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Notice of Appeal.

In Chancery of New Jersey

Between
CITY OF BAYONNE,
Complainant,
and
JEREMIAH HILL, RICHARD DOHERTY
and MECHANICS' TRUST CO. OF
NEW JERSEY,
Defendants.

On
Interpleader 10

Decree appealed
from, made by the
Chancellor on the
advice of Bentley,
V. C.

TAKE NOTICE that the defendant, Richard Doherty, hereby appeals from so much of the final decree made and filed herein November 3rd, 1926, as directs that the defendant, Richard Doherty, pay the taxed costs to the complainant and to the defendants, Jeremiah Hill and Mechanics' Trust Co., and also directs the payment by him of a counsel fee to the said defendants, Jeremiah Hill and Mechanics' Trust Co., to the New Jersey Court of Errors and Appeals in the last resort in all causes. 20

Dated: November 27th, 1926. 30

Respectfully,

RICHARD DOHERTY,
Solicitor Pro Se.

To:
JAMES BENNY,
Solicitor of Complainant.

ALLEN BENNY,
Solicitor of Deft., Jeremiah Hill.

DEMBE & DEMBE,
Solicitor of Deft., Mechanics'
Trust Co. 40

Notice of Appeal.

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

RICHARD DOHERTY,
Of Counsel.

Filed Dec. 31, 1926.

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Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

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CITY OF BAYONNE,
Complainant-Appellee,

and

RICHARD DOHERTY,
Defendant-Appellant,

JEREMIAH HILL,
Defendant-Appellee,

MECHANICS' TRUST Co.,
Defendant-Appellee.

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On Appeal
from the
Court of
Chancery.

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

The petition of RICHARD DOHERTY, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date November 3rd, 1926, in a certain suit of interpleader in said

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Petition of Appeal.

Court of Chancery wherein the said City of Bayonne was complainant and the above named Richard Doherty, Jeremiah Hill and Mechanics' Trust Co. were defendants.

In said suit, this defendant, without answering, filed a concise statement of his claim setting forth that he claimed a lien on the fund referred to in the said suit to the amount of the reasonable value of a counsel fee due to him from the defendant, Jeremiah Hill. The defendant, Jeremiah Hill, filed thereto an answer disclaiming any interest in the fund referred to in the bill of complaint, and praying that the same be entirely delivered to the defendant, Mechanics' Trust Co.; the defendant, Mechanics' Trust Co., filed an answer claiming said fund in its entirety by virtue of an assignment, upon adequate consideration, of a certain judgment obtained by said Hill against the complainant. By an interlocutory decree made May 24th, 1926, consented to by all the parties, the complainant was dismissed with its costs to be paid out of a fund of \$2,000 which by said decree, was directed to be deposited with the clerk of the Court of Chancery. Said deposit was made and thereafter the defendant, Jeremiah Hill, filed a statement of his claim wherein he demanded the said fund less the sum of \$452.90 which, by said claim, he asserted was owing by him to the defendant, Mechanics' Trust Co. The Mechanics' Trust Co., by a statement of claim filed by it, resisted the claim of said Hill and demanded the entire fund of \$2,000 as forthcoming to it under its agreement with said Hill. Said cause was referred to Hon. John Bentley, Vice Chancellor, and was ultimately set for hearing November 3rd, 1926. Prior to said hearing, this appellant filed a disclaimer of any right or interest in said fund and the cause

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Petition of Appeal.

to hearing on the conflicting claims of said Hill and Mechanics' Trust Co.

10 At the time set for said hearing, no proof was offered or testimony taken, and a final decree was advised exclusively upon the reading of said answers, statements of all the defendants and the disclaimer of the appellant.

This appellant is aggrieved by said decree in this respect, to wit: that the same adjudges and decrees that this appellant pay the costs of the said defendant, Jeremiah Hill, and a counsel fee to his solicitor; that it adjudges that he pay the costs of the defendant, Mechanics' Trust Co., and a counsel fee to its solicitor; that it adjudges that he pay the costs of the complainant.

20 Your petitioner appeals from said decree aforesaid upon the ground that the same is erroneous in this:

1. Said decree was made without the submission of any proof to guide judicial discretion in the allowance of said costs and counsel fees.

2. Said allowances were arbitrary, capricious and in abuse of judicial discretion.

30 3. On no equitable consideration was the appellant properly chargeable with such costs and counsel fees.

4. The fraud of the defendant, Jeremiah Hill, as disclosed by the record, provoked the controversy, and in the course of said suit his conduct, as disclosed by the record, was dishonest towards, and impositious on, the court and disentitled him to the allowance of costs and counsel fee.

Petition of Appeal.

5. The fraud of the defendant, Mechanics' Trust Co. cooperating with that of the defendant, Jeremiah Hill, as disclosed by the record, provoked the controversy and in the course of said suit, as disclosed by the record, it advanced a claim that was false and impositious on the court and rejected by said final decree. 10

6. The filing of a disclaimer by the appellant entitled him to be dismissed without the payment of such costs or counsel fees.

7. The court, by said interlocutory decree, ordered that the costs of complainant be paid out of the fund in question, and such adjudication was in full force and virtue at the time of the making of the final decree. 20

8. Said allowances were made without notice to, or the consent of, appellant.

Your petitioner prays that so much of said decree of the Chancellor as orders appellant to pay said costs and counsel fees, may be reversed and set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet. 30

RICHARD DOHERTY,
Solicitor Pro Se.

RICHARD DOHERTY,
Of Counsel.

Filed Jan. 4, 1927.

Rule for Hearing.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10 Between
 CITY OF BAYONNE,
 Complainant-Appellee,
 and
 RICHARD DOHERTY,
 Defendant-Appellant,
 JEREMIAH HILL,
 Defendant-Appellee,
 20 MECHANICS' TRUST Co.,
 Defendant-Appellee.

} On Appeal.

The above named appellant, Richard Doherty, having filed and served a copy of his petition of appeal, and having made a deposit with the Clerk in Chancery of \$100 to answer the cost of said appeal, and the above named appellees, City of Bayonne, Jeremiah Hill and Mechanics' Trust Co., having all made default in the filing of an answer to the said petition of appeal, it is on this 30 twenty-ninth day of March, 1927,

ORDERED that the said appeal be heard and that the appellant have leave to bring on the same in accordance with the rules and practice of this court.

Rule actually entered the 29th day of March, 1927.

40 On motion of
 RICHARD DOHERTY,
 Attorney Pro Se.

Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

Between
 THE CITY OF BAYONNE,
 Complainant, 10
 and
 JEREMIAH HILL, RICHARD DOHERTY and MECHANICS TRUST COMPANY,
 Defendants. } On Bill of Interpleader.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey. 20

1. The complainant, the City of Bayonne, a municipal corporation of the State of New Jersey, respectfully shows, on June 19th, 1925, Jeremiah Hill recovered a judgment in the Hudson County Circuit Court against this complainant for \$4,709.98, with costs of suit to be taxed, which costs were afterwards taxed at \$43.12, making a total amount due on the said judgment so recovered by Jeremiah Hill against this complainant of \$4,753.10. 30

2. By an instrument under the hand and seal of the said Jeremiah Hill, bearing date the 17th day of April, 1925, for and in consideration of the sum of \$1 and other good and valuable consideration to him paid by the Mechanics' Trust Company of New Jersey, a corporation of New Jersey, he did transfer, set over and assign unto the said Mechanics Trust Company, its successors and as- 40

Bill of Complaint.

10 signs, the sum of \$4,637.33, with such interest as will accrue thereon for services rendered as street commissioner, and which said claim against the City is further represented by a suit instituted by the said Jeremiah Hill in the Hudson County Circuit Court against this complainant, which assignment is hereunto annexed and is marked "Schedule A," and is made a part hereof.

20 3. On June 20th, 1925, the said Jeremiah Hill, by an instrument in writing under his hand and seal, in consideration of One dollar to him paid by the Mechanics' Trust Company, a corporation of the State of New Jersey, granted, bargained, sold, assigned, transferred and set over unto the Mechanics' Trust Company of New Jersey, a corporation of New Jersey, the said judgment recovered by him against this complainant, for \$4,709.98, together with the said costs then to be taxed, and did make, constitute and appoint the said Mechanics' Trust Company his true and lawful attorney, to have, use and take all lawful ways and means for the recovery of the said moneys, and the interest thereon, and in case of payment to discharge the same, which assignment is hereunto annexed and is marked "Schedule B," and is made part hereof.

30 4. On June 23rd, 1925, the said Mechanics' Trust Company presented to the Board of Commissioners of this complainant, which board is the governing body of this complainant, a communication notifying this complainant of the assignment of said judgment, and of said taxed costs, to it the said Mechanics' Trust Company by the said Jeremiah Hill, and requesting payment thereof; that said Mechanics' Trust Company enclosed with said communication a copy of the said as-

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Bill of Complaint.

signment, all of which will more fully appear by said communication, which communication is marked Schedule "C" and is hereunto annexed and made a part hereof, and the assignment of said judgment and costs is hereunto annexed and marked Schedule "B" as aforesaid.

10 5. That said Mechanics Trust Company has threatened to begin suit against this complainant on the said assignment of said money, and also the assignment of the said judgment, unless the said moneys are paid to it.

20 6. On April 16th, 1925, before either of the said assignments were made and executed by the said Jeremiah Hill to the said Mechanics Trust Company, and before the said assignments were presented to this complainant, Richard Doherty, an attorney and counselor at law of this State, filed with John J. Ryan, the Treasurer of this complainant, a notice, of which the following is a true copy:—

"JOHN J. RYAN, Esq.,
Treasurer,
Bayonne, N. J.

30 YOU ARE HEREBY NOTIFIED, as representative of the City of Bayonne, that I claim an attorney's lien upon a certain fund, which by the resolution of the Commissioners, April 14th, 1925, was directed to be paid to Jeremiah Hill for arrears of salary as City Commissioner, to the extent of services rendered and disbursements made in behalf of said Hill, touching his right and title to said fund.

40 And you are further notified to refrain from paying the same over to the said Jeremiah Hill, or anybody in his behalf, until the

Bill of Complaint.

adjudication of said lien and judicial order thereon.

Dated, April 15, 1925.

RICHARD DOHERTY."

10 And on the same day the said Richard Doherty filed a similar notice with William P. Lee, the City Clerk of this complainant. The said Richard Doherty has threatened to begin suit against this complainant for said sum of \$1,800.

7. That the said Richard Doherty was not the attorney of record in the said suit of Jeremiah Hill against this complainant, in which the said judgment for \$4,753.10 was recovered, but the said
20 Richard Doherty claims that he rendered services to the said Jeremiah Hill in said cause, and that he has a lien for such services against the said judgment, and the proceeds thereof, and claims to be entitled to be paid out of the said fund the amount of his said lien.

8. That while the said Richard Doherty did not state in his said notice set forth in paragraph 6 of this bill, the amount he claimed to be due to him from said Jeremiah Hill for such services, for
30 which he claims a lien upon the said fund, he gave notice to this complainant not to pay any of said moneys to the said Jeremiah Hill, or to any body on his behalf until the adjudication of the said lien, and he, the said Richard Doherty, afterwards on August 27th, 1925, notified the City attorney of this complainant, that his claim against the said fund amounted to \$1,800, with interest from May 3rd, 1924.

