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NEW JERSEY

Court of Errors and Appeals

**Bill of Complaint**

*(Filed June 11, 1909)*

In Chancery of New Jersey.

To HIS HONOR MAHLON PITNEY,

CHANCELLOR OF THE STATE OF NEW JERSEY

20

Complaining shows unto your Honor, your orator Bartley F. Tuthill, of the Borough of Roselle Park, in the County of Union and State of New Jersey, that your orator is a creditor of Adam Masonis (sometimes called Adam Masionis) a resident of the Township of Union, in said County and State, and he exhibits this, his Bill of Complaint for his own benefit and the benefit of all other creditors of said Adam Masonis (sometimes called Adam Masionis) as shall come in under this bill in this suit and for and on behalf of any trustee in bankruptcy proceedings instituted by the said Adam Masonis (sometimes called Adam Masionis).

30

Your orator further shows that the said Adam Masonis (sometimes called Adam Masionis) was on and before the thirty-first day of March, A. D., 1906, seized and possessed in fee simple of all

40



## Bill of Complaint

side of said New Road; thence along the same south, seventeen degrees and thirty (30) minutes west, fifty-three (53) feet and five inches to the place of beginning.

Being the same land and premises conveyed to Adam Masionis by deed of Anna Dorthea Platz, widow, by deed dated February 27, 1901 and recorded in Book 380 of Deeds for Union County 10 on pages 198 &c.

Second Tract: Beginning at a corner of land belonging to E. B. Jagers at the intersection of the westerly line of said road from Irvington; thence along said Jagger's land, north forty (40) degrees and twenty (20) minutes west, five (5) chains and sixty-two links; thence north forty-six (46) degrees and forty-five minutes east, still along said Jagger's land ten (10) chains and thirty-nine and a half ( $39\frac{1}{2}$ ) links more or less to the 20 westerly side of said road from Irvington; thence along said westerly side of said road south nineteen (19) degrees and five minutes (5) west, twelve chains and eight and a half ( $8\frac{1}{2}$ ) links to the place of beginning. Containing two and nine hundred and thirteen thousandths of an acre, be the same more or less.

Being the same land and premises conveyed by Thomas Fitzgerald and wife to Adam Masionis and recorded in Book #442 of Deeds, page 138 30 &c.

And your orator furth shows that on or about the twenty-fifth day of October, A. D. 1906 and for a long period of time prior thereto, the said defendant Adam Masionis (sometimes called Adam Masionis) and while he was seized and possessed of said lands and real estate, was justly indebted to your orator in the sum of two hundred and seventy-four dollars and twenty-one cents and upwards 40

## Bill of Complaint

for goods and chattels sold and delivered to the said defendant Adam Masonis (sometimes called Adam Masionis). That on the twenty-sixth day of September, 1906 you orator commenced an action on contract against the said Adam Masonis for the recovery of said debt and interest thereon in the District Court of the City of Elizabeth  
10 and such proceedings were thereupon had in said suit that afterwards, to wit, on the twenty-fifth day of October, A. D., 1906, your orator recovered a judgment in the said District Court for the sum of two hundred and ninety-four dollars and seventy-eight cents including interest and costs which judgment was afterwards, to wit, on the twenty-sixth day of October, A. D., 1906, duly docketed  
20 in the Court of Common Pleas in and for the County of Union, pursuant to the statute in such case made and provided as by the record of the said judgment now remaining in the office of the Clerk of said Court of Common Pleas, reference being made thereunto had, will more fully and at large appear.

And your orator further shows, that for the purpose of obtaining satisfaction of said judgment, he caused to be issued thereon out of said Court of Common Pleas a writ of *fi fieri facias de bonis et terris*, tested on the fifth day of May, A.  
30 D., 1909, and returnable on the fifth day of October, next, which writ having been first duly recorded was delivered to the Sheriff of the said County of Union, to whom it was directed and thereby he was commanded that of the goods and chattels of the said Adam Masonis in his County he should cause to be made the said sum of two hundred and ninety-four dollars and seventy-eight cents so as aforesaid, adjudged to your orator; and that if  
40 sufficient goods and chattels of said Adam Mason-

## Bill of Complaint

is in his County, he can not find whereof to make said money, he should cause the whole or the residue as the case might require of said moneys to be made of the lands, hereditaments and real estate whereof the said Adam Masonis was seized on the twenty-sixth day of October in the year A. D., 1906 or at any time afterwards, in whose hands so ever the same might be; and that the said Sheriff 10 should have those moneys before said Court of Common Pleas on the return day of said writ, to render to your orator in satisfaction of his said judgment and that he should have then and there the said writ.

And your orator further shows that the Sheriff of said County of Union to whom the said writ of execution was directed and delivered, being unable to find any goods and chattels, lands, hereditaments and real estate of the said Adam Masonis 20 whereon to levy an make said judgment has returned said writ of execution to said Court of Common Pleas with a return indorsed thereon as follows:

“Returned *nulla bona*, May 5, 1909.

Robert J. Kirkland,  
Sheriff.”

reference being thereunto had will more fully and at large appear.

And your orator further shows that the said 30 Adam Masonis (sometimes called Adam Masionis) being so seized and possessed of said tracts of land and premises as aforesaid, which are of the value of six thousand dollars and upwards, afterwards, at or about the dates or times and by the pretended deeds hereinafter mentioned, and after the said debt so due to your orator had accrued and become due and payable and in order to secure the said property for his own use and benefit 40

## Bill of Complaint

and protect it from the claims and demands of his creditors and your orator in particular, and prevent your orator and such other creditors from collecting their said debts, contriving to defraud your orator and other creditors did by deed bearing date on the 31st day of March, A. D., 1906 and recorded in Book 463 of Deeds for said

10 County of Union, pages 296 etc, pretend to convey the said two tracts of land above described to one Joseph Ramiszesky, who, by deed bearing date the same day and year last aforesaid pretended to convey the said lands and real estate to Paulina Masionis (sometimes called Pauline Masionis) the wife of the said defendant Adam Masionis (sometimes called Adam Masionis) for the nominal consideration of one dollar and other good and valuable consideration, which last mentioned

20 deed was recorded in Book 463 of Deeds for said County of Union on pages 298, etc.

And your orator further shows that he has been informed and believes it to be true and therefore expressly charges, that no consideration whatever was paid for any of the said deeds of conveyances, that the said Joseph Ramiszesky was a mere conduit or intermediary for the purpose of affecting and carrying into execution the fraudulent design of the said Adam Masionis (sometimes

30 called Adam Masionis) in conveying to his said wife Paulina Masionis (sometimes called Pauline Masionis) the said lands and real estate in order to defeat and defraud your orator and other creditors of payment and satisfaction of their debts and demands; and that the said Adam Masionis (sometimes called Adam Masionis) has always

40 held, occupied, possessed and enjoyed and received the rents and profits of said lands as ful-

## Bill of Complaint

ly to all intents an purposes as before the execution of said pretended conveyances.

And your orator further shows, that he has frequently and in a friendly manner applied to the said Adam Masonis (sometimes called Adam Masionis) and to his wife Paulina Masionis (sometimes called Pauline Masionis) to pay the said judgment, or to reconvey or cause to be reconveyed the said premises to the said Adam Masonis (sometimes called Adam Masionis) so that they may be sold under an execution on said judgment for the satisfaction of said judgment, and that a good and clear title given therefor to the purchasers thereof as in equity and good conscience they ought to have done, but which they wholly refused to do. 10

In consideration whereof and for as much as your orator is remediless in the premises at the common law, and can not have adequate relief except by the aid of this Honorable Court. 20

To the end, therefore, that the said Adam Masonis (sometimes called Adam Masionis) and Paulina Masionis (sometimes called Pauline Masionis) may without oath, full, true, direct and perfect answer make to all and singular the charges and matters aforesaid as fully and particularly as if the same were here again repeated and they thereunto particularly interrogated; and that the said defendants or some one of them may be decreed to pay to your orator the full amount due and owing on said judgment with interest cost and execution fees accrued thereon; and that the said fraudulent conveyances, and all other conveyances and encumbrances made, created or suffered between the said defendants and affecting the said lands and real estate, may be set 30 40

## Bill of Complaint

aside and declared null and void; and that the said lands may be sold clear, free and discharged of and from the said fraudulent deeds and all other fraudulent deeds and encumbrances under a writ of execution issued for this purpose, and the proceeds thereof, or such part of the same as may be necessary, may be applied to the payment of your  
 10 orator's said judgment and the claims and demands of other creditors; and that your orator may have such other or further relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

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 directed to the said  
 20 Adam Masonis (sometimes called Adam Masionis) and Pauline Masionis (sometimes known as Paulina Masionis) his wife, therein and thereby commanding them and each of them at a certain day and under a certain penalty to be therein expressed, personally to be and appear before your Honor in this Honorable Court, then and there to answer the premises and to stand to and abide by and perform such order and decree therein as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

30 And your orator will ever pray, &c.

MARTIN P. O'CONNOR,

Solicitor for and of counsel with Complainant.

A true copy.

Sam K. Robbins,  
 Clerk.

**Answer of Pauline Masionis**

*(Filed August 7, 1909)*

IN CHANCERY OF NEW JERSEY

Between BARTLEY F. TUTHILL, <div style="text-align: right; margin-right: 20px;">Complainant,</div> <div style="text-align: center; margin: 5px 0;">and</div> ADAM MASONIS AND PAULINE MASONIS, <div style="text-align: right; margin-right: 20px;">Defendants.</div>	}	10          On Bill &c.
--	---	---

This defendant for answer unto the Complainant's bill of complaint, or so much thereof as she is advised is necessary or material for her to answer unto, says that she is without knowledge or information of the matters and things alleged and set forth in said bill, except as herein set forth and hence neither admits nor denies the allegations in said bill of complaint, but puts the complainant upon his proof. 20

And this defendant denies all the allegations alleged by the complainant in his bill of complaint that the said conveyances made by the said Adam Masionis to Joseph Ramiszesky and from the said Joseph Ramiszesky to this defendant, was done for the purpose of cheating and defrauding the said complainant and divers other creditors or any creditors of the said Adam Masionis, but that the said conveyance was made to this defendant for a full bona fide consideration and for the full value of the land and premises, for cash moneys paid at the time of the conveyance and for 30 40

## Answer of Pauline Masionis

moneys advanced by this defendant unto the said Adam Masionis, prior thereto.

- And this defendant further denies that the said Adam Masionis takes the rents, issues and profits therefrom, but on the contrary avers that this defendant has advanced a larger sum of money to the said defendant, Adam Masionis, in excess of
- 10 the value of the said land and premises mentioned in the bill of complaint; all of which conveyances was done by reason of the fact that a conveyance can not be made under the laws of the State of New Jersey, direct from the said Adam Masionis to this defendant, who is the wife of the said Adam Masionis: That the said Joseph Ramiszesky was used for an intermediary party for the purpose of this conveyance, but all of which was done in good faith for full and bona fide value, for
- 20 cash moneys paid at the time of the conveyances and for moneys advanced by this defendant to the said Adam Masionis prior thereto: all of which was done without knowledge or information that the said Adam Masionis was indebted to the said complainant or any other person or persons, or that the said Adam Masionis had any creditors, and that all acts and doings of this defendant were done in good faith, without intent to cheat and defraud the creditors of the said Adam Masionis.
- 30 And this defendant further denies that these premises were conveyed to her by the said Joseph Ramiszesky for the purpose and with intent to cheat and defraud the complainant and other creditors of the said Adam Masionis, but on the contrary, that she paid a fair and full consideration for the said land and premises to the said Adam Masionis at the time the conveyances was made,
- 40 and that from that time she has always held, oc-



## Answer of Adam Masionis

tions in said bill of complaint, but puts the complainant upon his proof.

And this defendant neither admits nor denies that he was seized in fee simple of all the tracts or parcels of land situate in the Township of Union, County of Union and State aforesaid, and mentioned and described in the complainant's bill  
10 of complaint, or any other lands and premises, but leaves the complainant to prove the said allegation by him alleged in his said bill of complaint.

And this defendant further admits the making and executing of the several deeds of conveyance mentioned and set forth in the bill of complaint, but denies that the same were made for the purpose of or with intent to cheat and defraud the complainant in this suit or any other creditors;  
20 but on the contrary says that a full and fair bona fide consideration was paid to this defendant for the premises set forth in the complainant's bill of complaint, at the time of the conveyance, and some time prior thereto for money advanced by the said Pauline Masionis to this defendant for the premises set forth in the bill of complaint, and for the making of the several deed of conveyance set forth in the bill of complaint, by this defendant to the said Pauline Masionis.

30 And this defendant further denies that the said premises are worth seven thousand dollars or upwards, or that this defendant is enjoying the rents, issues and profits from the premises described in the bill of complaint.

And this defendant further denies that any application has been made to him to surrender any deeds of conveyance and further denies that there  
40 are any fraudulent conveyances to be surrendered

## Answer of Adam Masionis

by him, but on the contrary, this defendant avers that he has received the full bona fide value of the said land and premises from the said Pauline Masionis by him conveyed unto her.

And this defendant further answering says, that on or about the fourth day of June, nineteen hundred and nine, he has filed a petition in bankruptcy in the United States District Court for the District of New Jersey, and there surrendered all his assets whatever he had or possessed, to the trustee in bankruptcy duly appointed in the said proceedings, for the benefit of all the creditors of this defendant: Wherefore this defendant denies that the said bill of complaint was filed by the said complainant for the benefit of all creditors; and that a trustee was appointed in said bankruptcy proceedings. 10

And this defendant prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained. 20

WM. GREENFIELD,  
Solicitor for Adam Masionis.

A true copy  
Sam K. Robbins,  
Clerk.



## Order of Substitution of Complainant

in the place and stead of the present complainant  
Bartley F. Tuthill.

And it further appearing that the solicitor of the  
said defendants and the said James P. Kelly con-  
sent to the making of this order, and no reason ap-  
pearing why the same should not be granted.

It is thereupon on this 14th day of September  
A. D. nineteen hundred and nine, ordered, that 10  
the said James P. Kelly trustee of said Adam  
Masonis, bankrupt, be and he is hereby substituted  
as complainant in the above entitled cause, in the  
place and stead of the present complainant,  
Bartley F. Tuthill, and that said action be here-  
after entitled and prosecuted, in the name  
of said James P. Kelly, trustee of said Adam  
Masonis, bankrupt, for and on behalf of the estate  
of said bankrupt.

Respectfully advised 20

Frederic W. Stevens, V. C.

MAHLON PITNEY,  
C.

I consent to the making of the foregoing order.

WILLIAM GREENFIELD,  
Solicitor of defendants.  
J. P. KELLY,

Trustee of Adam Masionis, Bankrupt.

A true copy.

Sam K. Robbins, 30  
Clerk.



## Order of Substitution of Complainant

in the place and stead of the present complainant  
Bartley F. Tuthill.

And it further appearing that the solicitor of the  
said defendants and the said James P. Kelly con-  
sent to the making of this order, and no reason ap-  
pearing why the same should not be granted.

It is thereupon on this 14th day of September  
A. D. nineteen hundred and nine, ordered, that 10  
the said James P. Kelly trustee of said Adam  
Masonis, bankrupt, be and he is hereby substituted  
as complainant in the above entitled cause, in the  
place and stead of the present complainant,  
Bartley F. Tuthill, and that said action be here-  
after entitled and prosecuted, in the name  
of said James P. Kelly, trustee of said Adam  
Masonis, bankrupt, for and on behalf of the estate  
of said bankrupt.

