

# New Jersey Court of Errors and Appeals

Between

IGNATZ PRUSAKOWSKI,  
Complainant-Appellant,

and

WOODWARD LUMBER & SUPPLY  
COMPANY,  
Defendant-Respondent.

ON APPEAL  
FROM DE-  
CREE OF  
COURT OF  
CHANCERY.

## BRIEF OF COMPLAINANT-APPELLANT.

### Statement of Facts.

This is an appeal from a final decree of the Court of Chancery which denies to the complainant the right to have a judgment obtained in the Bayonne District Court against him by the defendant company, which judgment was subsequently docketed in the Court of Common Pleas of Hudson County, cancelled of record and an injunction issue to prevent the sale of complainant's real estate by virtue of an execution issued upon said judgment. The judgment in the Bayonne District Court was recovered by the defendant-respondent under the following state of facts: The complainant entered into a contract with one Rudolph whereby said

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Rudolph, as contractor, was to erect a building upon the land of the complainant; Rudolph did part of the work and then defaulted in the performance of his contract. The Woodward Lumber & Supply Company supplied the contractor with some of the material which was used in the erection of the building to the value of \$358.56, and upon default of the contractor, served notice upon complainant, under the Third Section of the Mechanic's Lien Law, demanding payment from the complainant. Upon the failure to pay this amount the defendant brought suit in the Bayonne District Court against complainant on said stop notice, and based its claim solely upon the stop notice served by virtue of the Third Section of the Mechanic's Lien Law (see State of Demand, Schedule E, p. 21).

The defendant recovered judgment against the complainant on December 24th, 1908, which judgment on April 1st, 1909, was docketed in the Hudson County Court of Common Pleas, and an execution was issued thereon.

There had been a number of claims filed against the fund due to the contractor, and on February 11th, 1914, complainant filed a bill of interpleader in the Court of Chancery with a prayer for an injunction and a temporary restraint was granted preventing further proceedings upon the execution issued at law, upon the said judgment.

The complainant at the same time deposited with the Clerk of the Court of Chancery the sum of \$482.23, which was all the money due to the contractor Rudolph.

All the claimants were made parties-defendant, and the respondent was one of them. On April 12th, 1915, a decree of interpleader was advised and the respondent filed its claim in said interpleader action in which it sets out its claim upon

the fund due by reason of having served the stop notice under the Third Section of the Mechanic's Lien Act and its judgment obtained thereon (Schedule F, p. 24). On January 12th, 1916, an order of distribution was made by the Chancellor in which the priority of the claimants was determined and the proportionate share due to respondent company, amounting to \$122, was awarded to it (Schedule D, p. 18). By reason of said order the defendant company received from the Clerk in Chancery the amount to which it was entitled under said order.

The decree of interpleader provided that upon making the deposit of the moneys due to the contractor, the complainant was to be "*released, acquitted and discharged from all claims or liability of either of the defendants in this suit for, upon or by reason of said fund*" (Schedule A, p. 13). The said decree also contained a reservation permitting the respondent to move for a vacation of the injunction after the rights of the parties have been adjudicated, and on March 27th, 1916, after the interpleader action had been fully settled, the injunction was dissolved by consent of the parties. Thereupon, defendant proceeded to have the Sheriff sell the real estate of the complainant in order to satisfy the balance of the judgment obtained against the complainant. Whereupon application was made to the Court of Common Pleas to cancel the judgment of record, but the Judge of said court declined to do so on the ground that the Court of Chancery had jurisdiction in the matter (Schedule C, p. 17). Complainant then filed the present bill in Chancery praying that the respondent be decreed to cancel of record the said judgment on the ground that the decree in the interpleader action satisfied the judgment; that it be prevented and enjoined from proceeding upon said

judgment and a temporary restraint was granted. Notice was given to vacate this restraint, and after the argument a final decree was entered vacating the temporary restraint and dismissing the bill of complaint, from which decree this appeal is taken.

There was no bond filed by the complainant before procuring the temporary restraint in this action for it was not deemed by counsel that the scope of the Chancery Act required the giving of a bond where it is sought to compel the cancellation of a judgment on the ground that by a decree of the Court of Chancery this judgment has been paid and must be cancelled as of record.

*Comp. Stat.* Volume 1, p. 434, Section 64.

But the Vice Chancellor having determined that the Chancery Act did apply in this case, complainant <sup>counsel have said ready to file</sup> filed the statutory bond ~~and such bond is now on file~~ <sup>and is still ready to file same</sup> in the Clerk's office of the Court of Chancery.

It is contended that the final decree is erroneous in that:

(1) Claimants, by reason of the Third Section of the Mechanic's Lien Law, reach only the fund in the hands of the owner due or to grow due to the contractor.

(2) The recovery of a judgment by a material-man does not give him any superior rights to other claimants against the fund.

(3) The decree of interpleader is conclusive as to the rights of the Woodward Lumber & Supply Company.

(4) Equity requires the cancellation of this judgment and the issuing of a permanent injunction from proceeding thereon.

**POINT I.**

**Claimants by reason of the Third Section of the Mechanic's Lien Law reach only the fund in the hands of the owner due or to grow due to the contractor.**

The contractor having defaulted in his payments due to the materialmen and laborers, they were empowered to serve stop notices upon the owner of the building by reason of the Third Section of the Mechanic's Lien Act which, summarized, provides that when a materialman gives notice in writing to the owner of the building of the indebtedness "the owner shall be authorized to retain the amount so due and claimed by such materialman out of the amount owing by him or them on the contract."

*Comp. Stat.*, Volume 3, p. 3294.

Those who serve stop notices by virtue of this act are entitled to be paid in the order of priority in which they are served, but laborers are given priority over materialmen.

*Smith v. Dodge & Bliss Co.*, 59 *Eq.*, 584.

But the materialmen and laborers can only reach the fund in the hands of the owner which is due to the contractor either at the time of filing the notices or which may subsequently grow due, but nothing more.

*Reeve v. Elmendorf*, 9 *Vroom*, 125-130.

*Blauvelt v. Fuller*, 66 *N. J. L.*, 46, at 49.

*St. Peter's Catholic Church v. Vannote*,  
66 *N. J. Eq.*, 78.

In the last-mentioned case, the Vice Chancellor writing the opinion, in discussing the rights of some of the subsequent claimants, says, at page 84:

“A consideration of the validity or priority of the subsequently filed claims would be useless as, in my view of the situation, there can be no fund to pay them in any event.”

It is clear, therefore, that if the owner should pay out to prior claimants all the fund due to his contractor, those who serve stop notices late, do not procure any part of the fund.

In the case *sub judice* all the rights of the Woodward Lumber & Supply Company were based upon the provisions of the Mechanic's Lien Law, as described in its state of demand (see Schedule E, p. 21), and in the action of interpleader, the said respondent company filed a statement of claim in which it sets out that it claims to be entitled to the payment of the said money out of the said fund by reason of the Third Section of the Mechanic's Lien Law and the judgment recovered thereunder (see Schedule F, p. 24). The right of the respondent company is limited, therefore, to the rights which creditors of contractors possess by reason of said act, and only the fund which is due to the contractor can be reached by them, and nothing more.

## POINT II.

**The recovery of a judgment by a materialman does not give him any superior rights to other claimants against the fund.**

The intention of the Mechanic's Lien Law is manifest from Section 4 thereof which provides that the materialman whose claim is disputed by

the contractor, must bring an action against the owner or else forfeit all rights to the money "*which may be due or which may grow due to the contractor from the owner.*"

3 *Comp. Stat.*, page 3298.

The act expressly provides in that section, that "*all that can be reached, even by suit, is money which may be due or which may grow due to the contractor from the owner.*"

The only purpose and intention of the act is to give a right of action to materialmen and laborers who claim money due them from the contractor in so far only as there is money due to the contractor from the owner.

*Reeve v. Elmendorf*, 9 *Vroom*, 125-130.

There is no mention in the Mechanic's Lien Law, or any substantive law which counsel has examined, which gives a judgment-creditor who claims a right against the owner by reason of the Mechanic's Lien Law, any superior rights to any stop notice claimants. It cannot be contended by counsel for the defendant that merely because of respondent's recovery of a judgment, it must be paid in full out of this fund, which was deposited by the complainant in the Court of Chancery in its interpleader action, even though there were claims of laborers who, by the act, are entitled to payment in full. Nor can it be contended that if there were claimants who filed stop notices prior to the one filed by the respondent, they would lose their right to priority merely because the respondent had recovered a judgment against the complainant upon the stop notice which it had subsequently filed against the fund. The respondent did not set up such contention in the interpleader action, and if

it asserted any superior rights by reason of its judgment, it should have raised that contention, if indeed it had any, in the interpleader action.

The learned Vice Chancellor, in his opinion, holds that the judgment of the defendant in the District Court should not be disturbed because the complainant defended the action therein and complainant does not allege that he had an equitable defense of which he could not avail himself at law (Case, p. 55, ll. 36-38). But it must be noted in this connection that the Mechanic's Lien Law gives the owner a right to contest the claim of a materialman for various reasons. The owner of a building has a right to show the amount of the claim is excessive.

*Taylor v. Wahl*, 69 N. J. L., 471.

Surely the mere fact of the contesting of the claim of the materialman by the owner, when the owner is sued, does not change the status of the materialman's or owner's rights regarding the fund which is due to the contractor. The Court, in the case just cited, expressly says that it is a duty which the owner owes to the other claimants of the fund to contest a claim which he thinks is excessive or fraudulent. On page 473, the decision reads:

"The owner is in a position where other workmen and materialmen may claim that a duty is cast upon him to see that the claim made is just, because, if unjust, they may have rights in the fund. He may not be compelled to contest, or liable to other claimants who may be subsequent in priority of claim, if he fail to do so, that is not decided, but he certainly has the right to contest the claim made in any notice, similar to the no-

tice of the plaintiff in this case, and if it appear by the proof uncontroverted, or the jury so find, that the claim as made is excessive, to the knowledge of the claimant, the claimant cannot recover anything, and the owner is entitled to a verdict and judgment thereon in his favor. The principle controlling in such a case as this is the same as that declared by the Court of Errors and Appeals to apply where a notice to hold back is given to a city by a claimant against a contractor upon work done under a public contract. *Camden Iron Works v. Camden*, 19 *Dick. Ch. Rep.*, 743."

So that submitting himself to the jurisdiction of the law court, and defending the action therein, cannot preclude the complainant from insisting that the respondent company's rights as a judgment-creditor were lawfully determined and disposed of by the decree of interpleader in the Chancery action which he had subsequently pursued.

### POINT III.

#### **The decree of interpleader is conclusive as to the rights of the Woodward Lumber & Supply Company.**

The rule is well settled that an owner of a building, where a number of stop notices and claims have been filed against the fund due to his contractor, may avail himself of the right to file a bill of interpleader and bring any balance that is due on the contract into court. A long line of decisions, beginning with *Supt. v. Heath*, 2 *McCart.*, 22, firmly establishes this right.