40 9. That the said Richard Doherty still claims to be entitled to said sum of \$1,800, with interest

Bill of Complaint.

from May 3rd, 1924, out of said fund, and he claims to have a lien on said fund to the extent of said sum of \$1,800, as an attorney at law of New Jersey for services claimed by him to have been rendered to the said Jeremiah Hill in procuring the said judgment against this complainant as
10 aforesaid.

10. The said Mechanics Trust Company claims all of said money by virtue of the said assignments (Schedules A and B) notwithstanding notice of the lien claims of the said Richard Doherty against the said judgment and the said fund which is the proceeds of the said judgment.

11. Complainant has been and is unable to determine whether the said Mechanics' Trust Company is entitled to all of said moneys, or whether
20 the said Richard Doherty has a lien against the same, or part thereof, and whether he is entitled to said sum of \$1,800, or any other sum, to be paid out of said fund of \$4,753.10, and complainant has been and is unable to determine which of the aforesaid claimants the said money rightfully belongs to.

12. Complainant has always been willing and still is willing to pay the said sum of \$4,753.10 to
30 such person or persons as is or are lawfully entitled to receive the same, and to whom it can pay it with safety, and hereby offers to pay the said sum of \$4,753.10 into this Court. As will more fully appear by a resolution passed by its Board of Commissioners, a copy of which is hereto annexed and made a part hereof and marked Schedule "D."

13. Complainant has not in any wise colluded and does not in any way collude with the Mechan- 40

Bill of Complaint.

10 ics Trust Company and Richard Doherty, or with either of them, respecting the aforesaid matters, and it has not been indemnified by the said Mechanics Trust Company, or the said Richard Doherty, or either of them, but brings this suit of its own free will and to avoid being molested or injured touching the matters contained in this bill of complaint.

14. Complainant is without adequate remedy in the Courts of law, and therefore prays:

20 (1) That Jeremiah Hill, the Mechanics Trust Company of New Jersey and Richard Doherty, who are the defendants in this suit, may answer this bill of complaint, and each statement therein made, and may interplead and determine their rights to the said sum of \$4,753.10.

(2) That complainant may be ordered to pay said sum of \$4,753.10 into this Court.

(3) That the said Mechanics Trust Company may be enjoined and restrained from beginning suit upon the assignment of said money and the assignment of said judgment, so made to it by the said Jeremiah Hill, for the recovery from this complainant of the said sum of \$4,753.10.

30 (4) That the said Richard Doherty may be enjoined and restrained from beginning suit upon his notice or claim of attorney's lien upon the said sum of \$4,753.10.

40 (5) That complainant upon the payment into this Court of said sum of \$4,753.10, and upon procuring the said defendants to interplead and settle their rights to said sum of money, according to law and the practice of this Court, may be ordered, adjudged and decreed to be discharged from all liability to said defendants, or either of them,

Bill of Complaint.

arising out of the transaction in this bill of complaint set forth.

(6) That complainant may be paid out of said sum of \$4,753.10, its costs of these proceedings.

(7) That a writ of subpoena may issue commanding the said defendants to answer this bill of complaint, and to abide by such decree as this Court may make in the premises. 10

JAMES BENNY,
Solicitor for and of Counsel
with the Complainant.

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

HARRY HOSFORD, being duly sworn according to law, upon his oath deposes and says: I am the Director of Revenue and Finance of the complainant in the foregoing bill of complaint named; that the said bill of interpleader against the defendants in this cause, is filed by the City of Bayonne without any fraud or collusion between the said City of Bayonne, and the said defendants, or either of them, and that said City has not exhibited the said bill at the request of the said defendants, or of either of them, and that said City has not been indemnified by said defendants or by either of them, but has exhibited the said bill with no other intention than to avoid being sued or molested by the said defendants touching the matters in said bill of complaint contained. 30

HARRY HOSFORD.

Sworn and subscribed to before }
me this 25th day of November, }
1925. }

JOHN J. RYAN
Notary Public of New Jersey. 40

Bill of Complaint.

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

10 WILLIAM P. LEE, being duly sworn on his oath
deposes and says: I am the Clerk of the City of
Bayonne, the complainant in the foregoing bill
of complaint named; that on the 24th day of No-
vember, 1925, a resolution was passed, directing
the City Attorney to file a bill of interpleader in
the above entitled cause; that the said bill of inter-
pleader against the defendants in this cause is
filed by the City of Bayonne without any fraud or
collusion between the said City of Bayonne and
the said defendants or either of them, and that
20 said city has not exhibited the said bill at the re-
quest of the said defendants or of either of them,
and that said City has not been indemnified by
said defendants, or by either of them, but has ex-
hibited the said bill with no other intention than
to avoid being sued or molested by the said de-
fendants touching the matters in said bill of com-
plaint contained.

WILLIAM P. LEE.

30 Sworn and subscribed to before }
me this 25th day of November, }
1925.

JOHN J. RYAN
Notary Public of N. J.

Schedule "A."

KNOW ALL MEN BY THESE PRESENTS That I, Jere-
miah Hill, of the city of Bayonne, County of Hud-
son and State of New Jersey, for and in consid-
eration of the sum of One (\$1.00) Dollar, and
other good and valuable consideration, to me in
hand duly paid by the MECHANICS' TRUST COM- 10
PANY of N. J., a corporation of New Jersey, the
receipt whereof is hereby acknowledged, do here-
by transfer, set over and assign unto the said
Mechanics' Trust Company of N. J., its successors
and assigns, the sum of Four Thousand Six Hun-
dred and Thirty-seven Dollars and 33/100
(\$4,637.33) with such interest as will accrue
thereon, now due me from the City of Bayonne for
services rendered as Street Commissioner, and
20 which said claim against the City of Bayonne is
further represented by a suit instituted by me in
the Hudson County Circuit Court as plaintiff, and
the City of Bayonne as defendant, and I do hereby
transfer, set over and assign unto the said Me-
chanics' Trust Company of N. J., all my rights in
the said suit and any judgment which may be
entered therein, and all proceeds which may arise
therefrom.

30 To HAVE AND TO HOLD the same unto the said
Mechanics' Trust Company of N. J., its succes-
sors and assigns forever,

And I, the said Jeremiah Hill, do hereby consti-
tute and appoint the said Mechanics' Trust Com-
pany of N. J., my true and lawful attorney, in my
name, to proceed with the prosecution of the said
suit, and to take any and all further actions there-
on, as it may deem advisable, and also to institute
any further action or actions that it may deem
40 necessary for the collection of the said moneys
due from the City of Bayonne, and upon receipt

Schedule "B".

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20th day of June, 1925.

Signed, sealed and delivered in the presence of

10 CHARLES DEMBE.

JEREMIAH HILL (Seal).

STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss.:

20 BE IT REMEMBERED THAT ON this 20th day of June, 1925, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Jeremiah Hill, who I am satisfied is the grantor mentioned in the within Assignment to whom I have first made known the contents thereof, and thereupon acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

CHARLES DEMBE,
Master in Chancery of New Jersey.

30 A true copy,
JOHN J. MCGOVERN,
Clerk.

(SEAL)

Schedule "C."

June 23rd, 1925.

Board of Commissioners
City of Bayonne, N. J.

Gentlemen:— 10

PLEASE TAKE NOTICE of the fact that on the 19th day of June, 1925, judgment was entered in favor of Jeremiah Hill against the City of Bayonne in the sum of \$4,709.98 besides costs of \$43.12, and which judgment was assigned by the said Jeremiah Hill unto the Mechanics' Trust Company of New Jersey.

This judgment was entered with the consent of your corporation counsel under a resolution adopted by your Honorable Board on April 14th, 1925. 20

May we ask that you be good enough to arrange for the payment of the same. A copy of the Assignment of judgment from Jeremiah Hill to the Mechanics' Trust Company of New Jersey for your files is herewith enclosed.

Respectfully yours,

DEMBE & DEMBE, 30
By H. B. DEMBE.

Schedule "D."

By Commissioner Hosford:

WHEREAS, Jeremiah Hill recovered judgment against the City of Bayonne, for \$4,753.10 and

10 WHEREAS the said Jeremiah Hill has assigned the said judgment to the Mechanics' Trust Company, and

WHEREAS Richard Dougherty has filed notice that he claims a lien upon the said money by reason of services rendered and disbursements made on behalf of the said Jeremiah Hill, and

WHEREAS this Board does not know to whom the said money should be paid, Therefore Be It

20 RESOLVED that a warrant be drawn on the Current Account, Union Trust and Hudson County National Bank, to the order of the Clerk in Chancery of New Jersey for \$4,753.10 for the purpose of paying said amount into Court, and that the City Attorney be and he is hereby directed to file a bill of interpleader to the end that the said money may be paid to such party as the said court may decree is entitled thereto.

30 ADOPTED—November 24, 1925.

Filed Nov. 28, 1925.

Answer.

IN CHANCERY OF NEW JERSEY.

Between

THE CITY OF BAYONNE,
Complainant,

10

and

JEREMIAH HILL, RICHARD DOHERTY and MECHANIC'S TRUST COMPANY,

Defendants.

On Bill of Interpleader.

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

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JEREMIAH HILL, one of the defendants above named, answering the bill of complaint, says:

1. He admits the allegations of the bill of complaint.

2. He denies that the defendant, Richard Doherty, has an attorney's lien upon the fund in the hands of Complainant, mentioned in the bill of complaint, or any lien or claim whatever upon or against said fund.

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3. He denies that said defendant, Richard Doherty, rendered services or made disbursements for or in behalf of this defendant, touching the right and title of this defendant to said fund.

4. He denies that said defendant, Richard Doherty, rendered services to this defendant in a cause or suit brought by this defendant against

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Answer.

Complainant in which judgment was recovered against complainant by this defendant for \$4,753.10 as set forth in the bill of complaint, and denies that said defendat, Richard Doherty, has a lien for services against said judgment and the proceeds thereof or is entitled to be paid out of said fund anything whatever. 10

5. This defendant says that Allan Benny is the Attorney of record who instituted the action at law in which said judgment was recovered. Said Allan Benny, later substituted Dembe and Dembe as Attorneys for said action, who were the Attorneys of record who recovered said judgment against said City of Bayonne for this defendant and that said defendant, Richard Doherty, had nothing to do with the recovery of said judgment, either as Attorney or otherwise. 20

6. That the claim of said defendant, Richard Doherty to an Attorney's lien against said judgment, set forth in the complaint, is founded, not upon services alleged to be rendered to this defendant in the action at law in which said judgment was recovered, but (1) upon alleged services and disbursements upon behalf of this defendant in certain certiorari proceedings in the Supreme Court of New Jersey, brought by this defendant against the Board of Commissioners of the City of Bayonne, in which said Richard Doherty acted as Attorney for this defendant, as set forth below, and in which proceedings the writ of certiorari, procured by this defendant, was, because of the failure and neglect of said Richard Doherty to file his brief in said Supreme Court, dismissed for lack of prosecution; and (2) upon alleged services on behalf of this defendant in the service by said Richard Doherty, upon the Board of Com- 30 40

Answer.

missioners of said City of Bayonne, of a notice in writing, dated October 18, 1924, a copy of which is attached hereto and made part hereof and marked "Schedule 'A'", notifying said Board of the dismissal of said writ of certiorari and entry of judgment thereon, and requesting said Board of Commissioners to set as early a date as possible for the hearing of certain charges against this defendant as Street Commissioners of said City of Bayonne, as set forth below. Said Board of Commissioners did not set such date, said charges were never heard, and said defendant, Richard Doherty, ceased to represent this defendant as Attorney. The fact being, that said Board of Commissioners were without right or authority to set such date, or to hear said charges, or to take any action against this defendant in respect of said charges, all of which said Richard Doherty did not, at the time of said last named alleged services, know, but which he should have known. Therefore, said Richard Doherty did not render any services to, or disburse any monies for, this defendant in either of the two instances referred to in this paragraph, but, on the contrary, by reason of his failure to file his brief in the first instance and his ignorance of this defendant's rights and the powers and duties of said Board of Commissioners in the second instance, he subjected this defendant to great expense, trouble and humiliation. 10 20 30

7. That the Board of Commissioners of the City of Bayonne, on the 7th day of November, 1923, adopted a resolution attempting and purporting to remove this defendant from the office of Street Commissioner of said City, said resolution being founded upon a notice in writing, addressed to this defendant, dated November 1, 40

Answer.