Respectfully advised 20

Frederic W. Stevens, V. C.

MAHLON PITNEY,  
C.

I consent to the making of the foregoing order.

WILLIAM GREENFIELD,  
Solicitor of defendants.

J. P. KELLY,

Trustee of Adam Masonis, Bankrupt.

A true copy.

Sam K. Robbins, 30  
Clerk.

## Stipulation

*(Filed September 20, 1909)*

## IN CHANCERY OF NEW JERSEY

10	Between JAMES P. KELLY, Trustee of Adam Masonis, Bankrupt, Substituted Complainant, and ADAM MASONIS, (sometimes called ADAM MASONIS), and PAULINE MASONIS, (sometimes called PAULINA MASONIS), Defendants.	}	On bill, &c.
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20. The substitution of James P. Kelly, trustee of Adam Masonis, bankrupt, as complainant herein, in the place and stead of Bartley F. Tuthill, shall not effect the answers heretofore filed by the said defendants and before the making of the order of substitution herein, but such answers shall remain and be understood to be the answers of the defendants in this action to be henceforth continued and prosecuted in the name of the said substituted complainant and that said substituted complainant shall have ten days from the date hereof within which to file a replication or replications joining issue on said answer.

Dated, September, 14, 1909.

MARTIN P. O'CONNOR,  
 Solicitor of Complainant.  
 WM. GREENFIELD,  
 Solicitor of Defendants.

A true copy.

40 Sam K. Robbins,  
 Clerk.

**Replication**

(*Filed September 20, 1909*)

IN CHANCERY OF NEW JERSEY

Between JAMES P. KELLY, Trustee of Adam Masonis, Bankrupt, Substituted Complainant, and ADAM MASONIS, <i>et als.</i> , Defendants.	}	On bill, &c.	10
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The complainant joins issue on the answer of the defendant Adam Masonis.

MARTIN P. O'CONNOR,

A true copy.                      Solicitor of Complainant.

Sam K. Robbins,  
Clerk.

20

**Replication**

(*Filed September 20, 1909*)

IN CHANCERY OF NEW JERSEY

Between JAMES P. KELLY, Trustee of Adam Masonis, Bankrupt, Substituted Complainant, and ADAM MASONIS, <i>et als.</i> , Defendants.	}	On bill, &c.	30
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The complainant joins issue on the answer of the defendant Pauline Masonis.

MARTIN P. O'CONNOR,

A true copy.                      Solicitor of Complainant.

Sam K. Robbins,  
Clerk.

40

## Order of Reference

*(Filed September 24, 1909)*

## IN CHANCERY OF NEW JERSEY

10	Between JAMES P. KELLY, Trustee of Adam Masionis, Bankrupt, Substituted Complainant, and ADAM MASONIS, (sometimes called ADAM MASONIS), and PAULINE MASONIS, (sometimes called Paulina Masionis), his wife, <p style="text-align: right;">Defendant.</p>	}	On bill, &c.
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20 Application having been made on behalf of the complainant for an order to refer the above entitled cause for a final hearing and it appearing that said cause is at issue and that the solicitor of the defendants, consents to the making of this order, and no reason appearing why said order should not be granted.

30 It is thereupon on this twenty-second day of September, A. D. 1909, on motion of Martin P. O'Connor, of counsel with complainant, ordered, that the above stated cause be referred to Hon. Frederic W. Stevens, one of the Vice Chancellors, to hear the same for the Chancellor and report thereon to him and advise what order or decree should be made therein.

MAHLON PITNEY,  
C.

I consent to the making of the foregoing order.

WM. GREENFIELD,  
Solicitor of Defendants.

A true copy.

40 Sam K. Robbins,  
Clerk.

**Order Fixing Day of Hearing**

*(Filed October 5, 1909)*

IN CHANCERY OF NEW JERSEY

Between

JAMES P. KELLY, Trustee of  
Adam Masonis, Bankrupt,  
Substituted Complainant,

10

and

ADAM MASONIS, (sometimes  
called Adam Masionis), and  
PAULINE MASONIS, (sometimes  
called Paulina Masionis), his  
wife,

On bill, &c.

Defendants.

Application having been made to this Court for  
an order fixing a day for a hearing of said cause,  
and it appearing by an order heretofore made that  
said cause was referred to Hon. Frederic W.  
Stevens, one of the Vice Chancellors of this court;  
and it further appearing that due notice of this  
application has been given to the solicitor of the  
defendants. 20

It is thereupon on this fifth day of October,  
A. D. 1909, ordered, that said cause be set down  
for hearing on Thursday, the eighteenth day of  
November, A. D. 1909, at ten o'clock in the fore-  
noon of that day at the Chancery Chambers in the  
City of Newark, N. J. 30

MAHLON PITNEY,  
C.

Respectfully advised.

Frederic W. Stevens, V. C.

A true copy.

Sam K. Robbins,  
Clerk.

40

## Decree Dismissing Bill

*(Filed February 23, 1910 )*

## IN CHANCERY OF NEW JERSEY

	Between	}	On Bill &c.,
10	JAMES P. KELLY, Trustee of Adam Masionis, Bankrupt, substituted for Bartley F. Tuthill,		
	Complainant,	}	
	and		
	ADAM MASONIS (Sometimes call- ed Adam Masionis) and PAU- LINE MASONIS (sometimes call- ed Pauline Masionis),	}	
20	Defendants.		

This matter coming on to be heard before his Honor, Frederic W. Stevens, Esquire, one of the vice chancellors of this Court to whom the above cause was referred by the chancellor of the State of New Jersey, in accordance with the statute in such case made and provided, on the eighteenth day of November, nineteen hundred and nine; and

30 Martin P. O'Connor, solicitor for the complainant and William Greenfield, solicitor for the defendant having appeared before the said vice chancellor, at the chancery chambers, at Newark, in the County of Essex and State of New Jersey, on bill, answer and replication, and proof having been taken in open court, and argument of the respective solicitors for the complainant and for the defendants having been heard in said matter; and the said complainant having on the fourth day of

40 January, nineteen hundred and ten, made applica-

## Amended Bill of Complaint

tion to this court for leave to amend the bill of complaint, and the said application having been continued to January eighteenth, then to February fifteenth and then until the twenty-first day of February, nineteen hundred and ten, on which day and date the said complainant appeared by Martin P. O'Connor, and the said defendants appeared by William Grenfield, and the Court having heard the argument of the respective solicitors for the complainant and defendants, and after due and mature consideration by this Court: 10

It is on this twenty-third day of February, nineteen hundred and ten, ordered, adjudged and decreed, that the said application to amend the bill of complaint is denied with costs without prejudice to a renewal of such application.

MAHLON PITNEY,

C. 20

Respectfully advised,  
Frederic W. Stevens,  
V. C.

A true copy.  
Sam K. Robbins,  
Clerk.

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 Amended Bill of Complaint

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*(Filed December 13, 1910)*

IN CHANCERY OF NEW JERSEY

TO HIS HONOR, MAHLON PITNEY, CHANCELLOR OF  
THE STATE OF NEW JERSEY:

Complaining shows unto your Honor, your orator James P. Kelly, trustee in bankruptcy of 40

## Amended Bill of Complaint

Adam Masionis of the city of Elizabeth in the County of Union and State of New Jersey; that the said Adam Masionis, defendant, was on or about the thirty-first day of March, A. D., 1906, seized and possessed of all those tracts and parcels of land and real estate situate in the township of Union, in the County of Union and state aforesaid, that is to say:

- 10 First Tract: Beginning in the westerly line of a road called New Road on a map made for a division of the property, conveyed to Ephriam Baker and wife to William Weiss by deed dated September 1, 1866, and recorded in book 20, of deeds for Union county, on pages 746 & 747 made by J. R. D. Dunn & Company, Surveyors, where said westerly line of New Road is intersected by the first course described in said deed, from thence
- 20 running south forty-four degrees and forty-five minutes west, along the land now or formerly of Johnson Baldwin, four hundred and eighty-nine (489) feet to land now or formerly of the estate of Elihu Bond, deceased; thence along the same south sixty (60) degrees and fifteen (15) minutes west, three hundred and seventy-nine feet and six inches to land now or formerly of Jonathon Winans; thence
- 30 along the same north fifty (50) degrees and thirty (30) minutes west, one hundred and thirty-four (134) feet, eight (8) inches; thence north forty-five (45) degrees and fifteen (15) minutes west, seven hundred and fifteen (715) feet nine (9) inches to land now or formerly of the heirs of John Woodruff deceased; thence along the same north fifty (50) degrees and thirty (30) minutes, east two hundred feet; thence south forty-six (46) degrees and thirty-four (34) minutes east, eight
- 40 hundred and fifty-one (851) feet, five (5) inches;

## Amended Bill of Complaint

thence north forty-four (44) degrees and forty-five (45) minutes west, one hundred and ninety (190) feet and nine inches; thence south seventy-two degrees and thirty (30) minutes east, two hundred (200) feet to the westerly side of said New Road; thence along the same south, seventeen degrees and thirty (30) minutes west, fifty-three (53) feet and five inches to the place of beginning. 10

Being the same land and premises conveyed to Adam Masionis by deed of Anna Dorthea Platz, widow, by deed dated February 27, 1901 and recorded in Book 380 of deeds for Union county, on pages 198 etc.

Second Tract: Beginning at a corner of land belonging to E. B. Jagers at the intersection of the westerly line of said road from Irvington; thence along said Jagger's land, north forty (40) degrees and twenty (20) minutes west, five (5) chains and sixty-two links; thence north forty-six (46) degrees and forty-five minutes east, still along said Jagger's land ten (10) chains and thirty-nine and a half ( $39\frac{1}{2}$ ) links more or less to the westerly side of said road from Irvington; thence along said westerly side of said road south nineteen (19) degrees and five minutes (5) west, twelve chains and eight and a half ( $8\frac{1}{2}$ ) links to the place of beginning. Containing two and nine hundred and thirteen thousandths 20  
30  
of an acre, be the same more or less.

Being the same land and premises conveyed by Thomas Fitzgerald and wife to Adam Masionis and recorded in Book 442 of Deeds, page 138 etc.

Your orator further shows that on or about the first day of June, 1909, the said Adam Masionis, filed with the Clerk of the District Court of the United States for the District of New Jersey, a petition wherein he exhibited, set forth and al- 40

## Amended Bill of Complaint

leged, that he was indebted to different persons in various amounts and sums, the total of which amunted to about the sum of eighteen hundred and seventeen dollars and nineteen cents, and that he was possessed of no property rights, affects or assets whatever and praying that he might be adjudged by the said Court to be a bankrupt within  
10 the purview of the acts of Congress relating to bankruptcy.

Your orator further shows, that afterwards, to wit, on the fifth day of June, 1909, said Adam Masionis, defendant, was adjudicated bankrupt, and that matter of said bankruptcy referred by an order of said United States District Court, for said District of New Jersey to Atwood L. De-Coster, Esquire, referee in bankruptcy; that on the 26th day of July, A. D., 1909, your orator was  
20 appointed trustee of said bankrupt, and has duly qualified as such and entered upon the discharge of his duties as such trustee, and that on or about the fourteenth day of April, 1910, the said Adam Masionis, applied to and received from the United States District Court for the District of New Jersey, his discharge as a bankrupt, all of which from the records in the office of the Clerk of the District Court of the United States for the District of New Jersey, reference being therunto had  
30 will more fully and at large appear.

Your orator further shows that, on or about the 25th day of October, 1905, and for a long period of time prior thereto, the said Adam Masionis, defendant, and while he was seized and possessed of said real estate and property, was justly indebted to Bartley F. Tuthill in the sum of two hundred and seventy-four dollars and twenty-one cents (\$274.21) and upwards, for goods and chat-  
40 tels sold and delivered to the said Adam Masionis,

## Amended Bill of Complaint

at his request. That on or about the 26th day of September, A. D. 1906, the said Bartley F. Tuthill, commenced an action on contract against the said Adam Masionis for the recovery of said debt and interest thereon in the District Court in the City of Elizabeth, and such proceedings were thereupon had, in said suit, that afterwards to wit, on the 25th day of October, 1906 the said Bartley F. Tuthill, recovered a judgment in said District Court of the City of Elizabeth, for the sum of two hundred and ninety-four dollars and seventy-eight-cents (\$294.78) including cost of suit and interest, which judgment was afterwards, to wit, on the 26th day of October, 1906, duly docketed in the Court of Common Pleas, in and for the County of Union, in this state, pursuant to the statute in such case made and provided as by the record of such judgment now remaining in the office of the Clerk of said Court of Common Pleas, reference being thereunto had will more fully and at large appear.

Your orator further shows that for the purpose of obtaining satisfaction of said judgment, the said Bartley F. Tuthill, judgment creditor, caused to be issued thereon, out of the said Court of Common Pleas, a writ of *feri facias de bonis et terris*, tested on the fifth day of May, A. D. 1909; and returnable on the fifth day of October, then next, which writ having been first duly recorded, was delivered to the sheriff of said County of Union to whom it was directed and thereby he was commanded that of the goods and chattels of the said Adam Masionis, in his county he should cause to be made, the said sum of two hundred and ninety-four dollars and seventy-eight cents (\$294.78), so as aforesaid, adjudged to the said judgment creditor; and that if sufficient goods and chattels of

## Amended Bill of Complaint

the said Adam Masionis in his county he can not find whereof to make said money, he should cause the whole of the residue as the case might require able to find any goods and chattels, lands, hereditaments and real estate whereof the said Adam Masionis was seized on the 26th day of October, A. D. 1906, or at any time afterwards in whose  
 10 hands soever the same might be; and that the said sheriff should have those moneys before said Court of Common Pleas on the return day of said writ, to render unto Bartley F. Tuthill in satisfaction of his judgment and he should have then and there the said writ.

Your orator further shows that the sheriff of the said County of Union, to whom the said writ of execution was directed and delivered, being unable to find any goods and chattels, lands, hereditaments and real estate, of the said Adam Masionis  
 20 whereon to levy and make said judgment, has returned said writ of execution to said Court of Common Pleas with a return endorsed thereon as follows:

“Returned *nulla bona*,

May 5th, 1909,

Robert Kirkland, Sheriff.”

reference being thereunto had will more fully and at large appear.

30 Your orator further shows, that the said Bartley F. Tuthill, judgment creditor aforesaid, has duly proved his said judgment as a claim, before Atwood L. Decoster, Esquire, referee in bankruptcy, before whom said bankruptcy suit was referred, which claim was duly allowed by said referee on or about the 26th day of July, A. D. 1909, against the estate of said bankrupt, for the sum of two hundred and ninety-four dollars and seventy-  
 40 eight cents, which claim is now before your orator

## Amended Bill of Complaint

as trustee as aforesaid, and your orator is informed and therefore alleges, has accrued on the 25th day of October, A. D. 1905.

That the Cyphers Company, a corporation, a creditor of said bankrupt, has duly proved its claim before said Atwood L. Decoster, referee in bankruptcy, which claim was duly allowed by said referee on the second day of July A. D. 1909, 10  
against the estate of the said Adam Masionis, bankrupt, for the sum of ninety-nine dollars and fifty-eight cents (\$99.58) which claim is now before your orator as trustee as aforesaid, and your orator is informed and therefore alleges, had accrued on the eighth day of December, 1906.

