company for said stock, and that he is now ready and willing to pay to the said Mutual Trust Company, for the said fifty shares of stock of the Westfield Land and Improvement Company, said sum of Ten thousand dollars, and interest thereon; less, however, the sums
10 of money received by said Mutual Trust Company as and for dividends on said fifty shares of stock of the Westfield Land and Improvement Company, or such other sum of money as this Honorable Court shall on an accounting determine to be the value of said fifty shares of stock, provided that said promissory note, held by the said Mutual Trust Company and endorsed by your orator, should be surrendered to your orator; that your orator is an
20 officer and director of the Westfield Land and Improvement Company, and that he is familiar with the value of the stock of said Westfield Land and Improvement Company, and that from such knowledge, and the information which he has gathered from the officers of the Mutual Trust Company, your orator knows that the value of the fifty shares of stock of the Westfield Land and Improvement Company, and that the dividends paid on account of said stock, and the money which can be derived
30 from a sale thereof, are more than sufficient to pay the amount due and owing to the Mutual Trust Company upon the promissory notes and negotiable paper of the said John W. Crooks, including the aforesaid note endorsed by your orator as aforesaid, and for the payment of which the said fifty shares of stock of the Westfield Land and Improvement Company were assigned and transferred by the said John W. Crooks, to the Mutual Trust Company.

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12. That your orator has no positive knowledge as to the exact amount of money due and owing to the said Mutual Trust Company upon the promissory notes or negotiable paper of the said John W. Crooks, held by it, nor of the dates when said promissory notes or negotiable paper were made, nor whether the same are endorsed by persons who are financially responsible. 10

13. And your orator further shows that although he has offered to pay to the said Mutual Trust Company for the aforesaid fifty shares of stock of the Westfield Land and Improvement Company, and the surrender to him of the promissory note so as aforesaid endorsed by him, the sum of ten thousand dollars, the said Mutual Trust Company has not complied with the reasonable request of your orator and has refused to assign and transfer to your orator said fifty shares of stock of the Westfield Land and Improvement Company, or to surrender or deliver up to your orator for cancellation the said promissory note for Seventeen hundred dollars, so endorsed as aforesaid by your orator, but the said Mutual Trust Company insists upon the liability of your orator as endorser of said promissory note, and, as above stated, has commenced suit in the New Jersey Supreme Court to compel your orator to pay the same. 20 30

All which actings, doings and pretences of the said Mutual Trust Company are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator in the premises.

In tender consideration whereof, and forasmuch as your orator is without adequate remedy in the premises, at and by the strict rules of the common law, and without the aid and intervention of this 40

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Honorable Court where matters of this nature are properly cognizable and relievable.

To the end, therefore, that the said defendants, Mutual Trust Company, a corporation, and John W. Crooks, may, without oath, full, true, perfect and direct answer make to all and every the matters aforesaid, and that as fully and particularly as if the same were here again repeated and that they thereto particularly interrogated, paragraph by paragraph; and that the said defendant, Mutual Trust Company, may set forth and discover what promissory notes and negotiable instruments, made by the said John W. Crooks, or endorsed by him, it held and possessed at the time of the transfer to it by John W. Crooks, of the fifty shares of stock of the Westfield Land and Improvement Company; the dates thereof, the amounts thereof, the dates and times when the same became due and payable, and the names of the other persons liable thereon, and also what promissory notes and negotiable paper made by the said John W. Crooks, or endorsed by the said John W. Crooks, if any, it, the said Mutual Trust Company, has received and discounted subsequent to the assignment and transfer of said stock to it, by the said John W. Crooks, and whether said promissory notes and negotiable paper received by it, the Mutual Trust Company, subsequent to said assignment and transfer are, or are not the renewals of promissory notes or negotiable paper signed or endorsed by the said Crooks, and held by it, the Mutual Trust Company, prior to and at the time of the assignment and transfer of said shares of stock; and that it, the said Mutual Trust Company may also set forth and discover the terms, covenants, agreements and understanding entered into by it and the said John W. Crooks, and the consideration for and upon which the said

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fifty shares of stock of the Westfield Land and Improvement Company were transferred and assigned to it, the Mutual Trust Company, by the defendant, John W. Crooks; and that an accounting may be taken of the moneys due and owing to the Mutual Trust Company from the said John W. Crooks, upon promissory notes and negotiable paper held by the Mutual Trust Company at the time of the assignment and transfer of said fifty shares of stock, to wit, on the Twelfth day of November, Nineteen hundred and eight, and also of moneys due to it, the Mutual Trust Company, upon promissory notes and negotiable paper of the said John W. Crooks, received by the Mutual Trust Company subsequent thereto, and also of the moneys received by the Mutual Trust Company for and on account of said shares of stock so assigned and transferred to it, by the said John W. Crooks, and if said stock has not been sold and disposed of that an accounting may be taken of the value thereof; and that the assets now in the hands of the Mutual Trust Company for and on account of the indebtedness of it of the said John W. Crooks may be marshalled, or that your orator may be subrogated to the rights of the said Mutual Trust Company in and to said fifty shares of stock of the Westfield Land and Improvement Company assigned and transferred to it by the said John W. Crooks as collateral security for the payment of the Seventeen hundred dollar note endorsed by your orator; and that the said Mutual Trust Company may be restrained and enjoined from further proceeding in the New Jersey Supreme Court with its action against your orator to enforce payment from your orator of the moneys claimed to be due and owing to the Mutual Trust Company upon a certain promissory note, bearing date the Thirtieth day of November, Nineteen hun-

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dred and eight, to secure the payment of the sum of Seventeen hundred dollars in two months from the date thereof, which note was made by the said John W. Crooks to the order of your orator, and endorsed by your orator and subsequently discounted for the said John W. Crooks by the Mutual Trust Company, or from transferring, delivering or assigning said promissory note to any other person or persons, or from in any other manner in anywise parting with the custody and possession of the said promissory note; and that said promissory note may be surrendered and delivered up to your orator, so that the same may be cancelled, or that your orator's name may be stricken therefrom; and that your orator may have such further or other relief in the premises as the nature and circumstances of the case may require, and as to your Honor shall seem meet and agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator not only the State's writ of injunction issuing out of and under the seal of this Honorable Court, to be directed to the said Mutual Trust Company, a Corporation, restraining and enjoining it, its officers, agents servants and attorneys, from further proceeding in the New Jersey Supreme Court with its action against your orator to enforce payment from your orator of the moneys claimed to be due and owing to the Mutual Trust Company upon a certain promissory note, bearing date the Thirtieth day of November, Nineteen hundred and eight, to secure the payment of the sum of Seventeen hundred dollars, in two months from the date thereof, which note was made by the said John W. Crooks to the order of your orator, and endorsed by your orator and subsequently discounted for the said John W. Crooks by

Affidavit of John S. Irving

the Mutual Trust Company, or from transferring, delivering or assigning said promissory note to any other person or persons, or from in any other manner in anywise parting with the custody and possession of the said promissory note, but also the State's writ of subpoena issuing out of and under the seal of this Honorable Court to be directed to the said Mutual Trust Company, a corporation, and to John W. Crooks, therein and thereby commanding them, and each of them, on a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor, in this Honorable Court, then and there to answer the premises, and to stand to, abide by and perform such decree therein as to your Honor shall seem meet, etc. 10

And your orator, as in duty bound, will ever pray, etc. 20

P. Q. OLIVER.
Solicitor for and of Counsel
with Complainant.

STATE OF NEW JERSEY, }
COUNTY OF UNION. } ss.:

JOHN S. IRVING, of full age, being duly sworn according to law on his oath says, that he resides in the Town of Westfield, in the County of Union and State of New Jersey; that at the present time he is an officer and director of the Westfield Land and Improvement Company, a Corporation of the State of New Jersey, and was such officer and director on the Fifth day of June, Nineteen hundred and two; that on said Fifth day of June, Nineteen hundred and two, fifty shares of stock of the Westfield Land 30 40

Affidavit of John S. Irving

and Improvement Company were issued to John W. Crooks, that said John W. Crooks continued to be the owner of said fifty shares of stock until on or about the Twelfth day of November, Nineteen hundred and eight, when at his written request said fifty shares of stock were transferred upon the books of said Westfield Land and Improvement Company to the Mutual Trust Company.

Deponent further says that on the Fifth day of June, Nineteen hundred and two, for the accommodation of said John W. Crooks, he endorsed a promissory note for the said John W. Crooks for an amount in excess of Seventeen hundred dollars, and from time to time thereafter, for the accommodation of said Crooks, deponent endorsed notes of said Crooks; that on or about the Twenty-fifth day of May, Nineteen hundred and eight, for the accommodation of said John W. Crooks, deponent endorsed a promissory note of said Crooks to secure the payment of the sum of Eighteen hundred dollars in four months from the date thereof; that said note was discounted by Crooks at the Mutual Trust Company, and when said note became due, on or about the Twenty-fifth day of September, Nineteen hundred and eight, Crooks paid One hundred dollars on account thereof, and renewed the same for Seventeen hundred dollars, giving a note payable in two months from date, endorsed by deponent; that deponent was informed by said John W. Crooks, and by the officers of the Mutual Trust Company, on or about the Twelfth day of November, Nineteen hundred and eight, that Crooks owed said Mutual Trust Company a large sum of money by reason of said Crooks being the maker and endorser of promissory notes which the said Mutual Trust Company had discounted for the said Crooks, and that among said notes was the aforesaid note

Affidavit of John S. Irving

of Seventeen hundred dollars endorsed by deponent; that all of said moneys, together, did not amount in excess of the sum of Ten thousand dollars.

Deponent further says that on or about the Twelfth day of November, Nineteen hundred and eight, Gordon B. Phillips, who was then the Secretary and Treasurer of the Mutual Trust Company, came to deponent with the written order of John W. Crooks for the transfer to the Mutual Trust Company of fifty shares of stock of the Westfield Land and Improvement Company, then standing in the name of Crooks upon the books of said Company, and said Phillips then told deponent that said stock was transferred to the Mutual Trust Company upon the agreement that said Mutual Trust Company should sell the same and apply the proceeds of the sale thereof toward the payment of the promissory notes signed or endorsed by said Crooks, including the Seventeen hundred dollar promissory note endorsed by this deponent, and that the indebtedness of said Crooks to the Mutual Trust Company for discounting said notes did not exceed the sum of Ten thousand dollars; that deponent was asked to make a bid on said stock and offered to pay the sum of Ten thousand dollars therefor, but his offer was refused.

Deponent further says that he had conversations with said Phillips, the Secretary and Treasurer of the Mutual Trust Company, on the eleventh day of November, Nineteen hundred and eight, and also on the twelfth day of November, Nineteen hundred and eight, in which Phillips stated that the stock was to be transferred to the Mutual Trust Company to pay the notes held by it, signed and endorsed by the said John W. Crooks, and that the note of Seventeen hundred dollars, en-

Affidavit of John S. Irving

dorsed by deponent, was among the notes which were to be paid out of the moneys procured from the sale of said stock.

10 Deponent further says that he received a promissory note, dated November 30, 1908, payable in two months after its date, for the sum of Seven-
teen hundred dollars to your orator's order, and that upon receiving the same he called up Mr. Phil-
lips the Secretary and Treasurer of the Mutual Trust Company upon the telephone, and that said
Phillips requested deponent to endorse said note and send it direct to the Mutual Trust Company,
which deponent did; that deponent is informed, and believes it to be true, that said promissory
note was not paid by the said John W. Crooks when it became due, but was protested for non pay-
20 ment; that deponent relying upon the agreement made between said John W. Crooks and the Mu-
tual Trust Company, that the note endorsed by deponent would be paid out of the proceeds of the
sale of said stock, paid no further attention to said promissory note until he received a letter from
the Mutual Trust Company, bearing date the Twenty-sixth day of November, Nineteen hundred and
nine, when he had a conversation with the As-
30 sistant Treasurer of said Mutual Trust Company, in which said Assistant Treasurer advised
deponent that he did not want to write said letter and intimated that he was forced to do
so by the Federal Trust Company of Newark, which had control of the Mutual Trust Company, and
that thereupon deponent heard nothing further in reference to said note until on the fourteenth day
of July, Nineteen hundred and ten, when he was served with a Summons and Declaration issued out
40 of the New Jersey Supreme Court, at the suit of the Mutual Trust Company, a corporation, against

Affidavit of William S. Welch

deponent and the said John W. Crooks; that in and by said declaration, served upon deponent, said Mutual Trust Company seeks to hold deponent liable for said sum of Seventeen hundred dollars, together with interest and protest fees.

J. S. IRVING. 10

Sworn and subscribed before me }
 this day of August, 1910. }

A. K. GALES,
 Notary Public.

STATE OF NEW JERSEY, }
 COUNTY OF UNION. } ss.: 20

WILLIAM S. WELCH, being duly sworn according to law, on his oath says, that he is the treasurer of the Westfield Land and Improvement Company, a Corporation of the State of New Jersey, and occupied said office on the twelfth day of November, Nineteen hundred and eight; that he recalls that on the twelfth day of November, Nineteen hundred and eight, a Mr. Phillips, of the Mutual Trust Company, a Corporation located at Orange, New Jersey, came to deponent and Mr. J. S. Irving with a written order, signed by Mr. John W. Crooks, requesting the transfer to the Mutual Trust Company of fifty shares of stock of the Westfield Land and Improvement Company, which were then upon the books of said Company in the name of John W. Crooks; that said Phillips stated in the presence and hearing of deponent and the said J. S. Irving, that said

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Affidavit of William S. Welch

stock was to be transferred to the Mutual Trust Company to pay certain notes signed or endorsed by John W. Crooks, and then held by said Mutual Trust Company, and that among the notes so held by said Mutual Trust Company, and which were to be paid out of said stock so transferred, was a
 10 certain promissory note of Seventeen hundred dollars endorsed by Mr. J. S. Irving; that said Phillips at that time stated what the total amount of the indebtedness due from Crooks, upon all of the promissory notes then held by said Mutual Trust Company, amounted to, but that deponent does not recall the exact amount stated by Mr. Phillips, but that he recollects distinctly that the value of the stock at that time was in excess of
 20 the amount stated by Mr. Phillips to be due to the Mutual Trust Company, from the said John W. Crooks, upon all of the notes so held by the Mutual Trust Company.

W. S. WELCH.

Sworn and subscribed before me }
 this day of August, 1910. }

A. K. GALES,
 Notary Public.

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IN CHANCERY OF NEW JERSEY.

Affidavit.

Between

JOHN S. IRVING,
Complainant,

and

MUTUAL TRUST COMPANY,
a corporation,
et al.,

Defendants.

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On Bill, etc.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss. :

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Gordon B. Phillips, of full age, being duly sworn deposes and says that he is at the present time an officer of the Newark Trust Company, and in November, Nineteen Hundred and Eight, was the Secretary and Treasurer of the Mutual Trust Company, the above named defendant, and that deponent is well acquainted with the transactions between the said Company and John W. Crooks and John S. Irving, concerning the Seventeen Hundred Dollar promissory note made by the said Crooks and endorsed by the said Irving on or about November Thirtieth, Nineteen Hundred and Eight.

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Deponent further says that it is not true, as stated in Paragraphs 4 and 6, that there was any understanding or agreement between the Mutual Trust Company or deponent and the said Crooks and Irving or either of them that the fifty shares of stock of the Westfield Land and Improvement Company, referred to in the bill of complaint,

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Affidavit of Gordon B. Phillips

would be sold, and out of the proceeds that the said Company would pay the promissory notes signed or endorsed by the said Crooks and held by the said Company at the time of the transfer of the said shares of stock to said Company, which was on or about November Twelfth, Nineteen Hundred and Eight, and deponent never made any such statement to the said Irving or to any other person; but on the contrary, at the time deponent attended at the office of the said Land Company for the purpose of procuring the transfer thereof to the Mutual Trust Company, deponent met said Irving and another party who was probably Mr. Welch, who makes an affidavit attached to the bill of complaint, and it was the said Irving and the said Welch or one of them who attended to the transfer of said shares of stock; when deponent presented said stock for transfer the said Irving stated that he would like to have the Seventeen Hundred Dollar note paid, and asked deponent to promise that it would be paid; deponent stated that he could make no agreement whatever, as he was there only for the purpose of securing the transfer of the said shares of stock, and no agreement or promise was at that time made by deponent of any kind whatsoever; that the said Irving thereupon had said shares of stock transferred and handed the new certificate to deponent.

Deponent further says that neither on the telephone nor at any other time did he ever request the said Irving to endorse any note for the said Crooks, or for any other person, but that it is true that said Irving did endorse the said note of November Thirtieth, Nineteen Hundred and Eight, and that the same was delivered to the Mutual Trust Company with the endorsement of the said Irving and the signature of the said Crooks.

Affidavit of Gordon B. Phillips

Deponent further says that the fifty shares of stock of the said Land Company were pledged with the said Mutual Trust Company as collateral security under note of August Thirtieth, Nineteen Hundred and Five, of which the following is a true copy:—

“4900 00/ Orange, N. J., Aug. 30, 1905. 10

On Demand after date, for value received, I promise to pay to MUTUAL TRUST COMPANY, or order, at its banking house, with interest at the rate of 5% per annum, Forty-nine hundred 00/ - - - Dollars, the undersigned having deposited with said Trust Company as collateral security for payment of this or any other liability or liabilities of the undersigned, direct or contingent, individual or firm, to said Trust Company now existing, or which hereafter may be contracted, the following property, viz: 20

50 shares Westfield Land and Improvement Co.,

with full power and authority to said Trust Company, or its President, or Treasurer, to sell, assign and deliver the whole, or any part thereof, or any substitutes therefor, or any additions thereto, at any additions thereto, at any Broker's Board, or at any public or private sale, at the option of said Trust Company, or its President, or Treasurer, or its or their or either of their Assigns, on the non-performance of this promise, or the non-payment at maturity of any of the other liabilities aforesaid, or at any time or times thereafter, without demand of payment, advertisement, or notice of sale, 30 40

Affidavit of Gordon B. Phillips

10 which are hereby expressly waived; and after deducting all costs and expenses for collection, sale and delivery, to apply the residue of the proceeds of such sale, or sales, to pay any or all of said liabilities to said Trust Company, or its assigns, as its President or Treasurer, or assigns, shall deem proper, returning the over-plus to the undersigned; and upon any sale at public auction or at Brokers' Board the holder hereof may purchase the whole or any part of such securities, discharged from any right of redemption. And the undersigned agrees to be and remain liable to the holder hereof for any deficiency, and to pay the same upon demand of the holder thereof.

20 In case of depreciation, according to the judgment of the holder hereof in the market value of the security hereby pledged, or which may hereafter be pledged for this loan, the undersigned agrees to make a payment on account, so that the said market value shall always be at least twenty per cent. more than the amount unpaid of this Note, or else to make such further additional deposits of securities as may be necessary to maintain such margin, adopting
30 either course that the holder hereof may require. In case of failure to do so, or in the event of insolvency of the undersigned or of any endorser or guarantor of this Note, this Note shall be due and payable forthwith at the option of the holder hereof, anything hereinbefore expressed to the contrary notwithstanding, and the holder may immediately reimburse himself by sale of the security as hereinbefore provided, also hold-
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Affidavit of Gordon B. Phillips

ing and applying the balance of any deposit account of the undersigned with said Trust Company. In case of the substitution of any other securities for those above mentioned, or of any additions to the collaterals at any time securing this Note, the provisions hereof shall apply to all such substituted new or additional collaterals. 10

In case of default by the undersigned and the payment of this Note by any guarantor or endorser, the said Trust Company is hereby expressly authorized, if it so elect, to surrender to the person making such payment, any or all collaterals held for the payment hereof.