The complainant, in the case *sub judice*, did file a bill of interpleader and deposited the money due or to grow due to his contractor with the Clerk in Chancery, and in such interpleader action the respondent company was made a party defendant. The Woodward Lumber & Supply Company then filed in said interpleader action, its claim wherein it based its right of action against the complainant upon the stop notice which it had served and the judgment it had recovered (see Schedule F, par. 8, p. 26; par. 9, p. 27). A decree of interpleader was signed by the Chancellor in this interpleader suit (see Schedule A, p. 13) which provides:

“And it is further ordered, adjudged and decreed that the said complainant upon depositing in this court the further sum of Forty-seven Dollars for interest on the said sum of Four hundred and thirty-five Dollars and twenty-three cents *be dismissed from the further prosecution of the suit, with his costs to be taxed and a counsel fee of Fifty Dollars, and paid by the Clerk of this Court out of the fund, and that he be released, acquitted and discharged from all claims or liability to either of the defendants in this suit, for, upon or by reason of said fund.*”

The respondent submitted itself to the jurisdiction of the Court of Equity in the interpleader action and litigated its claim with the other claimants and therefore is barred from any further proceedings based upon its claim, for the decree releases, acquits and discharges the complainant from any claims or liability to either of the defendants in said suit for, upon or by reason of the said fund.

And the order for distribution based upon the rights of the claimants, of whom this respondent

was one, awards the fund according to the order of priority which was determined upon litigation of the respective claims of the claimants and in this order for distribution no reference is made to any other claim which the Woodward Lumber & Supply Company may make against the owner by reason of its judgment (see Schedule D, p. 18). The claim of superiority, if indeed the Woodward Lumber & Supply Company possessed any such right, at any time, which we deny, should have been made as against the fund in the hands of the owner in the interpleader action and that question would have been determined by the Court of Chancery in said action, but not having been raised, the rights of the respondent herein are fixed and determined by the decree in that suit.

The determination of all the rights of the claimants by the decree of interpleader, amounts to a payment in full of the claim of the respondent company and it is estopped to set up any further claim by reason of said decree.

The learned Vice Chancellor, in his opinion, says that the defendant did not waive any right by accepting out of the moneys of the Court of Chancery, payment on account of its judgment and the reason he assigns therefor is "that it was the Woodward Company's material that helped to produce the fund, and it is entitled to have so much of it as it had a lien upon, applied upon account of the amount due on its judgment. It was for the benefit of Prusakowski that the defendant be permitted to accept part of the fund in payment of its judgment. If it had not done so, then the money paid to the Woodward Company would have been ordered paid to the other claimants" (Case, p. 56, ll. 13-22). It must be borne in mind, however, that this material was not purchased originally by the complainant but by the contractor who agreed

to erect the building and the contractor was primarily liable for the debt incurred. In selling this material to the contractor, the respondent assumed the risk of being paid in full by the said contractor because at no time was the complainant liable for the debt. The liability of the complainant arises only by reason of the Mechanic's Lien Act. The statement of the learned Vice Chancellor, that it was for the benefit of Prusakowski that the defendant be permitted to accept part of the fund because if it had not done so, the money would be paid to other claimants, is true, provided the decree of interpleader awarded the entire fund to claimants other than the respondent, but if the decree would have so provided, there can be no question but that the respondent's rights would have been entirely adjudicated by the said decree, and merely because the respondent helped to produce the fund is no reason why it should now be permitted to proceed in the enforcement of the collection of the difference between the amount of its judgment and the amount it received from the Clerk in the Court of Chancery. If this were so, every claimant in an interpleader action who is awarded only a part of his claim would have a right to proceed to collect the balance thereof merely because his material helped to produce the fund in the hands of the owner.

But it is argued, by the respondent, that in the decree of interpleader, leave was given to vacate the injunction after the order of distribution which was to be made therein (Case, p. 14, l. 34, etc.), and it urges that this reservation negatives any estoppel which may be claimed as against the respondent company because the restraint having been subsequently vacated, it has a right to proceed to collect the balance of its judgment and the Vice Chancellor, in his decision, seems to be of that opinion.

But this Court has determined this very question in the case of *McMurray & Brother v. Sisters of Charity*, 68 N. J. L., 312, which is directly in point.

In that case McMurray & Brother had in their possession an order accepted by the Sisters of Charity for payment to them of a sum of money due to the contractor who was erecting a building for the Sisters of Charity. There were several stops notices served upon the owner and a bill of interpleader was allowed and an injunction issued, in which injunction right was given to McMurray & Brother to prosecute their suit at law against the Sisters of Charity by reason of the acceptance of the order. McMurray & Brother, however, answered the bill of interpleader, took part in the proceedings, but the order of distribution made no provision for any payment to them, the fund having been awarded to other claimants. They then began suit to recover the amount of their claim and recovered judgment at law, and the Sisters of Charity appealed to the Court of Errors and Appeals to reverse the judgment on grounds directly applicable to this case.

Judge COLLINS, writing for the Court, says:

“As the claim of McMurray & Brother was limited to the fund on which other persons also made claim, the decree for an interpleader in respect to all claims against that fund was a full discharge of the complainant in that suit. That result of such a decree is well settled wherever equity practice prevails, and nowhere more firmly than in this Court. *Willison v. Salmon*, 18 *Stew. Eq.*, 257; *Hall v. Baldwin*, *Id.*, 858, 866.

McMurray & Brother, in their answer, expressly offered to submit themselves to such a decree. They asked, however, and the court

permitted them to reserve, the right to assert, at law, an alleged general liability of the complainant to them. That was not in accordance with the previous practice of the Court of Chancery, for it had been held, in that court, that the only course open on a contention of personal liability was to prove it, and, because of it, ask a dismissal of the bill as improperly brought. *Wakeman v. Kingsland*, 1 *Dick. Ch. Rep.*, 113, 117.

It was doubtless the reservation that was made from the injunctive part of the decree that moved the learned trial justice to the ruling now under review, but such a reservation could not destroy the normal effect, on the fund, of the decree as a discharge of the complainant with respect thereto. In interpleader cases, the protection of injunction is only needed *in limine*. After rendition the decree itself affords adequate protection as an adjudicated bar to the claims on the fund of the defendants thereto. \* \* \* The suit could proceed, but when, on the trial, it appeared—as we now judge—that the liability on the alleged acceptance was not general, but limited to a particular fund, the discharge of that liability effected by the decree presented a complete bar to recovery.”

In the case *sub judice*, the facts are even more against the respondent than in the *McMurray* case, because in the present case the Woodward Lumber & Supply Company based its action in the District Court upon the third section of the Mechanic's Lien Law, filed its claim as a defendant in the interpleader suit, basing its rights upon said section of the Lien Law and the judgment recovered thereon, presents its claim with the other creditors and ac-

*cepts* its proportionate share of the fund deposited by the owner in the Court of Chancery, without at any stage of the action suggesting any other liability against the owner separate and apart from the fund which he had in his hands or without maintaining at any time that by reason of the judgment it was entitled to any superior rights. It is, therefore, clear that the liability of the complainant being limited to the particular fund which he deposited in the Court of Chancery, the discharge of that liability effected by the decree of interpleader presents a complete bar to any alleged right on the part of the respondent to proceed with the collection of the balance of its claim.

#### POINT IV.

**Equity requires the cancellation of this judgment and the issuing of a permanent injunction from proceeding thereon.**

There is not one particle of equity or good conscience in favor of the Woodward Lumber & Supply Company in this case. The injustice appears more manifest when we consider that the Woodward Lumber & Supply Company, although it had received its share of the fund, seeks to collect from the complainant at this time even more than the amount of the judgment as it was originally obtained, because of the accrued interest.

If the Woodward Lumber & Supply Company had any superior rights by reason of its judgment, it should have maintained its rights against the fund which the complainant deposited in Chancery, and which was far in excess of the amount of the judgment recovered by the Woodward Lumber & Supply Company. Having failed to assert any such

claim, because in truth no such claim could at any time have been asserted, it now seeks, after the Court of Chancery has disposed of the fund, to recover from the owner individually an amount of money which at no time was due to the contractor or to any other person. All that the owner is liable at any time to contractors or materialmen is the amount due by reason of the contract, and that amount was deposited by the owner in the Court of Chancery. All the adverse claimants were adjudged to litigate their claims. The Woodward Lumber & Supply Company did so. It filed its claim, claimed no priority, in fact admitted the priority of the laborers to receive payment in full and does not set up any superiority of claim by reason of its judgment. For it to come in at this time and seek to sell the premises of the complainant to satisfy the balance of its claim is unjust, unfair and inequitable.

It is respectfully submitted that the decree of the Court of Chancery should be reversed, with costs, and that a decree be entered compelling the respondent to cancel its judgment now open of record, and that a permanent injunction issue restraining it from proceeding with the sale of the complainant's lands and premises.

Respectfully submitted,

HERSHENSTEIN & FINNERTY,  
Attorneys for Complainant.

CHARLES HERSHENSTEIN,  
Of Counsel.

NEW JERSEY

Court of Errors and Appeals

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BETWEEN

IGNATZ PRUSAKOWSKI,  
*Complainant-Appellant,*

*and*

THE WOODWARD LUMBER & SUP-  
PLY Co.,  
*Defendant-Respondent.*

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*On Appeal  
from Decree in  
Chancery.*

**Brief on Behalf of the Respondent.**

**FACTS.**

The appellant employed one Barnet Rudolff to erect a building for him under contract dated November 12th, 1907; the respondent furnished materials to Rudolff for the building to the value of \$358.56 (case, p. 34, lines, 10 to 20). Payment being refused on demand, the respondent, on November 12, 1907, served notice on the appellant under the 3rd section of the Mechanics Lien Law. Other material men and laborers also served notice on the appellant. The respondent commenced suit against the appellant in the Bayonne District Court on the notice served by it upon him. On December 24, 1908, judgment was rendered in favor of the plaintiff for the amount demanded, viz.: \$358.56, and \$21.56 costs (case, p. 34, line 30). This judgment was docketed in the Hudson County Court of Common Pleas April 1st, 1909 (case, p. 1, parg. 2, bill of complaint). Execution was issued thereon October 24, 1913 (case p. 36, line 20). No appeal was taken

by the appellant from the judgment of the District Court, nor was any action taken by him for relief from said judgment until after the execution was issued. On February 11th, 1914, more than five years after the recovery of the judgment he filed a bill of interpleader against the respondent, and all persons who had served notice upon him, and prayed for and obtained a temporary injunction restraining the respondent from proceeding under its execution for the enforcement of the payment of the judgment (case, p. 36, lines 30 to 40). On April 12th, 1915, a decree of interpleader was made, but it was ordered therein "that leave is reserved to the defendant the Woodward Lumber and Supply Co., upon notice to the complainant herein, to move for the vacation of the injunction heretofore issued in this cause, after the order adjudicating the rights and priorities of the several defendants herein to the fund deposited in Court, is made." On January 12th, 1916, an order of distribution was made, under which the respondent received \$142.99. The respondent, thereafter, on January 27th, 1916, in accordance with the leave reserved to it in the decree of interpleader, gave notice to the appellant of a motion to dissolve the injunction. On March 27th, 1916, the injunction was dissolved, the appellant consenting thereto (case, p. 44). The Sheriff was thereafter instructed to proceed with the execution (case, p. 39, line 3). On March 31, 1916, the appellant procured an order from the Hon. George G. Tennant, Judge of the Hudson County Common Pleas, requiring the respondent to show cause why the judgment should not be cancelled, and also restraining the Sheriff from proceeding on the execution. On the return of this order, after hearing the parties, Judge Tennant filed a memorandum denying the applica-

tion of the appellant (Schedule G, case, p. 17), and on July 24th, 1916, he made an order dismissing the rule to show cause (case, p. 45). The appellant thereupon filed his bill in the Court of Chancery praying for the cancellation of the judgment of the respondent, and for an injunction against it proceeding on its execution. An order to show cause was made with an ad interim restraint against the respondent, and also against the Sheriff proceeding under the said execution. His Honor, Vice Chancellor Lewis, after hearing the parties advised an order and decree discharging the order to show cause and dismissing the bill.