That Pauline Masionis, wife of said bankrupt, has proved her claim before said Atwood L. Decoster, referee in bankruptcy, which claim was duly allowed by said referee on the 26th day of 20  
July, 1909, against the estate of her husband said Adam Masionis, bankrupt, for the sum of four hundred and fifty dollars (\$450) which claim is now before your orator as trustee, as aforesaid, and your orator is informed and therefore alleges, had accrued on the 24th day of June, 1908.

That Charles H. McKee, a creditor of said bankrupt, has duly proved his claim before said Atwood L. Decoster, Esquire, referee in bankruptcy, which claim was duly allowed by said referee on 30  
the 11th day of January, 1910, against the estate of Adam Masionis, bankrupt, for the sum of twenty-five dollars and thirteen cents (\$25.13) which claim is now before your orator as trustee as aforesaid, and your orator is informed and therefore alleges, had accrued on the 27th day of December, 1905.

That Abraham Leder has duly proved his claim before said Atwood L. Decoster, Esquire, referee 40

## Amended Bill of Complaint

in bankruptcy, which claim was duly allowed by said referee, on the 11th day of January, 1910, against the estate of Adam Masionis, bankrupt, for the sum of fifty-three dollars and thirty-two cents (\$53.32), being the amount of judgment and costs awarded to the said Abraham Leder, by the First District Court of the City of Newark, 10 against the said Adam Masionis, which claim is now before your orator as trustee as aforesaid, and your orator is informed and therefore alleges, had accrued on or about the seventh day of November, 1907.

That John Berkenhauer, receiver of the Consumer's Brewing Company, creditor of said bankrupt, has duly proved his claim as such receiver, before said Atwood L. Decoster, Esquire, referee in bankruptcy which claim was duly allowed by 20 said referee on the 11th day of January, 1910, against the estate of said Adam Masionis, bankrupt, for the sum of thirty-five dollars and ninety-seven cents (\$35.97) which claim is now before your orator as trustee as aforesaid, and your orator is informed and therefore alleges, had accrued on the 11th day of March, 1906.

Your orator further shows that the aggregate amount of claims duly proved and allowed against the estate of said bankrupt, is the sum of nine 30 hundred and fifty-three dollars and seventy-eight cents (\$953.78) or thereabouts, and that the time for other creditors, if any, to prove their claims against the estate of said bankrupt has expired under the Acts of Congress, relating to bankruptcy.

Your orator further shows, that as trustee of said bankrupt he has endeavored to find and collect the assets of said bankrupt, and he avers that, 40 so far as he can discover, the said bankrupt has no

## Amended Bill of Complaint

assets whatever, except the real estate and property above mentioned and fraudulently transferred, and that your orator has not since his appointment as trustee as aforesaid, any assets whatever and now has no assets whatever of the said Adam Masionis, defendant and bankrupt, with which to pay the claims of the said Bartley F. Tuthill, The Cyphers Company, a corporation, 10  
Paulina Masionis, Charles H. McKee, Abraham Leder and John Berkenhauer, receiver of Consumer's Brewing Company, or other claims and demands, if any, which may be presented and allowed against the estate of said bankrupt.

Your orator further shows that the said Adam Masionis being so seized and possessed of said tracts of land and real estate as aforesaid, which are of the value of six thousand dollars (\$6,000) and upwards, afterwards, at or about the dates 20  
or times and by the pretended deeds hereafter mentioned and after the said debt to the said Bartley F. Tuthill, a lawful existing creditor, had accrued and become due and payable and in order to secure the said property for his own use and benefit and to protect it from the claims and demands of said Bartley F. Tuthill, judgment creditor aforesaid, and the claims and demands of the other creditors aforesaid and to prevent the said Bartley F. Tuthill and other creditors aforesaid 30  
from collecting their said debts, contriving to defraud the said Bartley F. Tuthill, a lawful existing creditor and the other creditors aforesaid, did, by deed bearing date on the 31st day of March, A. D. 1906, and recorded in Book 463 of deeds for said County of Union, on pages 296 etc., pretend to convey the said two tracts of land above described to one Joseph Ramizesky, who by deed bearing date the same day and year last 40

## Amended Bill of Complaint

aforesaid pretended to convey the said lands and real estate to Paulina Masionis, wife of the said defendant, Adam Masionis, for the nominal consideration of one dollar, which last mentioned deed was recorded in Book 463 of deeds for said County of Union on pages 298 etc.

10 Your orator further shows that the said Pauline Masionis wife of said Adam Masionis, defendant, by virtue of the alleged delivery to her of said fraudulent deeds pretends that she is the owner of said lands and premises.

Your orator further shows that the said Adam Masionis, defendant, and his said wife Paulina Masionis and the said Joseph Ramizesky, in making said deeds and conveyances of said real estate fraudulently colluded and conspired together for the purpose of defrauding, hindering and de-  
20 laying the said Bartley F. Tuthill, a lawful existing creditor of said Adam Masionis, and the other creditors aforesaid of said Adam Masionis in the collection and satisfaction of their said claims and demands.

Your orator further shows that he has been informed and believes it to be true, and therefore expressly charges that no consideration whatever was paid for any of said conveyances; that the said Joseph Ramizesky was a mere conduit or in-  
30 termediary for the purpose of affecting and carrying into execution the fraudulent design of said Adam Masionis in conveying to his wife Paulina Masionis, the said lands and real estate, in order to defeat and defraud the said Bartley F. Tuthill, a lawful existing creditor of said Adam Masionis and also, the other creditors aforesaid of payment and satisfaction of their debts and demands, and that the said Adam Masionis has always, held,  
40 occupied possessed and enjoyed and received the

## Amended Bill of Complaint

rents and profits of said lands and real estate as fully to all intents and purposes as before the execution of the said pretended conveyances.

Your orator further shows that by virtue of his appointment as trustee in bankruptcy of the said Adam Masionis, by District Court of the United States for the District of New Jersey, he became and was vested by operation of law of every and 10  
all the estate and effects, both real and personal of the said bankrupt, Adam Masionis, for the benefit of all his creditors and that as such trustee he became and is entitled to the title and possession of the property above described, fraudulently transferred as aforesaid, for the benefit of the creditors of the said Adam Masionis, defendant.

Your orator further shows that he has frequently and in a friendly manner applied to the said Adam Masionis and the said Paulina Masionis, 20  
his wife, to pay the said Bartley F. Tuthill and other creditors aforesaid, their said claims and demands or cause the said premises to be conveyed to your orator as trustee as aforesaid so that the same may be sold for the satisfaction of the said debts and demands of the creditors aforesaid of the said defendant Adam Masionis, and who are entitled to payment of their said debts and demands out of the said lands and real estate or  
in case of a sale thereof out of the proceeds of 30  
such sale and that a good and clear title given therefor to the purchaser or purchasers thereof as in equity and good conscience they ought to have done and as your orator well hoped they would have done but which they wholly refused to do.

In consideration whereof and for as much as your orator is remediless in the premises at the common law and can not have adequate relief except by the aid of this Honorable Court. To the 40

## Amended Bill of Complaint

end therefore, that the said Adam Masionis, who is also, known and sometimes called Adam Masionis and Paulina Masionis, his wife, who is also, sometimes called and known as Pauline Masionis, may without oath, full, true, direct and perfect answer make, to all and singular the charges and matters aforesaid, as fully and particularly as  
10 if the same were here again repeated and they thereunto particularly interrogated; and that the said defendants or one of them be decreed to pay to your orator the full amount due and owing to the several creditors aforesaid of the said Adam Masionis, with interest thereon besides the costs of suit; and that the said fraudulent conveyances and encumbrances made, created, or suffered between the said defendants and affecting the said lands and real estate, may be set aside and  
20 declared null and void and that the said lands may be sold free, clear and discharged of and from said fraudulent deeds and all other fraudulent deeds and encumbrances and the proceeds thereof or such part of the same as may be necessary may be applied to the payment and satisfaction of the several debts and demands of the creditors aforesaid of the said Adam Masionis, defendant and bankrupt; and that your orator may have such other and further relief in the premises as the  
30 nature of the case may require and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered to grant unto your orator, the state's writ of subpoena issued out of and under the seal of this Honorable Court and directed to the said Adam Masionis, sometimes known and called Adam Masionis and Paulina Masionis, his wife, sometimes called and known as Pauline Masionis, therein  
40 and thereby commanding them and each of them,

## Answer of Pauline Masionis

on a certain day and under a certain penalty to be therein expressed, personally to be and appear before your Honor, in this honorable court, then and there to answer the premises and to stand to and abide by and perform such order and decree therein as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

And you orator will ever pray, etc.

10

MARTIN P. O'CONNOR,  
Solicitor and of Counsel  
with Complainant.

A true copy.

Sam K. Robbins,  
Clerk.

## Answer of Pauline Masionis

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(Filed December 27, 1910)

## IN CHANCERY OF NEW JERSEY

Between JAMES P. KELLY, Trustee of Adam Masionis, Bankrupt, Substituted Complainant, and ADAM MASIONIS (sometimes known as Adam Masonis), <i>et</i> <i>als.</i> , Defendants.	}	On Bill, &c.	30
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This defendant for answer unto the bill of complaint of the complainant, or so much thereof as she is advised is necessary or material for her 40

## Answer of Pauline Masionis

to answer unto, says she is without knowledge or information of the matters and things alleged and set forth in said bill, except as herein set forth, and hence neither admits nor denies the allegations in the said bill of complaint, but puts the complainant upon his proof.

And this defendant denies all the allegations  
10 by the said complainant in his said bill of complaint alleged denies that the said conveyances made by Adam Masionis to Joseph Ramiszesky and by Joseph Ramiszesky to this defendant were made and done by collusion, conspiracy or with the connivance of the said Adam Masionis or Joseph Ramiszesky for the purpose of cheating and defrauding the complainant or divers other alleged creditors of Adam Masionis, but, on the contrary, this defendant avers that the  
20 said conveyances were made to this defendant for a full, bona fide and valuable consideration and for the full value of the land and premises, paid by this defendant unto the said Adam Masionis.

And this defendant further answering the said bill of complaint denies the allegations contained in paragraph seventeen of the said bill of complaint, that this defendant fraudulently colluded or conspired with Adam Masionis, Joseph Ramiszesky or with any other person or persons for  
30 the purpose of defrauding, hindering or delaying the said Bartley F. Tuthill, or any other of the alleged creditors of Adam Masionis but, on the contrary, avers that all of this defendants acts and doings were in good faith; that the said conveyances were in good faith and for full, fair, valuable and bona fide consideration paid by this defendant to the said Adam Masionis.

And this defendant further denies that the said  
40 Adam Masionis takes the rents, issues and profits

## Answer of Pauline Masionis

from the said land and premises since the conveyance thereof to this defendant, but, on the contrary this defendant takes the rents, issues and profits therefrom to her own use. And this defendant avers that she has advanced large sums of money to the said defendant Adam Masionis, in excess of the value of the said land and premises mentioned in the said bill of complaint, all which conveyances were made by reason of the fact that under the Laws of the State of New Jersey a conveyance could not be made by Adam Masionis directly to this defendant who is the wife of Adam Masionis and that therefore Joseph Ramiszsky was used as an intermediary party for the purpose of the conveyance; that all of the conveyances were made in good faith for full and bona fide consideration; for cash money paid by this defendant to the said Adam Masionis and all of which was done without knowledge or information that the said Adam Masionis was indebted to Bartley F. Tuthill or to any person or persons, or that the said Adam Masionis had any creditors at the time of the conveyances, or at any time prior thereto; that all of the acts and doings of this defendant were in good faith and without fraud or collusion on the part of this defendant with the said Adam Masionis, or any other person or persons, and were not with intent to cheat and defraud the creditors of the said Adam Masionis.

And this defendant further denies that the said premises were conveyed to her by the said Joseph Ramiszsky for the purpose or with intent to cheat and defraud the creditors of the said Adam Masionis, but on the contrary, this defendant paid a fair and full consideration for the said land and premises to the said Adam Masionis and that from the time the conveyances were made this de-

## Plea of Adam Masionis

defendant has always held, occupied, possessed, enjoyed and received all the rents, issues and profits of the said land and premises for her own use, and not for the use of Adam Masionis.

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

10 WM. GREENFIELD,  
Solicitor for and of Counsel  
with Pauline Masionis.

A true copy.  
Sam K. Robbins,  
Clerk.

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 Plea of Adam Masionis

20

(Filed Jan. 3, 1911)

## IN CHANCERY OF NEW JERSEY

30	Between JAMES P. KELLY, Trustee of Adam Masionis, Bankrupt, Substituted Compl't, and ADAM MASIONIS (sometimes called Adam Masonis) et al., Defendants.	}	On Bill &c.
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The plea of Adam Masionis the defendant, to so much of the Bill of Complaint filed by the above Complainant in the above case, as was not answered by the defendant in his answer to the said  
40 Bill.