J. W. CROOKS." 20

Deponent further says that on November Thirtieth, Nineteen Hundred and Eight, or on such subsequent date as the note of November Thirtieth, Nineteen Hundred and Eight, was delivered to the said Mutual Trust Company, the Mutual Trust Company was the holder of the following papers, made or endorsed by the said John W. Crooks:—

Date	Amount	Maker	Endorser	Time	30
Nov. 30, 1908	\$1,700.00	J. W. Crooks	John S. Irving	2 months	
Sept. 31, 1908	\$1,700.00	J. W. Crooks	Est. T. W. Crooks	2 months	
Sept. 3, 1908	\$2,800.00	Harry W. Crooks	J. W. Crooks, Guarantor		
July 1, 1905	\$4,900.00	J. W. Crooks		Demand	
Nov. 12, 1908	\$5,247.50	J. W. Crooks, acquired Dec. 18, 1908		Demand	

Deponent further says that the history of the present Seventeen Hundred Dollar note of said Crooks and Irving is that the original note, to- 40

Affidavit of Gordon B. Phillips

gether with the first renewal, were made by the said John S. Irving and endorsed by the said John W. Crooks, and that the three last renewals were made by the said John W. Crooks and endorsed by the said John S. Irving, and that as the paper first came to the said Mutual Trust Company, the said

10 Irving was primarily liable thereon as maker, and the said Crooks secondarily as endorser, as per the following statement:—

Maker	Endorser	Amount	Date	Time
John S. Irving	J. W. Crooks	\$2,000.00	Sept. 23, 1907	4 months
John S. Irving	J. W. Crooks	\$1,900.00	Jan. 25, 1908	4 months
J. W. Crooks	John S. Irving	\$1,800.00	May 28, 1908	4 months
J. W. Crooks	John S. Irving	\$1,700.00	Sept. 28, 1908	2 months
J. W. Crooks	John S. Irving	\$1,700.00	Nov. 30, 1908	2 months

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GORDON B. PHILLIPS.

Subscribed and sworn to before me this }
 12th day of September, 1910. }

W. WALTER BLAKEMAN,
 Notary Public, N. J.

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Affidavit of T. Stephen Byrne

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

T. Stephen Byrne, of full age, being duly sworn, deposes and says that he is the acting Secretary and Treasurer of the Mutual Trust Company, one of the defendants in the foregoing bill of complaint named, and that he has read the matters contained in the bill of complaint and the affidavits thereto attached. 10

Deponent further says that he has never made any promises to the said Irving with regard to the disposition of the fifty shares of stock of the Westfield Land and Improvement Company, and that the stock is still held by and in the name of the Mutual Trust Company; that since the acquisition of the said shares of stock by the Mutual Trust Company the sum of Five Thousand Dollars has been received by it as dividends on said shares of stock, and said dividends have been applied by the said Trust Company in the following manner: 20

June 10, 1909, \$300. Paid interest on \$4,900 to July 1st, 1909, and on the \$5,150.96 loan to April 1st, 1909.

June 23, 1909, \$450. On \$4,950 loan, reducing same to \$4,450. 30

Aug. 3, 1909, \$1,000. On \$4,450 loan, reducing same to \$3,450.

Nov. 8, 1909, \$500. On \$3,450 loan, reducing same to \$3,008.57, balance of \$41.43 applied on loan as interest to October 1st, 1909.

Feb. 15, 1910, \$1,350. \$1,309.16 on loan of \$3,008.57, reduced same to \$1,699.41 and \$40.84 interest to January 1st, 1910.

June 8, 1910, \$300. \$29.60 interest applied on 40

Affidavit of Charles R. Wilmot

\$1,699.41 loan to April 1, 1910, and \$270.40 on Demand Note of \$5,150.96 to April 1st, 1910.

Aug. 5, 1910, \$1,100. Applied on note of J. W. Crooks \$1,700, endorsed Est. T. W. Crooks, reducing same to \$600.

Deponent further says that at the present time
 10 the amount of notes held by the Mutual Trust Company, upon which the said Crooks is liable as maker, endorser or guarantor, is the sum of Ten Thousand Seven Hundred and Seventy-four Dollars and Ninety-nine Cents, with interest, and that the said Trust Company is ready and willing to assign the said shares of stock to said Crooks or Irving upon payment of said sum and interest.

T. STEPHEN BYRNE.

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Subscribed and sworn to
 before me this 12th day
 of September, 1910. }

MARIAN P. BARRADALE,
 Notary Public of New Jersey.

30 STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

Charles R. Wilmot, of full age, being duly sworn,
 deposes and says that he is the President of the Mutual Trust Company, one of the above named defendants, and has had his attention called to a statement in the bill of complaint in the above stated cause and the affidavits thereto attached, in which it is stated that the complaint "thereupon
 40 got into consultation with the officers of the Mutual

Affidavit of Charles R. Wilmot

Trust Company, and at the request of said officers did endorse renewal promissory note, and at the request of said officers did send said promissory note to the Mutual Trust Company, at Orange, New Jersey."

Deponent further says that as one of the officers of the said Mutual Trust Company he never had any communication with the said Irving and never made any promises to him, although deponent has been President of said Mutual Trust Company since June, Nineteen Hundred and Five. 10

CHARLES R. WILMOT.

Subscribed and sworn to }
before me this 13th day }
of September, 1910. } 20

THOMAS S. BYRNE,
Notary Public.

**Order to Show Cause for Injunction
Dismissed.**

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IN CHANCERY OF NEW JERSEY.

10	Between JOHN S. IRVING, Complainant, and MUTUAL TRUST COMPANY, a corporation, and JOHN W. CROOKS, Defendants.	}	On Bill, &c.
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Order Granting Leave to File Supplemental Bill.

20 Due notice of this application having been given to Messrs. Howe & Davis, of counsel for the defendant, the Mutual Trust Company, and a copy of said supplemental bill having been served upon them, and the Court having inspected said supplemental bill and being of the opinion that the same should be filed :

30 It is, thereupon, on this fourteenth day of November, nineteen hundred and eleven, on motion of Samuel Koestler, of counsel with the complainant, ORDERED that said complainant have leave to file said supplemental bill.

Filed November 15, 1911.

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Supplemental Bill.

IN CHANCERY OF NEW JERSEY.

TO HIS HONOR, MAHLON PITNEY,

CHANCELLOR OF THE STATE OF NEW JERSEY :

Humbly complaining shows unto your Honor
your orator, John S. Irving, of the Town of West- 10
field, in the County of Union and State of New
Jersey; that on or about the twenty-third day of
August, nineteen hundred and ten, your orator ex-
hibited his original bill of complaint in this Honor-
able Court against the Mutual Trust Company, a
Corporation of the State of New Jersey, and John
W. Crooks, as defendants, thereby stating that said
John W. Crooks was the owner of fifty (50) shares
of the capital stock of the Westfield Land and Im- 20
provement Company, that on the twenty-fifth day of
May, nineteen hundred and eight, your orator did
endorse a certain promissory note for the accom-
modation of said John W. Crooks, made by said Crooks
for the sum of eighteen hundred dollars (\$1,800),
payable in four months, which note was discounted
for said Crooks by the Mutual Trust Company, a
corporation of the State of New Jersey; and that
said Mutual Trust Company did also hold and pos-
sess certain other promissory notes and negotiable 30
instruments made by or endorsed by said John W.
Crooks, and discounted to the credit of said Crooks
by the Mutual Trust Company.

That the Mutual Trust Company ascertaining
that Crooks became financially involved obtained
from him (the said John W. Crooks) by way of
collateral security the aforesaid mentioned fifty
(50) shares of stock, which said Crooks held of the
Westfield Land and Improvement Company, and
also alleging that at the time of the transfer of said 40

Supplemental Bill

stock it was agreed between said Crooks and said Mutual Trust Company that said Company would take over said fifty (50) shares of stock, dispose of the same and out of the proceeds pay to itself the amounts due and owing upon the said promissory notes signed or endorsed by said John W. Crooks, including the promissory note then of Seventeen hundred dollars, endorsed by your orator, and then held by the Mutual Trust Company and discounted by it for said John W. Crooks; and that it was upon said agreement and understanding that said Crooks, in writing authorized and directed said Westfield Land and Improvement Company to transfer upon its books the said fifty (50) shares of stock, and that said shares of stock were transferred on the books of said Westfield Land and Improvement Company on or about the twelfth day of November, nineteen hundred and eight to the Mutual Trust Company.

That at the time of the said transfer of said stock upon the books of said Westfield Land and Improvement Company the Mutual Trust Company, by its officers and agents, did inform your orator of the agreement under and by virtue of which the said stock was so transferred, and did also state that it would sell said shares of stock, and out of the proceeds thereof pay the promissory note so as aforesaid endorsed by your orator for Crooks, and discounted to the credit of said Crooks by the Mutual Trust Company, and that your orator at that time offered to pay for said stock the sum of ten thousand dollars (\$10,000), which was more than sufficient to pay all of the promissory notes then held by the Mutual Trust Company, and which were chargeable against said fifty (50) shares of stock.

That after said promissory note, so endorsed by

Supplemental Bill

your orator, became due and payable, after the transfer of said fifty (50) shares of stock to the Mutual Trust Company, said Crooks brought to your orator a renewal promissory note, dated November 30th, 1908, payable two months after its date, for the sum of seventeen hundred dollars (\$1,700); that your orator got into conversation with the officers of the Mutual Trust Company, and at their request your orator did endorse said promissory note, and send it to said Mutual Trust Company at Orange, N. J.; that when said note became due it was not paid by said Crooks, and was protested for non-payment, and that your orator always believed that the Mutual Trust Company would pay said note out of the proceeds derived from the sale of said fifty (50) shares of stock of the Westfield Land and Improvement Company transferred to the Mutual Trust Company by said John W. Crooks as aforesaid; but that on the fourteenth day of July, nineteen hundred and ten, your orator was served with a summons and declaration, issued out of the New Jersey Supreme Court, at the suit of said Mutual Trust Company, in and by which your orator was sued on his endorsement of the aforesaid promissory note, for the amount of seventeen hundred dollars (\$1,700), together with interest and protest fees thereon; that your orator's defenses to said suit were equitable, that he had relied upon the statements made to him by the officers of the said Mutual Trust Company as to the terms and agreements upon which said fifty (50) shares of stock had been assigned to the Mutual Trust Company, and by reason of placing such reliance upon the statements made to him by the officers of said Mutual Trust Company, he did not take any further or other proceedings which at that time he might have taken against said Crooks, to protect

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Supplemental Bill

himself against his endorsement on said promissory note of seventeen hundred dollars (\$1,700.)

That said Westfield Land and Improvement Company, after said fifty (50) shares of stock had been assigned to the Mutual Trust Company, declared dividends and paid the same to the Mutual Trust
10 Company, that said dividends amounted to between four and five thousand dollars, and that the Mutual Trust Company should account for the same, and that the value of said stock is more than sufficient to pay the moneys due to the Mutual Trust Company, and for which said stock was transferred to it, including the note of your orator.

That your orator has no knowledge of the exact amount due and owing to the Mutual Trust Company upon the promissory notes and negotiable
20 papers of said John W. Crooks, held by it, nor of the dates when said promissory notes or negotiable paper were made, nor whether the same are endorsed by persons who are financially responsible; that although your orator has offered to pay the Mutual Trust Company, for said fifty (50) shares of stock, and the surrender of his promissory note, the sum of ten thousand dollars (\$10,000), said Company has refused to do so, or surrender the
30 promissory note, but insists upon the liability of your orator as endorser on said note, and has commenced suit thereon as aforesaid.

That said bill prays for discovery as to the promissory notes and negotiable instruments made by Crooks, or endorsed by him, held by the Mutual Trust Company at the time of the transfer of said
40 fifty (50) shares of stock, the dates and the amounts thereof, when the same became due and payable, the names of persons liable thereon, also what promissory notes or negotiable paper made by said Crooks, or endorsed by him, said Mutual

Supplemental Bill

Trust Company received or discounted subsequent to the assignment of said stock to it, and whether the notes and negotiable paper received by said Mutual Trust Company subsequent to the assignment and transfer of said stock are, or are not renewals of promissory notes signed or endorsed by said Crooks, and held by the Mutual Trust Company prior to the time of the assignment, of said fifty (50) shares of stock, and that said Company may also set forth and discover the terms, covenants, agreements and understanding entered into by it and the said John W. Crooks, and the consideration for and upon which said fifty (50) shares of stock of the Westfield Land and Improvement Company were transferred to it (the Mutual Trust Company) by said John W. Crooks, and also that an accounting may be taken of the moneys due and owing to the Mutual Trust Company from the said Crooks, upon promissory notes and negotiable paper held by said Mutual Trust Company at the time of the assignment and transfer of said fifty (50) shares of stock, to-wit, on the twelfth day of November, nineteen hundred and eight, and also of the moneys due to it upon promissory notes and negotiable paper of the said John W. Crooks, received by said Mutual Trust Company subsequent thereto, and also the moneys received by the Mutual Trust Company for and on account of the shares of stock, so transferred to it by said Crooks, and that an accounting might be taken of the value of said stock, and that the assets now in the hands of the Mutual Trust Company for and on account of the indebtedness to it of the said John W. Crooks might be marshalled, or that your orator might be subrogated to the rights of the said Mutual Trust Company in and to said stock, and for a restraint of the action brought by the Mutual Trust Com-

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Supplemental Bill

pany in the New Jersey Supreme Court against your orator upon said promissory note of seventeen hundred dollars (\$1700), and for the surrender and cancellation of said note, or that your orator's name might be stricken therefrom, and for other and further relief, and praying for process of this Court and an injunction; that subpoena for the appearance of the defendants was duly issued and served upon the defendant, Mutual Trust Company, and as the defendant, John W. Crooks, was non resident, he was brought into Court by publication; that neither of said defendants have filed an answer to said bill of complaint up to the present time.

That upon the filing of said bill of complaint an order was made that the Mutual Trust Company show cause why an injunction should not issue as prayed in said bill of complaint, and that in response thereto the said Mutual Trust Company appeared in Court, by its counsel, and presented affidavits setting forth that said fifty (50) shares of stock of said Westfield Land and Improvement Company were pledged with it as collateral security under a note of August 30th, 1905, of which the following is a true copy.

“\$4,900.00. Orange, N. J., Aug. 30, 1905.
On Demand after date, for value received I promise to pay to Mutual Trust Company, or order, at its banking house, with interest at the rate of 5% per annum, Forty-nine hundred 00/..... Dollars, the undersigned having deposited with said Trust Company as collateral security for payment of this or any other liability or liabilities of the undersigned, direct or contingent, individual or firm, to said Trust

Supplemental Bill

Company now existing, or which hereafter may be contracted, the following property, viz:

50 Shares Westfield Land and Improvement Co., with full power and authority to said Trust Company, or its President, or Treasurer, to sell, assign and deliver the whole, or any part thereof, or any substitutes therefor, or any additions thereto, at any additions thereto, at any Broker's Board, or at any public or private sale, at the option of said Trust Company, or its President, or Treasurer, or its or their or either of their assigns, on the non-performance of this promise, or the non-payment at maturity of any of the other liabilities aforesaid, or at any time or times thereafter, without demand of payment, advertisement, or notice of sale, which are hereby expressly waived; and after deducting all costs and expenses for collection, sale and delivery, to apply the residue of the proceeds of such sale, or sales, to pay any or all of said liabilities to said Trust Company, or its assigns, as its President or Treasurer, or assigns, shall deem proper, returning the over-plus to the undersigned; and upon any sale at public auction or at Broker's Board the holder hereof may purchase the whole or any part of such securities, discharged from any right of redemption. And the undersigned agrees to be and remain liable to the holder hereof for any deficiency, and to pay the same upon demand of the holder hereof.

In case of depreciation, according to the judgment of the holder hereof in the market

Supplemental Bill

10 value of the security hereby pledged, or
which may hereafter be pledged for this loan
the undersigned agrees to make a payment
on account, so that the market value shall
always be at least twenty per cent more than
the amount unpaid of this note, or else to
20 make such further additional deposits of se-
curities as may be necessary to maintain
such margin, adopting either course that the
holder hereof may require. In case of failure
to do so, or in the event of insolvency of the
undersigned or of any endorser or guarantor
of this Note, this Note shall be due and pay-
able forthwith at the option of the holder
hereof, anything hereinbefore expressed to
the contrary notwithstanding, and the holder
30 may immediately reimburse himself by sale
of the security as hereinbefore provided, also
holding and applying the balance of any de-
posit account of the undersigned with said
Trust Company. In case of the substitution
of any other securities for those above men-
tioned, or of any additions to the collaterals
at any time securing this note, the provisions
hereof shall apply to all such substituted
new or additional collaterals.

30 In case of default by the undersigned and
the payment of this Note by any guarantor
or endorser, the said Trust Company is here-
by expressly authorized, if it so elect, to sur-
render to the person making such payment,
any or all collaterals held for the payment
hereof.

J. W. Crooks."

40 And further claiming certain sums of money due
and owing to it upon other notes; and that upon the

Supplemental Bill

hearing of said rule to show cause, upon bill and affidavits, the order to show cause was dismissed and an order to that effect entered on the thirteenth day of December, nineteen hundred and ten.

Your orator further shows that by way of supplement, since the filing of his original bill and the appearance on the rule to show cause of the Mutual Trust Company, he has paid to the Mutual Trust Company in settlement of the promissory note mentioned in the bill of complaint, made by said John W. Crooks and endorsed by your orator for the accommodation of said Crooks and discounted by said Crooks at the Mutual Trust Company and costs of suit as aforesaid, the sum of Nineteen hundred and forty dollars and fifty-four cents (\$1,940.54); on the nineteenth day of January, nineteen hundred and eleven, but that notwithstanding said payment of said note the same has not been surrendered to him, nor is said Mutual Trust Company willing to subrogate your orator to its rights against said fifty (50) shares of stock of the Westfield Land and Improvement Company, unless your orator is willing to pay, to said Mutual Trust Company, a wrongful and unlawful charge against said fifty (50) shares of stock of the large sum of fifty-two hundred and forty-seven dollars and fifty cents (\$5247.50) upon a promissory note alleged to be held by said Mutual Trust Company, and acquired by said Company on the eighteenth day of December, nineteen hundred and eight, subsequent to the time when your orator's liability as endorser upon the note of said Crooks became chargeable against said fifty (50) shares of stock; and that on the twentieth day of January, nineteen hundred and eleven, your orator caused to be served upon Messrs. Howe and Davis, the legal representatives and solicitors of the Mutual Trust Company, a notice, in writing, setting up

Supplemental Bill

his claims against said fifty (50) shares of stock, and his willingness to pay to said Mutual Trust Company the sums of money for which it is legally entitled to hold said stock as collateral security, and demanding to know the amounts realized on account of the indebtedness due to it by said
10 Crooks, and particularly the circumstances and conditions relating to the acquirement by said Mutual Trust Company of the note of said Crooks of Fifty-two hundred and forty-seven dollars and fifty cents (\$5247.50), which was acquired on December 18th, 1908, and upon obtaining said information your orator would be ready and willing to pay the sums of money to which said Mutual Trust Company was lawfully entitled to hold said stock as collateral security (a copy of which notice is hereto
20 annexed and made a part hereof); to which said notice the said Mutual Trust Company has directed a reply to Mr. Paul Q. Oliver, the solicitor of your orator, in and by which reply the Mutual Trust Company has claimed to have acquired the note of December 18th, 1908, for the sum of Fifty-two hundred and forty-seven dollars and fifty cents (\$5247.50) in the ordinary course of business, and claims the balance due on said note with interest as part of the money due and owing to it, the said
30 Mutual Trust Company, and for which it, the said Mutual Trust Company, is entitled to charge the said fifty (50) shares of stock of the Westfield Land and Improvement Company, assigned to it by the said John W. Crooks, or the proceeds which have since been realized from said stock; which claim of the Mutual Trust Company your orator insists is not equitable, and that his rights against said stock, or the proceeds thereof, by reason of being an endorser on the aforementioned Seventeen hundred
40 dollar note, is prior in equity to the claim of the

Supplemental Bill

Mutual Trust Company under the Fifty-two hundred and forty-seven dollar and fifty cent note acquired by it on December 18th, 1908, as against said stock or the proceeds thereof, and your orator further claims that said note of Fifty-two hundred and forty-seven dollars and fifty cents (\$5247.50) was not acquired by the defendant, the Mutual Trust Company in the ordinary course of business, but was acquired by reason of a secret and fraudulent combination and agreement between the defendant, the Mutual Trust Company, and the Federal Trust Company, which was the owner of said note, for the purpose of preventing the Federal Trust Company from losing the entire money represented by said note as it was well known by the Federal Trust Company and the defendant, the Mutual Trust Company, on and before the eighteenth day of December, nineteen hundred and eight, that John W. Crooks was insolvent, and that the only assets which he, the said John W. Crooks, then possessed were the said fifty (50) shares of stock of the Westfield Land and Improvement Company, which had been assigned to the Mutual Trust Company as hereinbefore alleged, and the value of which was not sufficient to pay all of the obligations then owing by said John W. Crooks.