### POINT I.

#### **An action at law is maintainable on the service of a notice under the third section of the Mechanics Lien Law.**

It was so held in *Reeve vs. Elmendorf*, 9 Vr., p. 129. Approved in *Frank vs. Freeholders*, 10 Vr., p. 347.

In *Commonwealth Roofing Co. v. Ricco*, 81 Eq., p. 488, Chief Justice Gummere, in speaking for this Court, said:

“That an action at law by the laborer or materialman against the owner is a proper method of enforcing the right given by this section, has never been a matter of doubt since the decision by this Court in *Craig vs. Smith*, 37 N. J. L., 8 Vr., p. 549, as elaborated by Chief Justice Beasley in *Reeve vs. Elmendorf*.”

See also *Wightman vs. Brenner*, 11 C. E. Gr., p. 489, at p. 491, where Vice Chancellor Van Fleet expresses a similar opinion.

## POINT II.

**There is no difference between a judgment so recovered and a judgment recovered upon any other obligation to pay money.**

The effect of this judgment is that the Court of law adjudged that Prusakowski, the appellant, was indebted to the Woodward Company in the sum of \$358.56 and costs, which judgment is now conclusive.

## POINT III.

**A judgment at law can only be impeached in a Court of Equity for fraud in its concoction.**

The rule on this subject is thus laid down in *Stratton vs. Allen*, by Vice Chancellor Green, in 1 C. E. Gr., p. 229, and quoted with approval by Vice Chancellor Van Fleet, in *Mechanics National Bank vs. Burnet M'fg. Co.*, 33 Eq., p. 486 (at p. 489).

“Objections which relate to the regularity of a judgment, or the validity of the instrument upon which it is founded, constitute no ground for the interference of this Court. If the instrument upon which a judgment is entered is without consideration, or invalid, or if the judgment itself is unauthorized or illegal, the remedy for the party aggrieved would be by application to the Court in which the judgment is entered, or by writ of error. They are questions exclusively for the cognizance of those Courts. *It seems to be conclusively settled that a judgment can only be impeached in a Court of Equity for fraud in its concoction.*”

See also *Vaughn vs. Johnson*, 1 Stock.. p. 173.

Phillips vs. Pullen, 18 Stew., p. 5. Affirmed  
18 Stew., p. 831.

In *Brick et al. vs. Burr et al.*, 47 Eq., 2 Dick.),  
p. 189, Vice Chancellor Green said (at p. 191):

“To secure the interference of equity it will not suffice to show that *injustice* has been done by the judgment against which relief is sought. It must appear that the party has an equitable defense of which he could not avail himself at law, or had a good defense at law of which he was ignorant until after the time for making defense at law had passed, or that he was prevented from making his defense by fraud or artifice of his adversary, or by fraud, accident or mistake unmixed with any negligence of his own, or that his ground of interference is a matter of pure equity cognizance.”

Citing *Mechanics National Bank vs. Burnet M'fg Co.*, 6 Stew., p. 486, *Powers vs. Butler*, 3 Gr. (Chan.), 471, *Quackenbush vs. Van Riper*, Sax., p. 476. *Reeves vs. Cooper*, 1 Beasley, p. 223. *Kinney vs. Ogden*, 2 Gr. (Chan.), p. 168., and other cases in other jurisdictions.

He also says on page 192:

“*If the point was litigated in a Court of law and was within its jurisdiction equity will not interfere.*”

Citing *Vaughn vs. Johnson*, 1 Stock., p. 173. *Phillips vs. Pullen*, 18 Stew., p. 5. Affirmed 18 Stew., 830. *Simpson vs. Hart*, 1 Johnson (Chan.), p. 98.

The appellant defended the action in the District Court.

The appellant in the case now under consideration has not alleged any of the grounds set forth in the above cited cases to entitle him to relief in a court of equity. He does not allege that he had an equitable defense of which he could not avail himself at law, or that he had a good defense at law of which he was ignorant, until after the time to make the defense at law had passed, or that he was prevented from making such defense by fraud or artifice of his adversary, or by fraud, accident, or mistake unmixed with any negligence of his own.

It appears (case, p. 55), that all the stop notices referred to in his bill of complaint had been served upon him prior to November 24th, 1908, the date on which the summons was issued by the respondent out of the Bayonne District Court.

It would, therefore, appear that when the appellant submitted himself to the jurisdiction of the court of law and defended the action therein, he was fully cognizant of the fact that other parties had made claim against the moneys he had belonging to Rudolff, growing out of his contract with him for the erection of the building.

If he did not avail himself of such defense as he was then entitled to, in the District Court, he cannot now complain.

Equity cannot relieve him from any embarrassment which he may suffer by reason of his neglect to avail himself of a defense which he could have interposed in the court of law.

#### POINT IV.

##### **The appellant had a complete remedy at law.**

If he was aggrieved by the judgment of the Bayonne District Court he should have appealed. Having allowed his time to appeal to go by does not

entitle him to relief in a court of equity. The judgment is now conclusive.

If at the time of the action in the Bayonne District Court against him other notices had been served upon him, and there was not enough money to pay all in full, his remedy was to file a bill of interpleader and enjoin the prosecution of the suit of the respondent, but he *waived* that right and submitted himself to the jurisdiction of the District Court. He contested the action there. Judgment having been recovered against him it is final and conclusive. He is not now entitled to the aid of a court of equity to relieve him from the consequences of his own election to contest the right of the respondent to recover on his claim in a court of law.

The appellant's remedy was either by application to the Court in which the judgment was rendered or by appeal.

Mechanics National Bank vs. Burnett Mfg. Co., 6 Stew., p. 486.

#### POINT V.

**The respondent did not waive its right to collect its judgment by participating in the distribution of the fund.**

The respondent not only set up in its "concise statement" in the interpleader suit, the notices it served to entitle it to part of the fund (Schedule F, par. 4, case, p. 25), but also set up its judgment (Schedule F, par. 9, case, p. 26).

If the respondent had not proved its right to a portion of the fund, it would have been to the disadvantage of the appellant, because the total amount of the claims against the fund was

\$1,194.81, while the fund amounted only to \$482.23, the whole of the judgment of the respondent would have still been unpaid, whereas by the participation of the respondent in the distribution of the fund, the amount due on the judgment was reduced to the extent of \$142.99, the amount paid to it out of said fund.

The respondent did not voluntarily go into the Court of Chancery in pursuit of the fund. It was proceeding upon its judgment by issuing execution thereon, and had levied on the property of the appellant, when it was restrained by the Court of Chancery until the rights and priorities of the parties to the fund in Court were determined.

The notice so served constituted in equity an assignment *pro tanto* of the money then due, or thereafter coming due from the owner to the contractor.

Wightman vs. Brenner, 11 C. E. Gr., p. 489.

Kirkland vs. Moore, 40 Eq., p. 110.

Taylor vs. Reed, 68 L., p. 183.

Respondent had an inchoate lien on the fund.

Bayonne Bldg. Assn., No. 2, vs. Williams,  
59 Eq., 617.

It would be inequitable to relieve the appellant from the judgment recovered against him, because Barnet Rudolff, the original debtor has, since its recovery, been discharged from bankruptcy (see certificate of the Clerk of the U. S. District Court, case, p. 31). The respondent could therefore not recover against him, the original debtor.

## POINT VI.

**The decree of interpleader did not discharge the appellant from the payment of the judgment.**

The language of the decree is that "he (referring to the appellant) be released, acquitted and discharged from all claims or liability to either of the defendants in this suit for or by reason of *said fund.*" Not from the *judgment.* On the contrary, the decree expressly provides "that leave is reserved to the defendant, the Woodward Lumber and Supply Company, upon notice to the complainant herein, to move for the vacation of the injunction heretofore issued in this cause, after the order adjudicating the rights and priorities of the several defendants herein to the fund deposited in Court, is made." If Vice Chancellor Stevenson had concluded when he advised the decree of interpleader that the appellant would by such decree be discharged from the payment of the judgment, he would not have reserved leave to the respondent to move for the <sup>dissolution of the</sup> injunction when the rights and priorities of the parties to the fund had been adjudicated. Nor would he, after the decree of distribution had been made, have advised an order dissolving the injunction. The fact that he reserved such permission to the respondent and advised the dissolution of the injunction clearly indicates he did not consider that the judgment of the respondent was satisfied. If the appellant was aggrieved by the order of the Vice Chancellor he should have appealed therefrom.

Not having appealed, the decree must stand.

**POINT VII.****The respondent had an equitable lien upon the fund in Court.**

Stop notices served under the 3rd section of the Mechanics Lien Law, constituting an assignment *pro tanto* of the moneys due to the contractor, gives to the person entitled to such money thereunder, a lien upon the fund.

This Court has decided that material men have an inchoate lien on such funds.

Bayonne Building Association, No. 2, vs. Williams (59 Eq.), 14 Dick., p. 617.

It was, therefore, the right, if not the duty, of the respondent to have so much of the fund applied to the payment of its judgment as was not subject to prior liens of laborers.

**POINT VIII.****The appellant is guilty of laches in seeking relief from the judgment.**

The judgment was recovered in the District Court December 24, 1908, and docketed in the Common Pleas April 1, 1909 (case, p. 1, l. 20).

While the bill of interpleader under which an injunction was issued against the respondent proceeding to collect its judgment, was not filed until February 11, 1914 (case, p. 36, l. 31), more than five years after.

The appellant did not file his bill of interpleader until the respondent issued execution on its judgment and levied on his lands. The right of action against Rudolff, the original debtor, has in the meantime been barred by the statute of limitation.

**POINT IX.**

**The questions now before the Court are res judicata.**

If the appellant was aggrieved by the judgment of the Bayonne District Court he should have appealed. So long as that judgment stands it is conclusive. All the questions involved therein are settled. It was thereby determined that the appellant was indebted to the respondent in the sum of \$358.56 and costs.