- 1923, and signed by three members of said Board of Commissioners, viz: Robert J. Talbot, Mayor; Harry Hosford, Director of Revenue and Finance; and Patrick J. O'Connell, Director of Public Safety. Said notice in writing and said resolution are hereto attached, marked "Schedule B" and "Schedule C", respectively, and made a part hereof.
- 10
8. That this defendant engaged said defendant, Richard Doherty, as Attorney, to defend him against said attempted removal.
9. That this defendant thereupon, on November 10, 1923, through said Attorney, Richard Doherty, procured a writ of certiorari, removing said resolution to the Supreme Court of New Jersey, for review.
- 20
10. That, in pursuance of said writ of certiorari, depositions were taken before John J. Mulvaney, Esquire, a Supreme Court Commissioner, at four sessions, beginning April 11, 1924, and ending April 23, 1924, and the State of the case was printed, said defendant, Richard Doherty, having agreed to prepare and argue the case at the then next term of the Supreme Court of New Jersey.
- 30
11. That this defendant paid to said defendant, Richard Doherty, the sum of five hundred and fifty (\$550.00) Dollars in full for all services in said certiorari proceedings, including argument to be made before said Supreme Court, together with the sum of Seven hundred and fifty (\$750.00) Dollars in full for all Commissioner's, stenographer's and printer's charges in connection with said certiorari proceedings, making a total of
- 40
- Thirteen hundred (\$1,300) Dollars paid by this

Answer.

defendant to said defendant, Richard Doherty, in said certiorari proceedings.

12. That said defendant, Richard Doherty, although he had received Seven hundred and fifty (\$750.00) Dollars from this defendant, for the purpose of paying the fees and charges of the Commissioner and stenographer who took said depositions and the printer who printed said State of the case, failed to pay any part of their fees and charges to said Commissioner and said stenographer, and paid to said printer only Three hundred (\$300.00) Dollars on account of said printer's charges.

10

13. That said defendant, Richard Doherty, did not file a brief on behalf of this defendant (the prosecutor in said certiorari proceedings) and did not argue said case before the Supreme Court of New Jersey, but, on the contrary, wholly and willfully neglected so to do and to care for the interests of this defendant in said certiorari proceedings, with the result that this defendant's writ of certiorari was dismissed by said Supreme Court for lack of prosecution.

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14. That said City of Bayonne, in the year 1915, by popular vote, adopted the act of April 25, 1911, entitled "An act relating to and regulating and providing for the government of cities, towns, boroughs, and other municipalities within the State (Comp. Stat. Supp., p. 1087) commonly known as the Walsh Act, and elected a Board of Commissioners under said act.

30

15. That on April 23, 1915, said Board of Commissioners appointed and elected the several members of said board to be Directors of the several departments of said city and assigned powers

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Answer.

and duties to be performed to said several departments, assigning to the Director of Streets and Public Improvements, among other items, the City Engineer and Surveyor, Street Commissioner and all employees therein, Street Lighting and all public docks as will more fully appear by a copy of a resolution adopted by said Board on said April 23, 1915, attached hereto, marked "Schedule D" and made a part hereof. Which assignment of powers and duties to the Director of Streets and Public Improvements has never been rescinded nor set aside, but is still in full force and effect and in fact was confirmed by resolution adopted by said Board of Commissioners on December 2, 1924.

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20
30
16—That on May 15, 1923, the organization meeting of the present Board of Commissioners of said City was held. The members of said Board were then and still are: Harry Hosford, Patrick J. O'Connell, W. Homer Axford, Bert Daly and Robert J. Talbot. At said organization meeting, said Board, by resolution appointed and elected one of said Commissioners, viz.: Robert J. Talbot, to be Mayor of said City, and one of said Commissioners, viz.: W. Homer Axford, to be the Director of the Department of Streets and Public Improvements, which said last named office said W. Homer Axford still holds. As will more fully appear by a copy of said resolution hereto attached marked "Schedule E" and made a part hereof.

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17—That on May 17, 1923, said Board of Commissioners, by resolution, appointed and elected this defendant, Jeremiah Hill, Street Commissioner, Street Department of said City, at a salary of Three Thousand Five Hundred (\$3,500.00) Dol-

Answer.

lars per annum, the term thereof being fixed by law at three years,—as will more fully appear by a copy of said resolution hereto attached, marked "Schedule F" and made a part hereof. This defendant immediately assumed the duties of said office of Street Commissioner.

10
18—That said W. Homer Axford, Commissioner of Streets and Public Improvements, is the only person legally entitled to receive or hear charges against, or to suspend or dismiss this defendant, as Street Commissioner as aforesaid.

20
19—That said certiorari proceedings and said written notice dated October 18, 1924 (Schedule "A", hereto attached) constitute the only matters in any way connected with this defendant as Street Commissioner of said City, or in any way connected with the payment of money by said City or in any way connected with the payment of money by said City to this deponent, with which said defendant, Richard Doherty, ever had anything to do.

30
20—That in January, 1925, this defendant consulted Allan Benny, an Attorney of this State, who advised this defendant that said Board of Commissioners had no power or authority to hear said charges, or to suspend or dismiss this defendant, as said Street Commissioner and that this defendant was then and there Street Commissioner of said city, and that this defendant's proper remedy in the premises was by injunction to restrain the said Commissioners of said city from interfering with him in the discharge of his duties as said Street Commissioner, as aforesaid; that thereupon this defendant retained said Allan Benny to apply for such injunction.

Answer.

21—That on January 27, 1925, said Allan Benny as attorney for this defendant, appeared before said Board of Commissioners and requested that the said resolution of November 7, 1924 (Schedule "C" hereto attached), be rescinded and that this defendant be permitted, without interference, to proceed with his duties as Street Commissioner, as aforesaid. This request was referred to a committee and not acted upon. Thereupon, on said January 27, 1925, said Allan Benny served notice, a copy of which is hereto attached, marked "Schedule G" and made part hereof, on said Board of Commissioners and upon each member thereof, of an application to be made by him, on behalf of this defendant, to the Honorable Edwin R. Walker, Chancellor, for an injunction restraining them, and each of them, from interfering with this defendant in the discharge of his duties as said Street Commissioner.

22—That on February 2, 1925, the Honorable Vivian M. Lewis, Vice Chancellor, granted an order to show cause, directed to said Commissioners of said city, why an injunction should not issue restraining such interference as above set forth.

23—That on February 3, 1925, said Board of Commissioners was notified of said order to show cause.

24—That on February 7, 1925, interference with this defendant as Street Commissioner was withdrawn and on said February 7, 1925, this defendant resumed his duties as said Street Commissioner and has since continued to perform said duties.

Answer.

25—That on February 10, 1925, said Board of Commissioners adopted a resolution, a copy of which is attached hereto, marked "Schedule H" and made a part hereof, dismissing said charges and "re-instating" this defendant as said Street Commissioner.

26—That on June 19, 1925, this defendant recovered said judgment against said City of Bayonne, for salary as said Street Commissioner during the period of his alleged suspension from duty as herein set forth.

27—That an action at law is now pending in the Hudson County Circuit Court (cause Number 158 on the list for trial at the present December term of said Court) wherein said Richard Doherty is plaintiff and this defendant is defendant, involving the question of whether this defendant is indebted to said Richard Doherty, or said Richard Doherty is indebted to this defendant. The complaint in said last named action at law, with an itemized bill attached, shows that said Richard Doherty has no claim against said judgment recovered by this defendant against said City of Bayonne, or the proceeds thereof. A copy of said complaint, including said itemized bill, is attached hereto, marked "Schedule J" and made a part hereof.

28—This defendant prays:

(1) That the defendant Richard Doherty, be denied his claim to an Attorney's lien against said judgment, or the proceeds thereof.

Answer.

(2) That the amount of said judgment,
 viz.: \$4,709.98,
 with costs as taxed 43.12

making a total of \$4,753.10
 together with interest thereon from
 10 June 19, 1925 to November 25, 1925,
 amounting to 123.78

making altogether the sum of \$4,876.88

be paid to the defendant, Mechanics Trust Com-
pany.

(3) That the defendant, Richard Doherty, be
 directed to pay this defendant, Jeremiah Hill, his
 20 costs of these proceedings.

ALLAN BENNY,
 Solicitor for the defendant, Jeremiah Hill.

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

JEREMIAH HILL, of full age, being duly sworn,
 on his oath says that he is the answering defend-
 ant above named; that he has read the foregoing
 30 answer; that the statements therein so far as they
 relate to his own acts are true and, so far as they
 relate to the acts of others, he believes them to be
 true.

JEREMIAH HILL.

Sworn to and subscribed }
 before me this 29th day. }
 of December, 1925. }

JOHN T. FITZGERALD,
 Notary Public of N. J.
 40 Filed Dec. 30, 1926.

Statement of Claim of Defendant, Richard
Doherty.

IN CHANCERY OF NEW JERSEY.

Between THE CITY OF BAYONNE, Complainant, and JEREMIAH HILL, RICHARD DOHERTY and MECHANICS' TRUST Co., Defendants.	}	10 On Bill of Interpleader.
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The defendant, Richard Doherty, claims the
 fund referred to in the bill of complaint, to the
 amount of \$1800 by virtue of an equitable assign-
 ment thereof to him by the defendant, Jeremiah
 Hill, resulting from an agreement between this
 defendant and said Hill, whereby this defendant
 was to have upon said fund a lien to the reason-
 able value of services rendered and to be rendered
 by this defendant to said Hill, or any balance
 thereof which might be due at the time when said
 fund should be available. The object of such ser-
 vices was the prevention of Hill's wrongful dis-
 missal as Street Commissioner of the City of
 Bayonne, and the preservation to him of such
 legal status as would obligate the City of Bayonne
 to pay him back salary for such period as he
 might be suspended from the performance of his
 duties as such Street Commissioner. 20

The services were rendered by this defendant
 and were effective for the purposes contemplated,
 and the fund referred to in the bill of complaint is 30
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*Statement of Claim of Defendant,
Richard Doherty.*

the amount of back salary as Street Commissioner which the City of Bayonne eventually resolved to pay to said Hill, and is the fund to which the lien of this defendant attached.

10 Notice of said lien and assignment was given to the City of Bayonne by this defendant in the manner and at the time set forth in the bill of complaint.

Dated: December 30, 1925.

RICHARD DOHERTY,
Solicitor *Pro Se.*

Filed Dec. 31, 1926.

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Answer.

IN CHANCERY OF NEW JERSEY.