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20

30

And your orator further shows that since the time of the filing of his original bill of complaint, and all of the proceedings had thereunder, the Westfield Land and Improvement Company has gone into liquidation, and paid out the stockholders, and that on the first day of August, nineteen hundred and eleven, said Westfield Land and Improvement Company has made final payment to the Mutual Trust Company on account of the fifty (50) shares of stock held by it as aforesaid, and has taken up said stock; that your orator is informed, and

40

Supplemental Bill

believes it to be true, that in all the Mutual Trust Company has received from the Westfield Land and Improvement Company, as the value of said fifty (50) shares of stock, the sum of Thirteen thousand, six hundred and ninety-seven dollars and thirty-eight cents (\$13,697.38), upon the dates and in the amounts following:—

10

	Jan. 7, 1909, by check.....	\$ 300.00
	Jan. 19, 1909, by check.....	450.00
	Aug. 2, 1909, by check.....	1,000.00
	Nov. 5, 1909, by check.....	500.00
	Feb. 3, 1910, by check.....	1,350.00
	June 6, 1910, by check.....	300.00
	Aug. 3, 1910, by check.....	1,100.00
	Jan. 18, 1911, by check.....	900.00
20	Aug. 1, 1911, by check.....	7,797.38
		<hr/>
		\$13,697.38

30

Your orator further shows that said sums of money so received by the Mutual Trust Company, from the Westfield Land and Improvement Company, in settlement of the liquidation of said fifty (50) shares of stock is more than sufficient to have paid all of the obligations of said Crooks, held by the Mutual Trust Company, which said Company were at any time entitled to charge as against said fifty (50) shares of stock, which it held as collateral security under and by virtue of the agreement hereinbefore set forth, and that the rights of your orator as endorser upon the note of said Crooks, discounted for him by the Mutual Trust Company, as herein and in the original bill of complaint mentioned, are prior in equity to the rights, if any, which said Mutual Trust Company has against said fifty (50) shares of stock, or the pro-

40

Supplemental Bill

ceeds thereof under and by virtue of the note of fifty-two hundred and forty-seven dollars and fifty cents (\$5,247.50) acquired by said Mutual Trust Company on December 18th, 1908; and that said Mutual Trust Company is not entitled in equity and good conscience to charge as against the collateral security which it held the said note of fifty-two hundred and forty-seven dollars and fifty cents (\$5,247.50), or any part thereof, until it shall have returned to and re-imbursed your orator for the moneys which said Mutual Trust Company has forced your orator to pay to it by virtue of the suit instituted by the Mutual Trust Company, against your orator, in the New Jersey Supreme Court, upon the note your orator endorsed for said Crooks as hereinbefore set forth. 10

And your orator further shows that he is informed, and believes it to be true, that the note of fifty-two hundred and forty-seven dollars and fifty cents (\$5,247.50) was made by John W. Crooks to the Federal Trust Company, a corporation doing business in the City of Newark, N. J., in settlement of an indebtedness due from said Crooks to said Federal Trust Company; that said Federal Trust Company and the defendant, the Mutual Trust Company, are closely affiliated in their business relations, and also in the fact that many of the persons interested in the one company are also interested in the other; that said note of fifty-two hundred and forty-seven dollars and fifty cents (\$5,247.50) was held by the Federal Trust Company without any security whatsoever, and the Federal Trust Company and the defendant, the Mutual Trust Company, combined, conspired and agreed together that said note should be turned over and assigned to the Mutual Trust Company, so that it might be charged against the collateral security 20 30 40

Supplemental Bill

then held by the Mutual Trust Company, to wit, the fifty (50) shares of stock of the Westfield Land and Improvement Company, which had been assigned and transferred to the Mutual Trust Company, by John W. Crooks, as collateral security as aforesaid; and that said note of fifty-two hundred and forty-seven dollars and fifty cents (\$5,247.50),
10 now held by the Mutual Trust Company, is not a bona fide indebtedness of said Crooks to it, the said Mutual Trust Company, and is not in equity chargeable against the said fifty (50) shares of stock of the Westfield Land and Improvement Company, or the proceeds which have been derived therefrom prior to the rights against the same of your orator by virtue of his endorsement of the aforementioned seventeen hundred dollar (\$1,700) note, which said
20 Crooks discounted with the Mutual Trust Company as aforesaid.

To the end, therefore, that the said defendants may, if they can show why your orator should not have the relief hereby prayed, and may, but without oath, answer the premises as fully as if the same were here again repeated, and they particularly interrogated thereto, and that your orator may have the same relief against the said Mutual Trust Company as he might have had if the facts
30 hereinabove stated and charged by way of supplement had been set forth in your orator's original bill, and that your orator's claim against said fifty (50) shares of stock of the Westfield Land and Improvement Company, pledged as aforesaid by said Crooks with the Mutual Trust Company, or the proceeds thereof, may be adjudged by this Honorable Court to be prior to the rights and claims against the same by the Mutual Trust Company under and by virtue of the alleged promissory note
40 of fifty-two hundred and forty-seven dollars and

Supplemental Bill

fifty cents (\$5,247.50) acquired by said Company on December 18, 1908, and that the action of said Company in compelling your orator, by suit, to pay the note of Seventeen hundred dollars (\$1700) as hereinbefore stated, may be declared to be inequitable and unjust, and that he may be repaid the same by said Mutual Trust Company out of the moneys received by said Mutual Trust Company on account of said fifty (50) shares of stock aforesaid; and that your orator may have such other or further relief in the premises as the circumstances in the case may require, and as to your Honor shall seem meet. 10

May it please your Honor the premises considered to grant unto your Honor the state's writ of subpoena issuing out of and under the seal of this Honorable Court, to be directed to the said Mutual Trust Company, a corporation, and John W. Crooks therein and thereby commanding them, and each of them, on a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor, in this Honorable Court, then and there to answer the premises, and to stand to, abide by and perform such decree therein, as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience. 20 30

And your orator, as in duty bound, will ever pray, etc.

P. J. OLIVER,
Solicitor for and of Counsel
with Complainant.

Supplemental Bill

To the Mutual Trust Company:

Gentlemen :

10 Herewith I am sending you check in payment of my liability to you as endorsed on a promissory note signed by John W. Crooks, and I beg to advise you that by reason of making this payment I claim to have some interest in and to fifty shares of stock of the Westfield Land and Improvement Company assigned to you by John W. Crooks as collateral security for various notes made by John W. Crooks, and discounted at your bank, including the note which I am paying.

20 Therefore, you are notified that you should not transfer or dispose of said shares of stock as I intend to redeem the same upon equitable principles, and if we cannot agree upon the matter I will apply to the Court of Chancery to be subrogated to your rights in and to said fifty shares of stock, and for that purpose I am now ready and willing to pay to you the sums of money for which you are legally entitled to hold said shares of stock as collateral security; and I, therefore, demand to know for what sums of money you claim to hold said shares of stock of the Westfield Land and Improvement Company as collateral security, 30 what amounts of money you have realized on the original indebtedness of said Crooks to you; the various considerations given by you for the promissory notes, and other evidence of indebtedness now in your possession, and particularly the circumstances and considerations in relation to certain negotiable paper signed by John W. Crooks for the sum of Fifty-two hundred and forty-seven dollars and fifty cents (\$5247.50), and acquired 40 by you on the eighteenth day of December, nineteen hundred and eight.

Filed April 3, 1912.

45

Answer of Mutual Trust Company

Upon obtaining this information I am ready and willing to pay the sums of money for which you are lawfully entitled to hold said fifty shares of stock of the Westfield Land and Improvement Company, as collateral security.

Awaiting your early reply, I am,

Yours truly,

10

J. S. IRVING,
By Paul Q. Oliver,
Attorney.

Westfield, N. J.,
January 19, 1911.

Answer of Mutual Trust Company.

20

IN CHANCERY OF NEW JERSEY.

Between

JOHN S. IRVING,
Complainant,
and

MUTUAL TRUST COMPANY,
a corporation, *et al.*,
Defendants.

On Bill, etc.

30

The answer of the defendant, Mutual Trust Company, to the bill of complaint of the complainant, or so much thereof as this defendant is advised is necessary to make answer thereto, respectfully shows that it is true that John W. Crooks on August thirtieth, Nineteen hundred and five, executed a promissory note for Forty-nine hundred dollars, in the form commonly known as a collat-

40

Answer of Mutual Trust Company

eral note to this defendant, and pledged with this defendant fifty shares of stock of the Westfield Land and Improvement Company, the same being pledged with this defendant as collateral security for the payment of the said Forty-nine hundred dollar note, or other liability or liabilities that the

10 said John W. Crooks direct or contingent, individual or firm, to this defendant then existing, or which might thereafter be contracted, and that this defendant continued to hold the said shares of stock from that date down to the time when the said shares of stock were finally paid off in Nineteen hundred and eleven.

This defendant further answering shows that the indebtedness of the said John W. Crooks to this defendant, and for which the said shares of stock

20 were pledged were the following:

Date	Amount	Maker	Endorser	Time
Nov. 30, 1908	\$1,700.00	J. W. Crooks	John S. Irving	2 months
Sept. 3, 1908	\$1,700.00	J. W. Crooks	Est. T. W. Crooks	2 months
Sept. 3, 1908	\$2,800.00	Harry W. Crooks	J. W. Crooks, Guarantor	
July 1, 1905	\$4,900.00	J. W. Crooks		Demand
Nov. 12, 1908	\$5,247.50	J. W. Crooks		Demand

This defendant further answering shows that the

30 history of the said Seventeen hundred dollar note, referred to in the bill of complaint, is that the original note, together with the first renewal, were made by the said John S. Irving and endorsed by the said John W. Crooks, and that the three last renewals were made by the said John W. Crooks and endorsed by the said John S. Irving, and that as the paper first came to the said Mutual Trust Company, the said Irving was primarily liable thereon as maker, and the said Crooks secondarily

40 as endorser, as per the following statement:

Answer of Mutual Trust Company

Maker	Endorser	Amount	Date	Time
John S. Irving	J. W. Crooks	\$2,000.00	Sept. 23, 1907	4 months
John S. Irving	J. W. Crooks	\$1,900.00	Jan. 25, 1908	4 months
J. W. Crooks	John S. Irving	\$1,800.00	May 28, 1908	4 months
J. W. Crooks	John S. Irving	\$1,700.00	Sept. 28, 1908	2 months
J. W. Crooks	John S. Irving	\$1,700.00	Nov. 30, 1908	2 months

This defendant further answering shows that the total amount of the indebtedness of the said Crooks to this defendant together with the interest thereon, was the sum of Fifteen thousand and seventy-five dollars and fifty-eight cents, and that the amount realized from the said stock and of the dividends paid thereon was the sum of Thirteen thousand seven hundred and thirty-seven dollars and thirty-eight cents leaving a deficiency due to this defendant upon the Crooks indebtedness of the sum of Thirteen hundred and thirty-eight dollars and twenty cents. 10
20

This defendant further answering denies that the complainant ever offered to pay this defendant for the said stock, the sum of Ten thousand dollars, or any other sum, or ever tendered to this defendant the sum of Ten thousand dollars, or any other sum, to take up the said shares of stock; this defendant denies that either it or any of its officers requested the complainant to make or endorse a note for the said Crooks, or ever made any promises to the said complainant that the note which was made or endorsed by him would be paid out of the proceeds of the said shares of stock, or that this defendant would hold the said shares of stock for the benefit of the complainant, and this defendant denies that the value of the said stock was more than sufficient to pay this defendant the moneys due it on the indebtedness of the said Crooks, but alleges it to be as above stated, that after applying the proceeds of the shares of stock 30
40

Answer of Mutual Trust Company

to the said Crooks' indebtedness a large deficiency still existed, to wit, the sum of Thirteen hundred and thirty-eight dollars and twenty cents.

10 This defendant further answering admits that the complainant has paid the sum of Nineteen hundred and forty dollars and fifty-four cents, as the amount due upon the said Seventeen hundred dol-
lar note with interest and costs, and with said pay-
ment has served upon this defendant a notice as
set out in the bill of complaint, but this defend-
ant denies that the said complainant is entitled to
any benefit under the said shares of stock until and
unless all of the indebtedness held by this defend-
ant has been fully paid.

20 And this defendant further answering denies that neither as to the note of Fifty-two hundred and forty-seven dollars and fifty cents nor any other note or evidence of indebtedness, was there any corrupt or illegal or inequitable agreement or bargain, either as set out in the bill of complaint or in any other way, and that all of the said notes and evidences of indebtedness of the said Crooks were acquired by this defendant in the ordinary course of its business, and that the payment to this defendant of all of the moneys received either
30 from the said shares of stock or from the said complainant did not fully pay the amount of the indebtedness with interest so due to this defendant, and for which the said shares of stock were held as collateral, but on the contrary left a deficiency of Thirteen hundred and thirty-eight dollars and twenty cents, as above stated, and this defendant prays that it may be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

40 And this defendant submits to this Honorable Court, that the said complainant is not entitled to

Filed March 27, 1912.

*Answer of Federal Trust Company to Supplemental
Bill*

any relief in this court; and this defendant prays
it may have the same benefit of this defense as if
it had demurred to the said complainant's bill.

HOWE & DAVIS,
Solicitors for and of Counsel with
Defendant, Mutual Trust Com- 10
pany.

**Answer of Federal Trust Company to
Supplemental Bill.**

IN CHANCERY OF NEW JERSEY.

Between

JOHN S. IRVING,
Complainant,
and
MUTUAL TRUST COMPANY,
et al.,
Defendants.

20

On Bill, etc.

THE ANSWER OF FEDERAL TRUST COM-
PANY, DEFENDANT, TO THE SUPPLE- 30
MENTAL BILL OF JOHN S. IRVING, COM-
PLAINANT, FILED IN THE ABOVE EN-
TITLED CAUSE.

This defendant answering says:

1. This defendant has no information except
from said supplemental bill of complaint, as to the
filing of the original bill and the contents thereof,
and leaves the complainant to make such proof
thereof as it may be advised is necessary. 40

*Answer of Federal Trust Company to Supplemental
Bill*

2. This defendant believes it to be true that the said complainant has paid to the Mutual Trust Company the amount of nineteen hundred forty dollars and fifty-four cents (\$1940.54), on or about the nineteenth day of January, nineteen hundred
10 and eleven, as stated in said supplemental bill of complaint and also believes it to be true that the said Mutual Trust Company has declined to surrender the fifty shares of stock of the Westfield Land and Improvement Company in said bill referred to, to said complainant, claiming to hold the same as security for the payment of the indebtedness in said supplemental bill referred to; this defendant further believes it to be true that the said complainant served notice setting up his alleged
20 claim against said fifty shares of stock as in said supplemental bill mentioned, and that reply has been made by said Mutual Trust Company as therein stated; but this defendant calls upon the said complainant to make such proof of these several allegations as it may be advised is necessary.

3. This defendant says that it is true that the said Mutual Trust Company acquired the note in said supplemental bill referred to for five thousand two hundred forty-seven dollars and fifty cents
30 (\$5,247.50), from this defendant in ordinary course of business, and while this defendant has no interest in the controversy between said complainant and said Mutual Trust Company as to the right to resort to the said fifty shares of stock of the Westfield Land and Improvement Company transferred to it by the said John W. Crooks in satisfaction of said note for five thousand two hundred forty-seven dollars and fifty cents (\$5,247.50), so as aforesaid acquired by said Mutual Trust Company from this
40 defendant, this defendant believes it to be true that

*Answer of Federal Trust Company to Supplemental
Bill*

the said Mutual Trust Company had the right to apply the proceeds of the sale of said collateral to the satisfaction of said note, and that the rights of the said complainant by reason of being an endorser on the note for seventeen hundred dollars (\$1700), in said supplemental bill mentioned, whatever such right may be, is not prior in equity to the right of the said Mutual Trust Company as claimed and exercised by that Company; and this defendant denies the allegation of said complainant in said bill of complaint that the said note of five thousand two hundred forty-seven dollars and fifty cents (\$5,247.50), was not acquired by the Mutual Trust Company in the ordinary course of business, and further denies that said note was acquired by said Mutual Trust Company from this defendant by reason of any secret and fraudulent combination and agreement between this defendant and said Mutual Trust Company for the purpose of preventing this defendant from losing the entire money represented by said note, and alleges the fact to be that said note was acquired by said Mutual Trust Company from this defendant in ordinary course of business in good faith and not by reason of any secret or fraudulent combination and agreement or for any improper or unlawful purpose.

4. This defendant further says that it believes it to be true that the Westfield Land and Improvement Company has gone into liquidation, as stated in said supplemental bill of complaint, and has made the payments to said Mutual Trust Company therein referred to, but this defendant leaves the complainant to make such proof thereof as he may be advised is necessary; this defendant answering says that whatever payments have been made by reason of such liquidation of said Westfield Land

*Answer of Federal Trust Company to Supplemental
Bill*

and Improvement Company to said Mutual Trust Company were, so far as this defendant knows, lawfully and properly made, without prejudice to, or violation of, any right or equity of the said complainant, but that whether this be so or not, this
10 defendant is in no way involved in the relations between the said complainant and the said Mutual Trust Company, or in any way answerable to said complainant by reason of any transaction between this defendant and the said Mutual Trust Company as alleged in said supplemental bill of complaint or otherwise.

5. And this defendant further answering says that this defendant, on or about the eighteenth day of November, nineteen hundred and eight, sold and
20 transferred in usual course of business, a demand note of John W. Crooks held by this defendant, representing an indebtedness of said Crooks to this defendant; this defendant admits that there are persons interested in this defendant and also in the Mutual Trust Company, but denies that there is thereby created any identity of the two corporations, and shows the truth to be that this defendant conducts its own business and the Mutual Trust Company conducts its own business, and that the
30 affiliations of the two corporations in their business relations grow out of contracts and transactions lawfully made and conducted and entirely independent of, and without reference to, the ownership of the stock in either; this defendant admits that this defendant had no security for the said demand note of five thousand two hundred forty-seven dollars and fifty cents (\$5,247.50), representing an indebtedness of said John W. Crooks to this defendant for that amount, but this defendant denies
40 that it sold and transferred said note to said

*Answer of Federal Trust Company to Supplemental
Bill*

Mutual Trust Company by reason of any combination or conspiracy between said Mutual Trust Company and this defendant, or for any unlawful or improper purpose, or other than in the usual course of business, and alleges the truth to be that said transaction by which this defendant sold and transferred the said note to the said Mutual Trust Company was in all respects a bona fide sale and transfer of said note by this defendant to said Mutual Trust Company by which this defendant received from the said Mutual Trust Company the amount of said note and thereafter ceased to have any interest therein, the said note thereupon becoming the property of the said Mutual Trust Company absolutely and in good faith and without any reservations or understandings, secret or otherwise, by which this defendant retained any interest therein, or by which this defendant is in any way charged with any subsequent acts of the said Mutual Trust Company in the collection thereof; and this defendant again repeats that it has no interest in the controversy between the said complainant and the said Mutual Trust Company as to the payment of the said note out of the proceeds of the shares of stocks of the said Westfield Land and Improvement Company in said supplemental bill referred to, and expressly denies that by reason of any act of this defendant or in which this defendant participated, the rights of the said complainant against the said Mutual Trust Company have in any way been changed or affected. 10
20
30

This defendant prays that it may be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

PITNEY, HARDEN & SKINNER,
Solrs., &c. 40

IN CHANCERY OF NEW JERSEY.

10	Between JOHN S. IRVING, Complainant, and MUTUAL TRUST COMPANY, a corporation, <i>et al.</i> , Defendants.
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Transcript of testimony taken in the above entitled cause before J. FRANKLIN FORT, Esquire, Advisory Master, at the Chancery Chambers, Newark, New Jersey, on May 23, 1913, at 10 A. M.