The appellant sought to have the judgment cancelled by order of the Court of Common Pleas. He made an application for that purpose, and a rule to show cause was granted to him, requiring the respondent to show cause why the judgment should not be cancelled. After hearing, the Court of Common Pleas denied his motion and discharged the rule to show cause.

If the appellant was aggrieved by the order made by the Court of Chancery, giving the complainant leave to apply for the vacation of the injunction, or by the order dissolving it, he should have appealed from such orders.

The orders advised by Vice Chancellor Stevenson (1) reserving to the respondent leave to move for vacation of the injunction after adjudication of the rights and priorities of the several defendants to the fund, and (2), dissolving the injunction, are conclusive until reversed.

The appellant in this case should have appealed from such orders, instead of filing a new bill to restrain the respondent from proceeding upon its judgment.

See *West New York Silk Mill Co. vs. Laubach & Dixon*, 53 Eq., 8 (Dick. Ch.), p. 65.

If appellant was aggrieved by the order of Judge Tennant in the Common Pleas, he should have appealed therefrom.

#### POINT X.

#### **An injunction cannot issue until satisfactory security is given.**

The Chancery Act provides in substance that no injunction shall issue to stay proceedings at law in any personal action after verdict or judgment, unless a sum of money equal to the amount due at the time of such deposit, upon such judgment, with costs, shall be first deposited with the Clerk of the Court, or unless security by bond is given with the condition to abide such order and decree as the Chancellor shall make in the premises, or, if the bill be dismissed, to pay the amount of such judgment with costs and interest.

See *Comp. Stats.*, Vol. 1, p. 434, Sect. 64.

The statute is quoted in full in the conclusions of the Vice Chancellor (case, p. 57, line 30).

This statute applies as well to a bill of interpleader, where an injunction is prayed, as to other cases.

*Canal Co. vs. Bartlett*, 3 Eq., p. 9. See also

*Kinney vs. Ogden*, Admr., 3 Eq., p. 168.

*Marlatt vs. Perine*, 2 C. E. Gr., p. 49.

In *Phillips vs. Pullen*, 18 *Stew.*, p. 157, this Court held that a temporary injunction or stay order is within the statutory prohibition.

No bond or other security was deposited, filed or tendered before the restraining order made on July 21), 1916. ~~We believe that a bond has been filed since the making of the decree appealed from.~~

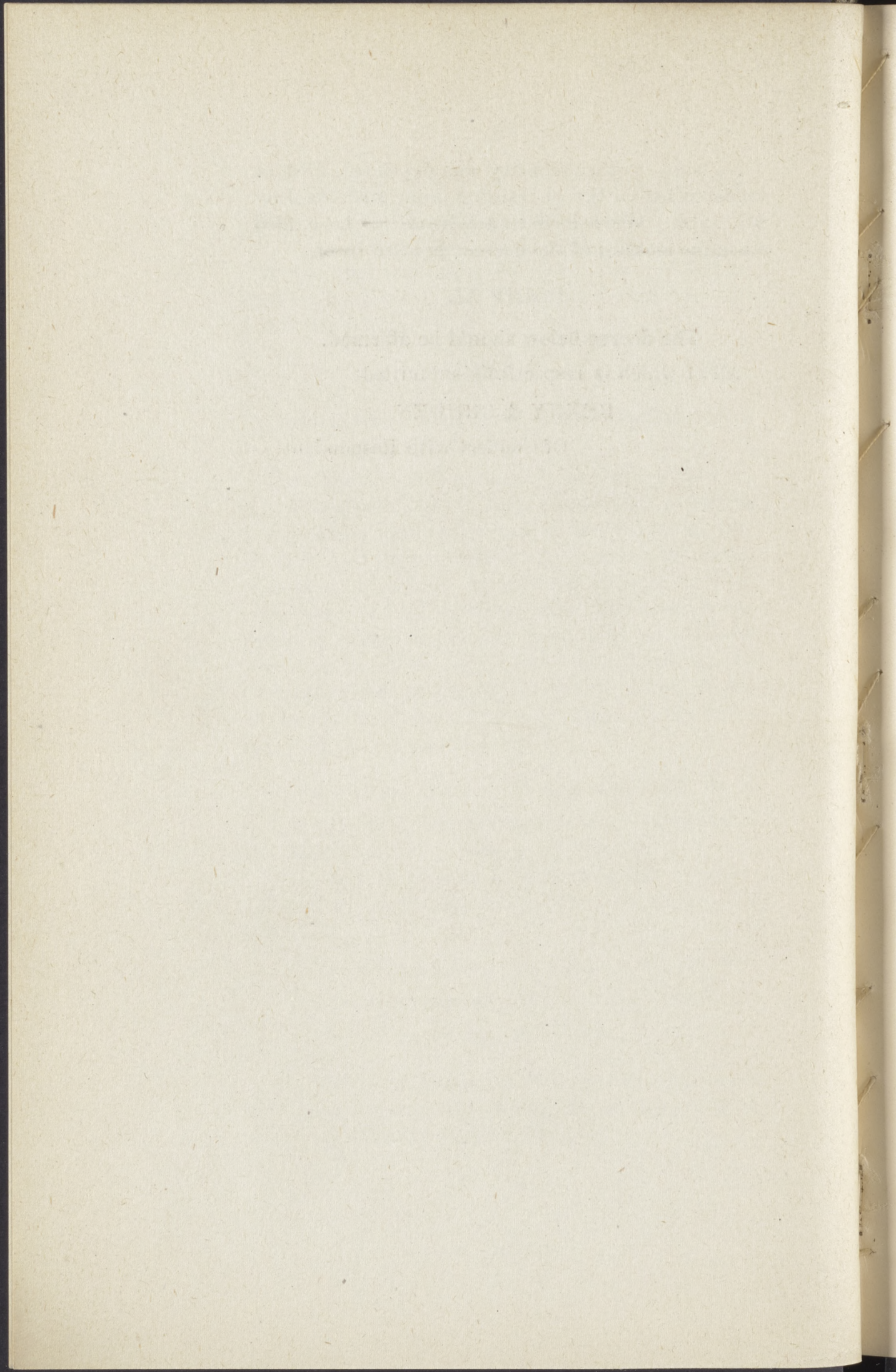
**POINT XI.**

**The decree below should be affirmed.**

All of which is respectfully submitted.

BENNY & CRUDEN,

Of Counsel with Respondent.