30	Between CITY OF BAYONNE, a Municipal Corporation of New Jersey, Complainant, and JEREMIAH HILL, RICHARD DOHERTY and THE MECHANICS' TRUST COMPANY OF NEW JERSEY, Defendants.	} On Bill of Interpleader.
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40 THE MECHANICS' TRUST COMPANY OF NEW JERSEY, a corporation of the State of New Jersey, with its principal office in the City of Bayonne,

Answer.

County of Hudson and State of New Jersey, answering the Complaint filed in this cause respectfully shows:

1. It admits the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the Complaint. 10

2. It denies the allegations contained in paragraphs 11 and 12 of the Complaint.

3. It has no information as to the matters set forth in paragraph 13 of the Complaint and therefore denies the same, leaving the Complainant to the proof thereof.

4. That the defendant RICHARD DOHERTY has no lien or claim upon the money due from the City of Bayonne to the defendant Jeremiah Hill, since Chapter 201 of the Laws of 1914 of the State of New Jersey entitled "An Act to give an Attorney, Counsellor-at-law, or Solicitor in Chancery a lien upon any cause of action, verdict, report, decision, decree, award or final judgment" is not applicable in this controversy, the defendant Jeremiah Hill being represented in his suit against the City of Bayonne first by his present Solicitor Allen Benny, and then by the present Solicitors of the Mechanics' Trust Company, Dembe & Dembe, the defendant Richard Doherty having rendered no services whatsoever in the said suit. 20 30

5. That under the Assignment dated June 20, 1925, made by the defendant Jeremiah Hill to the defendant Mechanics' Trust Company, the latter became entitled to the sum of \$4,709.98 together with costs to be taxed thereon upon the judgment recovered in the Hudson County Circuit Court against the Complainant, the City of Bayonne, notice of which was duly served upon the said 40

Answer.

City of Bayonne and the defendant Mechanics' Trust Company is therefore the only one entitled to the money sought to be deposited in this Court in this proceeding.

10 6. That the defendant Mechanics' Trust Company is entitled to costs and Counsel fees from the Complainant, the City of Bayonne, and defendant Richard Doherty, or either of them in this proceeding.

20 7. The defendant Mechanics' Trust Company reserved the right at the final hearing of this cause to move for a dismissal of the Bill of Complaint filed in this cause by the City of Bayonne on the ground that there are no adverse claimants to the fund sought to be deposited in this Court and that the facts and pleadings did not disclose a proper case for a Bill of Interpleader under the Law and practice.

DEMBE & DEMBE,
Solicitors of the defendant Mechanics'
Trust Company.

Filed Feb. 2, 1926.

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Notice of Motion to Discharge Complainant, etc.

IN CHANCERY OF NEW JERSEY.

Between THE CITY OF BAYONNE, Complainant, and JEREMIAH HILL, RICHARD DOHERTY and MECHANICS' TRUST COM- PANY, Defendants.	}	On Interpleader.	10
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To the CITY OF BAYONNE and JAMES BENNY, Esq.,
Corporation Counsel. 20

JEREMIAH HILL, and ALLAN BENNY, Esq.,
Solicitor.

MECHANICS' TRUST COMPANY and Messrs.
DEMBE & DEMBE, Solicitors:

TAKE NOTICE that on Monday, the 15th day of March, instant, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, I will move the Chancellor at the Chancery Chambers in Jersey City, for an order discharging the complainant in the above entitled suit and directing the payment into court of the fund in the bill mentioned, on the ground that the equity of said bill is not contested by the defendants; and for an order dropping the above named Jeremiah Hill as a defendant on the ground that by his answer he has disclaimed right to the said fund; and for an order directing the defendant, 30 40

Notice of Motion to Discharge Complainants, Etc.

Mechanics' Trust Company, to file a concise statement of the nature of its claim to said fund in compliance with the rule of court in such case promulgated.

10 Dated: March 4th, 1926.

Respectfully,

RICHARD DOHERTY,
Solicitor *Pro Se*.

Service of a copy of the within notice is hereby acknowledged this day of March, 1926.

20 JAMES BENNY,
Solicitor for Complainant.

Service of a copy of the within notice is hereby acknowledged this 6th day of March, 1926.

ALLAN BENNY,
Solicitor of Jeremiah Hill.

30 Service of a copy of the within notice is hereby acknowledged this 6th day of March, 1926.

DEMBE & DEMBE,
Solicitors of Mechanics' Trust Co.

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Interlocutory Decree.

IN CHANCERY OF NEW JERSEY.

Between

CITY OF BAYONNE,
Complainant,

and

JEREMIAH HILL, RICHARD DOHERTY and MECHANICS' TRUST COMPANY,
Defendants.

On Bill of Interpleader.

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This cause being opened to the Court by James Benny, Solicitor of the Complainant, and it appearing that the above entitled cause was by an order made by the Chancellor on the 2nd day of March, 1926, referred to Hon. John Bentley, one of the Vice Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him, and to advise what order or decree should be made therein,

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And it further appearing that due notice of a motion to be made on March 15th, 1926, by the complainant, for an order fixing the time and place for the hearing of said cause, has been given to the solicitors of the respective defendants, as appears by the acknowledgment of service endorsed on said notice,

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And it appearing further that since the service of the said last mentioned notice, the defendant, Richard Doherty, has given notice to the complainant and to the defendants, Jeremiah Hill and the Mechanics' Trust Company; that on March

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Interlocutory Decree.

15th, 1926, he would move the Chancellor at Chancery Chambers in Jersey City, for an order discharging the complainant in said cause and directing the payment into this Court of the fund in the said bill mentioned, on the ground that the equity of the said bill is not contested by the said defendants, and that Jeremiah Hill be dropped as a defendant on the ground that by his answer he has disclaimed right to said fund and that the defendant Mechanics' Trust Company, file a concise statement of the nature of its claim to said fund,

And the Court having read the bill of complaint, and answers of the defendants, Jeremiah Hill and the Mechanics' Trust Company, and the concise statement filed by the defendant, Richard Doherty, and having heard the arguments of counsel for the complaint and each of said defendants and having considered the said bill, answers, statements and argument, and this order or decree having been consented to by all the parties, and the defendant, Mechanics' Trust Company by its answer, does not deny the equity of the said bill of complaint and being satisfied that the complainant holds the fund in the bill of complaint mentioned, for the true owner thereof or the person or persons entitled thereto without having or claiming any lien or interest therein and has offered to pay the said fund into this Court, and that the said bill of interpleader is properly brought by the complainant in this cause and that the said complainant is entitled to the relief in the said bill of complaint prayed; and the defendants having agreed that the sum of Two thousand (\$2,000.00) dollars of the said fund be paid into this Court, said sum to abide the further order of this Court and that the balance of said fund

Interlocutory Decree.

be paid to the defendant, the Mechanics' Trust Company,

IT IS, thereupon, on this 24th day of May, 1926, on motion of said James Benny, and in the presence of, and on the consent of Allan Benny, Counsel for the defendant, Jeremiah Hill, and Dembe & Dembe, Counsel for the defendant, Mechanics' Trust Company, and Richard Doherty, counsel pro se for the defendant, Richard Doherty, ORDERED, ADJUDGED AND DECREED that the said bill of interpleader is properly brought by the complainant in this cause and that the complainant is entitled to the relief in the said bill of complaint prayed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by and with the consent and agreement of each of the said defendants that the said complainant deposit in this Court the sum of Two Thousand (\$2,000.00) Dollars, and that the sum of Two Thousand Seventy Hundred Fifty-three Dollars and 10/100 (\$2,753.10) be paid by the complainant unto the defendant, the Mechanics' Trust Company, the aggregate of the said two sums being the amount of the judgment recovered in the Hudson County Circuit Court by the said Jeremiah Hill against the City of Bayonne, and being the fund referred to in the bill of complaint.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said complainant, the City of Bayonne on the making of such deposit be dismissed from the further prosecution of this suit with its costs to be taxed to be paid to the Solicitor of the Complainant by the Clerk of this Court out of the said fund so to be deposited as aforesaid, and that the said complainant be released, acquitted and discharged from all claim or liability to any of the

Interlocutory Decree.

defendants in this suit, for, upon or by reason of said fund; and

10 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said defendants interplead, settle and adjust their several claims, demands and matters in controversy in this suit as between themselves.

E. R. WALKER,
C.

Respectfully advised:

JOHN BENTLEY, V. C.

20 We do hereby consent and agree that this order or decree may be made and entered in the above entitled cause.

DEMBE & DEMBE,
Solicitors for
Mechanics' Trust Company.

ALLAN BENNY,
Solicitor for Jeremiah Hill,
Defendant.

30 RICHARD DOHERTY,
Solicitor *pro se*.

Filed May 24, 1926.

Order of Reference.

IN CHANCERY OF NEW JERSEY.

Between

CITY OF BAYONNE,
Complainant,

and

JEREMIAH HILL, *et als.*,
Defendants.

On Bill of
Interpleader.

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This matter being opened to the Court by James Benny, Solicitor of the Complainant, and it appearing that due notice of this application has been given to Jeremiah Hill, The Mechanics' Trust Co. of New Jersey, and Richard Doherty, the answering defendants, and no good reason being shown to the contrary,

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It is on this 2nd day of March, 1926, on motion of James Benny, solicitor of the complainant, and in the presence of Richard Doherty, solicitor *pro se* Ordered that the above entitled cause be referred to Hon. John Bentley, one of the Vice-Chancellors of this Court, to hear the same for the Chancellor, and to report thereon to him, and to advise what order or decree should be made therein.

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E. R. WALKER,
C.

Filed March 2, 1926.

Designation of Time and Place for Hearing.

IN CHANCERY OF NEW JERSEY.

10	Between CITY OF BAYONNE, Complainant, and JEREMIAH HILL, RICHARD DOHERTY, and MECHANICS' TRUST Co. OF NEW JERSEY, Defendants.	}	On Interpleader.
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20 Due notice having been given of this application, it is on this 7th day of June, 1926,

ORDERED, that the time and place for the hearing of the above entitled cause be fixed for Tuesday, the 7th day of February, 1927, at ten o'clock in the forenoon at the Chancery Chambers in the City of Jersey City.

E. R. WALKER,
C.

30 Respectfully advised,
JOHN BENTLEY, V. C.

Filed June 7th, 1926.

Endorsed:

RICHARD DOHERTY,
Solicitor Pro Se.

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**Statement of Claim on Behalf of Defendant,
Mechanics' Trust Company of New Jersey.**

IN CHANCERY OF NEW JERSEY.

10	Between CITY OF BAYONNE, Complainant, and JEREMIAH HILL, RICHARD DOHERTY and MECHANICS' TRUST COMPANY OF NEW JERSEY, Defendants.	}	On Bill of Interpleader.	10
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The MECHANICS' TRUST COMPANY OF NEW JERSEY, a corporation of the State of New Jersey, having its principal office in the City of Bayonne, County of Hudson and State of New Jersey, claims the fund referred to in the Bill of Complaint and the Interlocutory Decree to the extent of \$452.90 besides interest from June 3, 1926.

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1. That under an Assignment dated June 20, 1925, copy of which is attached to the Bill of Complaint and marked Schedule A, the defendant Jeremiah Hill assigned, transferred and set over unto the defendant Mechanics' Trust Company of New Jersey, the judgment recovered by him against this Complainant for \$4,709.98 together with the costs then to be taxed, which costs, when taxed, made the total amount due \$4,753.10.