## Plea of Adam Masionis

This defendant by protestation not confessing or acknowledging the matters and things in and by such part of the said Bill of Complaint not answered by this defendant, and as set forth and alleged, for plea to such paragraphs of the said Bill of Complaint as are hereinafter specifically referred to, says:

As to paragraphs two, three, four, five, six, 10  
seven, eight, nine, ten, eleven, twelve and thir-  
teen of the Complainant's Bill of Complaint, this  
defendant says and admits that he did file a Pe-  
tition in Bankruptcy, in the United States  
District Court of the District of New Jer-  
sey, in accordance with the Statute in such  
case made and provided; that this defendant  
did file the proper schedules required by the  
Act of Bankruptcy of the United States  
of America; that he did petition the said Court 20  
on or about the first day of June, nineteen hun-  
dred and nine and that on or about the fifth day  
of June, nineteen hundred and nine, this defend-  
ant was adjudicated a Bankrupt, and the Bank-  
ruptcy proceedings were then and there referred  
to the Honorable Atwood L. DeCoster, Referee in  
Bankruptcy, in accordance with an Act of Con-  
gress of the United States of America, made and  
provided in such case; that a meeting was duly  
held on or about the Twenty-sixth day of July, 30  
Nineteen Hundred and Nine, at the office of the  
said Referee in Bankruptcy, all the creditors hav-  
ing been duly notified by the Honorable Referee in  
Bankruptcy, in accordance with act of Congress  
made and provided in such case, and that this de-  
fendant submitted himself to an examination by  
the said Trustee, the Complainant in the above  
cause, and by such creditor or creditors who may  
have desired to examine this defendant, in accord- 40

## Plea of Adam Masionis

ance with an Act of Congress made and provided in such cases. And this defendant further says that in due course he petitioned the United States District Court for the District of New Jersey to be discharged to all debts and liabilities then and there fully scheduled in the said schedules filed by this defendant with his  
10 petition, or then and there outstanding against this defendant, this defendant having surrendered all goods and chattels, property, things in action and realty, of whatever kind this defendant had, to the Trustee in Bankruptcy, for the benefit of the creditors of this defendant, with a prayer to the said Court that this defendant be discharged of any and all debts and liabilities for which he was then and there indebted to divers creditors, amongst which creditors was the said Bartley F.  
20 Tuthill; that on or about the Eighteenth day of January, Nineteen Hundred and Ten the said Bartley F. Tuthill did file a Specification of Grounds of Opposition to Bankrupt's Discharge, wherein he did among other things, allege in opposition to the said Discharge in Bankruptcy that this defendant transferred the land and premises mentioned and specified in the Complainant's Bill of Complaint, fraudulently and with intent to cheat and defraud the creditors of this defendant; and  
30 did further allege in the said Specification of Grounds as aforesaid, in opposition to the said Discharge in Bankruptcy, that divers goods and chattels were fraudulently omitted from this defendant's schedule of Assets, and that this defendant failed to reveal to the said Trustee the existence of the said assets. That thereupon the matter was referred to the Honorable Atwood L. DeCoster to take testimony therein as to what  
40 could be said or alleged in substantiation of the

## Plea of Adam Masionis

said allegations contained in the said Specification of Grounds of Opposition to Bankrupt's Discharge; that the said Complainant and the said Bartley F. Tuthill failed to appear before the said Honorable Atwood L. DeCoster and substantiate or sustain the allegations in the said Specification of Grounds of Opposition to the Bankrupt's Discharge made; that the Honorable 10  
Atwood L. DeCoster did thereupon advise the United States District Court for the District of New Jersey that the said Complainant and the said Bartley F. Tuthill had so failed to substantiate or sustain any of the allegations so by them made as aforesaid and did then and there advise the said Court to enter a Decree dismissing the said Specification of Grounds of Opposition to the Bankrupt's Discharge and did among other things advise the said Court to grant the prayer of this 20  
defendant for his Discharge in Bankruptcy, discharging this defendant from liability of the claim of Bartley F. Tuthill under the judgment by him recovered as set forth in the said Bill of Complaint, and of and from the claims of the Cyphers Company, a corporation, Charles H. McKee, Abraham Leder, Pauline Masionis and John Berkenhauer Receiver for the Consumer's 30  
Brewing Company, all of which were duly scheduled in the schedules filed by this defendant with his Petition in Bankruptcy, with the United States District Court for the District of New Jersey, and to all of the records of the United States District Court for the District of New Jersey in the said Bankruptcy proceedings of this defendant, this Honorable Court is more particularly referred. 40

## Plea of Adam Masionis

And this defendant by way of plea in bar and in abatement of this Complainant's suit further avers that by filing the said Petition in Bankruptcy and by virtue of the granting of this defendants' Discharge in Bankruptcy, and by virtue of an Act of Congress of the United States of America, made and provided in such cases, all of the claims against this defendant, then duly scheduled and at that time due and owing, were dissolved and for nothing holden and this defendant was discharged of any and all obligations and liability for the said debts, claims and demands, specifically mentioned and set forth in the Complainant's Bill of Complaint and so duly scheduled as aforesaid, and therefore this defendant does plea the said Discharge in Bankruptcy as a plea in bar and abatement of the said Complainant's suit.

All of which matters and things this defendant doth aver to be true, and he please the said Discharge in Bankruptcy in bar and abatement of the Complainant's Bill, and prays the judgment of this Honorable Court whether he should be compelled to make any other or further answer to the said Bill, and prays to be hence dismissed with his costs and charges in that behalf most wrongfully sustained.

30

WM. GREENFIELD,  
Solicitor for and of Counsel  
with Adam Masionis.

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

Adam Masionis of full age being duly sworn according to law on his oath deposes and says,  
that the foregoing Plea is not interposed for de-

40

## Answer of Adam Masionis

lay, but in good faith for the cause therein set forth.

ADAM MASIONIS.

Sworn and subscribed to

before me, this Twenty-eighth  
day of December, A. D., Nineteen  
Hundred and Ten, Newark, N. J.

Nathan Erlich,

10

Attorney at Law of the  
State of New Jersey.

I certify that I have perused the Complainant's  
Bill in the above stated cause, and that the above  
Plea is well founded within the points of Law.

WM. GREENFIELD,  
Of Counsel.

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Answer of Adam Masionis

20

(Filed January 3, 1911)

IN CHANCERY OF NEW JERSEY

Between  
JAMES P. KELLY, Trustee of  
Adam Masionis, Bankrupt,  
Substituted Complainant,  
and  
ADAM MASIONIS (sometimes  
known as Adam Masonis) *et*  
*al.*,  
Defendants.

On Bill &c.

30

This defendant for answer unto the Bill of  
Complaint of the Complainant, or so much there- 40

## Answer of Adam Masionis

of as he is advised is necessary or material for him to answer unto, says that he is without knowledge or information of the matters and things alleged and set forth in said Bill, except as herein set forth, and hence neither admits nor denies the allegations in said Bill of Complaint, but puts the Complainant upon his proof.

10 And this defendant in answer to paragraph one of the said Bill of Complaint, neither admits nor denies that he was seized in fee simple of all the tracts of land situate in the Township of Union, in the County of Union and State of New Jersey, as mentioned and described in the Complainant's Bill of Complaint, but leaves the complainant to prove the said allegations by him alleged in said Bill of Complaint.

20 And in answer to paragraph fourteen of the said Bill of Complaint this defendant admits the making and executing of the said deeds of conveyance as therein set forth, but denies that the said deeds of conveyance were made for the purpose and with intent to cheat and defraud the Complainant in the above suit, or Bartley F. Tuthill, or any alleged creditor of this defendant, but, on the contrary, avers that this defendant received a full, fair, valuable and bona fide consideration for the land and premises conveyed by this  
30 defendant by the said deeds of conveyance to the said Pauline Masionis.

And this defendant in answer to paragraph fifteen of the said Bill of Complaint, says that since the delivery of the said deed of conveyance to Pauline Masionis for a full, fair and bona fide consideration, the said Pauline Masionis has taken and held and still doth hold and enjoy possession of and has taken and takes the rents, issues  
40 and profits from the said lands and premises.

## Answer of Adam Masionis

And this defendant in answer to paragraph sixteen of the said Bill of Complaint denies that he colluded or conspired with the said Pauline Masionis, Joseph Ranieszky or with any other person or persons, or that he fraudulently made the said deeds of conveyance for the purpose of or with intent to defraud, hinder and delay the alleged lawful existing creditors of this defendant, 10  
but avers that the said deeds were made in good faith and for a full, valuable and bona fide consideration and were, as this defendant is informed and verily believes to be true, promptly and with due diligence placed on record, by the said Pauline Masionis, in the Register's Office of the County of Union and State of New Jersey.

And this defendant in answer to the allegations set forth in paragraph seventeen of the Complainant's Bill of Complaint denies that no 20  
consideration was paid for the said conveyance but admits that the said Joseph Ranieszky was used as an intermediary for the purpose of the conveyance of the said land and premises for a full, fair, bona fide and valuable consideration to the said Pauline Masionis the wife of this defendant, by reason of and in accordance with the laws of the State of New Jersey. But this defendant denies that the said conveyances were made for the purpose of effecting or carrying into execu- 30  
tion any fraudulent design on the part of this defendant or any other person or persons, and this defendant further denies that since the conveyance aforesaid he has had possession of or enjoyed taken or received the rents, issues and profits of the said property, lands and premises in the said Bill of Complaint mentioned and described; but, on the contrary this defendant avers that since 40  
the said conveyance the said Pauline Masionis has

## Answer of Adam Masionis

held possession of and received and enjoyed, and to this day and date receives and enjoys, the rents, issues and profits of the said lands and premises so conveyed to her as aforesaid, for a full, fair, valuable and bona fide consideration.

Further answering as to paragraph eighteen of the said Bill of Complaint, this defendant denies  
10 that the Complainant James P. Kelly, became vested by operation of law, of every and all the estate and effects, both real and personal, of this defendant Adam Masionis, for the benefit of his alleged creditors; and this defendant denies that the said Complainant is entitled to the title and possession of the property in said Bill of Complaint described and denies that the said property was fraudulently, by collusion and conspiracy and  
20 connivance with Pauline Masionis and Joseph Ranizesky transferred as alleged in said paragraph eighteen of the Bill of Complaint.

And this defendant answering unto paragraph nineteen of the said Bill of Complaint, denies that the complainant has, in a friendly or any other manner, applied to this defendant, to pay the said claim of Bartley F. Tuthill or any of the other alleged creditors, and this defendant avers that by virtue of the Discharge in Bankruptcy granted to this defendant by the United States  
30 District Court for the District of New Jersey, on or about the fourteenth day of April, Nineteen Hundred and Ten, this defendant was discharged free and clear of any claims whatsoever. And this defendant denies that there are any claims outstanding against this defendant and denies that there have been any claims against defendant since the granting of the said Discharge in Bankruptcy so as aforesaid.

40 And this defendant prays to be hence dismissed

## Notice of Hearing

with his reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM GREENFIELD,  
Solicitor for and of Counsel  
with Adam Masionis.

A true copy.

Sam. K. Robbins,  
Clerk.

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 Notice of Hearing

(Filed January 23, 1911)

## IN CHANCERY OF NEW JERSEY

Between

JAMES P. KELLY, trustee &c.,  
Substituted Complainant,  
and

ADAM MASONIS (sometimes  
known as Adam Masonis) *et*  
*al.*,

Defendants.

On Bill &c.

20

To Martin P. O'Connor, Esq.,  
Solicitor for Complainant.

30

Sir:

Please take notice that this cause will be brought to a hearing on the Plea filed therein by the defendant Adam Masionis, before the Chancellor on the first day of the next stated term of this Court to be held in the State House, in the city of Trenton, at the hour of ten o'clock in the forenoon, or 40

## Amended Plea of Adam Masionis

as soon thereafter as counsel can be heard thereon.

Dated at Newark, N. J., January 18, 1911.

Respectfully yours,  
WM. GREENFIELD,  
Solicitor for and of Counsel  
with defendant.

10 A true copy,  
Sam. K. Robbins,  
Clerk.

## Amended Plea of Adam Masionis

(Filed March 18, 1911)

20 IN CHANCERY OF NEW JERSEY

Between

JAMES P. KELLY, Trustee of  
ADAM MASONIS, Bankrupt,  
Substituted Complainant,

and

ADAM MASONIS, (sometimes  
called ADAM MASONIS) *et al.*,  
Defendant.

On bill, &c.

30

The plea of Adam Masionis the defendant, to so much of the bill of complaint filed by the above named complainant in the above cause, as was not answered by the defendant in his answer to said bill.

This defendant by protestation not confessing or acknowledging the matters and things in and  
40 by such part of said bill of complaint not an-

## Amended Plea of Adam Masionis

swered by this defendant, and as set forth and alleged, for plea to such paragraphs of the said bill of complaint as are hereinafter specifically referred to, says:

As to paragraphs two, three, four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen of the complainant's bill of complaint, this defendant says and admits that he did file a petition in bankruptcy, in the United States District Court for the District of New Jersey, in accordance with the statute in such cases made and provided; that this defendant did file the proper schedules required by the Act of Bankruptcy of the United States of America; That he did petition the said court on or about the first day of June, nineteen hundred and nine and that on or about the fifth day of June, nineteen hundred and nine, this defendant was adjudicated a bankrupt, and the bankruptcy proceedings were then and there referred to the Honorable Atwood L. DeCoster, referee in bankruptcy, in accordance with an Act of Congress of the United States of America, made and provided in such case; that a meeting was duly held on or about the twenty-sixth day of July, nineteen hundred and nine, at the office of the said referee in bankruptcy, all the creditors having been duly notified by the Honorable referee in bankruptcy, in accordance with act of Congress made and provided in such case, and that this defendant submitted himself to an examination by the said trustee, the complainant in the above cause, and by such creditor or creditors who may have desired to examine this defendant, in accordance with an Act of Congress made and provided in such cases. And this defendant further says that in due course he petitioned the United States District Court for the District of New Jersey to be dis-

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## Amended Plea of Adam Masionis

charged of all debts and liabilities then and there fully scheduled in the said schedules filed by this defendant with his petition or then and there outstanding against this defendant, this defendant having surrendered all goods, and chattels, property, things in action and realty, of whatever kind this defendant had, to the trustee in bankruptcy,

10 for the benefit of the creditors of this defendant, with a prayer to the said court that this defendant be discharged of any and all debts and liabilities for which he was then and there indebted to divers creditors, amongst which creditors was the said Bartley F. Tuthill; that on or about the eighteenth day of January, nineteen hundred and ten the said Bartley F. Tuthill did file a specification of grounds of opposition to bankrupt's discharge, wherein he did among other things, allege in op-

20 position to the said discharge in bankruptcy that this defendant transferred the land and premises mentioned and specified in the complainant's bill of complaint, fraudulently and with intent to cheat and defraud the creditors of this defendant; and did further allege in the said specification of grounds as aforesaid in opposition to the said discharge in bankruptcy, that divers goods and chattels were fraudulently omitted from this defendant's schedule of assets, and that this defend-

30 ant failed to reveal to the said trustee and existence of the said assets, a true copy of the said specification of grounds of opposition to bankrupt's discharge being hereto annexed and made part of this plea: That thereupon the matter was referred to the Honorable Atwood L. DeCoster to take testimony therein as to what could be said or alleged in substantiation of the said allegations contained in the said specifications of

40 grounds of opposition to bankrupt's discharge;

## Amended Plea of Adam Masionis

that the said complainant and the said Bartley F. Tuthill failed to appear before the said Honorable Atwood L. DeCoster and substantiate or sustain the allegations in the said specification of grounds of opposition to the bankrupt's discharge made; that the Honorable Atwood L. DeCoster did thereupon advise the United States District Court for the District of New Jersey that the said complainant and the said Bartley F. Tuthill had so failed to substantiate or sustain any of the allegations so by them made as aforesaid and did then and there advise the said Court to enter a decree dismissing the said specification of grounds of opposition to the bankrupt's discharge and did among other things advise the said Court to grant the prayer of this defendant for his discharge in bankruptcy discharging this defendant from liability of the claim of Bartley F. Tuthill under the judgment by him recovered as set forth in the said bill of complaint, of which advise and order true copies are hereto annexed and made part of this plea, and of and from the claims of the Cyphers Company, a corporation, Charles H. McKee, Abraham Leder, Pauline Masionis and John Berkenhauser, receiver for the Consumer's Brewing Company all of which were duly scheduled in the schedules filed by this defendant with his petition in bankruptcy, with the United States District Court for the District of New Jersey, and to all of the records of the United States District Court for the District of New Jersey in the said bankruptcy proceedings of this defendant, this Honorable Court is more particularly referred.

And this defendant by way of plea in bar and in abatement of this complainant's suit further avers that by filing the said petition in bankruptcy and by virtue of the granting of this de-

## Amended Plea of Adam Masionis

fendants' discharge in bankruptcy, and by virtue  
 of an Act of Congress of the United States of  
 America, made and provided in such cases, all of  
 the claims against this defendant, then duly  
 scheduled and at that time due and owing, were  
 dissolved and for nothing holden and this defend-  
 ant was discharged of any and all obligations and  
 10 liability for the said debts, claims and demands,  
 specifically mentioned and set forth in the com-  
 plainant's bill of complaint and so duly scheduled  
 as aforesaid, and therefore this defendant does  
 plea the said discharge in bankruptcy as a plea  
 in bar and abatement of the said complainant's  
 suit.