20 Appearances:

Mr. Samuel Koestler and Mr. Paul Q. Oliver for Complainant.

Mr. Thomas A. Davis for defendant Mutual Trust Company.

Mr. John R. Hardin for defendant Federal Trust Company.

30 THOMAS S. BYRNE, sworn for complainant.

Direct examination by Mr. Koestler:

Q. Are you employed by the Mutual Trust Company?

A. Yes, sir.

Q. In what capacity?

A. Secretary and treasurer.

40 Q. How long have you been secretary and treasurer?

Thomas S. Byrne—Direct

A. Secretary and treasurer now since April, 1912.

Q. What office did you occupy with the bank before April, 1912?

A. Assistant treasurer.

Q. How long were you assistant treasurer?

A. I should say about four or five years; I cannot say offhand. 10

Q. You were assistant treasurer in November, 1908?

A. Yes, sir.

Q. Have you produced under subpoena the records of the bank?

A. Yes, sir.

Q. Have you an account in those records against John W. Crooks?

A. Yes, sir. 20

Q. Will you produce it?

A. This is the John W. Crooks account (Producing same).

Q. What is this paper you have?

A. This is from our own register.

Q. Taken from a loose leaf book?

A. Yes, sir.

Q. Is it numbered?

A. No, it is not numbered.

Q. Do you know in whose handwriting it is? 30

A. That is Mr. Hendershot's—at that time the teller—referring to the first column.

Q. With what does the account start?

A. September 27, 1907.

Q. And what is that?

A. It was originally a \$2,000 note of John S. Irving, maker, endorsed by John W. Crooks.

Q. Where does it show who was the endorser?

A. In writing it down here, it is always understood, when the account is in the man's name, it 40

Thomas S. Byrne—Direct

is John W. Crooks, we just write in the maker's name, and it is always understood on the account.

Q. That was credited to the account of John W. Crooks?

A. John W. Crooks.

10 Q. And it was either discounted by the Trust Company or purchased by the Trust Company from John W. Crooks?

A. Purchased by the Trust Company. We cannot discount; we purchase the notes.

Q. Crooks was given credit for the proceeds of the note?

A. Yes, sir.

Q. Can you tell me what happened to that note after that?

20 A. It was renewed again.

Mr. Hardin: What is the first date?

Witness: The first date on this book is September 27, 1907.

Q. What is the amount of the note? A. \$2,000.

Q. Was that note renewed when it came due?

A. Yes, that note was renewed; it was renewed January 31, 1908.

Q. Is that a renewal?

30 A. That is a renewal, \$1,900.

Q. It was reduced to \$1,900?

A. Yes.

Q. Was it renewed again?

A. Yes, renewed on May 29; this time John W. Crooks is maker and John S. Irving endorser.

Q. It was renewed on May 29, 1908, for what amount?

A. For \$1,800.

40 Q. And then Crooks is maker and Irving endorser?

Thomas S. Byrne—Direct

A. Yes, sir.

Mr. Hardin: The form of the note changed?

Witness: The form changed then, yes, sir.

Q. Was it renewed after that?

10

A. Yes, it was renewed on September 28, for \$1,700; John W. Crooks maker and J. S. Irving endorser.

Q. Was it renewed after that?

A. Yes, it was renewed on December 1, 1908, for \$1,700 again, for two months.

Q. Who was the maker?

A. John W. Crooks maker, J. S. Irving endorser.

Q. Were any of those notes protested?

A. This \$1,700 note was protested for non-payment. 20

Mr. Hardin: What do you mean?

Witness: The Irving note we are now speaking of, the last one.

Q. Were any of the prior notes in that series protested?

A. That I cannot answer, I cannot say.

Q. Did the Trust Company hold any other note of John W. Crooks? 30

A. Yes, sir, it held a note at one time of John W. Crooks, endorsed by the Estate of T. W. Crooks, \$3,000, October 12, 1907.

Q. Is that the original note?

A. Yes sir.

Q. And was that subsequently renewed?

A. That was nine times.

Then on November 16, 1907, we have another for \$3,000. 40

Thomas S. Byrne—Direct

Q. Same maker and endorser?

A. Yes, sir.

Q. When was it payable?

A. On November 27.

Q. What happened to that note on November 27?

A. Our records show on the 29th, 1907, that it
10 was paid, \$3,000.

Q. Was there another note to take the place of
it?

A. Yes, then on December 12, 1907, is one for
\$2,800.

Q. Same maker and endorser?

A. Same maker and endorser.

Q. And that note took the place of the \$3,000
note?

A. Yes, sir.

20 Q. Was it renewed again?

A. Yes, it was renewed. Then we had another
one on December 13, for \$2,600; same maker and
same endorser.

Q. That is also a renewal of the original \$3,000
note?

A. Those are two different notes; there were
originally two notes of \$3,000 each. This \$2,800
is the renewal of one \$3,000, with a reduction of
\$200, and the \$2,600, I take it is a renewal of this
30 \$2,800 with \$200 paid.

Q. What next happened?

A. Then on December 27, there is one for \$2,400,
the same maker and endorser.

Q. That is a renewal of the \$2,600, is it?

A. I presume that is what it is.

Q. When was that note payable?

A. Due on January 6, 1908.

Q. What was done with it?

A. Then on January 15, our records show \$2,400
40 was paid, leaving a balance of \$2,000.

Thomas S. Byrne—Direct

Q. On which note is that balance of \$2,000?

Court: These are not renewals if the notes were paid and a new note given. But you state that on December 27, 1907, you made a note for \$2,400 which was due January 6th, and on January 15th, the same month, that was paid, \$2,400. 10

Witness: Yes, sir, shows here as being paid. Then on the same date we have another note for \$2,200; I would take from that, that it is a renewal with a \$200 payment on account.

Q. As a matter of fact, the way you keep your records; when a note comes due, you actually purchase a renewal note for the face of it and credit that amount as being a payment of the old note, don't you? 20

Mr. Hardin: Objected to on the ground that it asks counsel's interpretation of the banking methods. What does he do?

Court: Yes.

Q. What is your practice in the purchasing of notes and renewal notes? 30

A. We regard a renewal just the same as the original note.

Q. What do you mean?

A. We purchase a note in the first place, it shows on our own register for the full amount of the note. Then again when the note comes due, if it is renewed, it shows the same way; it is recorded as a note purchased the second time.

Q. Your books show no distinction between original purchases and renewals, do they? 40

Thomas S. Byrne—Direct

A. No, sir.

Q. How can anybody from an examination of your books tell which is a renewal and which is a direct purchase?

10 Mr. Davis: I object. It is immaterial whether anyone can tell.

Court: It would be important.

A. The only way I can account for that, I regard them as renewals because they show reductions each time.

Q. Are these notes all new transactions or are they renewals?

A. They are really renewals.

20 Q. Tell us the transaction in regard to this note endorsed by the estate of T. W. Crooks, coming down to date as far as you can. You are now down to \$2,400.

A. Then on January 15, 1908, there is a \$2,200 note; on January 31 it shows that \$2,000 note paid; also January 31 shows it being paid again, and then on the same date, \$2,100 is put on; the note is put on for \$2,100. Then, again, the same date, for \$1,900, that is Irving's note, that is taken to the estate—the estate is taken to \$2,100 on January 30 31, 1908.

Q. What happened that time after that?

A. Then it was put on against February 28 for \$2,000, which shows a reduction of \$100.

Q. What is subsequently done?

A. Then on May first it was put on again for \$1,900.

Q. That was another reduction, was it?

40 A. Yes, a reduction of \$100. Then on July 3, 1908, it was \$1,800, and put on again on September 4, 1908, for \$1,700; that was the final of the estate.

Thomas S. Byrne—Direct

Q. Then all these payments reducing the note from \$3,000 down to \$1,700 were made by Crooks, were they not?

A. I think they were. I swore to that. But he was then active, it was very likely they were paid by him; but down to the \$1,700 I would say that they were paid by Crooks, because we were dealing with John W. Crooks. 10

Q. What happened to the note after September 4, 1908, when it was reduced to \$1,700?

A. It was then protested for non-payment.

Q. Did you hold any other notes on the Crooks' account?

A. That John S. Irving note.

Q. You told us about that. Any others?

A. Yes, sir, November 18, 1908, we have a demand note of John W. Crooks for \$5,247.50. 20

Court: That is one of the notes in controversy?

Mr. Koestler: That is the note.

Q. Whose writing is this?

A. That is a bookkeeper by the name of Eugene Batell, who is not now in our employ.

Court: What was the date of the protest on the \$1,700 note? 30

Mr. Davis: Protested November 4, 1908, the estate note. I would like to suggest that there are two other notes that might expedite things, before he takes up the notes in controversy.

Q. What is the \$4,900 note?

A. Demand collateral note secured by 50 shares of Westfield Land & Improvement Company, made by John W. Crooks. 40

Thomas S. Byrne—Direct

Q. When did you get it?

A. Entered on our books 1905, July first.

Q. What is the date of the note?

A. July 1, 1905, according to our books; I cannot tell the date of the note.

Q. Is the date you enter in your books the date
10 of the note or the date you take the note?

A. The day that it was made.

Q. Are there any payments credited to this
\$4,900 note?

A. Yes, sir.

Q. What is the first one?

A. \$4,900, which was on June 10, 1909.

Mr. Koestler: It seems that these pay-
ments on the \$4,900 are payments made by
20 virtue of the stock payments.

Mr. Davis: Yes.

Mr. Koestler: I don't care about that.

Witness: Those are the only payments
that were made on the \$4,900.

Q. From dividends received on the stock?

A. Yes, sir.

Q. And that \$4,900 note has been changed with-
out any change in renewal notes being given?

30 A. No renewals. It is a demand note.

Mr. Koestler: That is the note with which
the stock in question was pledged.

Q. You have a \$2,800 note?

A. Yes. Harry W. Crooks, secured by 130 shares
of the Publishers Security Company.

Q. What was the date of that note?

40 A. That was 1905, July first, the same date as
the other.

Thomas S. Byrne—Direct

Q. Were any payments made on account of that?

A. Yes, sir, payments made on account of that up to July 15, 1911, reducing it to \$1,540.

Q. Were those payments made by Crooks?

A. They were made by Harry Crooks, I know, those last few payments; the previous payments I cannot say. From April 20, 1911, I know they have been paid by Harry Crooks. 10

Q. How much were the payments made on the note from the date you last mentioned?

A. \$40 from April 26.

Q. You believe the other payments were made by John W. Crooks?

A. I cannot say as to that; it was Harry W. Crooks; he very likely paid them, I cannot say.

Q. The loan there is charged against Harry W. Crooks? 20

A. Yes.

Q. What did John Crooks have to do with it?

A. He guaranteed the loan; it says "Loan guaranteed by J. W. Crooks."

Mr. Koestler: You have that note?

Mr. Davis: I think it is here.

Q. On August 28, 1911, there was a balance of \$1,540 due on that note? 30

A. Yes, sir.

Q. Were any payments credited to that note after that date?

A. On August 28 it was cleared up and paid off.

Q. Who paid it?

A. That was paid from dividends; we got a dividend on August 28, as per our records, from the Westfield Land and Improvement Company of \$7,797.38, and there was \$201.80 applied on account of this \$1,540 note; that left it \$1,338.20 balance. 40

Thomas S. Byrne—Direct

Q. What was done with the \$1,338.20?

A. The loan then was turned over to the Federal Trust Company and we received their draft for it for \$1,338.20, and they took the loan with the collateral Harry W. Crooks.

10 Q. Did the Federal Trust Company pay you for the note?

A. Yes, sir, we received their draft for it.

Q. On what date was that?

A. August 28, 1911.

Q. Any other of the Crooks' notes turned over to the Federal Trust Company?

A. That is the only one.

Q. Turn to the \$5,000 note, Federal Trust Company note; your records show you got that note on November 18?

20 A. Yes, sir.

Q. Is there any other record in which you show when you got that note besides this book you are now producing?

A. We have a letter.

Mr. Koestler: Have you the letter, Judge Davis?

Mr. Davis: Yes. Those three papers belong together. (Producing papers.)

30

Q. When did you receive these papers?

A. They are dated November 12, 1908; we received them probably the next day; I cannot say as to that.

Q. When did you receive them; they are dated November 12?

A. The exact date when we received them, I cannot say; we have a note on our books as November 18th.

40

Q. Is that the date you received them?

Thomas S. Byrne—Direct

A. I cannot say as to that.

Q. I show you the note of \$5,247 which you produce, and ask you who endorsed the payments on this note?

A. \$75 payment, that was endorsed by our bookkeeper E. F. Batell.

Q. Do you know who made the payment? 10

A. I believe that came through the Federal Trust Company.

Q. Who made the subsequent payment of \$21.54?

A. That came through the same way.

Q. From whom did you get this note of \$5,247.50?

A. I believe it came from the Federal Trust Company; at that time I wasn't the treasurer; Mr. Phillips was the treasurer at that time.

Q. Where do you show credit given to the Federal Trust Company for this note? 20

A. This is the draft that we gave to the Federal Trust Company for the purchase of this note, draft No. 4858, dated November 18, 1908. (Producing draft.)

Q. Was that draft paid?

A. That draft was paid, yes, sir.

Q. What were the business relations then existing between the Mutual Trust Company and the Federal Trust Company?

A. The Federal Trust Company controlled the Mutual Trust Company. 30

Q. In what way?

A. By owning over fifty per cent of the stock.

Mr. Hardin: 51 per cent as a matter of fact.

Mr. Koestler: That is my information.

Q. Who was Mr. Garrison? 40

Thomas S. Byrne—Direct

A. He was the vice-president of the Federal Trust Company.

Q. Who had charge of the purchase of this note of \$5,247.50 from the Federal Trust Company?

A. Mr. Phillips was our treasurer then.

10 Mr. Davis: Do you want the minutes?

Q. He had charge of these matters?

A. Yes, he had charge of these matters.

Q. Was there a resolution to that effect?

20 Mr. Davis: It appears on the minutes of the executive committee under date of November 25, 1908, under the head of "Notes Purchased," "J. W. Crooks, \$5,247.50, demand new," signifying that it was a demand note, a new note?

Witness: Yes.

Q. Do you know anything of the relations between Crooks and the Federal Trust Company at the time of giving this note of November 12, 1908?

A. No, sir.

30 Q. You have received in all from the Westfield Land and Improvement Company how much money by reason of these fifty shares of stock?

A. \$13,697.38.

40 It is stipulated and agreed that the Irving note dated November 30, 1908, for \$1,700 was not paid when it became due on February 1, 1909, and was protested for non-payment. Suit was instituted on said note against the said complainant John S. Irving as endorser in the New Jersey Supreme Court, by summons dated on June 23, 1910;

Thomas S. Byrne—Cross

after that time an original bill was filed in this cause and after the dismissal of the rule to show cause why the suit should not be restrained, the note, costs and interest were paid by Mr. Irving's check dated January 19, 1911, for the sum of \$1,940.54, being amount of the \$1,700 note, interest and costs of suit. 10

Q. As a matter of fact, Mr. Byrne, the amount of money you received from the shares of stock of the Westfield Land and Improvement Company would have been more than sufficient to pay all the notes that the Mutual Trust Company held, if you excluded this note acquired from the Federal Trust Company?

A. Yes, sir. 20

Cross examination by Mr. Hardin:

Q. Just a word as to your methods of doing business. When you purchase a note, what sort of a record do you make of it?

A. Our old method was of drawing a draft—treasurer's check.

Q. What kind of a record do you make of it?

A. It is entered on our note register, and if you are the borrower, it is entered under your name on the note register, and that shows that you got the credit for it, and there is a record of it in the minutes of our executive committee. 30

Q. You found a record of the purchase, to illustrate, of this \$5,200 note?

A. \$5,247.50, that was a demand note new; it appears on our minutes of November 25, 1908, minutes of the executive committee of the Mutual Trust Company. 40

Thomas S. Byrne—Cross

Q. What record is it you make in your note register when you purchase a note?

A. It is always entered under the borrower's name, the man that gets credit for the note.

Q. What else do you put down?

A. Sometimes he gets credit for it on the ledger;
10 it may be that he would take a draft for it or treasurer's check for it; it is not always credited to a man's account; he may want to use the proceeds somewhere else.

Mr. Hardin: Did you offer this note sheet in evidence?

Mr. Koestler: I suppose it will be considered in evidence. I will formally offer it.

20 Mr. Davis: Don't you think you ought to offer everything in evidence, the papers and notes?

Mr. Koestler: I called for the production of the note, not all the papers.

I offer in evidence the records produced here in the nature of loose leaf book accounts.

30 Witness: There are four sheets from the note register and collateral note register, two of each.

Mr. Hardin: Three sheets are headed "J. W. Crooks" and one "Harry W. Crooks."

Mr. Koestler: I also offer in evidence the demand note November 12, 1908, for \$5,247.50, signed by J. W. Crooks, payable to the order of himself, which is endorsed "J. W. Crooks Paid 11/20/08 \$75; Paid 12/16/08 \$21.57; Paid 8/28/08, \$5,150.96."

40 (Register sheets marked Exhibit C 1.)

Thomas S. Byrne—Redirect

(Note \$5,247.50, dated November 12, 1908, marked Exhibit C 2.)

(Draft to the Federal Trust Company from the Mutual Trust Company for the purchase of the note amounting to \$5,247.50, dated November 18, 1908, marked Exhibit C 3.)

(Check of John S. Irving, dated January 19, 1911, to the order of the Mutual Trust Company for \$1,940.54, offered in evidence and marked Exhibit C 4.) 10

Redirect examination by Mr. Koestler:

Q. Was this note of \$5,247.50 acquired by the Mutual Trust Company in the ordinary course of business?

A. Yes, sir. 20

Q. What do you mean by that?

A. By showing a record on our minutes of the executive committee purchasing the note.

Q. I believe you stated you didn't have anything to do with the purchase of the note?

A. I didn't, but our minutes show it.

Q. Do you know whether the Mutual Trust Company had anything to do with the procuring of the note from John W. Crooks?

A. I cannot say. 30

Q. As a matter of fact, from your records it shows that you acquired the note, not from Crooks, but from the Federal Trust Company?

A. From the Federal Trust Company.

Q. Judge Davis produced the demand note of August 30, 1905, for \$4,900, under which the shares of stock in question were pledged; what are the endorsements on this note of \$4,900; do those represent payments made under the note?

A. Yes, sir. 40

Thomas S. Byrne—Recross

Mr. Koestler: I offer that note in evidence.
(Note of \$4,900 marked Exhibit C 4a.)

Mr. Koestler: I now offer in evidence the
note of November 30, 1908, for \$1,700, made
by J. W. Crooks to the order of J. S. Irving
for \$1,700, payable two months after date,
together with the protest.
(Marked Exhibit C 5.)

Recross by Mr. Hardin:

Q. Going back to your records about which I
started to ask you when I was interrupted by Mr.
Koestler—the first entry is of an Irving note on
the loose sheet, Exhibit C 1, and shows what?

A. John S. Irving maker, dated September 21,
1907, for \$2,000.

Q. That particular note was without an en-
dorser?

A. No, instead of writing down the endorser,
when it appeared to the man's credit, it is under-
stood, instead of writing it all out that he is en-
dorsed; that was the four months note.

Q. Now, then, is there any other book in which
this note is entered besides this loose leaf sheet,
or is this the only place?

A. We have no journal.

Q. This sheet does not show whether that note
was ever paid or not, does it?

A. It shows that; we always mark it off as to
whether it is a renewal or not; it appears here as
amount paid.

Q. What do you mean, "mark it off as paid?"

A. We credit the full amount when it comes
due.

Q. Does this check mean paid?

Thomas S. Byrne—Recross

A. Yes, sir, those are the amounts that are checked with the other book (indicating).

Q. Then as a matter of fact this note of John S. Irving, endorsed by John W. Crooks, September 27, 1907, for \$2,000, appears on your records to have been paid?