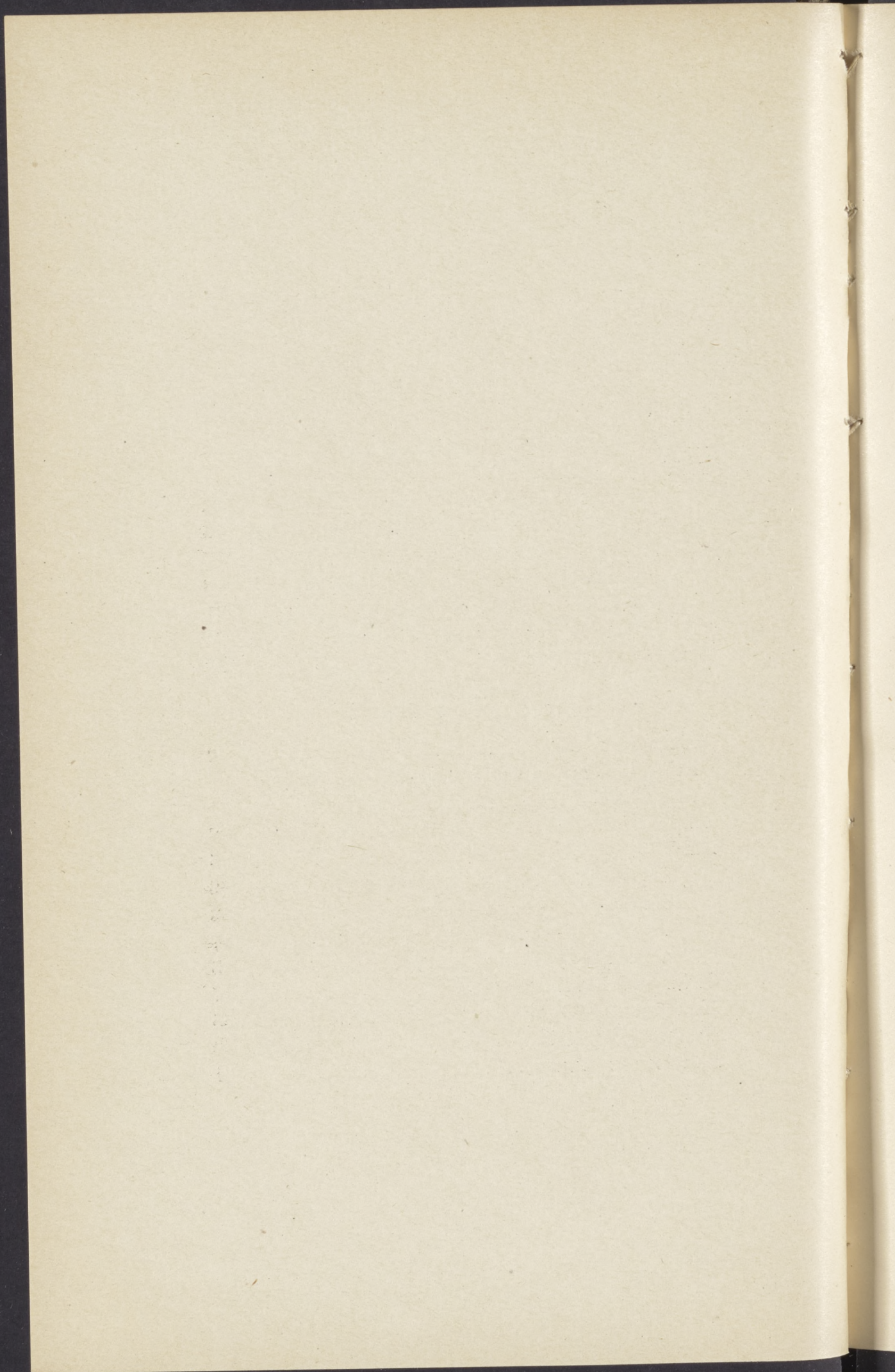


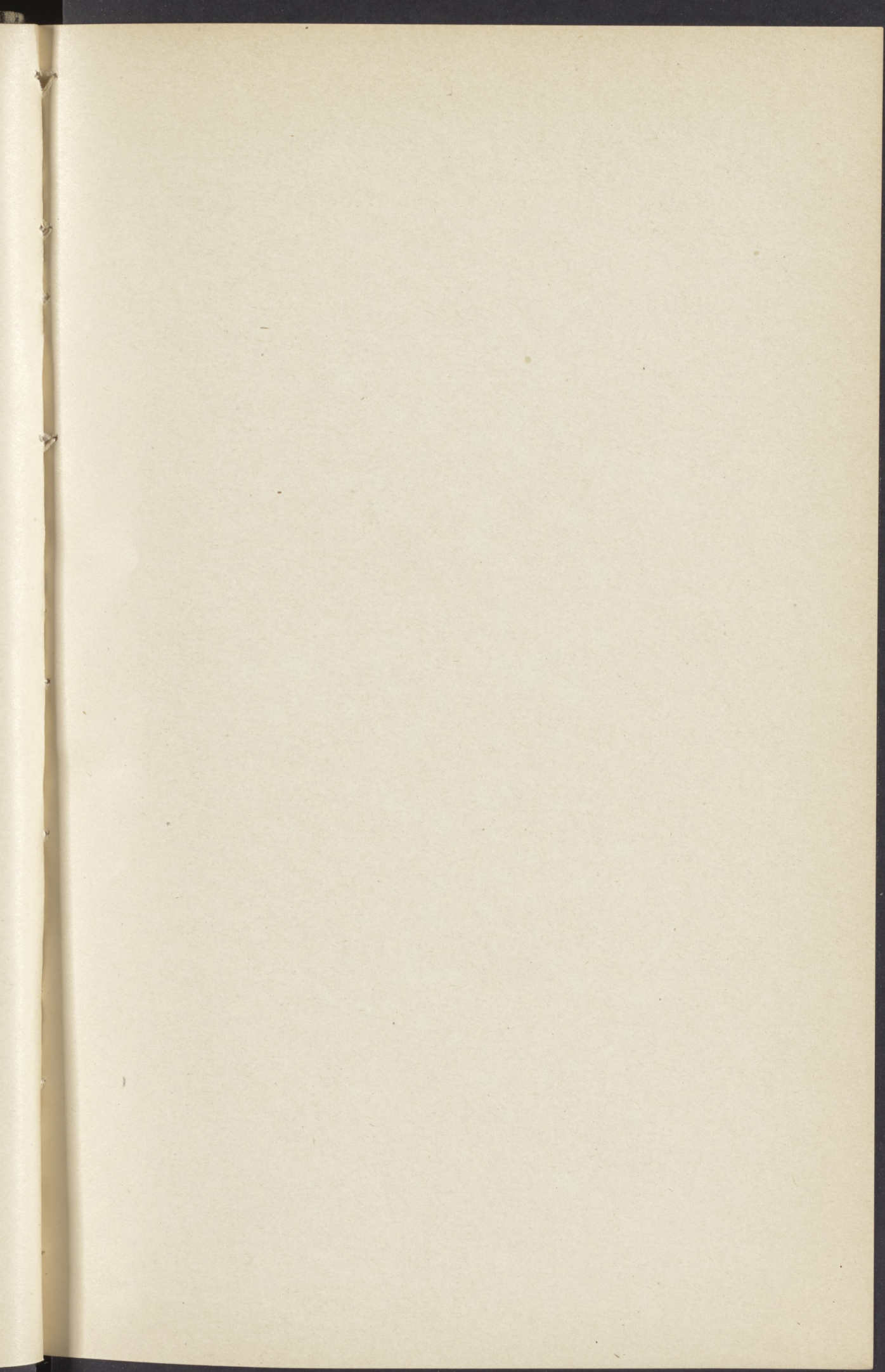
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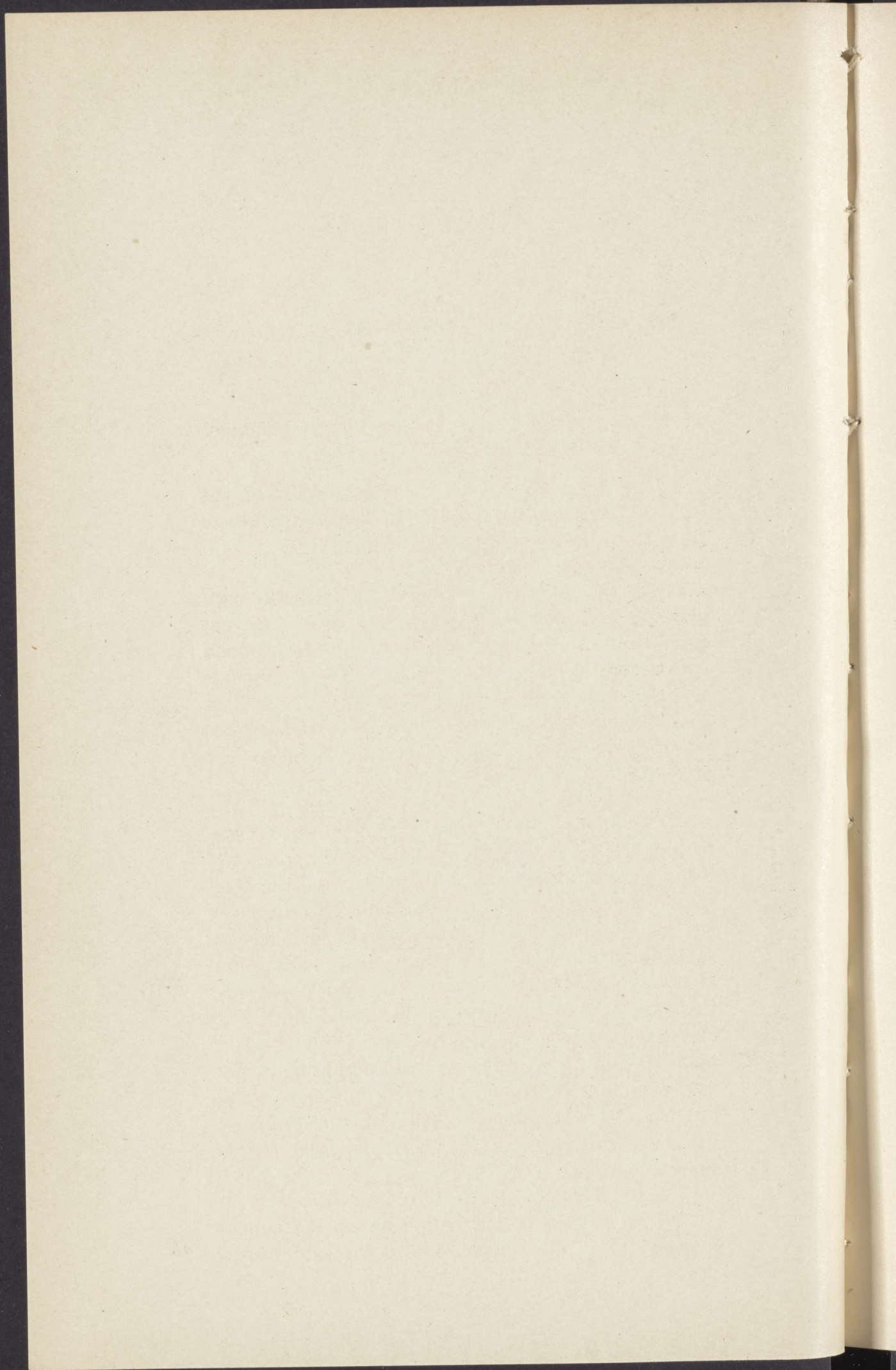
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**Bill of Complaint.**

*(Filed July 22, 1916.)*

*To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:* 10

The complainant, Ignatz Prusakowski, of the City of Bayonne, County of Hudson and State of New Jersey, respectfully shows that:

(1) On or about November 12th, 1907, the complainant entered into a contract with one Barnet Rudolff for the erection of a certain building upon land owned by the complainant on the easterly side of Avenue E between East 24th Street and East 25th Street, Bayonne, New Jersey, which contract was duly recorded in the office of the County Clerk of Hudson County. 20

(2) On May 11th, 1908, the Woodward Company, now known as the Woodward Lumber and Supply Co., did serve a stop notice upon the complainant notifying the complainant to retain the sum of \$358.56 due to it for material furnished to said Barnet Rudolff, the contractor. That thereafter on November 25th, 1908, the said Woodward Co., now the Woodward Lumber and Supply Co., instituted an action in the Bayonne District Court upon the stop notice against the complainant, and on December 24th, 1908, recovered judgment, which judgment was docketed in the Court of Common Pleas of Hudson County on April 1st, 1909, for the sum of \$382.84. 30

(3) Complainant had in his hands the sum of \$480.65, which money was due to the said Barnet 40

*Bill of Complaint.*

---

10 Rudolff, the contractor, and there was also served upon the complainant claims for labor due to Hillel Finkelstein, Jacob Cohn, Samuel Cohn, Ike Resnick, Max Katcher and Henry Lapidus for labor performed upon said buildings, whereupon your complainant did file a bill of interpleader making all of the parties interested defendants and the said Woodward Lumber and Supply Co. was included as one of the defendants in said bill of interpleader by reason of the claim due to it upon its said stop notice and judgment, and on April 12th, 1915, a decree of interpleader was granted to your complainant, a copy of which decree is hereunto annexed and made part hereof and referred to as Schedule A.

20 (4) That pending the proceedings upon the bill for interpleader, your complainant did obtain an injunction upon the said Woodward Company, now the Woodward Lumber and Supply Company, preventing it from proceeding upon its judgment at law which injunction was dissolved upon motion, a copy of said order dissolving the injunction being hereto annexed and made part hereof and referred to as Schedule B, and at the time of the said dissolving of the injunction, counsel for the complainant was informed by Vice Chancellor Stevenson, 30 who heard the motion, that in view of the action of interpleader and its results, the Court in which the judgment was obtained had jurisdiction to regulate its own judgment pursuant to the decree in the Court of Chancery.

(5) Whereupon your complainant did apply, pursuant to the suggestion of Vice Chancellor Stevenson, to the Court of Common Pleas to cancel the judgment on record against your complainant in favor 40 of the Woodward Company, now the Woodward

*Bill of Complaint.*

---

Lumber and Supply Co., which motion was denied, an opinion being filed by the Honorable George G. Tennant, Judge of the Court of Common Pleas, wherein he stated that the remedy of the complainant is in the Court of Chancery and not in the Court of Common Pleas, a copy of which opinion is hereto annexed and made part hereof and referred to as Schedule C. 10

(6) Complainant did deposit with the Clerk in Chancery all of the money in his possession due to the said contractor, Barnet Rudolff, and the said defendants did, among themselves, litigate the priority of the amounts of their claims and on January, 1916, an order for distribution was made out of this Honorable Court in the said interpleader action whereby the money in the hands of the Clerk in Chancery was distributed among all of the claimants of the said fund, and their proportionate share of the moneys actually paid out by the said Clerk in Chancery pursuant to said order for distribution, a copy of which order is hereto annexed and made part hereof and referred to as Schedule D. 20

(7) That by virtue of the said order, the defendant, the Woodward Lumber and Supply Co., did receive from the Clerk in Chancery \$142.99, the proportionate share due to it as provided in the said order for distribution. 30

(8) That, thereafter, the said Woodward Lumber and Supply Co. and its attorneys, Messrs. Benny and Cruden, did issue execution upon the said judgment recovered in the Bayonne District Court, and docketed in the Court of Common Pleas of Hudson County, and did direct the Sheriff to sell the premises owned by your complainant in satis- 40

*Bill of Complaint.*

---

faction of the moneys due by virtue of the judgment recovered in the District Court giving credit for the amount received from the Clerk in Chancery in the interpleader suit.