All of which matters and things this defendant  
 doth aver to be true, and he pleads the said dis-  
 charge in bankruptcy in bar and abatement of the  
 20 complainant's bill, and prays the judgment of  
 this Honorable Court whether he should be com-  
 pelled to make any other or further answer to the  
 said bill, and prays to be hence dismissed with his  
 costs and charges in that behalf most wrongfully  
 sustained.

W. M. GREENFIELD,  
 Solicitor for and of  
 Counsel with Adam Masionis.

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

Adam Masionis of full age being duly sworn ac-  
 cording to law on his oath deposes and says, that  
 the foregoing plea is not interposed for delay,  
 but in good faith for the cause therein set forth.

ADAM MASIONIS.

Sworn and subscribed to before me  
 this twenty-seventh day of February  
 A. D. 1911, at Newark, N. J.  
 February 27th, 1911.

J. H. McCracken,

40

Master in Chancery of N. J.

Grounds of Opposition to Bankrupt's Discharge

I certify that I have perused the complainant's bill in the above stated cause, and that the above plea is well founded within the points of law.

WM. GREENFIELD,  
Of Counsel.

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Specification of Grounds of Opposition to Bankrupt's Discharge

*(Filed January 13, 1910)*

*Annexed to amended plea of Adam Masionis*

In the United States District Court, for the 20  
District of New Jersey.

In Bankruptcy

In the matter of ADAM MASIONIS, }  
Bankrupt. }

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Bartley F. Tuthill of the Borough of Roselle 30  
Park, in the County of Union and State of New  
Jersey, a party interested in the estate of said  
Adam Masionis, bankrupt, does hereby oppose  
the granting to him of a discharge from his debts;  
and for the grounds of such opposition does file  
the following specification.

FIRST: On or about the 18th day of November,  
A. D. 1909, while a bankrupt and after the ap- 40  
pointment and qualification of his trustee Adam

## Grounds of Opposition to Bankrupt's Discharge

Masionis, the above named bankrupt, knowingly and fraudulently concealed the following assets belonging to his estate from said trustee, to wit; all that lot of land and premises situate in the City of Newark, in the County of Essex and State of New Jersey and described as follows:

Beginning in the westerly line of South Thirteenth street at a point distant southerly one hundred (100) feet from the southerly line of Avon avenue; thence running northerly sixty-seven degrees (67) and thirty-five (35) minutes west one hundred and one hundredths ( $100 \frac{1}{100}$ ) feet; thence southerly twenty-three (23) degrees west fifty (50) feet; thence southerly sixty-seven (67) degrees and thirty-five (35) minutes east one hundred and one hundredths ( $100 \frac{1}{100}$ ) feet to the westerly line of South Thirteenth street and thence along the same north twenty-three degrees east (50) fifty feet to the place of beginning. Being lots Nos. nineteen (19) and twenty-one (21) on "map of property of William Riker, situate in the City of Newark. Being the same premises conveyed to the said Adam Masionis by two separate deeds recorded in Book K. 28, page 377 and D. 32 page 496 for Essex County. Also, the following lots and parcels of land situate in the Township of Union in the County of Union and State of New Jersey, and described as follows:

FIRST TRACT: Beginning in the westerly line of a road called New Road on a map made for a division of the property, conveyed by Ephraim Baker and wife to William Weiss by deed dated September 1, 1866, and recorded in Book 20, of deeds for Union County, on pages 746 and 747 made by J. R. D. Dunn & Company, surveyors, where said westerly line of New Road is inter-

## Grounds of Opposition to Bankrupt's Discharge

sected by the first course described in said deed, from thence running south forty-four degrees and forty-five minutes west, along the land now or formerly of Johnson Baldwin, four hundred and eighty-nine (489) feet to land now or formerly of the estate of Elihu Bond, deceased; thence along the same south sixty (60) degrees and fifteen (15) minutes west, three hundred and 10  
seventy-nine feet and six inches to land now or formerly of Jonathan Winans; thence along the same north fifty (50) degrees and thirty (30) minutes east, one hundred and thirty-four (134) feet, eight (8) inches; thence north forty-five (45) degrees and fifteen (15) minutes west, seven hundred and fifteen (715) feet nine (9) inches to land now or formerly of the heirs of John Woodruff deceased; thence along the same north fifty 20  
(50) degrees and thirty (30) minutes, east two hundred (200) feet, thence south forty-six (46) degrees and thirty-four (34) minutes east eight hundred and fifty-one (851) feet, five (5) inches; thence north forty-four (44) degrees and forty-five (45) minutes west, one hundred and ninety (190) feet and nine inches; thence south seventy-two degrees and thirty (30) minutes east, two hundred (200) feet to the westerly side of said New Road; thence along the same, south seventeen de-  
grees and thirty (30) minutes west, fifty-three 30  
feet and five inches to the place of beginning.

Being the same land and premises conveyed to Adam Masionis by deed of Anna Dothea Platz, widow, by deed dated February 27, 1901 and recorded in Book 380 of Deeds for Union County on pages 198 etc.

SECOND: Beginning at a corner of land belonging to E. R. Jaggars at the intersection of the westerly line of said road from Irvington; thence 40

## Grounds of Opposition to Bankrupt's Discharge

along said Jagger's land, north forty (40) degrees and twenty (20) minutes west, five (5) chains and sixty-two (62) links; thence north forty-six (46) degrees and forty-five (45) minutes, east, still along said Jagger's land ten (10) chains and thirty-nine and a half ( $39\frac{1}{2}$ ) links more or less to the westerly side of said road from  
 10 Irvington; thence along said westerly side of said road south nineteen (19) degrees and five (5) minutes west, twelve chains and eight and a half ( $8\frac{1}{2}$ ) links to the place of beginning. Containing two and nine hundred and thirteen thousandths of an acre, be the same more or less.

Being the same land and premises conveyed by Thomas Fitzgerald and wife to Adam Masionis and recorded in Book 442 of deeds, page 138 etc. Also the following goods and chattels, twenty-two  
 20 (22) head of cattle, fifteen (15) pigs, four (4) horses, twenty-five (25) chickens, two (2) milk wagons, one two-horse truck, one (1) small farm wagon, one (1) mowing machine, one (1) hay cutter machine, two (2) plows, one (1) harrow, lot of farm utensils and implements, one (1) carriage, two (2) set of single harness, one (1) set of team harness, one (1) parlor suit of four pieces, one (1) ice box, one (1) lounge, one (1) parlor carpet, two (2) pictures, one (1) center table  
 30 three (3) kitchen tables, six kitchen chairs, one (1) kitchen range, boiler and fittings, one (1) heating stove, one (1) bedroom suit, three (3) pieces, four (4) iron beds, one sewing machine and other household effects and furnishings.

SECOND: On or about the 31st day of March, 1906, the bankrupt for the purpose of hindering delay and defrauding his creditors, transferred to Paulina Masionis, his wife, through one Joseph  
 40 Ramizesky, as intermediary, the lands and real

### Grounds of Opposition to Bankrupt's Discharge

estate and goods and chattels above described and the said real estate and goods and chattels, at the time of the appointment and qualification of the trustee herein, was being held of secret trust by said Paulina Masionis for the bankrupt. Said bankrupt knowingly and fraudulently omitted said property from his schedule of assets herein and failed to reveal to said trustee the existence of the same or the facts as to the title thereto, and fraudulently and knowingly concealed said property so as aforesaid, belonging to his estate whilst such bankrupt, from his said trustee. 10

THIRD: On or about the fifth of June, A. D. 1909 in the bankruptcy proceeding of Adam Masionis, the bankrupt herein knowingly and fraudulently made a false oath in relation to said proceedings in bankruptcy as follows; to wit; the said bankrupt omitted the lands and real estate and goods and chattels aforesaid from his schedule and yet did then and there knowingly and fraudulently make oath to said schedule, that they were true statements of his assets whereas the truth and fact were as said bankrupt well knew that said land and real estate and the goods and chattels aforesaid were property of value and belonging to his estate and that such omission was material in that it was his property and was of value. 20 30

Dated, January 12, 1910.

(Signed) BARTLEY F. TUTHILL,  
Creditor.

United States of America, }  
District of New Jersey. } ss:

Bartley F. Tuthill, the creditor above named, does hereby make solemn oath that the statements contained in the foregoing specification of 40

## Referee's Report on Objections to Discharge

grounds of opposition to said bankrupt's discharge subscribed by him are true.

(Signed) BARTLEY F. TUTHILL.

Sworn and subscribed to before me

this 12th day of January A. D.

(signed) Chas. L. Morgan

A. Master in Chancery

10 of New Jersey.

Affixed: Seal of

United States District Court

District of New Jersey.

A true copy.

George T. Cranmer,

Clerk.

per

Benjamin F. Havens,

Deputy.

20

## Referee's Report on Objections to Discharge

(Filed April 15, 1910)

*Annexed to amended plea of Adam Masionis*

UNITED STATES DISTRICT COURT, DIS-  
TRICT OF NEW JERSEY

30

In Bankruptcy

In the matter of ADAM MASONIS  
Bankrupt.

To the Honorable Judge of the District Court  
of the United States, for the District of New  
Jersey:

40 In accordance with an order made in above  
stated matter on the eighteenth day of January,

## Referee's Report on Objections to Discharge

in the year of our Lord one thousand nine hundred and ten, whereby the specifications of objections to the discharge of the bankrupt were referred to me as special master to take proofs respecting the same, and to report such proofs to the Court, together with my findings thereon, I do hereby report that I fixed Tuesday, the fifteenth day of March, nineteen hundred and ten at two o'clock in the afternoon, at my office, No. 776 Broad street, Newark, N. J. as the time and place when I would proceed to take proof respecting said matters, and I notified the respective attorneys for the objecting creditors and bankrupt. 10

On the day fixed, the attorney for the objection creditor made application for postponement of said matter, and the same was adjourned to the twenty-ninth day of March, at the same hour and place. 20

At the said last mentioned time, the bankrupt and his attorney appeared, and the objecting creditor and his attorney failed to appear. Application was made that said specifications of objections be dismissed for want of prosecution.

I therefore recommend that said specifications of objections be dismissed for want of prosecution, and that said bankrupt be discharged.

Respectfully submitted this fourteenth day of April, in the year of our Lord one thousand nine hundred and ten. 30

ATWOOD L. DECOSTER,  
Referee in Bankruptcy.

Affixed Seal of  
United States District Court,  
District of New Jersey.

A true copy.  
George T. Cranmer,  
Clerk.

per  
Benjamin F. Havens,  
Deputy.

### Order of Reference on Specifications

(Filed January 13, 1910)

*Annexed to amended plea of Adam Masionis*

10 At a stated Term of the District Court of the United States, for the District of New Jersey, held at the United States Court House, in the City of Trenton, on the Eighteenth day of January, in the year of our Lord one thousand nine hundred and ten.

Present: HIS HONOR, JOHN RELLSTAB, District Judge.

20 In the matter of ADAM MASONIS, }  
Bankrupt. }

Specifications of objections to the discharge in bankruptcy of the said bankrupt having been filed by Bartley F. Tuthill,

On motion of Martin P. O'Connor, solicitor for the aforesaid creditor, it is

30 Ordered that the said specifications of objections be referred to Atwood L. DeCoster, referee in bankruptcy, as special master under the rules of this court, to take proofs respecting the same, and to report such proofs to his court, together with his findings thereon, with all convenient speed.

JOHN RELLSTAB,  
Judge.

Affixed Seal of  
United States District Court,  
40 District of New Jersey.

## Replication

A true copy.

George T. Cranmer,  
Clerk.

per

Benjamin F. Havens,  
Deputy.

A true copy.

Sam K. Robbins,  
Clerk.

10

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 Replication

(Filed April 17, 1911)

## IN CHANCERY OF NEW JERSEY

20

JAMES P. KELLY, trustee of  
Adams Masionis, bankrupt,  
Substituted Compl't,

vs.

Adam Masionis, bankrupt,  
called Adam Masonis) *et al.*,  
Def'ts.

On Bill, &c.

30

The complainant joins issue on the answer of  
the defendant, Pauline Masionis.

MARTIN P. O'CONNOR,  
Solicitor of Complainant.

A true copy.

Sam K. Robbins,  
Clerk.

## Order Overruling Plea of Adam Masionis, Defendant

*(Filed April 17, 1911)*

## IN CHANCERY OF NEW JERSEY

	Between	}
10	JAMES P. KELLY, trustee of Adam Masionis, bankrupt, Substituted Complainant,	
	vs.	
	ADAM MASONIS, (sometimes called Adam Masonis) <i>et al.</i> , Defendants.	

This cause coming on to be heard at the regular term of this court, in the presence of Martin P. O'Connor, of counsel with the complainant, and William Greenfield, of counsel with the defendant Adam Masionis, and the chancellor having heard the arguments of counsel of the respective parties on the plea filed in the above stated cause.

It is on this eleventh day of April, A. D., 1911, on motion of Martin P. O'Connor, of counsel with the complainant, ordered, that the said plea be overruled with cost and that the said defendant Adam Masionis (sometimes called Adam Masionis) answer the complainant's bill within thirty (30) days from the date hereof and that if he fails so to do, the complainant's bill be taken as confessed against him.

MAHLON PITNEY,  
C.

Respectfully advised,  
Frederic W. Stevens, V. C.

A true copy.  
Sam K. Robbins,

40 Clerk.

**Notice of Appeal**

(*Filed May 10, 1911*)

IN CHANCERY OF NEW JERSEY

Between

<p>JAMES P. KELLY, Trustee of Adam Masionis, bankrupt, Substituted Compl't, and ADAM MASONIS (sometimes called Adam Masonis) <i>et al.</i>, Defendants.</p>	}	<p>10 On Bill, &amp;c.</p>
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To Martin P. O'Connor, Esquire,  
Sol'r for and of counsel with complaint.

Sir: 20

The defendant, Adam Masionis, hereby appeals from an order made on the eleventh day of April, Nineteen Hundred and Eleven, and from the whole and every part thereof, which said order was made in this Court in the above stated cause wherein it overrules the defendant's Adam Masionis (sometimes called Adam Masonis) Plea in Bar to the Complainant's Bill of Complaint, and to the action of the said cause on the part of the said complainant, to the Court of Errors and Appeals of the State of New Jersey in the last resort in all causes. 20

Dated at Newark, N. J., May 8th, 1911.

Respectfully yours,

WM. GREENFIELD,

Sol'r. for and of Counsel with  
Defendants-appellants.

## Petition

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

WM. GREENFIELD,  
Of Counsel with  
Defendants-appellant.

A true copy.  
Samuel Robbins,  
Clerk.