2. That by Interlocutory Decree dated May 24, 1926, the sum of \$2,753.10 was ordered paid

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*Statement of Claim on Behalf of Defendant,
Mechanics' Trust Company of New Jersey.*

by the Complainant to the defendant Mechanics' Trust Company of New Jersey, and said sum of money has been paid to the Mechanics' Trust Company of New Jersey.

10 3. That under said Interlocutory Decree the Complainant was ordered to deposit and has deposited with this Court the sum of \$2,000.00 and that the said \$2,000.00 is the fund in the hands of this Court.

20 4. That the Assignment made by the defendant Jeremiah Hill to the defendant Mechanics' Trust Company of New Jersey was made *to secure a loan* made to the said defendant Jeremiah Hill by the Mechanics' Trust Company in the sum of \$3,000.00. That on the 3rd day of June, 1926, there was due for interest on the said loan, the sum of \$206.00, totalling in all \$3,206.00. The defendant Mechanics' Trust Company of New Jersey has applied the sum of \$2,753.10 received from the Complainant herein by virtue of the Interlocutory Decree in this cause, leaving a balance due and owing to the Mechanics' Trust Company of New Jersey in the sum of \$452.90.

30 5. That the said sum of \$452.90 besides interest from June 3, 1926, is due and owing to the defendant Mechanics' Trust Company and the said Mechanics' Trust Company claims the fund of \$2,000.00 on deposit with this Court as security for money loaned, or to be loaned to the said Jeremiah Hill by virtue of the said assignment.

DEMBE & DEMBE,
Solicitors of the Defendant
Mechanics' Trust Company.

40 Filed June 11, 1926.

**Supplemental Statement of Claim of Defendant,
Mechanics' Trust Co.**

IN CHANCERY OF NEW JERSEY.

Between

CITY OF BAYONNE,
Complainant,

and

JEREMIAH HILL, RICHARD DOHERTY and MECHANICS' TRUST COMPANY OF NEW JERSEY,
Defendants.

On Bill of
Interpleader.

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The MECHANICS' TRUST COMPANY OF NEW JERSEY, a corporation of the State of New Jersey, having its principal office in the City of Bayonne, County of Hudson and State of New Jersey, says:

1. That the defendant Richard Doherty has no lien or claim upon the fund on deposit with this Court, since Chapter 201 of the Laws of 1914 of the State of New Jersey, entitled "An Act to give an Attorney, Counsellor at Law or Solicitor in Chancery a lien upon any cause of action, verdict, report, decision, decree, award and final decree" is not applicable in this controversy, the defendant Jeremiah Hill being represented in his suit against the City of Bayonne first by his present Solicitor Allan Benny and then by the present Solicitors of the Mechanics' Trust Company of New Jersey, Dembe & Dembe, the

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*Supplemental Statement of Claim of Defendant,
Mechanics' Trust Co.*

defendant Richard Doherty having rendered no services whatsoever in the said suit.

10 2. That under the Assignment dated June 20, 1925, made by the defendant Jeremiah Hill to the defendant Mechanics' Trust Company of New Jersey, the latter became entitled to the sum of \$4,753.10 represented by the judgment recovered in the Hudson County Circuit Court against the plaintiff, City of Bayonne, notice of which was duly served upon the City of Bayonne, and the defendant Mechanics' Trust Company is therefore entitled to the fund deposited in this Court by reason of the said assignment and which assignment was given as security for a loan of \$3,000.00 made to said Jeremiah Hill and such other
20 loans as might thereafter be made.

3. That the defendant Mechanics' Trust Company of New Jersey is entitled to costs and Counsel fees against the defendant Richard Doherty in this proceeding by reason of the fact that the actions of the defendant Richard Doherty are the cause of these proceedings.

30 DEMBE & DEMBE,
Solicitors of the Defendant
Mechanics' Trust Company.

Filed June 11, 1926.

Statement of Claim of Defendant, Jeremiah Hill.

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill of Interpleader.
CITY OF BAYONNE, Complainant,		
and	}	
JEREMIAH HILL, RICHARD DOHERTY, AND MECHANICS' TRUST Co., Defendants.		

1. The defendant, Jeremiah Hill, claims by virtue of the judgment mentioned in the bill of complaint, an interlocutory decree to the extent of \$2,000 deposited with this court by complainant, less the sum of \$552.90 with interest from June 3rd, 1926, due to the defendant, Mechanics' Trust Co., being the balance of a loan of \$3,000 with interest made by the said Mechanics' Trust Co., to this defendant April 17, 1925 on this defendant's promissory note for \$3,000 with interest, with assignment of the judgment obtained by this defendant against complainant set forth in the bill of complaint, as security for the payment thereof. Said loan of \$3,000 with accumulated interest was reduced to \$452.90 by the application on account thereof of \$2,753.10 paid by complainant to said Mechanics' Trust Co., according to the interlocutory decree of this court made May 24, 1926.

2. The defendant, Richard Doherty, has no lien or claim on said fund because (a) he was not the

Statement of Claim of Defendant, Jeremiah Hill.

attorney of and did not render service to or dis-
 10 burse for this defendant, in the action of this de-
 fendant against the City of Bayonne resulting in
 the judgment set forth in the complaint and (b)
 because he did not render any service to or dis-
 burse money for this defendant by way of pre-
 venting this defendant's wrongful dismissal from
 the office of street commissioner of Bayonne, or
 by way of preserving to this defendant such legal
 status as would obligate the City of Bayonne to
 pay him back salary for such period as he might
 be suspended from said office of street commis-
 sioner. Allan Benny, this defendant's present so-
 licitor, was the attorney who instituted the suit
 which resulted in said judgment, later substitut-
 20 ing as attorneys in the suit, Dembe & Dembe, the
 solicitors of the defendant, Mechanics' Trust Co.
 which last mentioned attorneys procured said
 judgment.

3. Action having been taken by way of charges
 and suspension from office, attempting to remove
 this defendant from the office of street commis-
 sioner of Bayonne, this defendant employed said
 Richard Doherty as attorney to defend him where-
 upon said Richard Doherty procured a writ of
 30 certiorari to review in the Supreme Court of New
 Jersey said action, which writ was dismissed for
 lack of prosecution due to the negligence of the
 said Richard Doherty in failing to file his brief
 after printing the state of the case, and after
 having received from this defendant the sum of
 \$550 in full for all services on said certiorari pro-
 ceeding, including argument to be made before
 said Supreme Court, together with the further
 sum of \$750 for fees for the commissioner, ste-
 40 nographer and printer in said certiorari proceed-
 ing. Of said \$750 said Richard Doherty paid to

Statement of Claim of Defendant, Jeremiah Hill.

the printer \$300., failed to pay any thereof to the
 commissioner or stenographer, and converted the
 balance to his own use.

4. After the dismissal of said writ of certiorari,
 said Richard Doherty attempted to bring about a
 trial or hearing of this defendant on said charges 10
 before the Board of Commissioners of Bayonne,
 which attempt was futile and without result be-
 cause said Board, under the commission form of
 government in Bayonne has no power or author-
 ity to try or hear charges against the street com-
 missioner of said city, that power and authority
 being vested in the Department of Streets and
 Public Improvements, now the Department of
 Public Works. Said Board refused to hear said 20
 charges or grant said trial and said Richard Do-
 herty made no attempt to procure a trial or hear-
 ing on said charges before said Commission of
 Street and Public Improvements.

5. The matter set forth in paragraphs 3 and
 4 above, are the only matters in any way con-
 nected with the defendant Jeremiah Hill, as street
 commissioner of Bayonne, or in any way con-
 nected with the payment of money by said city to
 the defendant or the recovery of money by this 30
 defendant from said city with which the defend-
 ant, Richard Doherty, had anything whatever to
 do, and it is upon these matters that he bases his
 claim.

6. After the dismissal of the said writ of cer-
 tiorari and the refusal of said Board of Commis-
 sioners to hear said charges, this defendant, by
 Allan Benny, his solicitor, instituted proceedings
 in the Court of Chancery of New Jersey, for in-
 junction against the Commissioners of Bayonne 40
 to restrain them from interfering with this de-

Statement of Claim of Defendant, Jeremiah Hill.

defendant in the discharge of his duties as street commissioner, whereupon said commissioners "reinstated" this defendant and later consented to the entry of said judgment.

10 ALLAN BENNY,
Solicitor of defendant, Jeremiah Hill.

Filed June 12th, 1926. —

Order Advancing and Fixing Date of Hearing.

IN CHANCERY OF NEW JERSEY.

20	Between CITY OF BAYONNE, Complainant, and JEREMIAH HILL, <i>et als.</i> , Defendants.	}	On Bill of Interpleader.
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30 This matter being presented to the court by Allan Benny, solicitor of the defendant, Jeremiah Hill, in the presence of Richard Doherty, defendant, solicitor pro se, and upon due notice given to the said defendant, Richard Doherty, solicitor pro se, and to Dembe & Dembe, solicitors of the defendant, Mechanics' Trust Co. of New Jersey, and it appearing that the hearing of this cause has heretofore by the order of this court been fixed for February 8th, 1927, at ten A. M. at the Chancery Chambers in the City of Jersey City, N. J., it is on this 9th day of August, on the motion of

40 Allan Benny, solicitor of the defendant, Jeremiah Hill,

Order Advancing and Fixing Date of Hearing.

ORDERED that the date for hearing said cause be advanced and fixed for Monday, October 4th, 1926, at 11 o'clock in the forenoon at the Chancery Chambers, Court House in the City of Paterson, N. J.

Respectfully advised E. R. WALKER, C. 10

JOHN BENTLEY, V. C.

Filed September 28th, 1926.

Disclaimer of Defendant, Richard Doherty.

IN CHANCERY OF NEW JERSEY.

20	Between CITY OF BAYONNE, Complainant, and RICHARD DOHERTY, JEREMIAH HILL and MECHANICS' TRUST Co., Defendants.	}	On Interpleader.
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The defendant, Richard Doherty, waiving all matters set forth in the concise statement of claim filed herein, hereby disclaims at this time all interest in the fund described in the bill of complaint, and now in the custody of the court.

Dated: November 1st, 1926.

RICHARD DOHERTY, 40
Defendant.

Filed Nov. 3, 1926.

Final Decree.

IN CHANCERY OF NEW JERSEY.