10 (9) The cause of action, upon which the Woodward Company, now the Woodward Lumber and Supply Co., did recover a judgment in the District Court of Bayonne, was based upon the stop notice pursuant to section #3 of the Mechanics' Lien Law, the state of demand in said action being hereto annexed and made part hereof and referred to as Schedule E.

20 (10) That the statement of claim of the Woodward Lumber and Supply Co., in the interpleader action in this Honorable Court, was also based upon the stop notice referred to, pursuant to section #3 of the Mechanic's Lien Law, a copy of which statement of claim being hereto annexed and made part hereof and referred to as Schedule F.

30 (11) That by reason of the decree of interpleader, and the money paid out to defendant by virtue of the order for distribution made in said cause, the said judgment was duly paid and satisfied and should now be cancelled of record in the District Court of the City of Bayonne and in the Court of Common Pleas of Hudson County.

40 (12) That unless this Honorable Court directs the defendant to cancel the said judgment recovered by the Woodward Lumber and Supply Co. against this complainant on December 24th, 1908, for the sum of \$380.09, which judgment was docketed in the Court of Common Pleas of Hudson County on April 1st, 1909, for the sum of \$382.84,

*Bill of Complaint.*

---

this complainant will be compelled to pay to this defendant a sum of money in excess of the money in his possession which was due to the contractor, Barnet Rudolff, for the erection of the said building hereinabove described which is contrary to law and equity, and by reason of the premises the enforcement of said judgment would work great hardship and fraud upon this complainant. 10

WHEREFORE, complainant is without adequate remedy in the Courts of Law and therefore prays:

(1) That the defendants, Woodward Lumber and Supply Company and Eugene F. Kinkead, Sheriff, may answer this bill of complaint without oath and each statement therein made.

(2) That the defendants, Woodward Lumber and Supply Company and Eugene F. Kinkead, Sheriff, their agents, employees or attorneys, be enjoined and restrained from proceeding upon the execution issued upon the judgment docketed in the Court of Common Pleas in favor of the Woodward Company, plaintiff, and against Ignatz Prusakowski, defendant. 20

(3) That the said defendant Woodward Lumber and Supply Co. may be decreed to cancel the judgment now on record in the Bayonne District Court, entitled the Woodward Company, plaintiff, against Ignatz Prusakowski, defendant, which judgment was recovered December 24th, 1908, for the sum of \$380.09, and the judgment now on record in the Court of Common Pleas of Hudson County, entitled the Woodward Company, plaintiff, against Ignatz Prusakowski, defendant, docketed April 1st, 1909, for \$382.84. 30

*Bill of Complaint.*

---

(4) That a writ of subpoena may issue demanding said defendants, Woodward Lumber and Supply Co. and Eugene F. Kinkead, Sheriff, to answer this bill of complaint and to abide by such decree as this Honorable Court may make in the premises.

10

HERSHENSTEIN & FINNERTY,  
Solicitors for Complainant.

CHAS. HERSHENSTEIN,  
Of Counsel.

20

30

40

**Affidavit of Ignatz Prusakowski.***Annexed to Bill of Complaint.*

IN CHANCERY OF NEW JERSEY.

Between

IGNATZ PRUSAKOWSKI,  
Complainant,

and

WOODWARD LUMBER AND SUPPLY  
COMPANY and EUGENE F. KIN-  
KEAD,  
Defendants.

10

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

20

IGNATZ PRUSAKOWSKI, of full age, being duly sworn according to law, up his oath, deposes and says:

(1) On or about November 12th, 1907, I did enter into a contract with one Barnet Rudolff for the erection of a certain building upon land owned by me on the easterly side of Avenue E between East 24th Street and East 25th Street, Bayonne, which contract was duly recorded in the office of the County Clerk of Hudson County.

30

(2) On May 11th, 1908, the Woodward Company, now known as the Woodward Lumber and Supply Co., did serve me with a stop notice notifying me to retain the sum of \$358.56 due to it for material furnished to said Barnett Rudolff, the contractor. That thereafter on November 25th, 1908, the said Woodward Co., now the Woodward Lumber and Supply Co., instituted an action against me in the Bayonne District Court upon the stop notice against me, and on December 24th,

40

*Affidavit of Ignatz Prusakowski.*

---

1908, recovered judgment which judgment was docketed in the Court of Common Pleas of Hudson County on April 1st, 1909, for the sum of \$382.84.

10 (3) I had in my hands the sum of \$480.65, which money was due to the said Barnet Rudolff, the contractor, and there was also served upon me claims for labor due to Hillel Finkelstein, Jacob Cohn, Samuel Cohn, Ike Resnick, Max Katcher and Henry Lapidus for labor performed upon said building, whereupon I did file a bill of interpleader making all of the parties interested defendants and the said Woodward Lumber and Supply Co. was included as one of the defendants in said bill of interpleader by reason of the claim due to it upon its said stop notice and judgment, and on April 20 12th, 1915, a decree of interpleader was granted to me.

30 (4) That pending the proceedings upon the bill for interpleader, I did obtain an injunction upon the said Woodward Co., now the Woodward Lumber and Supply Co., preventing it from proceeding upon its judgment at law, which injunction was dissolved upon motion, and at the time of the said dissolving of the injunction, counsel for me was informed by Vice Chancellor Stevenson, who heard the motion, that in view of the action of interpleader, and its results, the Court in which the judgment was obtained had jurisdiction to regulate its own judgment pursuant to the decree in the Court of Chancery.

40 (5) Whereupon I did apply, pursuant to the suggestion of Vice Chancellor Stevenson, to the Court of Common Pleas to cancel the judgment on record against me, in favor of the Woodward Company, now the Woodward Lumber and Supply Co., which motion was denied, an opinion being filed by

*Affidavit of Ignatz Prusakowski.*

---

the Honorable George G. Tennant, Judge of the Court of Common Pleas, wherein he stated that the remedy was in the Court of Chancery and not in the Court of Common Pleas.

(6) I did deposit with the Clerk in Chancery all of the money in my possession due to the said contractor, Barnet Rudolff, and the said defendants did, among themselves, litigate the priority of the amounts of their claims, and on January 12th, 1916, an order for distribution was made out of this Honorable Court in the said interpleader action whereby the money in the hands of the Clerk in Chancery was distributed among all of the claimants of the said fund, their proportionate share of the moneys actually paid out by the said Clerk in Chancery pursuant to said order for distribution. 10  
20

(7) That by virtue of the said order, the defendant, the Woodward Lumber and Supply Co., did receive from the Clerk in Chancery \$142.99, the proportionate share due to it as provided in the said order for distribution.

(8) That thereafter, the said Woodward Lumber and Supply Co. and its attorneys, Messrs. Benny and Cruden, did issue execution upon the said judgment recovered in the Bayonne District Court, and docketed in the Court of Common Pleas of Hudson County, and did direct the Sheriff to sell the premises owned by me in satisfaction of the moneys due by virtue of the judgment recovered in the District Court giving credit for the amount received from the Clerk in Chancery in the interpleader suit. 30

(9) The cause of action, upon which the Woodward Company, now the Woodward Lumber and Supply Co., did recover a judgment in the District 40

*Affidavit of Ignatz Prusakowski.*

---

Court of Bayonne, was based upon the stop notice pursuant to section #3 of the Mechanic's Lien Law.

10 (10) That the statement of claim of the Woodward Lumber and Supply Co. in the interpleader action in this Honorable Court was also based upon the stop notice referred to, pursuant to section #3 of the Mechanic's Lien Law.

(11) That by reason of the decree of interpleader, and the money paid out to defendant, by virtue of the order for distribution made in said cause, the said judgment was duly paid and satisfied and should now be cancelled of record in the District Court of the City of Bayonne and in the Court of Common Pleas of Hudson County.

20 (12) That unless this Honorable Court directs the defendant to cancel the said judgment recovered by the Woodward Lumber and Supply Co. against me on December 24th, 1908, for the sum of \$380.09, which judgment was docketed in the Court of Common Pleas of Hudson County, on April 1st, 1909, for the sum of \$382.84, I will be compelled to pay to this defendant a sum of money in excess of the money in my possession which was due to the contractor, Barnet Rudolff, for the erection of the said building hereinabove described, which is contrary to law and equity, and by reason of the premises the enforcement of said judgment would work great hardship and fraud upon me.

30

IGNATZ PRUSAKOWSKI.

Sworn to and subscribed before me  
this 20th day of July, 1916.

RIPLEY WATSON,  
Master in Chancery  
of N. J.

**Affidavit of Horace Roberson.***Annexed to Bill of Complaint.*

IN CHANCERY OF NEW JERSEY.

Between

IGNATZ PRUSAKOWSKI,  
Complainant,

and

WOODWARD LUMBER AND SUPPLY  
Co. and EUGENE F. KINKEAD,  
Defendants.

10

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

20

HORACE ROBERSON, of full age, being duly sworn according to law, upon his oath deposes and says:

(1) I am an attorney and counsellor at law of the State of New Jersey, and did represent Ignatz Prusakowski in all of the proceedings outlined in the bill of complaint, and did give him a substitution to Hershenstein & Finnerty to proceed in this cause.

30

(2) I did appear before Vice Chancellor Stevenson upon the motion dissolving the injunction which was obtained pending the proceedings upon the bill of interpleader, and upon the argument for dissolving said injunction, Vice Chancellor Stevenson did say to counsel that the Judge of the Court, out of which the judgment described in the bill of complaint was procured, had jurisdiction to control and cancel this judgment, and that application should be made to said Court for cancelling the

40

*Affidavit of Horace Roberson.*

---

judgment against the complainant, Ignatz Prusakowski.

(3) That thereupon an order was signed dissolving the injunction.

10 (4) That pursuant to the suggestion of Vice Chancellor Stevenson, I did make application to Judge George G. Tennant, Judge of the Court of Common Pleas of Hudson County, to cancel the judgment on record against this complainant in favor of the Woodward Company, now the Woodward Lumber and Supply Company, which motion was denied, an opinion being filed by the Honorable George G. Tennant, Judge of the Court of Common Pleas, wherein he stated that the remedy  
20 of the complainant is in the Court of Chancery and not in the Court of Common Pleas.

HORACE ROBERSON.

Sworn to and subscribed before me  
this 20th day of July, 1916.

HORACE K. ROBERSON,  
Master in Chancery  
of N. J.

30

40

**Schedule A.***Annexed to Bill of Complaint.*

IN CHANCERY OF NEW JERSEY.

Between

IGNATZ PRUSAKOWSKI,  
Complainant,

and

BARNET RUDOLPF *et als.*,  
Defendants.

10

On Bill, &c.,  
Decree of In-  
terpleader.