10

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 Petition

(Filed May 11, 1911)

NEW JERSEY COURTS OF ERRORS AND  
APPEALS

20

Between JAMES P. KELLY, Trustee of Adam Masionis, bankrupt, Substituted Compl't, and ADAM MASONIS (sometimes called Adam Masonis) <i>et al.</i> , Defendants.	}	On Bill, &c.
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30

The petition of Adam Masionis (sometimes called Adam Masonis) the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by an order made in the Court of Chancery, by his Honor Mahlon Pitney, Chancellor of the State of New Jersey, bearing date the eleventh day of April, Nineteen Hundred and Eleven, wherein the said James P. Kelly, Trustee of Adam Masionis, bankrupt, sub-

40

## Petition

stituted complainant was complainant, and Adam Masionis, and others were defendants, in this respect, to wit, that the said order overrules the amended plea in bar to the aforesaid cause of action, and directs the said defendant, Adam Masionis, to answer the complainant's bill of complaint, and in default thereof the said bill of complaint to be taken as confessed and a decree entered. 10

And your petitioner humbly appeals from that part of the order made by the Chancellor as aforesaid, on the ground that the same is erroneous, for that the said plea should have been sustained and is the proper plea in bar to the complainant's cause of action, by reason of the facts and things set out in the said amended plea, to wit, that the said defendant, Adam Masionis was duly adjudged a bankrupt and discharged of all debts and liabilities before the filing of the complainant's bill of complaint; that the same cause, matters, and things were tried and determined in the United States District Court for the District of New Jersey; that the said defendant, Adam Masionis, being duly discharged of all debts and liabilities as existing against him, the said Adam Masionis. 20

Your petitioner therefore prays that the said order of the Chancellor, may be, for the particulars aforesaid, reversed, set aside and for nothing holden, and that your petitioner may have such other relief in the premises as to this Honorable Court shall seem meet. 30

WM. GREENFIELD,  
Sol'r. for and of  
Counsel with Appellant.

## Answer to Petition of Appeal

Endorsed:

“Filed May 11, 1911,  
S. D. Dickinson,  
Clerk.”

A true copy.

S. D. Dickinson,  
Secretary of State.

10

## Answer to Petition of Appeal

*(Filed June 16, 1911)*NEW JERSEY COURTS OF ERRORS AND  
APPEALS

20

Between

ADAM MASONIS (sometimes  
called Adam Masonis, *et al.*,  
Appellants,  
(Defendants below),

and

JAMES P. KELLY, trustee of  
Adam Masonis, bankrupt,  
Respondent,  
(Complainant below.)

On Appeal.

30

The answer of the above named respondent to  
the petition of appeal of the above named appel-  
lant.

This respondent not acknowledging all or any  
of the matters which in the said petition of appeal  
are contained to be true, for answer thereto,  
40 nevertheless, says and admits that an order was,

## Answer to Petition of Appeal

on the 11th day of April, A. D. 1911, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced and this respondent is advised and believes that the said order is agreeable to equity, and prays that the same may be affirmed with costs to be adjudged to this respondent. 10

MARTIN P. O'CONNOR,  
Solicitor and of  
Counsel with Respondent.

Endorsed:

“Filed Jun 16, 1911,  
S. D. Dickinson,  
Clerk.”

A true copy.  
S. D. Dickinson,  
Secretary of State.

20

Report of the Board of Directors

on the 11th day of April, A. D. 1911, made and  
 entered in the books of the company, in the name for  
 that purpose mentioned in the certificate as in  
 fact stated, but as to the substance and form  
 thereof, said report may refer to the  
 when the same shall be produced and this re-  
 spondent is advised and believes that the same  
 order is necessary to comply and proper that the  
 same may be obtained with the same as referred  
 to in this report.

10

MARSHALL C. CUMMINGS  
 Solicitor and of  
 Counsel with Respondent

Witness my hand and  
 seal this 12th day of April, 1911.  
 J. M. [Name]  
 Clerk

20

# New Jersey Court of Errors and Appeals

*Between*

JAMES P. KELLY, TRUSTEE  
OF ADAM MASONIS, BANK-  
RUPT,

*Substituted Complainant—  
Appellee,*

AND

ADAM MASONIS ET AL.,

*Defendants—Appellants.*

*On Bill, &c.  
On Appeal  
from the Court  
of Chancery of  
New Jersey.  
Appellant's  
Brief.*

## FACTS.

Briefly stated the facts in this case are as follows: The Appellant, Adam Masionis, was a farmer in Union County, in the State of New Jersey, in the years 1904 and 1905. He owned horses, wagons, harness, farming implements and utensils, and land. In 1905 he transferred his property to Pauline Masionis, his wife, because he felt it was due her. He was not then indebted to anyone. No threat of any law suit had been made. In 1906, long after the transfer of property by Adam Masionis, one Bartley Tuthill recovered a judgment against Adam Masionis for \$270. Thereafter that plaintiff lay dormant and did nothing until 1909.

On June 5, 1909, the said Adam Masionis filed a petition in bankruptcy, and was duly adjudicated a bankrupt, on account of debts contracted long after the transfer of the property to his wife (see Complainant's Amended Bill of Complaint, pages 21 to 33, of the printed State of the Case). The suit at bar is brought or attempted to be brought by the trustee in bankruptcy, who was substituted Complainant in a suit to set aside the said conveyance on the ground of fraud. The conveyance complained of was made in March, 1905, by Adam Masionis to an intermediary and by the intermediary to Pauline Masionis, the Appellant's wife. See page 1 of the printed State of the Case. Adam Masionis was duly adjudicated a bankrupt and on April 14, 1910, was duly discharged in bankruptcy by the United States District Court for the District of New Jersey, and was thereby freed and absolved from all provable debts. By virtue of the said discharge in bankruptcy all judgments and claims of any kind and all liabilities of the bankrupt were dissolved and the debtor was freed from all debts to that date and the bankrupt was given an opportunity to start life anew, by purview of the Act of 1898, and as amended in 1903. At the time the original Bill of Complaint was filed the Complainant was Bartley Tuthill, the judgment creditor, and later James P. Kelly, Trustee in bankruptcy, was substituted by consent of counsel. When the bankrupt, Adam Masionis, petitioned the United States District Court for the District of New Jersey for his discharge in bankruptcy, one of his creditors, the Complainant in the first Bill of Complaint filed, objected to his discharge and filed Specifications of his Objections to the Discharge, setting out the same facts as are alleged in the Bill of Complaint filed by him, and which was thereafter

amended by the present Complainant, the Appellee. See page 51 of the printed State of the Case. A notice of hearing on the said Specifications of Objections and a report on the Objections to the discharge was made. See page 56 and page 58 of the printed State of the Case. A discharge was duly granted to the bankrupt, under the Laws of this Country; and, under the Act of Congress all provable debts of the Bankrupt were thereby dissolved and the bankrupt was permitted to start life anew. The original complainant in the first Bill of Complaint was also the creditor who objected to the bankrupt's discharge and he is the holder of a judgment recovered against the bankrupt one year after the transfer of the property. In other words, the property was transferred in 1905 and the judgment was recovered in 1906. After that the judgment creditor lay dormant until 1909. The amended Bill of Complaint was filed December 13, 1911, after the discharge in bankruptcy had been granted to Adam Masionis by the United States District Court for the District of New Jersey April 14, 1910, freeing him from all debts and liabilities, and it is the Appellant's contention that the discharge in bankruptcy barred and abated the complainant's action.

#### POINT 1.

It is respectfully submitted that any transfer of property, even if made without any consideration, is valid under the Bankruptcy Act, if it were made more than four months next preceding the adjudication of the bankrupt. In this case the transfer was made in March, 1905, and the Appellant, Adam Masionis, was adjudicated a bankrupt in 1909, a period of five years intervening between the time of the conveyance complained of and the adjudication

of the bankrupt. The bankruptcy Act of 1898 and as amended in 1903 states clearly that

“A conveyance shall be void if made within four months of the adjudication of the bankrupt.”

The complainant contends that even though the conveyance was made more than four months preceding the adjudication of the bankrupt, if it was made with a fraudulent purpose, the trustee can avoid it. That contention might be plausible if the Appellant had not been discharged in bankruptcy before the Bill was filed. In this case a discharge was granted to the bankrupt, Adam Masionis, dissolving all provable debts of the said bankrupt, the Appellant herein. Specifications of Objections were filed in Opposition to his discharge, the matter was referred to the referee in bankruptcy as a Special Master on the Specifications and a hearing was had thereon. (See Referee's report on said Objections to Discharge, page 56 of the printed State of the Case.)

The Bankruptcy Act is a beneficial act designed to relieve a person from the burden of his debts and to give him a new start in life.

Again it is respectfully submitted that the plea in bar and in abatement on the part of the Appellant should be sustained and the learned Vice Chancellor reversed, and the cause be abated, because Adam Masionis having been discharged in bankruptcy, all his debts and liabilities and all judgments and claims against him were dissolved. The Complainant-Appellee having been guilty of laches cannot now be heard to complain.

In *Collier on Bankruptcy, Fifth Ed.*, page 477, the learned author says:

“A clear understanding of what is a prov-

able debt is important to either the due administration of, or practice under, all bankruptcy laws. If provable, a debt is the basis of its owner's right to a pro rata share in the estate; if provable, with certain exceptions, always stated in the statute, *it is barred by the discharge.*"

Hence, if the debt has been barred what standing has the trustee in this court? The complainant himself, in his Bill of Complaint, set out that the Appellant was adjudicated a bankrupt and in due time petitioned the court for a discharge and that *the discharge in bankruptcy was granted to him.* The discharge having been granted to him without any opposition on the part of the trustee, his debts and liabilities were dissolved and wiped out, and, that being the case, the trustee has now no cause to complain. He cannot take advantage of his own negligence to harass and oppress the bankrupt. If he has been negligent in the discharge of his duties he must stand the consequences and therefore this Appellant contends that the decree of the learned Vice Chancellor should be reversed and the Appellant's plea in bar and in abatement should be sustained.

## POINT 2.

It is further respectfully submitted that since all debts and liabilities of the bankrupt-appellant were dissolved and he was absolved from any and all liability by virtue of the Act of Congress, and there are no debts to pay or liquidate, the trustee has nothing to pay and therefore he has no standing in Court, and the Plea in bar and abatement on the part of the Appellant is the proper plea. If the debts are dissolved it naturally follows that all further action concerning the debts in bankruptcy

proceedings, is abated and therefore the learned Vice Chancellor erred in not sustaining the plea in bar and abatement. While it may be true that the pleas were not drawn in an artistic manner, yet, issue was joined and no exception was taken to either the form or the substance of it. Therefore, it seems to me, that the learned Vice Chancellor should have taken into consideration all the facts as well as the law in this matter and not only the form of the plea, and I feel sure that had he done so he would have decided in favor of the defendant-Appellant herein and sustained the plea. It is respectfully submitted that having been discharged in bankruptcy, and by virtue of the said discharge all his debts and liabilities having been dissolved, this Appellant is under no obligation to any one (at least legally).

In 3 *Amer. Bank. Rep.* page 722, *in re Meyers* by Brown, J., the court says:

“This is a petition by certain creditors of the bankrupt for the revocation of his discharge. Section 15 provides that a discharge may be revoked upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt; that the knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge; provided the application be made within a year thereafter by parties who have not been guilty of laches. This application is made within the year. It is based upon the testimony of the bankrupt in subsequent proceedings, tending to show that he had considerable property at the time of his bankruptcy and application for discharge, which was concealed. His verified

schedules stated no assets. If the facts indicated in the petition are true the discharge should not have been granted. The same facts would also show that his discharge was procured through fraud; since in his peittion he made oath that he had wholly surrendered all his property and had fully complied with all the requirements of the Act. An Order of Reference was made to a Master and the application was granted."

It seems to me that under the decision of the learned Justice Brown, *supra*, the Appellee in this cause cannot be heard to complain. His recourse is not in the filing of a Bill in Chancery. He should apply to the United States District Court for the District of New Jersey for the revocation of the discharge granted to the bankrupt, and after the discharge is revoked he can come into the Court of Equity and complain, setting out the same facts as in the present Bill. But he cannot do that until the discharge in bankruptcy is revoked.

Can it be said that the Complainant-Appellee, having been duly elected Trustee, has fully performed his duties? He permitted the United States District Court for the District of New Jersey to grant a discharge in bankruptcy to Adam Masionis. Specifications of the Grounds of opposition to the said discharge were filed, but in due time the said discharge was granted to the bankrupt, dissolving all his debts and liabilities. It seems to me that if the Appellee should be permitted to harass and oppress the bankrupt, in another suit, and after the Appellee has been guilty of laches, then the entire bankruptcy proceedings would become a farce and the Act, instead of being a beneficial Act, would become a means for the harassing and op-

pression of the unfortunate. If, after the bankrupt has received from the Bankruptcy Court a discharge, whereby his debts and liabilities are dissolved and he is absolved from paying them, he cannot enter a Plea to bar and abate any action, then I say, the protection afforded by the Bankruptcy Act is a myth and the sooner it is wiped off the Statute Books the better it will be.

In 4 *Amer. Bank. Rep.*, Page 139, opinion by Justice Brown, the learned Court says:

“Proceedings in bankruptcy are doubtless in the nature of a suit. The discharge in bankruptcy was designed to give the debtor a fresh start in life, freed from the weight of all former debts; and its design is to give freedom to all debtors upon an honest compliance with its provisions.”

Until he has been proven dishonest the bankrupt is presumed to be honest, and it is presumed that he has complied with the requirements of the Act until he is proven to have done otherwise.

The Appellee will contend that under the case of *Washington vs. Beattie in the Court of Errors and Appeals*, reported in 76 *Atl. Rep.* 442, no matter what debts he may have had, or what threats of a law suit may have been made, if he has transferred his property it is a fraud. And if that is so he must pay his debt. But the learned Court must take notice of the fact (and this the Appellee has lost sight of) that *the transfer complained of must have been made in fear of a law suit or to evade an existing debt* before fraud can be presumed, under the case of *Washington vs. Beattie*, supra.

In the case at bar the amended Bill of Complaint was filed under an Order and Decree granted dismissing the original Bill (see pages 20 and 21 of

the printed State of the Case). And the amended Bill of Complaint was filed *after the debts of the Appellant were dissolved* and he was absolved from any and all liability to that time. The amended Bill of Complaint alleges debts due to divers creditors and which were due preceding the granting of the discharge to the bankrupt. Therefore, this Appellant contends that the case of Washington vs. Beattie, *supra*, acts in support of the plea in bar and abatement and the said plea should have been sustained by the learned Vice Chancellor.

Again as *in re Meyer*, 3 *Amer. Bank. Rep.* 722, it seems to me that since the trustee has failed to follow up his Specifications of Grounds of Opposition to the bankrupt's discharge, the Complainant is precluded from making a collateral attack on the discharge in these proceedings.

Under the *Bankruptcy Act of 1903, Sec. 12a. Composition*: He could have made a composition with the creditors and asked the Court to either deny or affirm the composition. But, since the bankrupt's discharge was granted the Court has lost jurisdiction over the matter and over the bankrupt. He is practically powerless at the present time to make any application for relief to the bankruptcy Court (his discharge having been granted), either by way of composition or any other settlement with the creditors, under said Act.

The *Bankruptcy Act, Sec. 67 c.*, sets out that:

“A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process or a judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by, or against such persons, shall be dissolved by

the adjudication of such person to be a bankrupt, if

(1) It appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference, or

(2) the party or parties to be benefited thereby had reasonable cause to believe the defendant was insolvent and in contemplation of bankruptcy, or

(3) that such lien was sought and permitted in fraud of the provisions of this act."

In the case of *Sherman vs. Luckhardt*, 11 *Amer. Bank. Rep.* 26, the Court holds distinctly:

"A conveyance of non-exempt property by a bankrupt to one of his creditors within four months prior to the filing of the petition in bankruptcy by or against him, made with the intent and purpose on the part of the bankrupt *alone* to hinder, delay and defraud his creditors, is prohibited by clause "e" of Section 67 of the Bankruptcy Act of 1898, and such conveyance may be avoided by the Trustee appointed in the Bankruptcy proceedings."