A. To a certain extent it is paid. 10

Q. I asked you whether your records show that note to be paid or not?

A. Well, I would say it is paid and then a new note purchased.

Q. We will come to that in a moment. I want to see whether your records show that it has been paid or not?

A. Yes, sir.

Q. You had another transaction about an Irving note on January 31, 1908; how much was that note? 20

A. \$1,900.

Q. Do your records show that that note was ever paid?

A. Yes, sir.

Q. Have you had any other transactions with Mr. Irving's notes?

A. Yes, sir, on May 29, 1908, Mr. Irving appeared as endorser for \$1,800.

Q. Who was the maker? 30

A. John W. Crooks was maker.

Q. Does your records show that that note has ever been paid?

A. Yes, sir.

Q. Have you any later transaction?

A. Yes, sir, on September 28, 1908, for \$1,700, endorsed by Mr. Irving, made by John W. Crooks.

Q. Do your records show whether that note has been paid or not?

A. Yes sir. 40

Thomas S. Byrne—Recross

Q. Did you have any further transaction?

A. Yes; then, again, on December 1, 1908, we had another note, \$1,700, in the same way; that note was protested.

Q. That is the note that is in evidence here, Exhibit C 5?

10 A. Yes, sir.

Q. Protested and subsequently paid by Mr. Irving?

A. Yes, sir.

Q. Do your records show when it was paid?

A. January 21, 1911, \$1,700.

Q. On November 30, 1908, the date of the note Exhibit C 5, what other obligations did the Mutual Trust Company hold against Mr. J. W. Crooks?

20 A. Demand note of John W. Crooks for \$5,-247.50, November 18, 1908, and Harry W. Crooks' note at that time was originally \$2,800; I guess that is what you want—July 1, 1905, secured by 130 shares of Publishers' Security, guaranteed by J. W. Crooks.

Q. That was a demand note?

A. Yes; July 1, 1905, there was a John W. Crooks' note secured by fifty shares of Westfield Land and Improvement Company \$4,900, to the estate of T. W. Crooks; John W. Crooks' note, endorsed by the estate of T. W. Crooks, \$1,700.

30

Q. What is the date of that last one?

A. On our books it is September 4; it was entered 1908.

Q. When was it due?

A. It was due on November 4.

Q. I show you note of J. W. Crooks to the order of estate of T. W. Crooks, dated September 3, 1908, is that the note you have last referred to?

40

A. Yes, sir.

Thomas S. Byrne—Recross

Q. Was that note paid on November 4, when due?

A. No, sir.

Q. What happened to it?

A. It was protested and sent to the Federal Trust Company for collection, and protested by them; it was payable at the Federal Trust Company. 10

(Note referred to marked D 1 for Identification.)

Q. When was that note D 1 for identification finally paid, if at all?

A. It was finally paid on January 19, 1911.

Q. Out of the proceeds of the——

A. Westfield Land and Improvement Company stock; the final payment was at that date. 20

Q. Has the \$4,900 note been fully paid? A. Yes, sir.

Q. Also out of the proceeds of the Land and Improvement Company stock?

A. Yes sir.

Q. Has the demand note of \$5,247.50 been finally paid?

A. Yes, sir.

Q. Also out of the proceeds of that stock?

A. There were two small payments of \$96.54 which were made. 30

Q. Made from dividends?

A. No, not out of the dividends. What was paid out of the dividends was \$5,150.96.

Q. You mean by dividends——

A. Of the Westfield Land and Improvement Company.

Q. At the finish?

A. Yes.

Q. I mean dividends declared by the company 40

Thomas S. Byrne—Recross

before it went into liquidation, or don't you know anything about that?

A. There were dividends declared at different times; this was a final dividend that was received and it was paid out of that final dividend.

Q The company was wound up?

10 A. Yes, sir.

Q. You don't know whether some of these smaller sums represented dividends earlier in the course of the operation of the company?

A. I could say that those two small ones, \$75 and \$21.54, were not dividends.

Q. Has the \$2,800 H. W. Crooks' note been paid?

A. It stands paid by the Federal Trust Company.

Q. They have taken it back?

20 A. Yes, sir, for \$1,538.20.

Q. The collateral wasn't sufficient to cover that?

A. The collateral didn't amount to anything; they were not enough, no, sir.

Q. So far as it would go, it was applied?

A. Yes, sir.

Q. When you turned the Harry W. Crooks' note back to the Federal Trust Company, you turned the collateral with it?

A. Which collateral have you reference to?

30 A. The collateral that went with the note?

A. Yes, sir.

Q. I show you this \$2,800 note; is that the \$2,800 note of Harry W. Crooks?

A. Yes, sir.

Q. Is this the collateral that is actually mentioned in your note?

A. Yes, sir.

Q. In the Publishers' Security Company in North America?

40 A. Yes.

Thomas S. Byrne—Re-redirect

Q. That all went back together?

A. Yes, sir.

Q. So that either from the Federal Trust Company or from the proceeds of the Land and Improvement Company collateral, your company has been entirely made whole as to the Harry W. Crooks' note?

10

A. Yes, sir.

Mr. Hardin: I offer this \$2,800 note and the collateral accompanying it in evidence.

(Marked Exhibit D 2 note and Exhibit D 2 collateral.)

Q. I call your attention to Exhibit C 2, being the demand note of J. W. Crooks for \$5,247,50, which was offered in evidence by Mr. Koestler; attached are two other papers; did they come at the same time with the note?

20

A. I presume they did; I cannot say as to that. Phillips at that time was treasurer.

Q. So far as you know, they did?

A. They did, yes, sir.

Re-Direct by Mr. Koestler:

Q. You say your books show that these various notes on which Mr. Irving was either the maker or the endorser, are shown by your books to have been paid. As a matter of fact, the notes were not paid, but the transaction represents one whole transaction, showing various renewals, does it not?

30

A. Yes, sir, the way they are marked paid and then renewed.

Q. And the transaction which your bank had between Crooks and Irving, on the one part, and the Mutual Trust Company on the other part, relates

40

Thomas S. Byrne—Re-redirect

back to the original note of \$2,000, dated September 27, 1907?

A. Yes, sir.

Q. Your authority as secretary and treasurer is given to you by what instrument?

A. The by-laws of the company.

10

Mr. Koestler: Are those by-laws here?

Mr. Davis: Yes, sir. Article five gives the duties of the secretary and treasurer.

“The Secretary and Treasurer and
Their Duties.

20

“Section 1. The treasurer shall keep account of the receipts of all moneys received by the company and the issuance of the vouchers and certificates therefor; he shall examine and countersign all checks for the payments of money, and no voucher or certificate shall be issued from the office unless his approval be certified thereon; he shall also supervise the deposit of all moneys lodged daily in the banks and compare the entry thereof with the books on their return from the banks, and also with the record of the receipts of the day; he shall have the custody, under the control and supervision of

30

the president, of all securities pledged as collateral for loans made by the company; he shall give his special attention and supervision to the various trust accounts opened in the office; see that all records, debits and credits are correctly made and properly registered, and shall perform such other duties as may be required or imposed on him by the president or executive committee; he shall have power to make temporary loans upon collateral or otherwise, under such

40

John S. Irving—Direct

rules and restrictions as the executive committee may adopt.

“Section 2. The secretary shall keep the minutes of the meetings of the stockholders and of the board of directors, and of all committees of the board who may require his services, and shall send notice of all meetings of the board to each director by mail two days in advance of such meeting, and he shall perform such other duties as may be required of or imposed on him by the president or executive committee. 10

“Section 3. In case of the temporary absence of the treasurer or secretary, the president or chairman of the executive committee may designate in writing such director, officer or employee of the company as he may deem proper to act as treasurer or secretary, as the case may be, pro tempore, with the powers of office.” 20

Q. Was there any minute of the executive committee meeting or action by the president giving anyone the right or power to perform their duties?

A. I don't know of any.

30

JOHN S. IRVING, complainant, sworn.

Direct Examination by Mr. Koestler:

Q. You are the complainant in this case?

A. Yes, sir.

Q. What is your business?

A. Lumber and coal business, in Westfield, New Jersey. 40

John S. Irving—Direct

Q. Do you know John W. Crooks?

A. Yes, sir.

Q. Was he related to you?

A. He married my daughter.

Q. Where was he employed in 1908?

A. In the Federal Trust Company.

10 Q. In what capacity?

A. I think he was secretary and treasurer; I might be mistaken on that.

Q. I show you Exhibit C 5 and ask you if you are the J. S. Irving named in that note as the payee?

A. Yes, sir.

Q. Is this endorsement, "J. S. Irving," your handwriting?

A. Yes, sir.

20 Q. Was that note made for your benefit or for the benefit of J. W. Crooks?

A. It was made for J. W. Crooks; there was never any note made for my benefit by him or endorsed by him.

Q. This note was originally for a larger sum, was it not?

A. Yes, sir.

Q. What was the note originally?

A. I think it was \$2,000.

30 Q. It appears from the evidence that on that original note of \$2,000 you were named as maker and Crooks as endorser; was that note signed by you for your own benefit or for someone else's benefit?

A. For Crooks' benefit; he requested me to make the note that way, as he was in the bank, so I did it.

Q. Did you have any connection with the Westfield Land and Improvement Company?

A. Yes, sir.

40 Q. What connection?

A. I was director and president of the company.

John S. Irving—Direct

Q. Did Mr. Welch have anything to do with that company?

A. Yes, sir.

Q. What connection?

A. He was secretary and treasurer.

Q. Were you a large stockholder in that company? 10

A. I had seventy shares in that company.

Q. How many shares did Mr. Welch have?

A. He had the same number.

Q. And Crooks had fifty?

A. Yes, sir.

Q. And were there any other shares issued?

A. Yes, there were ten shares, I think it was, to Martin Wells.

Q. Were these shares of Crooks ever transferred to anybody? 20

A. Yes, sir.

Q. Do you recall when?

A. I think it was 1908, November 12.

Q. Did anybody come to see you in reference to that transfer?

A. Yes, sir.

Q. Who?

A. Mr. Gordon Phillips, secretary and treasurer of the Mutual Trust Company.

Q. When did Mr. Phillips come to see you about transferring that stock? 30

A. He came on the eleventh; Mr. Welch was away and couldn't transfer it that day.

Q. Did you know Mr. Phillips was the secretary and treasurer of the Mutual Trust Company at that time?

A. He said he was; he had the papers.

Mr. Koestler: He was secretary and treasurer at that time? 40

John S. Irving—Direct

Mr. Davis: Yes, we will admit he was secretary at that time.

Q. Did you and Mr. Phillips have any conversation on November 11th, 1908, regarding this stock and notes of Crooks?

10 A. Yes.

Q. Tell us what he told you, and you said to him, on the eleventh.

A. Mr. Phillips said that Mr. Crooks owed them a large amount and had assigned the stock, or he had an order to have it issued to them, and I had a talk with Mr. Phillips, I inquired something about Mr. Crooks, but at any rate Mr. Phillips mentioned the \$1,700 note that I had endorsed, for one, and said that was included in the notes to be paid; I am
20 not sure about the amount; the amount was somewhere about \$10,000 that he thought was the amount that Mr. Crooks owed the Mutual Trust Company.

Q. Tell us all that you can remember he said to you and all that you said to him.

A. I inquired of Mr. Phillips about Mr. Crooks' other liabilities; I was interested and wanted to know about it. I asked him the question if he owed the Federal Trust Company anything; he said he
30 didn't think so, he was all straight with them and didn't owe them anything that he knew of; he said—he asked me to make a bid on the stock, they wanted to sell it and he wanted to clear up these—

Q. I only want the eleventh.

A. No, that bid was on the twelfth.

Q. Tell us again what was said about this note of \$1,700 on which you were endorser.

A. He said there was no question about that note; it would be paid, he told me.
40

Q. Paid by whom?

John S. Irving—Direct

A. By the proceeds of the stock.

Q. Are you sure he told you that?

A. Yes, I am positive about that; some things I might forget, but I didn't that; and I had a \$1,500 note discounted for Crooks in the Westfield Trust Company. I talked with him about that stock, if there was a surplus, if I couldn't arrange it some way to have that paid out of the surplus, after all the obligations were paid in the Mutual Trust Company; he said he couldn't speak for the directors about that, but he said he would use his influence; if there was a surplus, he would do what he could to have that \$1,500 note that I had discounted at the Westfield Trust Company paid out of it; he was in a hurry to have the stock transferred and requested me to bring it about just as quick as possible and have it ready for him the next day, and Mr. Welch not being home we had a kind of a general conversation about Mr. Crooks, etc., and he went away and came back the next day; Mr. Welch was there; we had the books. 10 20

Q. He came back the next day, the twelfth?

A. Yes.

Q. Was the stock transferred on the twelfth to the Mutual Trust Company on the books?

A. Yes, sir, on the twelfth.

Q. Tell us what conversation took place between you and Mr. Phillips in the presence of Mr. Welch on the twelfth? 30

A. Before we transferred the stock I questioned Mr. Phillips, I wanted him to state, in the presence of Mr. Welch, the same as he had to me; that was the reason I done it, before we transferred the stock, and he said the same thing.

Q. Tell us what took place?

A. He said the \$1,700 note was included in the 40

John S. Irving—Direct

notes that were to be paid out of the proceeds of the stock; there was no question about that note.

Q. Did you rely on that statement?

A. I did, or I wouldn't have transferred the stock that day.

10 Q. That note came due on November 30th, on which you were then the endorser?

A. On which I was endorser at that time?

Q. Yes.

A. I think so, the 28th or 30th.

Q. This note which has been offered in evidence for \$1,700 is dated November 30th; did you do anything before you endorsed that note?

A. Yes, sir.

Q. What did you do?

20 A. I called Mr. Phillips up on the telephone; I thought the note was taken care of, I understood that, and Mr. Crooks sent me the note, I think, by mail; I called Mr. Phillips up and asked him if he wanted me to endorse this note, and he said "Yes, endorse it and mail it direct to the Mutual Trust Company, not to Crooks," so I did that; I didn't have any question in my mind at that time about the Mutual Trust Company doing what they had agreed to do.

30 Q. Did you pay anything upon the prior note which came due on that day?

A. No, sir.

Q. Did you ever pay anything to the Mutual Trust Company upon any of these notes upon which you were either maker or endorser?

A. No, sir, I never paid anything.

Q. This note was protested when it came due, was it not?

A. Yes, sir.

40 Q. Did you go to the Mutual Trust Company after the note was protested?

John S. Irving—Direct

A. No, not at that time; I didn't think anything of that, because we hadn't the money yet for the stock; I thought that was a matter of business until we had the proceeds of the stock.

Q. When did you first go to see the Mutual Trust Company about this note?

A. I think the first time I went to see them about this note was when I received a letter from Howe & Davis. 10

Q. Didn't you receive a letter from the bank first?

A. Yes, I think I called them on the telephone that day; I called and Mr. Byrne answered.

Q. You got a letter from the bank about this note?

Q. What did you say to Byrne and he to you?

A. I asked him what he meant by sending me a letter demanding that I pay the note when they knew the note was to be paid out of the proceeds of the stock. 20

Q. What did he say?

A. Well, he didn't say very much; he said he didn't like to write the letter, for one thing; he said he had to write it.

Q. Did you ever go to see anybody in the Mutual Trust Company in regard to this note?

A. I did when I got the letter from Howe & Davis; I went over to the bank and I called Mr. Byrne up before I went a few days and asked him when the directors met; I said I would like to meet them, and he gave me the date and the hour, but I was a little late getting to the bank, it was bad weather; I went on the train, and when I got there the directors had gone and I had a talk with Mr. Byrne about it. 30

Q. What did you say to Mr. Byrne and he to you? 40

John S. Irving—Direct

A. Mr. Byrne finally advised me to go to the Federal Trust Company and see Mr. Garrison, I think it was—to see the Federal Trust Company officers, anyway—and I went there right from the Mutual Trust Company.

Q. When was that?

10 A. That was just a few days after Howe & Davis' first letter they wrote me.

Q. That was some months before you were sued, wasn't it?

A. Yes, that was January 31, 1910, I think, and I didn't hear no more about it and I think the summons was served on me in July.

Q. Did you go to see Mr. Garrison?

A. I did; I went down that day from the Mutual Trust Company.

20 Q. What connection did Mr. Garrison have with the Federal Trust Company?

A. I think he was vice-president; he seemed to be taking Mr. Crooks' place there—I am not sure about that—he seemed to be assisting the treasurer, I think, and managing the business there, as far as I could tell. Howe & Davis' letter was January 31.

30 Q. Tell us what took place between you and Mr. Garrison when you went there at the suggestion of Mr. Byrne.

A. I had quite a long talk with Mr. Garrison—it would be hard for me to state it all, but some of it I remember.

Q. Tell us what you remember?

A. He went over Mr. Crooks pretty rough on the first start.

Q. Tell us as much as you can?

40 A. He said he was a fool for taking a note of Mr. Crooks, he belonged down to Trenton, he ought not to have taken the note; he said after he took

John S. Irving—Direct

the note then Mr. Crooks was free, after he settled with him and took his note; he said he was sorry he took it.

Mr. Hardin: I move to strike that all out as entirely irrelevant.

Witness: I didn't expect to tell it. 10

Court: I will strike out that statement which he makes that Mr. Garrison said, because that is only a matter of opinion at best, it wouldn't be evidence if he were here himself—where Mr. Garrison says he ought to be in Trenton.

Mr. Koestler: What I want is, what they said in regard to the transactions of the Federal Trust Company with Crooks as relating to these various matters. 20

Mr. Hardin: There are five or six notes here.

Court: Confine yourself to the notes in question.

Q. Tell us the conversation with regard to these notes?

Mr. Hardin: May this be taken subject to my motion to strike it out?

Court: Yes, if the answer is not responsive or does not relate to the subject matter, I will strike it out. 30

A. We had made an offer for the stock right on the start.

Q. Who had made an offer?

A. Mr. Welch and me.

Q. To whom?

A. We made an offer to Mr. Phillips.

Q. Come to the time you had the talk with Mr. 40

John S. Irving—Direct

Garrison and tell us what you said to him and what he said to you relating to these two notes and the 50 shares of stock of the Westfield Land Company?

10 A. Mr. Garrison said that he would hold the stock, they wouldn't sell the stock, they would hold it until the agreement come due—the stock was due, and then see where they would come out; they said they wouldn't sell it.

Q. Prior to this time of the conversation with Garrison, had anything been said to you by Mr. Phillips in regard to making an offer for the stock?

A. He did the day we made the transfer and issued the stock to the Mutual Trust Company.

Q. On November 12, 1908? A. Yes.

Q. What did Mr. Phillips say on that day?

20 A. He asked us to make an offer, what we would give for it.

Q. Did you make an offer?

A. Yes.

Q. How much?

A. I think it was \$10,000.

Q. What did Mr. Phillips say?

A. He said he would submit it to the board of directors and advise them to take it.

Q. Did you hear from the board of directors?

30 A. I went over to see them two or three times, but couldn't meet them and it was put off from time to time—they didn't set any price, just what they would take for it; I went over to see them two or three times, trying to negotiate for the stock; I wanted to see if I couldn't save the \$1,500 note that was in the Westfield Trust Company; that is what I wanted to buy stock for; I thought there would be a surplus.

40 Q. When you saw Mr. Byrne the time you were there too late to see the directors, was anything said

John S. Irving—Direct

between you and Byrne about purchasing the stock?

A. I think so; I had a talk with Mr. Byrne and he advised me to go to the Federal Trust Company—I don't know just exactly what was said then, but at any rate he intimated that whatever the Fidelity Trust Company would do, he would agree to; that is the way I took it in conversation. 10

Q. Let us come to Mr. Garrison. Can you tell us what took place between you and Mr. Garrison?

Mr. Davis: Hasn't he said that?

Court: Practically all that was taken out.

A. Leaving out the purchase of the stock which come in the conversation. 20

Q. When Mr. Byrne told you to see the Federal Trust, did you go there?

A. I did.

Q. Did you see Mr. Garrison at the Federal Trust Company's place of business?

A. Yes.

Q. Tell us what took place at that time between you and Garrison?

A. I don't want to give you what Mr. Garrison said about Mr. Crooks, again; he talked about that. 30

Q. Tell what he said about the note?

A. I don't know just what he did say about the note.

Q. What do you remember?

A. The most I remember is that he objected to their selling the stock; he said they would hold it; he says, "We have got money enough to hold it until it comes due—until the agreement runs out."