10	Between	}	On Bill of Interpleader.
	CITY OF BAYONNE, Complainant,		
	and		
	JEREMIAH HILL, RICHARD DO- HERTY, and MECHANICS' TRUST Co.,	}	Defendants.
20			

This cause coming on to be heard in the presence of Allan Benny, solicitor of the defendant, Jeremiah Hill, and Dembe & Dembe, solicitors of the defendant, Mechanics' Trust Co., and it appearing that the above entitled cause was, by an order made by the Chancellor March 2nd, 1926, referred to Hon. John Bentley, one of the Vice Chancellors of this court, to hear the same, and to report thereon to him and to advise what order or decree should be made therein;

And it further appearing that by the interlocutory decree of this court consented to by all the parties, as will appear by the indorsement of such consent upon said interlocutory decree made the 24th day of May, 1926, it was ordered, adjudged and decreed that the said bill of interpleader was properly brought by the complainant in the cause, and that the complainant is entitled to the relief prayed for in said bill of complaint, and that the complainant deposit in this court the sum of \$2,000

Final Decree.

and that the sum of Two Thousand Seven Hundred Fifty-three Dollars and ten cents (\$2,753.10) be paid by the complainant to the defendant, Mechanics' Trust Co., the aggregate of said two sums being the amount of a judgment recovered in the Hudson County Circuit Court by said defendant, Jeremiah Hill, against the complainant, City of Bayonne, and being the fund referred to in the bill of complaint, and that the complainant, City of Bayonne, upon the making of such deposit, be dismissed with its costs to be paid out of said fund so to be deposited as aforesaid, and that the complainant be released, acquitted and discharged of all claim or liability to any of the defendants in this suit for, upon, or by reason of said fund, and that the said defendants interplead, settle and adjudicate their several claims, demands and matters in controversy as between themselves;

And it further appearing that the said sum of Two Thousand Seven Hundred Fifty-three Dollars and ten cents (\$2,753.10) was paid to the defendant, Mechanics' Trust Co., by said complainant and that said complainant has deposited with this court the said sum of \$2,000;

And it further appearing that by the order of the court, February 8th, 1927, was fixed as the day for hearing said cause and that by another order of the court, the date for said hearing was advanced to October 4, 1926, when the same was adjourned to November 3rd, 1926. And the court having read the answers of the defendants, Jeremiah Hill, Mechanics' Trust Co., and the concise statements of all the defendants, and the defendant, Richard Doherty, having filed with this court his disclaimer of any right to or interest in said fund or any part thereof, it is on this 3rd day of November, 1926

Final Decree.

10 ORDERED, ADJUDGED AND DECREED that the defendant, Mechanics' Trust Co., is entitled to recover out of the said fund deposited with this court, the sum of Four Hundred Fifty-two Dollars and ninety cents (\$452.90) with interest from June 3rd, 1926, amounting to Eleven Dollars and thirty-two cents (\$11.32), making in all Four Hundred Sixty-four Dollars and twenty-two cents (\$464.22) to be paid to the solicitor of said defendant, Mechanics' Trust Co., by the clerk of this court, and that said defendant, Mechanics' Trust Co., have its cost to be taxed to be paid by the said defendant, Richard Doherty, including a counsel fee of \$100 to be paid by the said defendant, Richard Doherty, to said solicitors of the Mechanics' Trust Co.

20 It is further ORDERED, ADJUDGED AND DECREED that the defendant, Jeremiah Hill, is entitled to receive the balance of said fund on deposit in this court to be paid to the solicitor of the defendant, Jeremiah Hill, by the clerk of this court and that the defendant, Jeremiah Hill, have his costs to be taxed to be paid by the said defendant, Richard Doherty, including a counsel fee of \$250 to be paid by said defendant, Richard Doherty, to said solicitor of the defendant, Jeremiah Hill, and the costs taxed for complainant.

Respectfully advised,

E. R. WALKER,
C.

JOHN BENTLEY,
Vice Chancellor.

Filed November 3, 1926.

40

Complainant's Costs.

IN CHANCERY OF NEW JERSEY.

Between
CITY OF BAYONNE,
Complainant,
and
RICHARD DOHERTY, *et als.*,
Defendants.

Complainant's
Costs. 10

	S. & C.	Ch.	Clk.	Als.	
Ret. fee for Sol. & Counsel.....	4.00				
Drawg. and eng. bill.....	8.40				
Drawg. takg. and filg. affits. to do	5.40		.12	.50	
Filg. bill and eng. action.....			.16		
Drawg. eng. and sealg. subpa.....	.40	.30	.08		20
Filg. do and shffs. fees.....			.06	7.62	
Copy of answer			5.04		
Drawg. servg. and filg. notice.....	.40		.06		
Motion for order reference.....	1.50	.50			
Drawg. eng. and filg. order 4 fol. & copy	1.20		.46		
Motion for interlocutory decree..	1.50	.50			
Argument fee on do.....	3.00				
Drawg. eng. and filg. decree 17 fol.	5.10		.06		30
Copies of decree.....			5.10		
Servg. copies of decree.....				1.20	
Drawg. takg. and filg. proof ser- vice80		.06	.25	
Drawg. and filg. ackmts.....	1.00		.18		
Drawg. & eng. costs.....	1.20				
Taxg. and filg. costs and copy.....			.80		

33.90 1.30 12.18 9.57

Taxed at fifty-six dollars and
ninety-five cents. 1.30 40

9.57

\$56.95

Nov. 12, 1926.
THOMAS BARBER, Clerk.

Costs of Jeremiah Hill.
IN CHANCERY OF NEW JERSEY.

10	Between CITY OF BAYONNE, Complainant, and RICHARD DOHERTY, <i>et als.</i> , Defendants.	Costs of Jeremiah Hill.					
			<i>S. & C.</i>	<i>Ch.</i>	<i>Clk.</i>	<i>Als.</i>	
			Ret. fee for Sol.....	2.00			
			Drawg. takg. and filg. answer.....	12.60	.06		
			Drawg. takg. and filg. afft. to do	13.60	.06	.25	
			Argument fee under decree May				
			24, 1926	3.00			
20			Drawg. and filg. statement 13				
			fol.	2.60	.06		
			Drawg. servg. and filg. notices....	.80	.12		
			Motion for order fixing day.....	1.50	.50		
			Drawg. eng. and filg. order 3 fol.	.90	.06		
			Motion for decree.....	.80	.16		
			Argument upon final hearing &c.	4.00	.25		
			Chancellor on decree.....		1.75		
			Drawg. eng. and filg. decree 14				
			fol.	4.20	.06		
30			Counsel fee as per decree.....	250.00			
			Copy of decree	1.40			
			Serv. copy of decree.....			.40	
			Enrolling proceedings 229 fol....		13.74		
			Copy of complainants costs.....		.30		
			Servg. copy of complainants				
			costs40	
			Servg. copy of defendants costs			.40	
			Drawg. and eng. costs.....	1.20			
			Taxg. and filg. costs and copy.....		.80		
40							
				297.20	2.25	17.07	1.45
			Taxed at Three hundred seven-	2.25			
			teen dollars and Ninety-seven	17.07			
			cents	1.45			
				317.97			

Nov. 12, 1926
THOMAS BARBER, Clerk.

Costs of Mechanics' Trust Company.
IN CHANCERY OF NEW JERSEY.

10	Between CITY OF BAYONNE, Complainant, and RICHARD DOHERTY, <i>et als.</i> , Defendants.	Costs of Mechanics' Trust Company.				
			<i>S. & C.</i>	<i>Ch.</i>	<i>Clk.</i>	<i>Als.</i>
			Ret. fee for Sol.....	2.00		
			Drawg. and eng. answer.....	2.40		
			Filg. answer06	.20
			Argument fee on decree May 24,			
			1926	3.00		
			Drawg. and filg. statement.....	1.40	.06	
			Drawg. and filg. supplemental			
			statement	1.20	.06	
			Counsel on hearing.....	4.00		
			Counsel fee as per decree.....	100.00		
			Drawg. and eng. costs.....	.90		
			Servg. copy of costs.....			.40
			Drawg. and eng. costs.....	.90		
			Taxg. and filing costs and copy....		.70	.30
				115.80	.88	.40
			Taxed at One hundred seventeen	.88		
			dollars and eight cents	.40		
				\$117.08		

Nov. 12, 1926.
THOMAS BARBER, Clerk.

Filed, Nov. 12, 1926. 40

Opinion.

IN CHANCERY OF NEW JERSEY.

10	Between CITY OF BAYONNE, Complainant, and JEREMIAH HILL, <i>et als.</i> , Defendants.	} On Bill of Interpleader.
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January 14, 1927.

20 ALLEN BENNY, Esq., for Defendant Hill.
 RICHARD DOHERTY, Esq., *Pro se.*

BENTLEY, V.-C.:—

Mr. Doherty has appealed from the making and entering of a decree in this cause, upon the ground, as I understand it, that no proofs were taken. This is so and I so certify.

30 The reason for not requiring proofs was as follows: The bill was filed by the City of Bayonne to restrain any action at law by the several defendants who were claimants for a fund which the city recognized itself to be under a legal obligation to pay to one or more of the defendants, and it prayed to be relieved of the fund by being permitted to deposit it with the clerk of this court. After the money had been deposited and the complainant discharged, the defendants all interpleaded. Mr. Doherty attempted to set up an equitable assignment to a portion of the fund, while the other defendants denied his right to
 40 any portion thereof. On the day set for final

Opinion.

hearing there was delivered to the court a letter, of which the following is a copy:

November 1st, 1926.

Hon. John Bentley,
 Vice Chancellor,
 Chancery Chambers,
 Jersey City, N. J. 10

BAYONNE vs. DOHERTY, *et als.*

Dear Vice Chancellor Bentley:

The above interpleader has been set down for final hearing by you for November 3rd, and a recent development in the matter convinces me that the filing with you of the enclosed disclaimer is indicated.

The statement of claim filed by me set up an equitable assignment of the fund to the extent of fees for services rendered in connection with the production of the fund. An action at law to recover such fees was started about six months before the filing of the interpleader, and last week the same came to trial in the Hudson County Circuit Court and was fully heard on the merits of reasonable compensation and the contention of a counterclaim that the amount already paid to me was chargeable with disbursements that the defendant alleged I should make. 20

The jury's verdict was against both my contention that there was a balance still due and against the defendant's contention that the amount paid to me was in any wise charged with a trust to disburse. In the light of this outcome I fail to see how I have any claim on the fund paid into court. I know that had the jury's verdict been to the contrary I would vigorously contend that the finding of fact was binding upon you; and equity requires me to concede the same result as against myself. 30

Might I therefore ask you to receive and file the enclosed disclaimer and permit the 40

Opinion.

10 matter to proceed without further molestation from myself. Should the matter of costs be suggested, might I invite you to consider that I was brought into the matter as a defendant who had already instituted the legal proceedings, and that upon the resolution of the facts in the latter case I hasten to withdraw from the present matter.

I am presuming to communicate with you in this informal manner because of November 3rd being the opening day of the Federal Court at Newark where I have a very pressing matter requiring personal attendance, and feel that you will indulge me to the extent of dispensing with a personal appearance before yourself.

Yours very truly,

RICHARD DOHERTY.

20 Rd:AJ

30 Upon the reading of this letter in open court, the remaining parties agreed completely upon the division of the fund, to the last cent, and upon their agreement and stipulation a decree was made. If any proofs are to be required in a decree which embraces the expressed wishes of all the parties to the suit with any interest therein at the time of final hearing, I shall have to re-
40 vise my notion of the practice in this court in that regard. It is done in hundreds of cases, and I have never known of the validity of such a decree being questioned. It is not similar to granting a decree without any proofs after answer filed and upon the failure of the defendant to appear at the time and place designated for the final hearing. In cases such as the one *sub judice*, the parties first appeal to the court, but later say, "We have settled our differences but require a decree", in this instance, to release the grasp of the clerk upon the fund.

Opinion.