That of course is true and properly so, because the Act distinctly specifies and limits the act to four months preceding the filing of the petition in bankruptcy, and the adjudication of the bankrupt.

Any proceedings must be taken within four months of the conveyance and transfer of any property or assets by the bankrupt. In the case at bar a period of five years had elapsed, and it seems to me that at this time the only plea the defendant in the Chancery suit, the Appellant herein can prop-

erly file is a plea in bar and abatement of the suit, by reason of the fact that he had been fully discharged in bankruptcy. This discharge is admitted by the trustee, the Appellee herein, while not in so many words, yet, by his acquiescence to the said discharge granted. Therefore he cannot now come and complain. He cannot say, "Yes, it is true that during all this time I have done nothing, but I can harass and oppress the bankrupt now, in other proceedings." That would surely make the Bankruptcy Act a weapon wherewith to oppress and ruin the unfortunate, instead of a beneficial Act.

### POINT 3.

It is respectfully submitted that the plea in bar should be sustained by this Honorable Court under the decision of the *U. S. Circuit Court of Appeals*, 11 *Amer. Bank. Rep.* 797; the Court says:

"The petition charges in this case that the respondent is insolvent, and within *four months* had by his certain deed of conveyance, conveyed, transferred, concealed, removed and permitted to be concealed and removed, a part of his property with the intent to hinder, delay or defraud his creditors, or some of them."

To this the respondent, by counsel, submitted a demurrer. The demurrer was sustained on the ground that the petitioner was not a creditor of the respondent at the time of the transaction complained of, and is not entitled to file a petition in bankruptcy, within the meaning of the Bankruptcy Act (Act July 1, 1898, ch. 541, Sec. 1, 30 Stat. 544 and 545, U. S. Comp. St. 1901, page 3419).

In the case of *Washington vs. Beattie*, *supra*, the Court decided that,

"Where the defendant is put in fear of a suit

and transfers his property it is a fraud upon creditors."

Now, in the case at bar, at the time of the filing of the original Bill of Complaint there were no creditors. All of the claims as set out in the complainant's Amended Bill of Complaint had been duly dissolved and the Appellant discharged from any and all liability therefore, by virtue of the discharge in bankruptcy which was granted to him, and since there were no claims the trustee has no standing in Court, and the plea in bar is a proper plea and should have been sustained by the learned Vice Chancellor.

Again the same Court in 11 *Amer. Bank. Rep.* at 797 citing the case of *Horbach vs. Hill*, 112 U. S. 144, says in the syllabus:

"A creditor of a grantor of real estate, attacking the conveyance as made to defraud creditors, should show affirmatively *that he was a creditor of the grantor when the alleged fraudulent conveyance was made.*"

The Court says further in the same case:

"He has a right to dispose of his property in the ordinary course of business for a valuable consideration, and the defendant (the grantee) has a right to purchase it. The complainant not showing that he was at the time a creditor, cannot complain. Even a voluntary conveyance is good as against subsequent creditors, unless executed as a cover for future schemes of fraud."

And this learned Court must not lose sight of the fact that the Appellant received his discharge in bankruptcy, dissolving all his debts and absolving him from all liability. While he may not be

morally absolved from paying, yet legally he is absolved.

Clearly the trustee failed to perform his duty; he failed to take advantage of his rights in the bankruptcy proceedings. He permitted the bankrupt to be discharged, and then, after the Appellant had gone to the trouble, annoyance and expense of filing his petition in bankruptcy and applying to the bankruptcy court for his discharge and attending at the hearings, the trustee by his counsel, who was also counsel for the creditor who filed Specifications of opposition to the discharge and failed to follow up his specifications, come into the Court of Equity. This Appellant contends that the trustee cannot come into the Court of Equity and seek relief from his own wrong, or his own laches.

It is further respectfully submitted that while the amended Bill of Complaint was filed under a Decree dated February 23, 1910, wherein the Court denied the right to file the amended Bill, without prejudice to the renewal of such Application, the amended Bill of Complaint is in the form of the old Bill and *it was filed after the Defendant-Appellant was discharged in bankruptcy and all his debts were dissolved*. He was by virtue of the said discharge absolved from all liabilities, and the Plea in bar to any further proceedings should have been sustained.

#### POINT 4.

In this point the Appellant desires to call the Honorable Court's attention to the fact that the trustee in bankruptcy is not the proper party complainant, there being no Order of the United States District Court permitting the said trustee, the Appellee herein, to institute this suit. Such an Order

is necessary as is held in the case of *Kinmouth vs. Brautigam* (*New Jersey Chancery*) 57 *Atl. Rep.* 1013. In that case the Court held specifically:

“A complainant must have an Order from the United States District Court permitting him to come into the State Court to sue.”

The original suit in Chancery was instituted by Bartley Tuthill, he having obtained a lien paramount to all other creditors. The trustee is an officer of the Court and holds the property and assets of the bankrupt for all creditors, to be shared pro rata. Therefore his interest in this suit as Complainant is contrary to the interest of the judgment creditor who has obtained a lien, as is held specifically, in *U. S. Supreme Court, Metcalf vs. Barker* 187 *U. S.* page 165, reported in 9 *Amer. Bank. Rep.* 39, opinion by the learned Chief Justice Fuller.

Again in the case of *Washington National Bank vs. Beattie*, supra, decided by this Court, the Court, speaking by the late Justice Dill, distinctly says:

“There must be an existing creditor at the time of the conveyance and the transfer must have been made to cheat, defraud, hinder and delay.”

So that since, at the filing of the amended Bill of Complaint by the Appellee herein, there was no existing creditor and all debts and liabilities of the Appellant herein had been dissolved, the Bill of Complaint should have been dismissed, as held in the case of *Washington vs. Beattie*, supra.

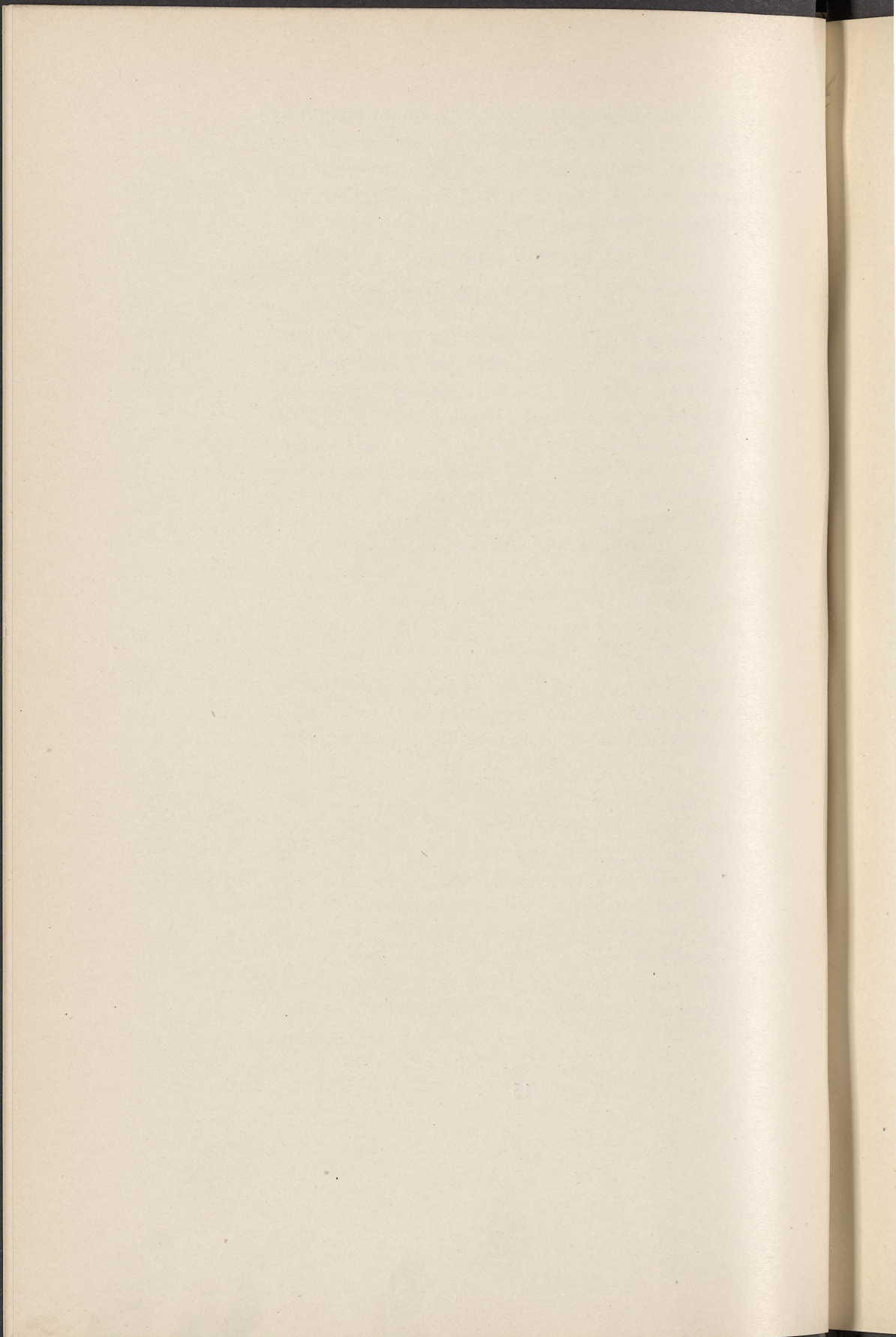
It is respectfully submitted to this Honorable Court that in view of all of the facts and the authorities above cited, the Decree overruling the Pleas in bar and abatement of this Appellant (see

page 60 of the printed State of the Case) should be reversed and a Decree ordered to be entered sustaining the said Pleas in bar and abatement and the Appellee be forever barred from further proceedings in this cause, with costs to the Appellant.

Respectfully submitted,

WM. GREENFIELD,

*Solicitor for and of Counsel  
with the Appellant.*



# New Jersey Court of Errors and Appeals

<p><i>Between,</i> JAMES P. KELLY, Trustee of ADAM MASONIS, Bankrupt, <i>Substituted</i> <i>Complainant-Appellee.</i></p> <p style="text-align: center;"><i>and</i></p> <p>ADAM MASONIS (sometimes called ADAM MASONIS) et al, <i>Defendant-Appellant.</i></p>	<p><i>On Bill, Etc.</i></p> <p><i>On Appeal from</i><sup>10</sup> <i>the Court of</i> <i>Chancery.</i></p> <p><i>Brief for</i> <i>Appellee.</i></p>
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The history of the case as set forth in the brief 20  
of Counsel for the Appellant under the heading  
"Facts" is not altogether correct. Under the sev-  
eral points discussed in his brief will also be found  
several inaccurate statements of facts.

## HISTORY OF CASE.

On the 25th day of October, 1905, and for some  
time prior thereto the defendant, Adam Masionis  
was indebted to one Bartley F. Tuthill and others 30  
for goods and chattels sold and delivered to him.  
The defendant while so indebted was the owner of  
certain real estate described in the Bill of Com-  
plaint. Subsequently on the 31st of March, 1906,  
he made a conveyance of his real estate to his wife,  
through one Joseph Ramizesky, and on the 25th  
day of October, 1906, Tuthill recovered a judgment  
against Masionis in the Elizabeth District Court  
for the amount of his debt which was immediately 40

docketed in the Court of Common Pleas for Union County out of which a writ of execution was issued and returned unsatisfied. While the defendant, Masionis, was being examined on supplementary proceedings at the instance of the judgment creditor, he filed on June 1, 1909, a petition in the United States District Court for the District of New Jersey praying that he be adjudicated a bankrupt and discharged from his debts in accordance with the laws governing bankruptcy. The judgment creditor before a receiver or a trustee was appointed in the bankruptcy proceedings filed a bill in the court below on behalf of himself and such other creditors as might join with him, praying that the conveyances fraudulently made by the bankrupt to his wife on the 31st day of March, 1906, be set aside and the property sold to pay the judgment creditor and the bankrupt's other creditors.

Masionis and his wife (the defendants named in the Bill of Complaint) answered the bill separately. Subsequently and on the 26th day of August, 1909, the complainant was appointed trustee of the bankrupt and on September 11, 1909, the Court of Chancery made an order with the consent of the defendants' counsel substituting the trustee as complainant in the place and stead of Tuthill the judgment creditor (Case, p. 15). Issue being joined on the answers the cause was referred to Vice-Chancellor Stevens, for hearing. The proof submitted on the hearing established the fact that the conveyances made by Masionis to his wife were fraudulent but the Vice-Chancellor entertained the opinion that inasmuch as the pleadings indicated that the suit was an ordinary creditor's action the bill ought to be dismissed, notwithstanding a stipu-

lation made by the parties (Case, p. 16). The trustee as complainant then made application to the court to amend the bill for the benefit of all creditors which he represented. Argument being had on the motion to amend, the court took the matter under advisement and later decided that the bill might be amended, and made an order to that effect. The complainant amended his bill accordingly which is the present bill (Case, p. 21). To the amended bill the defendant, Pauline Masionis, the wife of the appellant, Adam Masionis, filed an answer. The defendant, Adam Masionis, filed a plea coupled with an answer. Later the defendant Adam Masionis was given permission to file an amended plea (Case, p. 46). Argument having been had upon the issue raised by the plea the court overruled the plea and an order to that effect was entered April 11, 1911, (Case, p. 60). From the order overruling the plea the defendant, Adam Masionis *alone* appeals.

## POINTS.

### I.

#### THE STATUTORY CERTIFICATE IS NOT ATTACHED TO THE PLEA.

The plea has not attached the certificate required by the statute. The certificate attached to the plea reads, "is well founded *within the points of law*," whereas it should read, "is well founded *in point of law*."

Chancery Act, Laws of 1902, p. 518, sec. 22.

### II.

A PLEA WHICH SETS UP AS A DEFENCE MATTER WHICH APPEARS UPON THE FACE OF THE BILL WILL BE OVERRULED.

Every pertinent fact in this case which is set up by the plea appears upon the face of the Bill of Complaint, hence, a plea which sets up as a defence matter which appears upon the face of a bill will be overruled. The defendant should demur in such a case.

Davis vs. Davis 12, Dick. p. 252.

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### III.

#### THE PLEA IS OVERRULED BY THE ANSWER.

The defendant, Adam Masionis, in addition to filing a plea answered the bill (Case. pp. 36 and 41). The commencement of the plea purports to confine it to paragraphs 2 to 13 both inclusive of the Bill of Complaint; but as a matter of fact it goes to the whole bill. It recites various steps taken in the bankruptcy proceedings and then states, "*and therefore this defendant does plead the said discharge in bankruptcy as a plea in bar and abatement of the said complainant's suit.*" The conclusion of the plea is to like effect.

With the plea is coupled an answer not in support of it but which deny the equities set up in the bill. There is no connection whatever between the bankrupt's Discharge which is supposed to be the subject of the plea and the denial of fraud in making the deeds set up by way of answer. The denial of fraud by the answer does not support, assist or aid the bankrupt's Discharge as a defence. It requires no support. If a defence at all it is full and complete and speaks for itself when properly pleaded. Its purpose and object is defined by the statute which creates it. Therefore "a plea that goes to the whole bill and is coupled with an answer

not in support of it but which deny the equities set up in the bill is overruled by the answer."