This cause coming on to be heard before the Court, in the presence of Roberson & Demarest, Solicitors for and of counsel with the complainant, and James Benny, of counsel with the defendant Woodward Lumber and Supply Company, Max Solinsky, of counsel with the defendant James Brady's Sons Company, and Aaron A. Melniker, of counsel with the defendants Hillel Finkelstein, Jacob Cohn, Samuel Cohn, Ike Resnick, Max Kalchter and Henry Lapidus, and the depositions of witnesses being taken, and the arguments of the respective counsel being heard, and it appearing to the Court upon consideration thereof that the complainant held the funds in his bill mentioned for the true owner, without having or claiming any right or interest therein, and that the sum of Four Hundred and thirty-five Dollars and twenty-three cents has been deposited in the Court to be delivered over to whomsoever may have the right thereto:

20

30

It is on this Twelfth day of April, Nineteen Hundred and fifteen by his Honor, Edwin Robert

40

*Schedule A—Decree of Interpleader.*

---

Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor does, by virtue of the power and authority of this Court, hereby order, adjudge and decree, that the said bill of interpleader is properly brought by the complainant in this cause, and that he is  
10 entitled to relief in this Court.

And it is further ordered, adjudged and decreed that the said complainant upon depositing in this Court the further sum of Forty-seven Dollars for interest on the said sum of Four Hundred and thirty-five Dollars and twenty-three cents, be dismissed from the further prosecution of the suit, with his costs to be taxed and a counsel fee of Fifty Dollars, and paid by the Clerk of this Court  
20 out of the fund, and that he be released, acquitted and discharged from all claims or liability to either of the defendants in this suit, for, upon or by reason of said fund.

And it is further ordered, adjudged and decreed that the said defendants do interplead, settle and adjust their several claims, demands and matters in controversy in this suit as between themselves, and that all the said defendants in this cause, do file concise statements of their several claims with the Clerk of the Court, within twenty days after  
30 service of a copy of this decree, which service shall be either personally or upon their respective solicitors, or by mailing a copy to their last known address.

And it is further ordered that leave is reserved to the defendant The Woodward Lumber and Supply Company upon notice to the complainant herein, to move for the vacation of the injunction heretofore issued in this cause, after the order adjudicating the rights and priorities of the several de-

*Schedule A—Decree of Interpleader.*

defendants herein, to the fund deposited in Court, is made.

EDWIN R. WALKER,  
C.

Respectfully advised,  
EUGENE STEVENSON, 10  
V. C.

A True Copy.  
Solicitors of Complainant.

**Schedule B.**

*Annexed to Bill of Complaint.* 20

IN CHANCERY OF NEW JERSEY.

Between IGNATZ PRUSAKOWSKI, Complainant,  and  BARNET RUDOLFF <i>et als.</i> , Defendants.	}	On Bill, &c. Order Dissolving Injunction. 30
---	---	--

It appearing that by virtue of an order made in the above-entitled cause, the money deposited by the complainant with the Clerk of this Court has been distributed among the defendants entitled to receive the same, and the complainant having con- 40

*Schedule B—Order.*

10      sented by a stipulation in writing that the injunction heretofore issued on the 13th day of February, 1914, restraining the Woodward Lumber and Supply Company, successors to the Woodward Company, from proceeding at law for the recovery of moneys claimed to be due by it from the complainant Ignatz Prusakowski may be dissolved and vacated,

It is thereupon on this 27th day of March, 1916, ordered, adjudged and decreed that the aforesaid injunction issued on the 13th day of February, 1914, be and the same is hereby dissolved and vacated.

E. R. WALKER,  
C.

20

Respectfully advised,  
EUGENE STEVENSON,  
V. C.

A True copy,  
ROBERT H. MCADAMS,  
Clerk.

30

40

**Schedule C.***Annexed to Bill of Complaint.*HUDSON COUNTY COURT OF COMMON  
PLEAS.

---

 WOODWARD LUMBER & SUPPLY  
COMPANY,

Plaintiff,

vs.

IGNATZ PRUSAKOWSKI,

Defendant.
 

---

10

On Motion to  
Cancel Judgment.

Mr. HORACE ROBERSON, for the motion.

Mr. ALLEN BENNY, opposed.

20

THE COURT (Tennant, J.):

In this case a judgment was entered against the defendant in the Bayonne District Court, and thereafter he filed a bill of interpleader in Chancery of New Jersey. In the Chancery proceedings an injunction against the proceedings at law was issued. After the determination of the interpleader suit, the Court of Chancery, *on consent of both parties*, dismissed the injunction. In the meantime the judgment of the Bayonne District Court was docketed.

30

Application is now made on motion to cancel the judgment on the ground that the defendant paid into the Court of Chancery all the money available on a stop-notice proceeding. I have held this matter for some time; but I am unable to see what jurisdiction I have in the Common Pleas to cancel the judgment. In my opinion the matter could have been, and should have been, disposed of in the

40

*Schedule C—Opinion.*

Court of Chancery, if the defendant was entitled to the relief he now seeks on this motion.

I will deny the motion.

(signed) GEORGE G. TENNANT.

10

**Schedule D.**

*Annexed to Bill of Complaint.*

IN CHANCERY OF NEW JERSEY.

20

IGNATZ PRUSAKOWSKI,  
Complainant,

vs.

BARNET RUDOLFF *et als.*,  
Defendants.

On Bill of Interpleader. Order for Distribution.

30

A decree of interpleader having heretofore on April 10th, 1915, been entered in the above-entitled cause, wherein it was ordered that the complainant, upon depositing the further sum of \$47.00 in this court, be dismissed from the further prosecution of this suit, and be discharged and acquitted from all claims of any of the defendants herein; and

It appearing that the said complainant deposited said sum of \$47.00 in addition to the sum of \$435.23 heretofore deposited by him, and that said sum is now deposited with the Clerk of this Court, less complainant's costs and counsel fee; and

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It further appearing that a copy of said decree was duly served upon all the defendants appearing

*Schedule D—Order for Distribution.*

in said cause, and that, thereafter, the defendants Hillel Finkelstein, Jacob Cohn, Samuel Cohn, Ike Resnick, Max Katcher, Henry Lapidus and the Woodward Lumber and Supply Company filed a concise statement of their respective claims against said fund, within the time provided by law; and

It further appearing that, thereafter, a day for a hearing upon the claims of the several defendants was duly designated, upon notice, and that notice of the time and place of said hearing upon said claims, was duly given to all the defendants entitled thereto, and the defendants Hillel Finkelstein, Jacob Cohn, Samuel Cohn, Ike Resnick, Max Katcher and Henry Lapidus, appearing by Aaron A. Melniker, their solicitor, and the defendant The Woodward Lumber and Supply Company, appearing by James Benny, Esquire, its solicitor, and the matter being heard and deposition taken, and the payment of the claim of the said Henry Lapidus having been waived by his said solicitor, and

It further appearing that the defendants Hillel Finkelstein, Jacob Cohn, Samuel Cohn, Ike Resnick and Max Katcher performed labor upon the building described in the Bill of Complaint herein, and are by virtue of the provisions of the Mechanics Lien Act, entitled to priority of payment out of said fund, and that, after said claims are paid, the balance, if any, should go to the Woodward Lumber and Supply Company;

It is thereupon, on this twelfth day of January, A. D. nineteen hundred and sixteen,

ORDERED, ADJUDGED AND DECREED that out of the fund in his hands, the Clerk of this Court pay to the said Aaron A. Melniker, solicitor of said defendants, the sums set opposite their names, together with interest from June 1st, 1908:

*Schedule D—Order for Distribution.*

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Samued Cohn,	\$70.00
Hillel Finkelstein,	73.00
Jacob Cohn,	52.60
Ike Resnick,	25.00
Max Katcher,	11.75.

- 10 And it is further ordered that the balance, if any, after the payment of commissions, to which the Clerk is by law entitled, be paid to James Benny, Esquire, solicitor for the Woodward Lumber and Supply Company.

Respectfully advised,  
EUGENE STEVENSON, V. C.

- 20 I hereby consent to the making and entry of the above order.

BENNY & CRUDEN,  
Solicitors of Defendant  
Woodward Lumber & Supply Co.

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**Schedule E.***Annexed to Bill of Complaint.*

## BAYONNE DISTRICT COURT.

Hon. FREDERIC CHAMBERLAIN,  
*Judge.*

THE WOODWARD COMPANY, a corporation,

Plaintiff,

vs.

IGNATZ PRUSAKOWSKI,  
Defendant.

10

On Contract.  
State of Demand.  
\$500.00.

The plaintiff demands from the defendant the sum of Five Hundred Dollars (\$500) for this, that the said plaintiff being engaged in the wholesale and retail lumber and building material business, sold, furnished and delivered to Barnet Rudolph, contractor, certain large quantities of lumber, timber and other building materials which were used and employed by him in the erection and construction of a certain building for Ignatz Prusakowski, under and by virtue of a contract in writing made between the said Ignatz Prusakowski, owner, and said Barnet Rudolph for the erection of a certain building upon a lot or curtilage of land, situate, lying and being on the Easterly side of Avenue E., in the City of Bayonne, in the County of Hudson and State of New Jersey, and known as lot in Block 263, which building is now fully completed, and the contract price therefor, to wit: the sum of Five Hundred dollars was due to the said Barnet Tucker prior to the beginning of this suit,

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*Schedule E—State of Demand.*

and the said Barnet Rudolph being indebted to the plaintiff in the said sum for such lumber, timber and other building material so used and employed by him in the erection of said building as aforesaid, the said plaintiff did demand from the said Barnet Rudolph the sum of Three hundred and fifty-eight  
 10 dollars and fifty-six cents (\$358.56), said sum being the exact amount due, which sum the said Barnet Rudolph, without cause, and contrary to law, refused to pay. Thereupon the said plaintiff caused notice of such demand and such refusal, to be served upon the said defendant Ignatz Prusakowski, the owner of the said building and the lot or curtilage of land upon which said building is erected, a copy of which notice is as follows:

20

Bayonne, N. J., May 11th, 1908.

To Mr. Ignatz Prusakowski:

TAKE NOTICE that there is due to us by Barnet Rudolph, contractor, the sum of three hundred and fifty-eight and fifty-six one hundredths dollars (\$358.56) for lumber furnished by us to the said  
 30 Barnet Rudolph in the erection and alteration of your dwelling house, situated on the Easterly side of Avenue E., between East Twenty-fourth and East Twenty-fifth Streets, this City, and we have demanded of him payment of same, and he has refused to pay us. We therefore notify you to retain the amount so due to us out of the amount owing by you to said contractor, and pay same to us.

(Signed) THE WOODWARD COMPANY,

By A. F. Woodward,  
 President.