Q. Was anything else said? 40

John S. Irving—Direct

A. I think he spoke about their note; I think he said he didn't know any reason why it should not be paid.

Q. What should not be paid?

A. The \$5,200, or whatever it was over \$5,000; he said he had held the note that Crooks owed to him for some time; I don't remember what
10 about that, I cannot tell the particulars.

Q. Did you endorse any other papers for Crooks besides the papers connected with this case?

Mr. Hardin: Objected to as immaterial.

Mr. Koestler: It is material as showing his insolvency.

Court: I think that is quite material.

20 A. One in the Westfield Trust Company.

Court: I will let that stand.

Q. What was that for?

A. \$1,500.

Q. Who paid it?

A. I did.

Q. Was it protested when it came due?

A. Yes.

30 Q. This \$1,700 note which was dated November 30 and protested when it came due, did you pay that?

A. Yes.

Q. A suit was brought against you first, wasn't it?

A. Yes.

Q. Is that the check by which you paid it? (Witness shown check, Exhibit C 4.)

A. That is the check.

40 Q. After you paid by this check the sum of

John S. Irving—Cross

\$1,940.54, did the Mutual Trust Company give you back that note?

A. No, sir.

Q. Have you received it up to the present time?

A. No, sir.

Mr. Hardin: The judgment has been satisfied, hasn't it? 10

Mr. Davis: It is. You can have it any time you demand it.

Mr. Koestler: That is one of the prayers of our bill.

Cross-Examination by Mr. Davis:

Q. You never had any collateral for your note, did you, from Mr. Crooks for your endorsements? 20

A. Only the stock that Mr. Crooks held in our Land Company. When I first endorsed the note, I knew I would be safe on account of we handled the property and he held fifty shares of stock.

Q. But he never put that up with you as collateral?

A. No, sir, I never asked him to.

Q. You endorsed his note as accommodation to Crooks, didn't you, your son-in-law?

A. Yes. 30

Q. You endorsed the note in the Westfield Trust Company as accommodation for Mr. Crooks, your son-in-law?

A. Yes, sir.

Q. You took no collateral on that?

A. Our company still held the fifty shares of stock, it hadn't been transferred at that time.

Q. He didn't put it up with you?

A. I always depended on that for security; that was the only thing he was worth and all he had. 40

William S. Welch—Direct

Q. You knew he was worth that and nothing else?

A. I didn't suppose he was.

Q. When did you first ascertain that these fifty shares of stock were put up with the Mutual Trust Company as collateral?

10 A. On the eleventh of November, 1908.

Q. You didn't know that they had been put up as collateral since 1905?

A. No, sir; they hadn't been transferred to them, I know; we had the books.

Q. They were issued to Crooks as far back as 1905?

A. They might have been.

Q. Were they not as a matter of fact outstanding before 1905, the shares of stock?

20 A. Oh, yes, he held the shares of stock, I think, from 1902.

Q. You didn't know until the shares were actually transferred on the books, that the Mutual Trust Company had had them as collateral since 1905?

A. No.

Q. You didn't know up to that time to what extent Crooks was indebted to the Mutual Trust Company?

30 A. No, sir.

WILLIAM S. WELCH, sworn for complainant.

Direct Examination by Mr. Koestler:

Q. Do you know Mr. Irving?

A. I do.

Q. How long have you known Mr. Irving?

40 A. I have known him about forty years.

William S. Welch—Direct

- Q. You and he live in Westfield?
 A. Yes, sir.
- Q. You are associated together in connection with the Westfield Land and Improvement Company?
 A. Yes, sir.
- Q. Are you an officer of that company? 10
 A. I am.
- Q. What office did you hold?
 A. Secretary and treasurer at that time.
- Q. The company has since liquidated, has it not?
 A. No, sir, it is still in existence.
- Q. There were two hundred shares of stock issued?
 A. Yes, sir.
- Q. Who held them? 20
 A. Mr. Irving, myself, Mr. Wells and Mr. Crooks.
- Q. Did you ever transfer on the books of your company the stock which had been issued to Crooks?
 A. Yes, sir.
- Q. Can you tell by reference to your book when that was done?
 A. Yes, sir.
- Q. Will you look at your book and tell me?
 A. On the 12th of November, 1908, transferred 30
 to the Mutual Trust Company of Orange.
- Q. They were fifty shares, were they?
 A. Fifty shares, yes, sir.
- Q. Did anybody come to you to have those shares transferred?
 A. Yes, sir.
- Q. Who?
 A. Mr. Phillips.
- Q. Was Mr. Irving there? A. Yes, sir.
- Q. Was there any conversation between you and Irving and Phillips? 40

William S. Welch—Direct

A. Yes.

Q. Can you relate that conversation?

A. Before transferring the stock Mr. Irving asked Mr. Phillips regarding some notes which he had, and whether or not the notes would be paid out of the proceeds of this stock, and Mr. Phillips
 10 said that the \$1,700 in his own bank would be taken care of, but he couldn't say anything about the outside; but if the stock brought more than would cover the indebtedness, undoubtedly he could get the other note paid which was in the Westfield bank.

Q. What else took place?

A. That was all that I remember that was said concerning that; he asked us to make him an offer on the stock, saying they would like to clear up the
 20 matter.

Q. Did you make an offer?

A. We talked the matter over and made him an offer on the stock.

Q. Did you make Mr. Phillips an offer on the 12th of November, 1908?

A. Yes.

Q. What offer did you make him?

A. We made him an offer of \$10,000.

Q. What did he say?

30 A. He said he was under the impression that that would cover the indebtedness in their bank and he should advise them to accept it.

Q. Did you ever hear from them after that in reference to that offer?

A. No, sir.

Q. Did you keep a record of the dividends that have been declared?

A. Yes, sir.

40 Q. Have you got that book here?

William S. Welch—Cross

A. No, I haven't, I have the checks, though, that were paid.

Q. What amount was it?

A. \$13,697.38.

Q. When was the last payment made to the Mutual Trust Company?

10

Court: Dividends in liquidation?

Mr. Koestler: The last dividend in liquidation.

A. August 1, 1911.

Q. And at that time the stock was surrendered, was it?

A. It was surrendered later than that, about a month later: I can give the date of the surrender of the stock.

20

Cross Examination by Mr. Davis:

Q. Can you say when the first dividend was, according to your statement?

A. June 7, 1909.

Q. Give us all the dividends, date and the amount.

A. June 7, 1909, \$300; June 19, 1909, \$450; August 2 1909, \$1000; November 5 1909, \$500; February 3, 1910, \$1,350; June 6 1910, \$300; August 3, 1910, \$1,100; January 18, 1911, \$900; August 1, 1911, \$7,797.38.

30

Q. By that last payment did you redeem the stock altogether, principal and interest?

A. Yes.

Q. And wound up the company?

A. No, the company wasn't wound up.

Q. Is there anything more to come on the shares of stock?

40

A. Nothing from the Mutual Trust Company.

William S. Welch—Cross

Q. On these shares of stock is there anything to come?

A. No, sir.

Q. If the company hasn't been wound up, why isn't there something to come further on those shares of stock?

10 A. I retained my interest in the stock and the Orange Trust Company, and Mr. Irving turned over their shares and Mr. Wells', to me.

Q. When this last payment was made, was that a payment made by you or by the company?

A. The payment was made by the company.

Q. Then why do you say that if the company is not yet wound up and it has assets, that there isn't still some money to be paid on that stock?

A. The stock was surrendered or given to me.

20 Q. On the representation that the company was being wound up, and that is all there was to come on the issues of stock, wasn't it?

A. That is all there was that the company owned at that time; they sold a piece of property, which was all that the company owned, and as the payments were made on this property, the dividends were paid over to the different stockholders, and this last payment included the full amount that was paid for the property sold, and the company

30 owned nothing else outside of that.

Q. Has the company any assets at the present time?

A. It has at the present time, yes.

Q. Acquired since the shares of stock were taken up or since?

A. Since.

Q. Going back to this conversation with Mr. Phillips; was that on the day that the shares of stock were transferred?

40 A. Yes, sir.

William S. Welch—Cross

Q. Will you just state again what it was that Mr. Phillips said to Mr. Irving?

A. He said that the \$1,700 that was in their own bank would be taken care of out of the proceeds of this stock, but outside of that he couldn't say anything as to what would be done.

Q. Are you familiar with an affidavit that Mr. Irving made in 1910? You were familiar with this chancery case, were you? 10

A. I knew it came up.

Q. Didn't he say this, that the \$1,700 endorsed by Mr. Irving was among the notes which were to be paid out of the moneys procured from the sale of the stock?

A. As I remember it, he said the obligation in his own bank would be taken care of.

Q. Did he say particularly that the \$1,700 note would be paid, or that it was among the notes that would be paid? 20

A. No, sir, he said that would be paid.

Q. Then he didn't say that it was among the notes that would be paid?

A. No, sir.

Q. And if Mr. Irving made an affidavit to the effect that what he said was that it was among those that were to be paid, you say that Mr. Irving is not stating exactly what the treasurer said? 30

A. I cannot say anything about that, but Mr. Irving asked him the direct question regarding this note on which his name was, and he said, "The note is in our bank and will be taken care of out of the proceeds."

Q. Didn't he say, "I expect it will be taken care of?"

A. I don't think so; he was positive about the one that was in his own bank, but the other one he couldn't say anything about. 40

Thomas S. Byrne—Recalled—Direct

Q. You recall this, that when you said, or Mr. Irving said, you would give \$10,000 for the stock, that Mr. Phillips said that he didn't know if \$10,000 would cover all the Mutual Trust Company had, didn't he?

10 A. He said he was under the impression that it would cover it.

Q. Didn't you say in answer to counsel here, that when you made the offer, or Mr. Irving made the offer, that it was stated then that he didn't know if it would cover—the \$10,000 would cover what the Mutual Trust held?

A. I do not think so; I said he was under the impression it would cover, and he would advise their accepting the amount and cleaning up the obligation.

20 Q. He would advise that it be taken, if it would cover their obligations, didn't he say that?

A. Yes.

Q. Are you sure of that?

A. I am sure he said he was under the impression that it would cover the amount and he would advise the board to accept our proposition if it did.

Q. That is, if it did cover their indebtedness?

A. Yes.

30

THOMAS S. BYRNE, recalled for further

Direct Examination by Mr. Koestler:

Q. Can you tell from examining your records, how much was due to the Mutual Trust Company upon the Crooks' notes on November 12, 1908?

A. Yes, sir, \$9,900.

40

Thomas S. Byrne—Recalled—Cross

Cross Examination by Mr. Hardin:

Q. What notes have you included?

A. The two Mr. Irving's notes, \$1,700; and Estate, \$1,700; Harry W. Crooks', \$1,600, \$4,900 of the Westfield Land and Improvement Company.

Q. What was the situation on the thirtieth day 10
of November 1908?

A. \$5,172.50 more.

Q. When you are giving the statement on November 12, 1908, you are giving us the statement on the day that the Mutual Trust Company acquired the note for \$5,247.50?

A. No, sir, November 12, 1908, the total was \$9,900.

Q. (Last question repeated.) When you are giving 20
the statement on November 12 1908, you are giving us the statement on the day that the Mutual Trust Company acquired the note for \$5,247.50, or immediately prior to the acquisition of that note?

Mr. Koestler: Objected to; that note was not acquired until November 18.

Q. November 12th, or immediately prior?

A. Prior to November 18th we had the \$9,900.

Q. The statement that you gave to Mr. Koestler 30
as of the date of November 12th describes the situation as it existed prior to the purchase by the Mutual Trust Company from the Federal Trust Company of the note for \$5,247.50?

A. Yes, sir.

Q. I call your attention to Exhibit C 2, and note that there was a payment endorsed on the back of that promissory note of \$5,150.96, apparently of August 28, 1908; is that the correct date?

Thomas S. Byrne—Recalled—Redirect

A. No, sir, that is an error on my part; that should have been 1911.

Q. Is that statement in your handwriting—that entry?

A. Yes, sir.

10 Q. And the actual time of the receipt by your company of \$5,150.96 was what date?

A. August 28, 1911; I got the 1908 confused with the one above.

Re-Direct by Mr. Koestler:

Q. Then I understand that this payment which you have marked on here "8/28/08 \$5,150.96" is an error?

A. Yes.

20 Q. That amount was received at another date?

A. 1911.

Q. And represents \$5,150.96 which you took from the last dividend of the Westfield Land and Improvement Company and applied it toward the payment of this note?

A. Yes, sir.

Q. Was there any reason why you applied that to this note and not to the note upon which Mr. Irving was endorser?

30 A. Mr. Irving's at that time was paid.

Q. In 1911?

A. Yes, sir.

Q. By the check which has been offered in evidence

A. Yes, sir.

Q. What was done with this note of \$5,247.50 from the time you received it until the time you credited on it the sum of \$5,150.96?

A. We held it as a loan.

40 Q. Whose loan?

John S. Irving—Recalled—Cross

A. Mutual Trust Company loan.

Q. To whom?

A. Note purchased from the Federal Trust Company.

Q. You had no endorser from the Federal Trust Company?

A. No, sir.

10

Q. Was there any understanding or business arrangement between you and the Federal Trust Company with regard to the purchase of notes?

A. No, sir, I don't know if there was any understanding at that time; I wasn't in charge when that note was purchased.

Complainant Rests.

Mr. Davis: I would like to recall Mr. Irving for a moment.

20

JOHN S. IRVING, recalled for further examination by Mr. Davis:

Q. You stated in answer to counsel that what Mr. Phillips said at this conversation in Westfield was that there was no question but that the \$1,700 would be paid?

30

A. Yes, sir.

Q. And didn't he say at that time that this \$1,700 note was among the notes which were to be paid out of the moneys procured from the sale of said stock?

A. He did say that, but he also said that that note would be paid; that was one of the notes that would be paid.

Q. You made an affidavit in this case; in making

40

John S. Irving—Recalled—Cross

the affidavit in this case, why was it that you omitted to state in your affidavit that Mr. Phillips said that your note would be undoubtedly paid; that is your signature? (Witness shown affidavit sworn to on the 22d of August, 1910.)

A. Yes, sir.

10 Q. Didn't you say in that affidavit, "in this conversation Phillips stated that the stock was to be transferred to the Mutual Trust Company to pay the notes held by it, signed and endorsed by the said John W. Crooks, and that the note of \$1,700 endorsed by deponent was among the notes which were to be paid out of the moneys procured from the sale of said stock"; that is the way your affidavit read at that time, isn't it?

A. I don't see any difference in it.

20 Q. (Last question repeated.) .

A. That is the way it reads.

Mr. Koestler: Objected to; it speaks for itself.

Court: Yes.

30 Q. Why was it, in making the affidavit at that time, which is now several years ago, nearly three years ago, that you omitted to state that Mr. Phillips said that there was no question but what the \$1,700 note would be paid?

A. I know he said it; I know that much.

Q. Is your memory any better to-day than it was in 1910?

A. It may not be as good, but I remember that; I do not remember all the little details, but I remember the main substance of the matter; I don't see much difference in that; that says it is to be paid.

40 Q. Another thing; did Mr. Phillips mention at

William S. Welch—Recalled—Cross

that conversation, the exact amount that was due to the Mutual Trust Company from Mr. Crooks?

A. I do not remember that he did; I do not think he gave us the items.

Q. Did he mention the exact amount?

A. No, I don't think so.

Q. You do not remember that he did? 10

A. I don't remember it, not the exact amount, no.

Q. You don't remember whether he did or did not mention the exact amount?

A. No, I don't remember if he did, the exact amount.

Mr. Davis: I would like to recall Mr. Welch for a moment.

20

WILLIAM S. WELCH, recalled for further cross examination by Mr. Davis:

Q. Mr. Welch, you made a statement a short time ago in answer to my question, that Mr. Phillips did not say that this \$1,700 note was among the notes so held by the Mutual Trust Company that were to be paid.

A. I am positive that he said that that note that is in their bank would be paid from the proceeds of this stock. 30

Q. A short time ago you stated positively that he did not say that it was among the notes to be paid; now, I ask you again, are you positive that he didn't make the statement that the \$1,700 note was among the notes to be paid?

A. If it was paid, it would be among the notes.

Q. You understand my question, don't you; did he or did he not say that the \$1,700 note was among the notes to be paid? 40

William S. Welch—Recalled—Cross

A. I don't remember the word "among" at all in connection with it.

Q. Is that your signature? (Witness shown affidavit dated August 22, 1910, in this case.)

A. That is my signature.

10 Q. Did you in that affidavit swear that Mr. Phillips stated in the presence and hearing of deponent and the said J. S. Irving, that said stock was to be transferred to the Mutual Trust Company to pay certain notes signed or endorsed by John W. Crooks, and then held by the said Mutual Trust Company, and that among the notes so held by the said Mutual Trust Company and which were to be paid out of such stock so transferred, was a certain promissory note of \$1,700 endorsed by J. S. Irving. You swore to that at that time?

20 A. I did, and that is what I say now.

Q. You do say that now?

A. Yes, that that was one of the notes that was to be paid, and it was to be paid from those proceeds.

Q. Do you say now that he did say that it was among the notes to be paid?

A. He said he would pay that note, and it must be among them.

Q. You understand what I ask? A. Yes.

30 Q. Did he say that it was among the notes to be paid?

A. I don't know anything about the "among."

Q. If you don't know anything about the "among," why did you swear on August 22, 1910, that he did say it was among the notes to be paid?

Court: That is a matter of construction of that sentence. Read it again.

40 Q. In your affidavit, Mr. Welch, you say that

Gordon D. Phillips—Direct

Mr. Phillips stated in the presence and hearing of deponent and the said John S. Irving, that said stock was to be transferred to the Mutual Trust Company to pay certain notes signed or endorsed by John W. Crooks and then held by said Mutual Trust Company, and that among the notes so held by said Mutual Trust Company and which were to be paid out of said shares of stock so transferred was a certain promissory note of \$1,700 endorsed by John S. Irving; is that what Mr. Phillips said at that time? 10

A. Will you explain to me——

Q. I won't explain anything; is that what Mr. Phillips said at that time?

A. Mr. Phillips said that note would be paid.

Q. That is what he said?

A. And if it was among the other notes to be paid and all the notes were paid, that note would be paid. 20

By the Court:

Q. You refer to the conversation that was held on the 12th of November, 1908?

A. I am referring to the twelfth, that was the only conversation I was present at.

Complainant Rests. 30

Recess.

GORDON D. PHILLIPS, sworn for defendant.

Direct examination by Mr. Davis:

Q. What position do you hold now and with what bank?

A. I am the vice-president and secretary of the Newark Trust Company. 40

Gordon D. Phillips—Direct

Q. In 1908 were you connected with the Mutual Trust Company in Orange?

A. Yes, sir.

Q. In what capacity?

A. Secretary and treasurer.

10 Q. I show you a note marked Exhibit C 2, which is a note of J. W. Crooks, of November 12, 1908, for \$5,247.50; did the Mutual Trust Company in November, 1908, buy this note from the Federal Trust Company?

A. Yes, sir.

Q. And at the time that note came to your possession did this paper signed "J. W. Crooks" also come with it?

A. Yes.

20 Mr. Davis: I would like to have marked in evidence paper signed "J. W. Crooks," dated November 12, 1908.

(Marked Exhibit D 3.)

Q. You know Mr. Crooks' signature?

A. Yes, sir.

Q. Is that it signed to that paper?

A. That is it.

30 "Newark, N. J., November 12, 1908.

Mutual Trust Company,
Orange, N. J.

Gentlemen:

Enclosed please find my demand note for \$5,247.50 to be paid from the proceeds of the sale of the fifty shares of stock of the Westfield Land and Improvement Company herewith assigned to you.