The main complaint that Mr. Doherty has, I assume, is that portion of the decree which makes him liable to pay costs. I did consider, as I was requested by him to do, his argument that he was brought in as a defendant, but his haste to withdraw was not manifest until his position was rendered absolutely untenable, as he himself admits in the foregoing letter, by the verdict of the jury at the Circuit. He, by his concise statement (filed pursuant to the 69th rule of this court), prolonged the litigation for months after the dismissing of the complainant from the litigation. Every effort upon the part of the other counsel to bring the matter to final hearing was resisted by him, appearing for himself, for a long time. The other contesting parties were put to the expense of preparing for the final hearing. Then he undertook to relinquish any claim to the fund. It seems to me that under those circumstances it is only necessary to consider *Deacon v. Deacon*, 7 Sim., 378, upon which is based the following quotation from 1 Dan. Pl. and Pr., star page 709:

Where a defendant had occasioned the suit, in consequence of a claim to the fund set up by himself, which he refused to release or to verify, and afterwards put in a disclaimer, stating in his answer the facts upon which he had supposed himself to be entitled, as a ground for his not being ordered to pay the costs of the suit, which were prayed against him, in consequence of which the plaintiff examined a great number of witnesses to falsify such statement, but no witnesses were examined by the defendant, he was ordered to pay the whole costs of the suit, as well as the plaintiff's costs as the costs which the plaintiff was ordered to pay to the co-defendants.

Filed Jan. 17, 1927.

41 MAY. I. 1927

New Jersey Court of Errors and Appeals

Between

CITY OF BAYONNE,
Complainant-Appellee,

and

RICHARD DOHERTY,
Defendant-Appellant,

JEREMIAH HILL,
Defendant-Appellee,

MECHANICS' TRUST Co.,
Defendant-Appellee.

On Appeal
from
Chancery Decree
Awarding Costs.

BRIEF FOR APPELLANT.

The appellant seeks the reversal of such part of a Chancery decree advised by Vice Chancellor Bentley in the above matter, as imposes upon him the costs of the complainant and the costs and counsel fees of the defendants, Hill and Mechanics' Trust Co., in an interpleader suit in which he was joined as defendant. All appellees having defaulted in answering the petition of appeal the hearing is brought on under Rule 23.

Facts.

The appellant was the attorney of the defendant, Hill, who instituted certiorari proceedings to review his suspension as Street Commissioner of Bayonne, which were dismissed for lack

of prosecution (Hill's answer, Par. 13). After such termination of the proceedings, the Commissioners of Bayonne recalled the charges and reinstated Hill (Hill's answer, Par. 25). Hill thereupon brought suit through another attorney in the Hudson County Circuit Court to recover salary for the period of suspension, and the appellant served on the City a notice that he claimed a lien on any amount which might be owing to Hill and notified the City to refrain from paying the same to Hill until an adjudication of the lien (Bill of complaint, P. 9).

This notice was served on April 17th, 1925, and on the day following, Hill assigned to the Mechanics' Trust Co. the full amount of his claim, reciting that it was "represented by a suit instituted by me in the Hudson County Circuit Court" (Schedule A, P. 15). June following, the appellant commenced an action in the Hudson County Circuit Court against Hill for the recovery of \$1,800 which he claimed was a balance due on the reasonable value of his services, for which he had been paid but \$800. June 19th, Hill, notwithstanding the assignment of his claim to the Mechanics' Trust Co., entered a judgment against the City with the consent of the Corporation Counsel for \$4,709.98. On the day following he executed to the Mechanics' Trust Co. an assignment of such judgment (Schedule B, P. 15). On June 23rd, the Mechanics' Trust Co., by its attorney, filed a copy of the latter assignment with the City Commissioners and demanded, in its own right, the full amount of the judgment and costs (Schedule C, P. 19). The day following, Hill filed an answer to the appellant's action denying that the services rendered were of the value alleged and setting up that the amount paid to appellant was to be devoted to the defrayal of pleading costs and commissioners' and stenographers' fees, and

demanding a judgment against appellant by way of counter claim. The latter action was awaiting trial November 28th, 1925, when the complainant filed its bill of interpleader. The latter set up the claim of the Mechanics' Trust Co. to the entire fund by assignment, and the service of the appellant's notice that he had an unadjudicated lien, and making the appellant and the Trust Co. defendants; and for some unknown reason, also joined Hill as a defendant.

December 30th, 1925, Hill filed an answer admitting the allegations of the bill, copiously denouncing the appellant's claim that he had a lien, disavowing any interest of his own in the fund, and praying that the full amount thereof be paid to the Mechanics' Trust Co. (Hill's answer, P. 30).

December 31st the appellant filed a statement of claim alleging an agreement between himself and Hill whereby the defendant was to have a lien on the fund to the reasonable value of service rendered and to be rendered or of any balance thereof which might be due at the time when the fund should be available; and that the services of the appellant were effective to obligate the City to pay Hill the back salary which the fund represented (P. 31).

February 2nd, 1926, after an extension of time, the Mechanics' Trust Co. filed an answer setting up that it was "the only one entitled to the money sought to be deposited in this proceedings" (P. 33).

The appellant gave notice to all parties of a motion to discharge the complainant, procure the payment of the fund into court and for an order dropping Hill on the ground that he disclaimed all right to the fund (P. 35). On May 24th, 1926, on the hearing of such motion, an interlocutory decree was made directing that the sum of \$2,000

be paid into court and that the balance of the fund, \$2,753.10 be paid to Mechanics' Trust Co.; that the defendants interplead, and that the complainant be dismissed *with its costs to be paid by the clerk of this court out of the said fund so to be deposited* (interlocutory decree, P. 39).

The matter having been referred to Vice Chancellor Bentley on March 2nd, no step was taken to have the cause set down for trial until the appellant gave notice of such application, and on his motion, made June 7th, the cause was set down for hearing on February 7th, 1927. June 11th, the Mechanics' Trust Co. filed a statement of its claim, setting up that the assignments of the judgment was by way of security only, for a loan made and to be made by the Trust Co. to Hill; that \$3,000 had been already advanced, upon which was due \$206 interest, which debt was reduced to \$452.90 by the application of the amount paid under the interlocutory decree. It was further set up that "the Mechanics' Trust Co. claims the entire fund of \$2,000 as security for money loaned or to be loaned to the said Hill by virtue of said assignment."

In a supplemental statement filed the same date, it reiterated that "Mechanics' Trust Co. is therefore entitled to the fund deposited in this court by reason of the said assignment, and which assignment was given as security for a loan of \$3,000 made to said Jeremiah Hill and such other loans as might thereafter be made."

On the day following the filing of the last mentioned statements, Hill filed a statement in which he claimed "by virtue of the judgment mentioned in the bill of complaint, an interlocutory decree to the extent of \$2,000 deposited with this court by complainant, less the sum of \$552.90 with interest" (P. 47).

The time designated for the hearing was advanced to October 4th, 1926, but could not be held on that date, (P. 50) and was set for November 3rd following.

The week previous to the latter date, the appellant's action in the Circuit Court was tried with the result that the jury decided against his claim for additional compensation, and decided against Hill's contention that the amount paid to appellant was charged with a trust to disburse for expenses. Promptly upon the determination of the law action, the appellant filed with the Vice Chancellor a disclaimer of any further interest in the fund on deposit, (P. 51), and in a communication to the Vice Chancellor (P. 59) expressed his readiness that the matter should proceed on the conflicting claims of Hill and the Mechanics' Trust Co. without further molestation from himself. In his letter, he invited the court to consider in connection with the allowance of costs to himself on the disclaimer, that he was brought into the matter after the institution of legal proceedings and that his disclaimer was promptly forthcoming upon the resolution of the facts by the jury.

The matter coming on for hearing, and the defendant's disclaimer and letter being read in open court, the remaining parties agreed and stipulated as to what decree should be made, (Opinion, P. 60). The Mechanics' Trust Co. which up to that moment had claimed the entire fund, took \$464.22; Hill, who by successive assignments, absolute on their face, and by his original answer had disavowed any interest whatever in the fund, took the balance. The decree further directed that appellant pay the costs of the Mechanics' Trust Co. and \$100 counsel fee, and the cost and \$250 counsel fees of the defendant, Hill, and the costs taxed for the complainant. (Final decree, P. 54).

The decree was made in the absence of, and without notice to the appellant, and although it recites that it proceeded on the "reading of the answers of the defendants, Jeremiah Hill, Mechanics' Trust Co. and the concise statements of all the defendants," in his opinion the Vice Chancellor certifies that the remaining parties "agreed completely upon the division of the fund, to the last cent, and upon their agreement and stipulation a decree was made." No proof was taken and no hearing was held, (Opinion, P. 60).

ARGUMENT.

1. Costs were awarded against the appellant in favor of co-defendants notwithstanding that the appellant's conduct was that of the highest good faith while that of the defendants was deceptive throughout the case. Such costs are awarded in interpleader, only to reprehend the bad faith of one of the parties, and such bad faith can be ascertained only through proof and an opportunity to be heard.

2. Whether the appellant was mulcted upon a mere reading in his absence of the "answers of the defendants, Jeremiah Hill, and the Mechanics' Trust Co., and the concise statements of all the defendants," as the final decree recites, or because "the remaining parties agreed completely * * * and upon their agreement and stipulation, a decree was made," as the Vice Chancellor's opinion informs, in either case the infliction of costs on the appellant was grossly inequitable.

3. The pleadings in the case, which the recitals of the decree avow as the basis of judgment, indi-

cate the unquestionable good faith of the appellant, and the glaring bad faith of the two defendants to whom the costs were awarded.

4. The appellant's prompt disclaimer, after an adverse adjudication of his claim by a law court, refutes the innuendo of bad faith appearing in the Vice Chancellor's opinion, and should, on the contrary, have inured to his advantage in respect of an award of costs.

5. The impression of the Vice Chancellor that the appellant, by his concise statement, prolonged the litigation for months after the dismissing of the complainant, was wholly without foundation and was completely contradicted by the chronology of the case.

6. The understanding of the Vice Chancellor that the appellant resisted the effort of other counsel to bring the matter to a final hearing, was converse to the record, which demonstrated that the appellant was the only party who speeded the cause; if the Vice Chancellor acted on impressions concerning the appellant's motives and conduct derived from sources independent of the appellant's activities in the case, the decree was still more unjustifiable.

7. Without the taking of proof, it is inconceivable how the Vice Chancellor could have found that the other contesting parties were put to the expense of preparing for the final hearing. Such expenses might have been legitimately included in their bills of costs subsequently taxed, but such bills show no charges for procuring witnesses or evidence. In the posture of their pleadings, the preparation to which their efforts would be natur-

ally addressed would be such as necessary to combat their own conflicting claims inter sese.

8. The deportment of the appellant in the litigation was the antithesis of the facts upon which the finding in *Deacon vs. Deacon*, 7 Sim. 378, cited by the Vice Chancellor, proceeded.

I.

Where the conduct of the defendant in equity has been bona fide in all respects, costs and counsel fees may not be awarded.

The first action of the appellant was to notify the Bayonne Commissioners that he had an unliquidated lien on the fund for the reasonable value of services, and to request the withholding of payment from Hill until such lien was adjudicated; promptly, he commenced an action in the Circuit Court to procure such adjudication. This action was pending and awaiting trial for six months before the institution of the interpleader, in which he was joined as an unwilling defendant. He speeded the law action so as to procure a determination of his claim four days before the time set for the hearing of the interpleader, and upon a verdict adverse to his claim, at once filed a disclaimer and sought dismissal. In these circumstances, it would be necessary that it should clearly appear that his claim, *ab initio*, was fraudulent or purely vexatious in order to impute bad faith to his action. Such was not made to appear, or even attempted, and the imposition of costs was violative of the rule applicable to such case.

Larkin vs. Wikoff, 75 N. J. Eq. 462.