Corlies vs. Corlies, Exrs. 8 C. E. Gr., p. 197.

#### IV.

#### THE PLEA IS NOT CERTAIN AND SPECIFIC.

The plea is not certain and specific in its aver- 10  
ments of the matter which at best I infer it intends  
to set up as a defence namely, the *Discharge in  
Bankruptcy* of the appellant. The plea alleges that  
the referee in bankruptcy advised the United  
States District Court for New Jersey to grant the  
defendant's prayer for his *Discharge*, but there is  
no allegation in the plea that the court ever granted  
the *Discharge* so recommended. The most that is  
said of the *Discharge* is at the bottom of page 49 of 20  
the Case where this language appears, "*and by  
virtue of the granting of this defendant's discharge  
in bankruptcy.*" This is the only allegation in the  
plea from which may be inferred (but not specifi-  
cally stated) that the *Discharge in Bankruptcy* was  
ever granted to the defendant. When granted, if  
at all, the plea is silent. Such language in the plea  
is nothing more or less, as is the entire paragraph  
of which it is a part, than the recital of a fact in 30  
the mind of the pleader but not set forth in his plea,  
and for present purposes not existing. Neither is  
there a reference in the plea of a *Discharge* being  
annexed thereto, nor is the *discharge* annexed. The  
only papers attached to the plea are: (1) Tuthill's  
Specifications of Grounds of Opposition to Bank-  
rupt's *Discharge*—whose conduct is alleged both in  
plea and brief of the appellant to be binding upon  
the trustee, the complainant herein; (2) Order of 40

Reference on Specifications; (3) Referee's Report on Objections to Discharge. It is therefore to be seen that no Discharge in Bankruptcy of the defendant is specifically or distinctly pleaded or a proper reference made to it in the plea as annexed, nor is it annexed, hence the plea is bad.

1 Dan. Ch. (4 Ed.) p. 683 and cases cited.  
16 Cyc. 232.

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There being no Discharge in Bankruptcy pleaded, what is the issue tendered by this plea? The plea simply alleges (1) that the appellant filed a petition in bankruptcy with proper schedules; (2) that he was adjudicated a bankrupt; (3) that there was a meeting of his creditors which he attended; (4) that he applied to the court for a discharge; (5) that Bartley F. Tuthill, a creditor, filed specifications of grounds of opposition to his discharge which was referred to a referee who in the absence of the creditor advised the court to grant the discharge. The plea alleges that the complainant (trustee) failed to appear and oppose the discharge. It was not until December, 1910, (a year later) that the Bankrupt Law gave a trustee the right to oppose a discharge. Tuthill's conduct cannot bind the trustee and the other allegations present no  
20 defence or establish any fact that prevents the trustee from prosecuting this action to set aside the fraudulent transfers in question. I submit that the order made by the Chancellor overruling the plea is proper and that it should be affirmed with  
30 cost to the appellee.

Counsel for the appellant by his brief does not confine himself to the issue, if any, presented by his plea. The points on which he rests are foreign  
40 to the plea, and while I have next below replied to

them, I contend, nevertheless that they should not be considered on this appeal inasmuch as they are not properly brought before the court by the plea, which alone is involved in this appeal.

## V.

A DISCHARGE IN BANKRUPTCY IS NO DEFENCE TO AN ACTION BY A TRUSTEE OF A BANKRUPT TO SET ASIDE FOR THE BENEFIT OF CREDITORS CONVEYANCES OF REAL ESTATE FRAUDULENTLY MADE BY THE BANKRUPT. 10

Assuming that the plea properly sets up the appellant's Discharge in Bankruptcy, I contend that it is no defence to this action by the trustee of the bankrupt to set aside for the benefit of *creditors* the conveyances fraudulently made by the bankrupt for the purpose of defeating the payment of his creditors. 20

A Discharge under our present bankrupt law is defined as the, "release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are exempt by the act." Bankrupt Act, sec. 1 (12).

By sec. 14a. of the Bankrupt Law a bankrupt can apply for his Discharge *one month after he is adjudicated a bankrupt* and before the *expiration of twelve months*, but not later unless the court will grant an extension of time not exceeding *six months*. "*This can be done regardless of the stage or progress reached in the administration of the bankrupt's estate.*" 2 Rem. on Bankr. p. 1459 sec. 2415. It can be seen that it is the intent of the act to grant to the bankrupt his Discharge as soon as possible and when he is entitled to it in order that 40

he may start life anew. In the case of *Hardie vs. Swafford Bros. Dry Goods Co.* 165 Fed. Rep. p. 588, the court, speaking of the operation and purpose of a discharge said: "Its operation and purpose is to release honest, unfortunate and insolvent debtors from the burden of their debts and to restore them to business activity in the interest of their families and the general public. These are the main, if not  
10 the most important objects of the bankruptcy act."

"It does not effect suits to determine the ownership of property or to enforce liens thereon." 2 Rem. on Bankr. p. 1588.

"The statute as to discharge does not effect the recovery of property by the trustee." 2 Rem. on Bankr. p. 1591, Sec. 2674.

"The discharge when pleaded extends no further than to protect the bankrupt from *judgments in*  
20 *personam*, or of other *personal order*, the discharge in and of itself not being a defence to proceedings *in rem*. The discharge bars debts not \* \* \* the assertion of interests in property." 2 Rem. on Bankr. p. 1604 sec. 2709.

"A discharge goes to the remedy, but does not *cancel* the debt." Coll. on Bankr. (8th Ed.). p. 293.

The office of a discharge, therefore, is to relieve the bankrupt *personally* from the burden of his  
30 debts so that he may start anew in life. It only bars actions to recover debts which are dischargeable in bankruptcy. In other words, "After acquired property"—property acquired after the discharge is granted is not subject to the payment of his debts incurred before bankruptcy. It does not mean, as Counsel for the appellant contends, that after the bankrupt is discharged from bankruptcy he takes with him with the aid of his confederates  
40 all of his estate which he brought into bankruptcy

or ought to have brought in for administration or was entitled to before he went into bankruptcy. If this were so the bankrupt could enrich himself by his own fraudulent conduct and at the expense of his creditors and in such a case the bankruptcy act would be a mere instrument and devise to enable him to do so.

When a person goes into bankruptcy he leaves his estate after him to be administered by the court for the benefit of the creditors. This action is not a personal one but an action in rem to recover property belonging to the bankrupt which he fraudulently put out of his hands, and there is no question but what it continues for the benefit of the creditors and does not cease or fall simply because the bankrupt has been discharged from bankruptcy. If the contention of Counsel for appellant is correct then sec. 70a and 70e of the Bankrupt Act vesting in the trustee property transferred by the bankrupt in fraud of his creditors and the right to set aside transfers made by the bankrupt of his property, in fraud of his creditors, are meaningless and can not be carried into effect; in other words, a premium is placed upon fraudulent conduct and the creditor penalized.

## VI.

A TRUSTEE IN BANKRUPTCY IS NOT PRECLUDED FROM ATTACKING A CONVEYANCE OF REAL ESTATE FRAUDULENTLY MADE BY THE BANKRUPT MORE THAN FOUR MONTHS PREVIOUS TO THE INSTITUTION OF THE BANKRUPTCY PROCEEDINGS.

It is argued by Counsel for the appellant "that *any transfer* of property even if made without any

consideration is valid under the *Bankruptcy Act* if it were made more than four months next preceding the adjudication of the bankrupt."

Counsel for the appellant has evidently overlooked sections 70a and 70e of the Bankrupt Act.

Sec. 70a provides; "The trustee \* \* \* shall \* \* \* be vested by operation of law with the title of the bankrupt as of the date he was adjudicated a bankrupt \* \* \* to all, (4) property transferred by him in fraud of his creditors."

Sec. 70e provides; "The trustee may avoid any transfer, by the bankrupt, of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value from the persons to whom it is transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it except a bona fide holder for value."

In Coll. on Bankr. (8th Ed) p. 843 it is said, referring to sec. 70e above quoted: "The trustee is subrogated to the right of creditors and may sue to avoid any conveyance which creditors could have avoided although made more than four months prior to the adjudication in bankruptcy." To like effect see 2 Rem. on Bankr. secs. 1216 and 1217 and cases cited.

Counsel for appellant quotes sec. 67e of the Bankrupt Act in support of his contention, which provides: That all conveyances \* \* \* by a person adjudged a bankrupt \* \* \* within four months prior to the filing of the petition with intent and purpose on his part to hinder, delay or defraud his creditors or any of them shall be null and void as against the creditors of such debtor, except as

to purchasers in good faith, and for a present fair consideration; \* \* \*

It also provides; "And all conveyances \* \* \* made by the debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void against the creditors of such debtors by the laws of the state, territory or district in which such property is situated, shall be deemed null and void under this act against the creditors of such debtor if he be adjudged a bankrupt, \* \* \*."

In the case of Manning vs. Evans, 156 Fed. Rep. p. 107, a bankrupt gave a preference to one of his creditors by making a conveyance to him of certain real estate. An effort was made by the trustee to set aside the conveyance under sec. 67e of the Bankrupt Law as being made within the four months. There being a question as to when the bankrupt's 20 petition was filed, the court held, that it was not filed until July 3, 1905, and inasmuch as the conveyance to Evans was made five months previous to that date the deeds could not be set aside under the provisions of sec. 67e of the Bankrupt Act. Judge Lanning in the United States District Court for the District of New Jersey said: "The remaining question is whether the complainant is entitled to redress under the provisions of sec. 70e." After 30 quoting the statute he said: "It will be observed that in this section there is no four months' limitation as in the other section above referred to, its effect is to subrogate the trustee to the rights of the creditors. Its distinguishing feature is that it authorizes a trustee in bankruptcy to invoke the relief furnished by the state law to creditors for annulling transfers of property by their debtors." Citing in re William H. Gray (Sup.) 3 Am. Bankr. Rep. 647; 40

Skillen vs. Endleman (Sup.) 11 Am. Bankr. Rep. p. 766; Coll. on Bankr. (6th Ed.) p. 1613; Loveland on Bankr. (3rd Ed.) sec. 158; Bush vs. Export Storage Co. (C. C.) 136 Fed. Rep. p. 918. The court denied the relief under sec. 70e because the conveyance in that case *was valid* under the law of *New Jersey*, citing Garr vs. Hill 9 N. J. Eq. p. 210; Livermore vs. McNair 34 N. J. Eq. p. 478; Low vs. 10 Wortman 44 N. J. Eq. p. 193.

In re Taylor, United States District Court for the Northern District of Cal. 95 Fed. Rep. p. 956, the court said: "Where a debtor makes a sale of certain of his personal property but the same is fraudulent as to his creditors under the *statute of the state* \* \* \* and he is afterwards adjudged bankrupt, the title to such property vests in the trustee in bankruptcy for the benefit of the estate 20 notwithstanding the sale was made *more than four months* before the filing of the petition in bankruptcy and he will not be ordered to deliver such property to the original purchaser or his vendee." Continuing the court said: "This conclusion is the only one which will harmonize with the evident intent and purpose of the bankruptcy act that all property which under the laws of the state may be resorted to for the satisfaction of the bankrupt's 30 debts, shall pass to the trustee as the representative of all the creditors."

"The right of the creditors of the bankrupt to pursue and claim property transferred fraudulently by an insolvent debtor as a voluntary gift is not limited to such transfer made within four months of the institution of bankruptcy proceedings." In re Schenck 116 Fed. Rep. p. 554.

It is therefore plain that by the express provisions 40 of the bankrupt law, the trustee can recover prop-

erty fraudulently transferred by the bankrupt *more than four months* prior to the filing of the petition, and this for the benefit of the creditors which he represents.

## VII.

### AN ORDER OF THE BANKRUPTCY COURT IS NOT NECESSARY BEFORE THE TRUSTEE CAN SUE.

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The appellant contends that the trustee cannot maintain this action without an order of the bankruptcy court and relies on *Kinmouth vs. Braeutigan* 57 Atl. Rep. 1013. This is a trustee's suit for the benefit of *all the creditors* which he represents (see amended Bill of Complaint, Case, p. 21) and leave for him to prosecute this action is not necessary, it is a mere incident to his duty. *Callahan vs. Israel* 186 Mass. 383. 1 Rem. on Bankr. p. 1061, 20 secs. 1720 and 1722, and cases cited.

In *Kinmouth vs. Braeutigan*, supra, a judgment was recovered *after* the petition in bankruptcy had been filed. The judgment creditor filed a creditor's bill which was dismissed because the judgment obtained at such a time afforded no foundation for a creditor's bill. An effort was made to have the trustee prosecute the action. The court held, that the lien which would have been obtained by the 30 creditor had not bankruptcy intervened, was of no effect; that there was no authority or right in the trustee to enforce such a lien. The court said: "There is no order made by the federal court that this lien shall be preserved by the trustee for the benefit of the estate. Again, the *liens*, the prosecution of which *is provided for*, seem to be those obtained at any time within four months *prior*, to the filing of the *petition* in bankruptcy. This was ob- 40

tained *subsequent* to the *filing* of the *petition*. The opinion of the court being that such an order was not available in such a case, because the liens which alone the bankruptcy law provides for preserving are those obtained "*within four months prior to filing the petition in bankruptcy.*"

It is true that Tuthill, a judgment creditor of the appellant filed a creditor's bill to set aside the conveyances in question *after* the adjudication in bankruptcy—when no trustee or receiver existed—and when the equitable title was in the bankrupt. In re Engle 105 Fed. Rep. 893. Upon the appointment of a trustee in bankruptcy he became invested with the title of all property of the bankrupt transferred in fraud of creditors and such title relates back to the date of the adjudication. Sec. 70, Bankrupt Act. A time *prior* to any equitable lien which Tuthill would have had were it not for the bankruptcy proceedings. Therefore, by *operation of law*, the title of the bankrupt was invested in the trustee before any equitable lien attached. In other words the appointment of the trustee and the operation of Sec. 70, *supra*, destroyed what would have been a lien in the judgment creditor. It naturally follows there was no lien acquired because none could be imposed *after* the title vested in the trustee. Hence, the federal court could not make an order preserving a lien where none existed or could be imposed. The federal court can only make an order preserving a lien in those cases where it was obtained within four months *prior* to the filing of the petition in bankruptcy. This was *subsequent*. The reasoning in Kinmouth vs. Braeutigan, *supra*, is to like effect. Realizing such a condition the trustee upon his appointment was by *consent* of the appellant's Counsel substituted as complainant in the

action, but the pleadings not being framed to permit him to obtain the relief desired, the Bill of Complaint was amended with permission of the Court and after argument and the citation of authorities. To this the appellant has filed a plea coupled with an answer. The wife of appellant has filed an answer. *Metcalf vs. Barker* 187 U. S. 165, cited by Counsel is authority for the rule that an equitable lien on a bankrupt's property is acquired when the action is brought four months prior to the filing of the petition in bankruptcy, and that the creditor acquiring such lien can prosecute to final judgment. The case is therefore not in point here. The order should be affirmed.

Respectfully submitted,

Martin P. O'Connor,  
*Solicitor for and of Counsel with Appellee.* 20

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