40

Very truly yours,

J. W. Crooks."

Gordon D. Phillips—Direct

Q. And was it you, Mr. Phillips, who paid the check No. 4858, Exhibit C 3, to the Federal Trust Company for that note?

A. Yes, sir.

Q. This check Exhibit C3 is the check for that note, is it not?

A. Yes, sir. 10

Q. On November 18?

A. Yes, sir.

Q. A statement has been made that in a conversation which you had with Mr. Irving in Westfield when you went to have these shares of stock transferred to you, that you stated to Mr. Irving that the \$1,700 note that Mr. Irving was endorser on would absolutely be paid out of the proceeds of the sale of that stock; did you or did you not make that statement? 20

A. I did not.

Q. What was that conversation, Mr. Phillips?

A. The conversation was that the stock was to be transferred to the name of the Mutual Trust Company; incidentally, the notes were mentioned, but nothing was said about any specific note that would be paid.

Q. Do you remember something about an offer of \$10,000 being made at that time by Mr. Irving for the shares of stock? 30

A. Yes, sir.

Q. And you heard what he said about that, that you would refer the matter to the executive committee?

A. Yes.

Q. Is that what you said?

A. I said I would take it to the bank and refer it to the committee.

Q. During your time with the Mutual Trust Company were any of the dividends paid on these 40

Gordon D. Phillips—Cross

shares of stock or was it after you left the Mutual Trust Company?

A. I don't remember; I think it was after.

Q. When did you leave the Mutual Trust Company?

A. I left the Mutual Trust Company on January
10 15, 1909.

Cross examination by Mr. Koestler:

Q. Did you have any consultation with anybody before purchasing the note of \$5,247.50?

A. Yes, sir.

Q. With whom?

A. With an officer of the Federal Trust Company.

Q. What officer?

20 A. And also officers of our own company, that was the Mutual at that time.

Q. What officer?

A. I talked to Senator Smith, the president of the Federal Trust Company; I talked to Winton C. Garrison, vice-president of the Federal Trust Company, and I talked with Mr. Wilmot, president of the Mutual Company.

30 Q. When did you first have any conversation with Mr. Smith and Mr. Garrison regarding the purchase of this note?

A. I don't remember the exact time.

Q. How long before you acquired the note did you talk to Smith and Garrison?

A. As far as I can remember, it must have been within a week or two.

Q. You don't mean that, do you, a week or two?

A. Yes.

40 Q. As a matter of fact, the note is dated on the twelfth and you acquired it, according to your records, on the eighteenth?

Gordon D. Phillips—Cross

Court: You are involving him. He said he had a talk with him a week or two before acquiring the note; did you mean that?

Witness: Yes, as far as I can remember, it was a week or two.

Q. Your records show this note was acquired on the eighteenth? 10

A. I haven't seen the records.

Q. And the note is dated on the twelfth; with that in your mind, will you say that you had a consultation with Smith and Garrison a week or two before you actually acquired the note?

A. Yes.

Q. What was the reason for your having such consultation?

A. The Federal Trust Company called up on the telephone and talked to me about it and talked about the loan the Mutual Trust Company had for \$4900. 20

Q. Do you know whether that was before they had the note?

A. I don't know.

Q. As a matter of fact the Federal Trust Company at that time had a voice in the operations of the Mutual Trust Company, didn't they?

A. They owned the controlling interest in stock; yes, sir. 30

By the Court:

Q. Were either Smith or Garrison in the Mutual Trust Company?

A. No; Mr. Smith is a director, but not an officer.

Q. Is Mr. Garrison?

A. No. 40

*Gordon D. Phillips—Cross**By Mr. Koestler:*

Q. There was a director of the Federal Trust Company who was also a director of the Mutual?

A. Yes; several of them.

Q. That is, they controlled the board of directors?

10 A. No; I wouldn't say that.

Q. How many directors were there in the Mutual Trust Company at that time?

A. I have forgotten.

Q. Is there any book that will refresh your recollection?

A. There may be records here.

(Minutes produced by Judge DAVIS.)

20 Q. I call your attention to page 44 of the stockholders' minute book, for the January meeting, 1908, and that shows that the following gentlemen were nominated and elected directors; they are whom?

A. Charles R. Wilmot, James Smith, Jr., M. Winter, Hamilton F. Kean, Joseph M. Byrne, John O'Rourke, J. H. Matthews, E. C. Bataille, J. W. Crooks, Francis Berg, T. E. Holey, Louis Plaut, W. K. Kellner, Orrill E. Freeman and Edwin H.

30 Hatch.

Q. Can you tell how many of those gentlemen were connected with the Federal Trust Company?

A. James Smith, Jr., Hamilton F. Kean, Joseph M. Byrne, J. W. Crooks, Louis Plaut and W. K. Kellner.

40 Q. Which of those directors comprised the executive committee? I show you minutes of directors' meeting of February 6, 1908. It provides as follows: For the two directors to serve on the executive committee with the president and the

Gordon D. Phillips—Cross

second vice-president, the names of Messrs. John W. Crooks and Emil C. Bataille. Mr. Wilmot is the president and Mr. Bryne vice-president and Mr. Freeman second president?

A. Yes, sir.

Q. You attended to having the stock transferred by the Westfield Land & Improvement Company? 10

A. Yes.

Q. You went to Westfield twice for that purpose?

A. Yes.

Q. You went there on the 11th of November, 1908, the first time?

A. Yes.

Q. You were unable to see Mr. Welch?

A. Yes.

Q. You went there the following day?

A. Yes. 20

Q. What time of the day did you get there on the 12th?

A. About noon.

Q. Are you sure about that?

A. Not before noon.

Q. Don't you recall that the day before you made arrangements with Mr. Irving that you would be there very early in the morning, as you were anxious to have this stock transferred?

A. I don't remember that. 30

Q. Isn't it a fact that this stock was transferred before 8 o'clock in the morning?

A. I don't remember that. I remember it wasn't as early as that.

Q. You are sure it was noon time?

A. Noon time, as far as I can remember.

Q. What is there that serves you to remember that it was noon time and not 8 o'clock in the morning?

Gordon D. Phillips—Cross

A. The distance, in the first place, from West Orange, where I live, to Westfield.

Q. You had a considerable talk there, didn't you?

A. When?

Q. On the 12th.

A. We talked on the 12th some.

10 Q. Wasn't there some talk as to the value of this real estate?

A. I don't recall that.

Q. Don't you recall that they told you that the property was under contract to be sold, under a three-year contract?

A. I don't remember that.

Q. Will you say it wasn't told you?

A. I don't remember.

Q. Will you say it wasn't told to you?

20 A. I don't say it.

Q. As a matter of fact, were you not told the figures and how much they expected to make?

A. I don't remember that.

Q. Isn't it a fact that you and they all figured up that the fifty shares of stock which you held would, if everything went right, be worth about \$12,500?

A. Not in my presence.

30 Q. There was talk about the note in the Westfield Trust Company, wasn't there?

A. I don't remember any such talk.

Q. You stated on your direct examination that there was talk about the notes; about what notes was there any talk?

A. I didn't say that there was talk about—yes, there was talk about certain notes.

Q. What notes?

A. Some notes held by the Mutual Trust Company.

40 Q. What notes were they?

Gordon D. Phillips—Cross

A. As far as I can remember, the one of \$1,700, another of \$1,700, and there was one other note; I have forgotten the amount of it.

Q. As a matter of fact, the Mutual Trust Company held four notes, didn't they?

A. I don't remember that.

Q. Did you at the time you went to Westfield 10
to have these shares of stock transferred, know of the existence of the Federal Trust Company note of \$5,247?

A. No; not the existence of it.

Q. You didn't know there was such a note, did you?

A. Not on that day—that is, the morning of that day.

Q. You didn't know it when you were in West- 20
field?

A. No.

Q. You didn't at that time know that Crooks owed the Federal Trust Company any money, did you?

A. Yes.

Q. You did know it?

A. Yes.

Q. Did you have any talk with Mr. Irving as to whether or not Crooks owed the Federal Trust 30
Company any money?

A. I don't remember having any such talk.

Q. Do you recall whether you stated to Mr. Irving that you did not know that he owed the Federal Trust Company any money?

A. No.

Q. You will say you did not say that to Irving?

A. No; I did not say it.

Q. Didn't you say to Mr. Irving that if he bought this stock for \$10,000, according to their computa- 40
tions, they would make \$2,500 and that would leave him whole on his Westfield note?

Gordon D. Phillips—Cross

A. No.

Q. You are sure about that?

A. Yes.

Q. Is it that you do not recall it, or you recall that you did not say so?

A. I did not say it.

10 Q. Tell us what talk you had with Mr. Irving in the presence of Mr. Welch in relation to this \$1,700 note which the Mutual Trust Company held and upon which Irving was the endorser; what you said to him and what he said to you.

A. The matter of notes was brought up; I don't remember having said anything to him about any special note; all I know we talked in general about notes.

Q. What did he say to you and you to him?

20 A. I don't remember that.

Q. Then, if you did say to Mr. Irving that this note of \$1,700 would be paid out of the proceeds of the sale of that stock, you don't remember it now?

A. I remember I didn't say that; I had no authority to.

Q. You didn't say anything about a \$1,700 note?

A. Not about any specific note.

Q. You also made an affidavit in this case?

30 A. Yes.

Q. I show you an affidavit sworn to on September 12, 1910, and ask you if that if your signature?

A. Yes.

Q. You swore to that affidavit?

A. Yes.

Q. And you say there was nothing said by you to Irving or Irving to you in reference to any particular note?

40 A. Not any particular note.

Q. Are you sure about that? A. Yes.

Gordon D. Phillips—Cross

Q. I show you this part of your affidavit where you say: "When deponent presented said stock for transfer, the said Irving stated that he would like to have the \$1,700 note paid, and asked deponent to promise that it would be paid." Does that recall to your mind that something particular was said about the \$1,700 note? 10

A. The only thing I recall is the note—is that there were several notes mentioned.

Q. You knew, Mr. Phillips, at the time you went out to Westfield what note your bank held?

A. Several notes; yes.

Q. And you didn't know what this stock was worth, did you?

A. No.

Q. Didn't you ask them?

A. I may have asked them there. 20

Q. Didn't they go over it and tell you what it was worth?

A. I don't remember that.

Q. How long have you been in the banking business?

A. Sixteen or seventeen years.

Q. And as such banker you have had very many of these transactions where you have had various notes and collateral security for them?

A. Yes. 30

Q. As a matter of fact, you don't charge your mind particularly with any one of them, do you?

A. Yes, I do.

Q. Isn't it a fact you have had so many that you cannot remember them all distinctly?

A. No, not some years ago.

Q. This was five years ago pretty nearly?

A. Yes.

Q. And as a matter of fact, with all the intervening transactions you have no distinct recollection of this, except you went to Westfield? 40

Gordon D. Phillips—Cross

A. Oh, yes, I remember going to Westfield and having the stock transferred and bringing it back.

Q. Tell us what time in the day you got back to Newark.

A. I have forgotten that.

Q. You don't remember that?

10 A. No.

Q. Tell us whether you went to your bank in Orange on the twelfth day of November before you went to Westfield?

A. I have forgotten that.

Q. Do you know what route you have to take to get to Westfield from Orange?

A. Yes, I went in my machine.

Q. You deny that there was any talk between you and Irving in the presence of Mr. Welch about that
20 \$1700 note?

A. That special note, I do deny it; we mentioned notes, several of them.

Q. That was the note in which Mr. Irving was interested, wasn't it?

A. What note was that?

Q. The \$1700 note.

A. He was interested in a \$1700 note the bank held.

Q. You knew that he was the endorser for Crooks
30 on that note, didn't you?

A. Yes.

Q. You knew that Crooks got the money on that note?

A. I wasn't at the bank when the note was originally taken.

Q. Do you recall Mr. Irving calling you up on November 30, 1908, before he signed the renewal note for \$1700?

A. What date?

40 Q. November 30, 1908.

Gordon D. Phillips—Cross

A. I don't remember that.

Q. As a matter of fact, you were offered on that day, the 12th day of November, by Mr. Irving \$10,000 for this stock?

A. He made an offer, I think, of \$10,000.

Q. Do you know whether he did, or only guess?

A. He did make that offer, yes.

10

Q. Are you sure of that?

A. Yes.

Q. What did you say to him?

A. I told him I would take it back to the bank and submit it to the committee.

Q. Did you tell him that was sufficient to cover the amount of money that was owing by Crooks to the bank on his various notes?

A. I don't remember having said that.

Q. At that time you were the secretary and treasurer of the Mutual Trust Company, were you not?

20

A. Yes.

Q. You knew their business thoroughly?

A. Yes.

Q. You knew Crooks, didn't you?

A. Yes.

Q. Do you mean to say that a man who was a director in your bank, you didn't know how much he owed the bank?

A. I knew it.

30

Q. Then you knew when you were out in Westfield that that \$10,000 would cover the liabilities?

A. I suppose I did at that time; I don't know as I said it, though.

Q. Didn't you say to Mr. Irving that you would recommend that that offer would be accepted?

A. No, I said I would submit it to the committee.

Q. You don't recall whether Irving called you up on the telephone about this note?

A. No, I don't remember that.

40

Gordon D. Phillips—Cross

Q. And therefore you cannot say whether you asked him to endorse the note and send the note to you or not?

A. I don't remember that.

Q. What records of the bank would show how the note which became due on November 30, 1908,
10 was paid?

A. The bank's tickler of due dates of notes.

Q. Is that here?

Mr. Davis: You had that.

Q. Is there any book which shows who paid it? I refer to the note which was renewed by the note which was protested in this case. Can you tell from this sheet, Exhibit C 1, when the Irving note dated September 28, 1908, for \$1,700, was paid, and by whom?

20 A. It shows as having been paid; it doesn't show by whom.

Q. Haven't you any record in the bank that shows who makes payments?

A. I think the cash book would show that.

Q. As a matter of fact, at the time the note of November 30 came due, where was Crooks?

A. I don't know.

Q. Isn't it a fact that you just entered it on your book without any actual payment having
30 been made on November 30 and took a renewal note for the full amount?

A. No.

Q. Why doesn't it show here what was paid?

A. It does show that \$1,700 was paid.

Q. What was done with the interest?

A. The interest was deducted when the note was originally taken.

Q. Does it show on the renewal of this note what amount was deducted for interest on November 30,
40 1908?

Gordon D. Phillips—Cross

A. I do not see any such entry of interest on this sheet.

Q. You can tell me, as a banker, whether the Mutual Trust Company while you were secretary and treasurer had any book in which it showed by whom payments were made.

A. The cash book ought to show it. 10

Mr. Koestler: Is the cash book here, Judge Davis?

Mr. Davis: The proceeds of the new note paid the old note; that is all that is claimed.

Mr. Koestler: That is what I——

Mr. Davis: I didn't know there was any question about it.

Q. Didn't you report to your committee when you returned from Westfield after having the shares of stock assigned, that those shares of stock were worth so much money, according to what you learned out there? 20

A. I told them there was an offer of \$10,000 made.

Q. What was done, anything?

A. Nothing.

Q. After you had that stock assigned, you immediately got in touch with the Federal Trust Company, didn't you? 30

A. Yes.

Q. You then found out that they had this indebtedness?

A. Yes.

Q. And on the same day they arranged to get a note from Crooks, which was subsequently handed over to your bank?

A. I don't know what day they arranged it.

Q. You immediately upon coming back from 40

Gordon D. Phillips—Cross

Westfield informed the Federal Trust Company of the situation as you had learned it?

A. Yes.

10 Q. And although this note and the other instrument which you have identified as having received are both dated Newark, November 12, you didn't receive them until the 18th of November?

A. I have forgotten the date they were received.

Q. You had nothing to do with the execution of this note, did you?

A. The making of it by Crooks, no.

Q. You don't know whether it was made that day it bears date or not?

A. No.

Q. On this Exhibit C 3 you recognize your signature?

20 A. Yes.

Q. And it is dated November 18?

A. Yes.

Q. If you had acquired the note of November 12th before the 18th, would you not have paid for it before?

Court: He said he did not acquire it until the 18th.

30 A. It may have been held up for some reason; we might have accepted it one day and passed it on another, or purchased it another.

Q. It wasn't purchased until the day that draft was given?

A. No, it wasn't entered.

Q. Do you remember seeing Mr. Irving after he had been sued by the Mutual Trust Company on his endorsement on the \$1,700 note?

40 A. I don't know when he was sued; I wasn't with the bank.

Gordon D. Phillips—Redirect

Q. You were with the Newark Trust Company?

A. Yes.

Q. Don't you recall one instance when Mr. Irving came there to see you?

A. He was in there one time, yes.

Q. And didn't you at that time say to him when he came in, "Why, haven't they settled that up with you yet?" 10

A. I don't remember that.

Q. Are you sure you didn't say it?

A. I didn't say it.

Q. What do I understand, because you don't remember, you say you didn't say it?

A. I didn't say that.

Q. You remember he came and had some talk with you?

A. Yes. 20

Q. And what was it about?

A. I guess we talked on things in general.

Q. And not about this \$1,700 note at all?

A. I don't recall having talked about that.

Re-Direct by Mr. Davis:

Q. How long before November 18, 1908, did Crooks get out of the executive committee and out of the board of directors of the Mutual Trust Company; do you remember? 30

A. No, I don't.

Q. With regard to his getting out of the Federal Board, was it about the same time, or before or after?

A. As near as I can recall, I think he was off the board of the Mutual before—he got off that board before he left the Federal; I am not positive about that.

Q. I call your attention to the minutes of Decem- 40

*William S. Welch—Recalled—(In Rebuttal)—
Direct*

ber 3, 1908, on page 100 of the minutes, in which it says that "Director Joseph M. Byrne was nominated to fill the vacancy in the executive committee caused through the resignation of J. W. Crooks," and ask you if you know how long that vacancy
10 had existed before December 3, 1908?

A. I don't remember how long it had existed.

Q. I show you the minutes of the executive committee.

DEFENDANTS REST.

—

WILLIAM S. WELCH, recalled in rebuttal for complainant.

20

Direct-Examination by Mr. Koestler:

Q. Mr. Phillips says that at the time of his conversation with you and Mr. Irving on the 12th of November, 1908, there wasn't anything figured up in his presence to show the value of these fifty shares of stock; what have you to say?

A. We figured it out and approximated the value at about two and a half a share, making it about
30 \$12,500 as the value of the stock at that time, and we made the offer of \$10,000, because we didn't know whether the contract would carry through or not.

Q. What did Mr. Phillips say about that \$2,500 over the \$10,000 you offered?

A. He said, if our company accepts your \$10,000 offer, that the profits on that would protect Mr. Irving on his \$1,500 in the Westfield Bank. That
40 came out in conversation.

*William S. Welch—Recalled—(In Rebuttal)—
Redirect*

Cross-Examination by Mr. Davis:

Q. You say that "we figured it out"; you mean Mr. Irving and yourself?

A. Yes.

Q. And when you figured it out, you figured it out among yourselves? 10

A. Yes.

Q. You didn't let Mr. Phillips into the knowledge of what process of figuring you had at all?

A. We were all together in the one little room.

Q. You say you figured it out in his presence?

A. Yes, we were all in the one room; we didn't keep anything in the dark; he was one of us.

Q. Do you mean to say you figured all this out in his presence before you made the offer of \$10,000? 20

A. Yes, we figured out approximately what the stock was worth.

Q. Didn't you and Mr. Irving go one side and do the figuring?

A. No, sir.

Re-direct by Mr. Koestler:

Q. Did you tell Phillips the result of your calculation showing that his fifty shares, in your opinion, were worth \$12,500? 30

A. That is what we said.

Q. Who was it that made the remark about the surplus of \$2,500 making Mr. Irving whole, you or Phillips?

A. Mr. Phillips.

John S. Irving—Recalled—(In Rebuttal—Direct

JOHN S. IRVING, recalled in rebuttal.

Direct examination by Mr. Koestler:

10 Q. Mr. Irving, on November 12, 1908, when you, Welch and Phillips were together, did you and Mr. Welch figure out what you thought would be the approximate value of the fifty shares of stock, so that you might make an offer to purchase it?

A. Yes, sir.

Q. Did you inform Phillips what in your opinion it was worth?

A. He was there and knew as much about the figuring as we did.

Q. Did you tell him what you figured?

20 A. I suppose we told him; he could see the figures himself, he stood there at the desk alongside of me.

Q. He was right there and saw the figures?

A. Yes.

Q. Did he make any remark about the \$2,500 in excess of the \$10,000 you were offering?

A. No, I don't remember that he did any more than about the surplus would pay the \$1,500 that I had in the bank, in the Westfield Trust Company.