The award of costs in equity is in the court's sound discretion.

McClosky vs. Bowden, 82 N. J. Eq. 410.

Riley vs. Fithian, 64 N. J. Eq. 262.

But judicial discretion means no more than that the court will weigh and balance the equities and decide in favor of that party upon whose side he finds a preponderance.

West New York Silk Mill Co. vs. Laubsch,
53 N. J. Eq. 67.

Hennesy vs. Carmony, 50 N. J. Eq. 625.

The method of procuring an adjudication of a claim by a defendant in interpleader, through an action at law, is one that is favored in equity and may be ordered by the Chancellor.

Condict vs. King, 13 N. J. Eq. 375.

Kirtland vs. Moore, 40 N. J. Eq. 106.

The plaintiff had resorted to such method for the judicial determination of his claim before the filing of the interpleader, and his pursuit of such action was a benefit to the court and the parties in the interpleader suit in elucidating the truth of the case. His conduct as an interpleaded defendant could not be reprehended, unless on the absurd view that he should have dropped his law action immediately upon being interpleaded.

Interpleader is not intended to deprive defendants as against each other of substantial rights or defenses, which they may have against each other arising from the choice of forum.

D'Auria vs. Barbieri, 70 Atl. 154.

II.

The defendants were not entitled to counsel fees by the terms of the statute.

In any cause, matter or proceeding in the Court of Chancery, the Chancellor may make such allowances by way of counsel *to the party or parties obtaining the order or decree as to him shall be reasonable and proper* (Sec. 91, Chancery Act, 1 C. S. 445).

It is contended that the limitation of counsel fees prescribed by the above act to parties *obtaining the order or decree* does not, by any rational construction, relate to a case where the decree is not procured upon the merits of the complaint or defense, as the case might be. The word "obtain" relates to that which is acquired from the court by compulsion of equity after an inquiry into the truth of the case; and not, as in the present matter, where the decree was evolved from the agreement of the two parties who were to reap its benefit.

According to the Vice Chancellor's opinion, Hill and the Mechanics' Trust Co., instead of obtaining the decree from the court, were beholden to each other's magnanimity and acquiescence. An inquiry into the etymological derivation of the word "obtain," apart from any legislative intentions, bears out the view that the section relates to decrees emanating from the conscience of the court, irrespective of the complacency of the parties. The fees in the present matter were "allowed by the Chancellor" only to the extent that the Vice Chancellor was distracted from discerning that such fees were filched with the consents of the recipients only.

III.

The power of the court below to determine a controversy without a hearing was limited to what the parties might competently consent to.

With the appellant's disclaimer accepted and filed, and his status that of a dismissed co-defendant, the remaining litigants essayed to settle their dispute by each abandoning part of his claim and agreeing to a decree in respect of their own reciprocal rights. The Vice Chancellor, under the Statutes, (Sec. 96 Chancery Act) and the order of reference, was commanded "to hear the same for the Chancellor." His right to report and advise without such a hearing was confined to validating the consents of the parties affecting the adjustment of their own rights. To this extent, Hill and the Mechanics' Trust Co. had the right to consent to a settlement which the Vice Chancellor had the power to effectuate by decree in virtue of their authorization. But the bizarre proceeding in the present matter was that these two defendants, having agreed to a division of the fund among themselves, (and in derogation of the past claims of each) made the further agreement to plunder the appellant for costs and counsel fees. It is submitted that the Vice Chancellor was without power to act save with the consent of the appellant who was to be charged, or upon notice to him, and opportunity to be heard.

If Hill and the Trust Co. had settled out of court, without any agreement as to costs, neither would be entitled to them.

Bruce vs. Gale, 13 N. J. Eq. 211.

Much stronger is the iniquity of charging costs, without notice or consent, to one who is not party to the settlement and not before the court.

IV.

Neither Hill nor the Trust Co. succeeded on the issues which they created, and neither, even as between themselves, were entitled to costs.

Hill, on the day following appellant's notification to the Commissioners that he claimed a lien on the money, assigned his claim wholly to the Mechanics' Trust Co., and thereafter upon procuring, in his own name, a judgment against the city, wholly assigned the judgment.

In his answer he stood upon the absolute character of such assignments and prayed that the fund be delivered to his assignee. He resisted the appellant's motion to drop him as a defendant by confessing the mendacity of his answer, and seeking the right to put in a statement setting up his claim to part of the fund. By such statement he claimed that he had an interest amounting to \$1,447.10, (P. 47).

What success he eventually obtained through his chicanery, he reaped from the confession that his original answer was a fraud on the court, and that his assignments to the co-defendant were likewise badged with fraud.

The Mechanics' Trust Co., in its answer, untruthfully set up that its assignments were absolute and that it was the owner of the entire fund. This attitude it maintained until, like Hill, it was "smoked out" by the appellant's motion to drop Hill as a defendant. At that stage it was forced to the confession that the assignments were se-

curity only, and its answer a canard; it then put in a concise statement claiming the fund not only to the amount advanced with interest, but the balance of the fund "as security for money loaned or to be loaned by virtue of the said assignment" (P. 24).

It will thus be seen that up to the time of the hearing Hill and the Trust Co. were in open conflict, both claiming the same fund. In the outcome of the case, the Trust Co. failed in its claim to the entire fund and Hill was successful only in respect of being permitted to escape from the fraud of his answer in which he had disavowed all interest, and in which escape he was aided by the ready consent of the Trust Co.

Where opposing parties are each successful on one or more substantial issues, neither is entitled to costs.

Horner vs. Heinecke, 82 N. J. Eq. 176.

To these parties an award of costs would be a premium for litigious dishonesty and the allowance of counsel fees a judicial approbation of its audacity. It is unbelievable that the just and learned Vice Chancellor was not the overconfiding victim of their wiles and collusion.

Where both parties to a suit in equity prayed for relief as against the other, which was inequitable, and the decree did not conform to either prayer, costs would not be allowed to either.

Farmer vs. Ward, 75 N. J. Eq. 33.

V.

The appellant speeded the cause while the remaining defendants delayed it.

The bill was filed in November, 1925. Within time, the appellant filed a concise statement indicating that he had a claim which was still to be adjudicated. So far as his course of action was concerned, he ripened the case at once for final determination, and had the remaining defendants pursued the same course, the rights of all the parties could have been at once determined on the dismissal of the complainant.

Condict vs. King, 13 N. J. Eq. 375.

But Hill and the Trust Co. both filed their false answers,—Hill, on December 30th, 1925 and the Mechanics' Trust Co., out of time, on February 2nd, 1926. Neither filed statement of claim until June 11th, when for the first time they assumed in respect of the litigation, the same position the defendant had occupied from the outset, and they thereby delayed the suit for more than five months. In the meantime the activity of the appellant was conspicuous in the direction of hastening a determination of the matter. March 4th, 1926, he gave notice of a motion to discharge the complainant, have the fund paid into court, have Hill dropped as a defendant and directing Mechanics' Trust Co. to file a concise statement (P. 35).

This notice precipitated the interlocutory decree made May 24th. Without waiting for the filing of the statements by the defendant, the appellant gave notice and moved for a designation

of the time for hearing and obtained and filed an order thereon June 7th, (P. 42). As before stated, he brought his law action to trial before the time of the hearing, and upon its conclusion, without delay, filed the disclaimer.

Surveying these activities, it is obvious that the speed in the case was induced by the appellant; that the delays were caused by Hill and the Mechanics' Trust Co.; and that the Vice Chancellor was both unfamiliar with the course of the case and baldly deceived, when in his opinion, he expressed the views that the appellant "by his concise statement, prolonged the litigation for months after the dismissing of the complainant from the litigation," and "every effort upon the part of the other counsel to bring the matter to final hearing was resisted by him for a long time."

VI.

The filing of disclaimer by appellant did not authorize a decree for costs and counsel fees against him without a hearing.

The exercise of that judicial discretion upon which costs turn in equity connotes a prior investigation. Neither in favor of, nor against, a disclaimant can costs be decreed without a due regard for the special circumstances of the case which must be properly revealed in some form. A typical instance of the court's right to act upon due inquiry, would be the award of costs, (but not counsel fee) to this appellant against both Hill and the Mechanics' Trust Co. because of their confessions on record that their original answers were fraudulent. No similar aspersion of the appellant soils the record, and there could be no

finding against his good faith competently made without the adduction of proof, which was not had. The reading of part of the court files was not an adequate substitute for a hearing.

The statute provides the following course to be taken in the absence of a party.

If either party shall not attend at the time appointed for the hearing of the cause, the pleadings and *proofs* shall be read on the part of the party attending, and the court thereupon shall decree as the case may require. Chancery Act, Sec. 36. C. S.

This act is of long standing, and the proofs required to be read along with the pleadings comprehended the answers, responses to interrogations, depositions, etc., which served as competent evidence in the cause. But the innovation of the present form of hearing did not, because it could not, dispense with evidence as a foundation for decretal action.

Chancery Act, Sec. 97 and Chancery Rule 123 both impose on a Vice Chancellor the duty of taking testimony as the prerequisite to advising any decree, from which obligation, it is contended, he may be relieved only by the consent of the parties in respect of such of their own rights as to which they are at liberty to agree.

VII.

The conduct of the appellant did not justify the application of the rule in *Deacon vs. Deacon*, 7 Sims. 378, which the Vice Chancellor applied.

In the cited case the defendant (1) occasioned the suit, (2) refused to release or verify his claim, (3) put in a disclaimer and also an answer setting

up facts as ground for being relieved from costs with which he was already clearly chargeable, (4) in consequence of such answer plaintiff was compelled to examine *a great number* of witnesses to falsify such statement, but (5) no witnesses were examined by the defendant. From the conduct of the present appellant, every factor in the cited case is absent.

1. He requested the city commission to refrain from paying over the fund until adjudication and judicial order as to the validity and amount of his lien. (Bill of Complaint, P. 10). The Mechanics' Trust Co., on the contrary, occasioned the suit by demanding the entire fund at once and threatening suit. (Bill of Complaint, P. 9; Schedule C., P. 19.)

2. The appellant, through the law action, had undertaken the verification of his claim six months before the commencement of the interpleader suit.

3. The appellant's disclaimer was not accompanied by any answer protracting the cause, but sought his own dismissal leaving the further conduct of the suit to the remaining contestants.

4. The co-defendants, far from being incommoded by the disclaimer and forced to examine witnesses, found in it a facility for the culminating act of their long standing collusion.

5. The disclaimer was the appellant's laudable method of signifying his deference to the jury's finding in the action at law.

VIII.

The decree that appellant pay the complainant's costs which, by the consent of all the parties, had been ordered paid out of the deposited fund, was inequitable.

The interlocutory decree which directed the payment of complainant's costs out of the fund was made with the consent of the appellant. (P. 40.)

Its subsequent vacation to the extent of imposing the same costs on appellant without notice or opportunity to be heard was abusive of appellant's rights and injudicious. The prior solicitation of his consent entitled him to a hearing before such consent could be set at naught.

It is submitted that this view should prevail whether the decree, which is obscure in its verbiage, directs such payment to be made to the complainant directly, or to Hill as the obvious owner of the fund throughout the controversy.

IX.

The decree, as to the costs and counsel fees of Hill and the Mechanics' Trust Company, should be reversed; and as to the complainant's costs should be modified to make them payable out of the fund as the interlocutory decree ordered.

Respectfully submitted,

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