Q. Who said that?

30 A. I think Mr. Phillips spoke of it, as he knew that was what we were buying the stock for, to cover that note, trying to make something out of it over and above paying Crooks' obligations to the Mutual Trust Company.

Q. Did you go to see Phillips at the Newark Trust Company either after suit was started against you on the note or when it was threatened?

A. Yes, I called in there to see him.

40 Q. Do you know about when it was with relation to when suit was commenced against you?

John S. Irving—Recalled—(In Rebuttal—Direct

A. I don't know whether it was before the suit; it was after they had made a demand, either the Trust Company or through our attorneys, I don't know which.

Q. What did you go to see Phillips about?

A. I wanted to see how his memory was on what he told us the day we transferred the stock. 10

Q. What did you say to him and what did he say to you?

A. He seemed to get a little cross when I spoke of it.

Q. What did he say?

A. He said, "Haven't they settled that up yet?" something like that; I think that is what he said, "Haven't they settled that yet?"

Q. Did you ask what he remembered about the transaction of November 12th? 20

A. Yes.

Q. What did he say?

A. He didn't say; he said he didn't remember whether he remembered it or not; he didn't tell me whether he did or didn't.

COMPLAINANT RESTS.

30

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Exhibit C 1.

		HARRY W. CROOKS, 482 Broad St.									
Collateral.	Date.	Dr.	Cr.	Balance.	Days.	Rate.	Interest.				
90 shares Publishers Security Co.	July 1, 1905	2800			27	5	10 50	10 50	Pd	8/11/05	
Loan guaranteed by J. W. Crooks	27		150	2650	13		4 78	4 78	"	9/20/05	
40 shrs. ditto.	Aug. 9		250	2400	44		14 66	17 21	"	11/25/05	
	Sept. 22		100	2300	8		2 55				
	Dec. 2		200	2100	62		19 48	28 52	"	1/15/06	
	Jan. 9, 1906		100	2000	30		9 04				
	Mar. 2		200	1800	52		14 44				
					3		75				
	" 5		100	1700	26		6 14	42 82	Oct. 30,	1906	
	Feb. 2, 1907		100	1600	91		21 49				
	Feb. 18, 1911		10	1590	92		21 72	21 72	Jan. 8,	1907	
	Mar. 16		10	1580	92		21 72	21 72	June 25,	1907	
	Apr. 26, 1911		10	1570	33		7 79				
						Feb. 17/07					
	May 17, 1911		10	1560	57	6%	15 20	22 99	" 25,	1907	
	June 20, 1911		10	1550	91		24 21	24 21	Oct. 30		
	July 15, 1911		10	1540	92		24 53	24 53	Dec. 4		
	Aug. 28, 1911		1540	0	92	1/1/08	24 53	24 53	Mar. 26,	1908	
					91		24 27	24 27	May 23		
					91		24 27	24 27	Dec. 9		
					92		24 53	24 53	Jan. 9,	1909	
					92		24 53	24 53	July 13		
					90		24	24 53	May 10,	1910	
					91		24 27				
					92		24 53	72 80			
					92		24 53				
					90		24				
					91		24 27				
					92		24 53				
					92		24 53				
					49		13 07				
					26		6 89				
					15		3 95				
					26		6 85				
					21		5 50				
					34		8 84				
					10		2 58				
					15		3 88				
					35		8 98	230 67	Aug. 28,	1911	
								230 67			

J. W. CROOKS.

Sheet No. 4.

Date.	Balance	Dr.	Cr.	Balance.	Days.	Rate.	Aggregate Interest.
Sept. 1				73 12			
4			600	673 12			
4			1681 70	2354 82			
4			1000	3354 82			
4		1975		1379 82			
8		625		754 82			
10		100		654 82			
11			150	804 82			
12			1000	1804 82			
14		1801 56		2 26			
18			1000	1002 26			
19		500		502 26			
19			800	1302 26			
21		1300		2 26			
22		249 08		912 26			
22		6550 64	910	664 18			
		664 18	7214 82				
	212 Vas.	7214 82	7214 82				
22	Balance		664 18	664 18			
24			350	1014 18			
25		900		114 18			
28		1800		1800 00			
28			1685 82	0			
Dec. 1, 1908			1682 15	1682 15			
1		1700		17 85			
1		1 56		19 41			
9		3 67		23 08			
		4405 23					
Feb. 3, 1909		1 54		24 62			
		4406 77					
Jan. 19, 1911			24 62	0			
			4406 77				

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JOHN W. CROOKS.

Maker.	Endorser.	Date.	Mo.	Day.	Yr.	Amt.	Amt. Pd.	Balance.	Time.	Rate.	Interest.		
											Dr.	Cr.	
		Nov. 18, 1908				5247 50		5247 50	2 da.	6	1 75	Paid 1 75	June 10, 1909
		20				75		5172 50	26 "		22 41	" 22 41	June 10, 1909
		Dec. 16				21 54		5150 96	15	1/1/09	12 88	" 12 88	June 10, 1909
		Aug. 28, 1911					5150 96	0	90	4/1/09	77 27	Paid 77 27	June 10, 1909
											114 31		
									91	7/1/09	78 12		
									92	10/1/09	78 98		
									92	1/1/10	78 98	270 40	June 8, 1910
									90		42 95	34 32	
									91		78 12		
									92		78 98		
									92		78 98		
									90		77 27		
									91		78 12		
									50		434 42		
											42 92	477 34	Aug. 28, 1911

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JOHN W. CROOKS.

Maker.	Endorser.	Date.	Due.			Amt.	Amt. Pd.	Balance.	Time.	Rate.	Interest.	
			Mo.	Day.	Yr.						Dr.	Cr.
Wm. Bittles		Sept. 18, 1906	11	19	06	2400		2400	2 mos.	6	24 80	24 80
"	"	Nov. 20					2400	0				
"	"	20	1	21	07	2400		2400	2	"	25 20	25 20
"	"	Jan. 25, 1907					2400	0				
"	"	25	5	21	07	2400		2400	4	"	48	48
"	"	May 22	9	23	07	2400		4800	4	"		50
		24					2400	2400				
Jno. S. Irving		Sept. 27	1	23	08	2000		4400	4			40 67
		Oct. 5					2400	2000				
	Est. T. W. Crooks	12	10	21	07	3000		5000	9 da.	"		4 50
	" " "	Nov. 16	11	27		3000		8000	11	"	"	5 50
		20					3000	5000				
		29					3000	2000				
	do.	Dec. 2	12	9		2800		4800	7 da.			3 27
	"	13					2800	2000				
	"	13	12	19		2600		4600	10	"	"	4 47
	"	27					2600	2000				
	"	27	1	6	08	2400		4400	10	"	"	7 47
	"	Jan. 15, 1908					2400	2000				
	"	15	1	20		2200		4200	10	"	"	
	"	31					2000	2200				
	"	31					2200	0				
	"	31	2	24		2100		2100	30	"	"	
Jno. S. Irving		31	5	25		1900		4000	4 mo.	"		
	"	Feb. 28					2100	1900				
	"	28	4	28		2000		3900	2	"	"	
	"	May 1					2000	1900				
	"	1	6	29		1900		3800	2	"	"	
	"	29					1900	1900				
Jno. S. Irving		29	9	28		1800		3700	4	"	"	
	"	July 3					1900	1800				
Est. T. W. Crooks		3	8	31		1800		3600	2	"	"	
" " "		Sept. 4					1800	1800				
	"	4	11	4		1700		3500	2	"	"	
	"	28					1800	1700				
J. S. Irving		28	11	30		1700		3400	2	"	"	
	"	Dec. 1					1700	1700				
	"	Dec. 1					1700	1700				
J. S. Irving		1	2	1	09	1700		3400	2 mo.	6		
	"	Aug. 5, 1910					1100	2300				on acct.
	"	Jan. 19, 1911					600	1700				
	"	21					1700	0				

		J. W. CROOKS,			Loan No.						
		Newark, N. J.			Days.	Rate.	Interest.				
		Dr.	Cr.	Balance.							
Collateral. 50 shares Westfield Land and Improvement Company	Date.										
	July 1, 1905	4900		4900	92	5	61 94	61 94	Paid	1/9/06	
	June 23, 1909		450	4450	92		61 94	61 94	"	1/9/06	
	Aug. 3		1000	3450	90		61 25	61 25	"	Nov. 20	
	Nov. 8		441 43	3008 57	91		61 93	61 93	"	"	"
	Feb. 15, 1910		1309 15	1699 42	92		62 61	62 61	"	"	"
	June 30			01 1699 41	92		62 61	62 61	"	May 1, 07	
	Jan. 19, 1911			15 29 1684 12	90		61 25	61 25	"	"	1, 07
	21			1 54 1682 58	91		61 93	} 124 54	Oct. 2, 1907		
	Aug. 23, 1911		1682 58	0	92		62 61				
						91	61 93				
						91	61 93				
						92 to 10/1/08	62 61	249 08	Sept. 22, 1908		
						92	62 61	62 61	June 10, 1909		
						90	61 25	61 25	" 10, 1909		
					84	57 17					
					7	4 33	61 50	July 8			
					34	25 22	185 36				
					58	33 35	58 57	Nov. 8			
					39	18 69					
					53	22 15	40 84	Feb. 15			
					46	19 22					
					44	10 38	29 60	June 8, 1910			
					91	21 47					
					92	21 72					
					92	21 72	64 91	Jan. 19, 1911			
					19	4 48					
					71	16 59					
					91	21 27					
					50	11 69	54 03	Aug. 28, 1911			
							54 03				

Exhibit C 2.

\$5247 50/100 Newark, N. J., November 12th, 1908

On demand after date I promise to pay to
the order of myself

Five thousand two hundred and forty seven 50/100
dollars with interest from date at the FEDERAL
TRUST COMPANY. Value received.

J. W. Crooks 10

Due

Endorsed

J. W. Crooks

08 00

Paid 11/20 \$75 E. F. B.

54

Paid 12/16/08 21 A. F. H.

Paid 8/20/08 5150.96 F. S. B.

5247.50

20

Exhibit C 3.

MUTUAL TRUST COMPANY No. 4858

Orange, N. J., Nov. 12, 1908.

To The FEDERAL TRUST COMPANY, NEW-
ARK, N. J.

30

Pay to the Order of T. S. Byrne, Asst. Treas.

\$5247 50/100 Five thousand two hundred and forty
seven and 50/100 Dollars

W. B. Phillips

Charles R. Wilmot

Treasurer

President.

Endorsed

Pay to the order of

Federal Tr. Co.

T. S. Byrne

Asst. Treas.

40

Exhibit C 4a.

"4900 00/

Orange, N. J. Aug. 30, 1905.

On Demand after date, for value received, I promise to pay to MUTUAL TRUST COMPANY, or order, at its banking house, with interest at the rate of 5% per annum,

10 Forty-nine hundred 00/Dollars,
 the undersigned having deposited with said Trust Company as collateral security for payment of this or any other liability or liabilities of the undersigned, direct or contingent, individual or firm, to said Trust Company now existing, or which hereafter may be contracted, the following property, viz: 50 Shares Westfield Land and Improvement Co., with full power and authority to said Trust Company, or its President, or Treasurer, to sell,
 20 assign and deliver the whole, or any part thereof, or any substitutes therefor, or any additions thereto, at any additions thereto, at any Broker's Board, or at any public or private sale, at the option of said Trust Company, or its President, or Treasurer, or its or their or either of their Assigns, on the non-performance of this promise, or the non-payment at maturity of any of the other liabilities aforesaid, or at any time or times thereafter, without demand of payment, advertisement, or notice
 30 of sale, which are hereby expressly waived; and after deducting all costs and expenses for collection, sale and delivery, to apply the residue of the proceeds of such sale, or sales, to pay any or all of said liabilities to said Trust Company, or its assigns, as its President or Treasurer, or assigns, shall deem proper, returning the over-plus to the undersigned; and upon any sale at public auction or at Brokers' Board the holder hereof may purchase the whole or any part of such securities, discharged from any right of redemption. And the
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Exhibit C-4a

undersigned agrees to be and remain liable to the holder hereof for any deficiency, and to pay the same upon demand of the holder hereof.

In case of depreciation, according to the judgment of the holder hereof in the market value of the security hereby pledged, or which may hereafter be pledged for this loan, the undersigned agrees to make a payment on account, so that the said market value shall always be at least twenty per cent. more than the amount unpaid of this Note, or else to make such further additional deposits of securities as may be necessary to maintain such margin, adopting either course that the holder hereof may require. In case of failure to do so, or in the event of insolvency of the undersigned or of any endorser or guarantor of this Note, this Note shall be due and payable forthwith at the option of the holder hereof, anything hereinbefore expressed to the contrary notwithstanding, and the holder may immediately reimburse himself by sale of the security as hereinbefore provided, also holding and applying the balance of any deposit account of the undersigned with said Trust Company. In case of the substitution of any other securities for those above mentioned, or of any additions to the collaterals at any time securing this Note, the provisions hereof shall apply to all such substituted new or additional collaterals.

In case of default by the undersigned and the payment of this Note by any grantor or endorser, the said Trust Company is hereby expressly authorized, if it so elect, to surrender to the person making such payment, any or all collaterals held for the payment hereof.

J. W. Crooks."

Exhibit C 5.

\$1700.

Nov. 30, 1908.

Two months days after date I promise to
pay to the order of J. S. Irving

00/

Seventeen hundred Dollars
at Mutual Trust Co. Orange, N. J.
value received

10

J. W. Crooks

09

No. due Feb. 1

Exhibit D 1.

\$1700. 00/100

Newark, N. J. Sept. 3, 1908.

20

Two months after date I promise to pay to
the order of Est. of T. W. Crooks

Seventeen hundred 00/100 Dollars
at the FEDERAL TRUST COMPANY Value re-
ceived.

Due Nov. 3/08

J. W. Crooks.

Endorsed.

Est. of T. W. Crooks

J. W. Crooks.

30

Pay to the Order of
Federal Trust Company, Newark, N. J.
Restrictive Endorsements Guaranteed
Mutual Trust Company, Orange, N. J.
Gordon B. Phillips, Treasurer.

(This Note was protested November 4, 1908.)

Exhibit D 2.

\$2800.00

NEWARK, N. J., Oct. 21, 1904.

On demand, after date, for value received, I promise to pay to Bernardsville Natl. Bk. or order, at its banking house, with interest at the rate of 5 % per annum,

Twenty eight hundred 00/100 Dollars
the undersigned having deposited with said Trust Company as collateral security for payment of this or any other liability or liabilities of the undersigned, direct or contingent, individual or firm, to said Trust Company, now existing, or which hereafter may be contracted, the following property, viz.:

Ninety shares of Publishers Security Co. of C. A. with full power and authority to said Trust Company, or its President, or Treasurer, to sell, assign and deliver the whole, or any part thereof, or any substitutes therefor, or any additions thereto, at any Broker's Board, or at any public or private sale, at the option of said Trust Company, or its President, or Treasurer, or its or their or either of their Assigns, on the non-performance of this promise, or the non-payment at maturity of any of the other liabilities aforesaid, or at any time or times thereafter, without demand of payment, advertisement, or notice of sale, which are hereby expressly waived; and after deducting all costs and expenses for collection, sale and delivery, to apply the residue of the proceeds of such sale or sales, to pay any or all of said liabilities to said Trust Company, or its assigns, as its President or Treasurer, or assigns, shall deem proper, returning the overplus to the undersigned; and upon any sale at public auction or at Broker's Board the holder hereof may purchase the whole or any part of such securities, discharged from any right of redemption. And the undersigned agrees

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Exhibit D-2

to be and remain liable to the holder hereof for any deficiency, and to pay the same upon demand of the holder hereof.

10 In case of depreciation, according to the judgment of the holder hereof in the market value of the security hereby pledged or which may hereafter be pledged for this loan, the undersigned agrees to make a payment on account, so that the said market value shall always be at least twenty per cent. more than the amount unpaid of this Note, or else to make such further additional deposits of securities as may be necessary to maintain such margin, adopting either course that the holder hereof may require. In case of failure to do so, or in the event of insolvency of the undersigned, or of any endorser or guarantor of this Note, this
20 Note shall be due and payable forthwith at the option of the holder hereof, anything hereinbefore expressed to the contrary notwithstanding, and the holder may immediately reimburse himself by sale of the security as hereinbefore provided, also holding and applying the balance of any deposit account of the undersigned with said Trust Company. In case of the substitution of any other securities for those above mentioned, or of any additions to the collaterals at any time securing this Note, the provisions hereof shall apply to all such substituted
30 new or additional collaterals.

In case of default by the undersigned and the payment of this Note by any guarantor or endorser, the said Trust Company is hereby expressly authorized, if it so elect, to surrender to the person making such payment, any or all collaterals held for the payment hereof.

HARRY W. CROOKS.

40 "Endorsed without recourse
Bernardsville National Bank."

Exhibit D 3.

NEWARK, N. J., November 12th, 1908.

Mutual Trust Company, Orange, New Jersey.

Gentlemen—Enclosed please find my demand note for five thousand two hundred and forty-seven dollars and fifty cents (\$5,247.50) to be paid from the proceeds of the sale of the fifty shares of stock of the Westfield Land and Improvement Company, herewith assigned to you.

Very truly yours,

J. W. CROOKS.

IN CHANCERY OF NEW JERSEY.

Between

JOHN S. IRVING,
Complainant,
and
MUTUAL TRUST COMPANY,
et al.,
Defendants.

On Bill, etc.
Final Decree.

This cause coming on to be heard, at the present Term of the Court of Chancery of New Jersey, in the presence of Samuel Koestler, Esq., of counsel with the complainant, and John R. Hardin, Esq., of counsel with the defendant, Federal Trust Company, and Howe & Davis, Esqs., of counsel with the defendant, Mutual Trust Company, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and the said Court having

Notice of Appeal

duly considered the said pleadings, proofs and arguments; and it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by him in his bill of complaint;

10 It is on this twenty-sixth day of August, 1913, by his Honor, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the complainant's bill be and the same is hereby dismissed, with costs of the defendant Mutual Trust Company, and of the defendant Federal Trust Company to be taxed.

E. R. WALKER, C.

 IN CHANCERY OF NEW JERSEY.

20	Between JOHN S. IRVING, Complainant, and MUTUAL TRUST COMPANY, <i>et al.</i> , Defendants.	} Notice of Appeal On Bill, &c.
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30 The complainant, John S. Irving, hereby appeals from a final decree made in this Court in the above-stated cause dismissing the complainants' bill of complaint with costs, and from the whole and every part of said decree, to the Court of Errors and Appeals in the last resort in all causes.

Dated, September 27, 1913.

SAMUEL KOESTLER.

Solicitor for and of counsel with the complainant. I conceive there is good cause for appeal in the above-stated cause.

40

SAMUEL KOESTLER,
Of counsel with complainant.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

JOHN S. IRVING,
Complainant,
Appellant,

and

MUTUAL TRUST COMPANY,
et al.,
Defendants-Respondents.

Petition
for Appeal. 10

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

The petition of John S. Irving, the appellant in
the above-named cause, respectfully shows: 20

That your petitioner finds himself aggrieved by
a decree, made in the Court of Chancery, by his
Honor, Edwin Robert Walker, Chancellor of the
State of New Jersey, bearing date the 26th day of
August, 1913, wherein John S. Irving was com-
plainant and the Mutual Trust Company, and the
Federal Trust Company were defendants, in the
following respects, to wit:

That the said decree orders, adjudges and decrees
that the said bill of complaint of the complainant
should be dismissed with costs to be paid by the
complainant to the said defendants. 30

And your petitioner humbly appeals from said
decree of the Chancellor and each and every part
thereof, as aforesaid upon the ground, that the same
is erroneous, for the reason, that the said bill of
complaint of the complainant should not have been
ordered to be dismissed, nor costs awarded to the
defendants, but that the complainant should have
been granted the relief prayed by his said bill of
complaint and supplemental bill of complaint. 40

Petition for Appeal

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

10

SAMUEL KOESTLER,
Of Counsel with appellant, John S. Irving.

Answers Filed in Usual Form.

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