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*Schedule E—State of Demand.*

Whereupon, by reason of the sale and delivery of the said lumber, timber and building materials by the plaintiff to the defendant to the use and employment by him in the erection of the said building for the said Ignatz Prusakowski, and the demand that the said Barnet Rudolph pay to the plaintiff the said sum and his refusal so to do, and the service of the said notice upon the said Ignatz Prusakowski, the said plaintiff hath a right of action against the said Ignatz Prusakowski, by virtue of an act of the Legislature entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting any building" and the supplements thereto; and the said defendant notwithstanding the duty to pay to the said plaintiff in and by virtue of the provision of the said act of the legislature has neglected and refused to pay the same, and therefore the plaintiff brings this suit. That the annexed bill, marked Schedule "A," is a true bill of particulars of the amount due to the plaintiff by the said Barnet Rudolph.

Judgment will be claimed for \$358.56, with interest and costs of suit to be added.

JAMES BENNY,  
Attorney for the plaintiff.

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**Schedule F.***Annexed to Bill of Complaint.*

IN CHANCERY OF NEW JERSEY.

10	Between IGNATZ PRUSAKOWSKI, <div style="text-align: right;">Complainant,</div> <div style="text-align: center;">and</div> BARNET RUDOLPH <i>et als.</i> , <div style="text-align: right;">Defendants.</div>	} On Bill, &c. Statement of Claim.
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20 STATEMENT OF CLAIM OF THE DEFENDANT, THE  
WOODWARD LUMBER AND SUPPLY COMPANY.

The following is a concise statement of the grounds of the claim of the Woodward Lumber and Supply Company, to the fund deposited in the above-entitled cause:

30 1. The defendant, the Woodward Lumber & Supply Company, furnished material to Barnet Rudolph, for the erection and construction of the building altered and additions erected thereto upon the lands of the complainant, which building and the lands are described in the bill of complaint in this cause.

40 2. That the said Barnet Rudolph entered into a contract in writing with Ignatz Prusakowski, the complainant, in and by which the said Barnet Rudolph agreed to make the said alterations and erect additions to the said building, which contract was duly filed in the office of the Clerk of the County of Hudson.

*Schedule F—Statement of Claim.*

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3. That the said defendant the Woodward Lumber and Supply Company furnished materials to the said Barnet Rudolph for the making of the said alterations and additions to the value of three hundred and fifty-eight dollars and fifty-six cents (\$358.56), the whole of which sum being still due and payable to the said defendant, together with interest thereon. 10

4. That on the 12th day of May, 1908, the Woodward Lumber and Supply Company demanded payment of the said amount from the said Barnet Rudolph and the said Barnet Rudolph refused to pay the same, whereupon the defendant, the Woodward Lumber and Supply Company, served notice upon the said Ignatz Prusakowski, setting forth that there was due to him by the said Barnet Rudolph, the said contractor, the sum of \$358.56, for lumber furnished by the said defendant to the said Barnet Rudolph in the erection and alteration of the dwelling house of the said Ignatz Prusakowski, situated on the easterly side of Avenue E, between East 24th Street and East 25th Street, in the City of Bayonne, and that said defendant demanded from the said Barnet Rudolph payment of the said amount, and that the said Barnet Rudolph refused to pay the same, and therein notified the said Ignatz Prusakowski to retain the amount so due to the said defendant, the Woodward Lumber and Supply Company, out of the amount owing by him to the said Barnet Rudolph, and to pay the same to the said Woodward Lumber and Supply Company. 20 30

5. That at the date of the sale and delivery of the said lumber, and of the demand for the pay- 40

*Schedule F—Statement of Claim.*

10 ment of the same from the said Barnet Rudolph, and of the service of the said notice upon the said Ignatz Prusakowski, the said Woodward Lumber and Supply Company was known as the "Woodward Company"; that the name of the said Woodward Company has since been changed by the filing of a certificate according to the statute in such case made and provided, to the name of the Woodward Lumber and Supply Company.

20 6. That the notice of the said Woodward Lumber and Supply Company is first in the order of service; that on the said 12th day of November, nineteen hundred and eight, the date on which the said Woodward Lumber and Supply Company served said notice, no other notice had been served upon the said Ignatz Prusakowski.

7. The Woodward Lumber and Supply Company claims to be entitled to the payment of the said money first out of the said fund, except in so far as there may be money due to laborers, who by the statute claim to have priority of payment.

30 8. The Woodward Lumber and Supply Company claims to be entitled to the payment of the said money by reason of the sale and delivery of the said lumber and materials, and the demand of the payment thereof, and the service of the said notice under the provisions of an act entitled "An act to secure to mechanics and others payments for their labor and materials in erecting any building" (Revision of 1898), and the several supplements and amendments thereto.

40 9. The defendant, the Woodward Lumber and Supply Company, also claims to be entitled to the said fund because on the 24th day of December,

*Schedule F—Statement of Claim.*

nineteen hundred and eight, it recovered judgment against the said Ignatz Prusakowski in the Bayonne District Court on the notice so served by it upon and demand made of the said Ignatz Prusakowski, the said judgment having been rendered for three hundred and fifty-eight dollars and fifty-six cents (\$358.56) damages and twenty-one dollars and fifty-three cents (\$21.53) costs of suit. 10  
The said judgment was docketed in the Common Pleas Court on the first day of April, nineteen hundred and nine, and execution was issued thereon on October twenty-fourth, nineteen hundred and thirteen.

BENNY & CRUDEN,  
Sol'rs of the Defendant,  
Woodward Lumber & Supply Company. 20

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**Temporary Restraint.***(Filed July 22, 1916.)*

IN CHANCERY OF NEW JERSEY.

10	Between IGNATZ PRUSAKOWSKI, Complainant,  and  WOODWARD LUMBER AND SUPPLY COMPANY and EUGENE F. KIN- KEAD, Sheriff, Defendants.	}	Order.
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20 Upon reading the bill of complaint in this cause, and the affidavits thereto annexed, and upon motion of Messrs. Hershenstein & Finnerty, solicitors of complainant, it is on this 21st day of July, 1916,

30 ORDERED, that the defendant Woodward Lumber and Supply Company do show cause before the Chancellor at Chancery Chambers, Jersey City, on the 31st day of July, 1916, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order of injunction should not be made restraining the defendant from proceeding upon a judgment recovered at law in the District Court of the City of Bayonne on the 24th day of December, 1908, entitled Woodward Company, plaintiff, against Ignatz Prusakowski, defendant, and docketed in the Court of Common Pleas of Hudson County, on the first day of April, 1909, until the further order of this Court.

40 And it is further ordered that the said defendant, its agents, attorneys, deputies and Eugene F.

*Temporary Restraint.*

Kinkead, Sheriff of the County of Hudson, in the meantime and until the further order of this Court resist and refrain from proceeding upon the judgment hereinabove mentioned and described.

And it is further ordered that the said Eugene F. Kinkead, Sheriff of Hudson County, desist and refrain from selling the premises of the complainant upon an execution issued upon the judgment hereinabove described until the further order of this Court in the premises with leave to adjourn the same from time to time. 10

And it is further ordered that a copy of this bill, affidavits and order be served upon the defendant, personally or by leaving same with Messrs. Benny & Cruden, solicitors and of counsel of defendant, and upon Eugene F. Kinkead, Sheriff of the County of Hudson, or in his absence, upon the Undersheriff of said County, within three days from the date of this order, which copies may be certified as true copies by the solicitors of the complainant. 20

E. R. WALKER,  
*Chancellor.*

Respectfully advised,

JOHN GRIFFEN,  
V. C.

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**AFFIDAVITS IN REPLY.***(Filed July 31, 1916.)***Affidavit of James Benny.**

IN CHANCERY OF NEW JERSEY

10	Between IGNATZ PRUSAKOWSKI, Complt.,  and  WOODWARD LUMBER AND SUPPLY COMPANY <i>et als.</i> , Defts.	}	On Bill, &c. Affidavit.
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20 STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, } ss.:

30 JAMES BENNY, being duly sworn, on his oath says that Barnet Rudolff, who entered into the contract with Ignatz Prusakowski to erect the building for him, is now a bankrupt; that he filed his petition in bankruptcy on October 11th, 1915, and was adjudged a bankrupt thereon; that he was discharged from bankruptcy July 10th, 1916, as will appear by the certificate of the Clerk of the United States District Court, dated August 1st, 1916, now in the possession of this deponent, a true copy of which is hereto annexed.

JAMES BENNY.

Sworn and subscribed to before me  
 this 2nd day of August, 1916.

HANNAH WALSH,  
 Commissioner of Deeds  
 of New Jersey.

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**Clerk's Certificate as to Discharge from  
Bankruptcy of Barnet Rudolff.**

*Annexed to Affidavit of James Benny.*

DISTRICT COURT OF THE UNITED STATES,

DISTRICT OF NEW JERSEY.

I, GEORGE T. CRANMER, Clerk of the District Court of the United States, for the District of New Jersey, do hereby certify that I have searched the records of said Court, and I do not there find any Proceedings in Bankruptcy under the Act of July 1st, 1898, nor do I there find remaining or unsatisfied of record any Judgment, Decree or other Lien, except as below set forth, against Barnet Rudolff, for twenty years last past. 10

New Bankruptcy vs. Barnett Rudolff, Bayonne, N. J.

Aaron A. Melniker, 585 Avenue C., Bayonne, N. Y., Attorney for Bankrupt; 20

October 11, 1915,—Petition filed, adjudication and order of reference to Elmer W. Demarest, Jersey City, N. J., Referee;

October 14, 1915,—Order of re-reference to George R. Beach, Jersey City, N. J., Referee;

November 8, 1915,—Order appointing Louis G. Hansen, Jersey City, N. J., Trustee;

January 10, 1916—DISCHARGE of Bankrupt. 30

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of said Court, at Trenton, in said District, this first day of August, A. D. nineteen hundred and sixteen, at 9 A. M.

GEORGE T. CRANMER,  
Clerk.

Per R. S. CHEVRIER,  
Deputy. 40

10c. revenue stamp.  
Fees, 80c.



*Affidavit of Albert F. Woodward.*

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Company would not sell him any lumber for the job, unless he gave the Company an order on the owner for the payment of at least \$200.00 out of the second payment and \$200 out of the third payment, and the bill for any extra material that might be delivered, and that if the owner of the building would accept the said order and agree to pay for the lumber, that then The Woodward Company would furnish the material. That I then prepared an order, on one of the letterheads of The Woodward Company, addressed to Mr. Ignatz Prusakowski, directing him to pay to The Woodward Lumber Company the sum of \$400 for the contract, and also for any extra material used in the erection and construction of his house on Avenue E, Bayonne, a copy of which order is annexed hereto and marked Schedule No. 1; the original of which order is now in the possession of Benny and Cruden, attorneys of the Woodward Lumber and Supply Company, and which original order I inspected to-day. That the said Barnet Rudolff then signed the said order. That on the same day I took the order to the said Ignatz Prusakowski and told him that Barnet Rudolff, his contractor, had requested The Woodward Company to sell him lumber for the erection of his, the said Prusakowski's house on Avenue E, but that The Woodward Company would not sell or furnish any lumber to Mr. Rudolff for the erection of such house, unless he, the owner, would agree to pay for the same; and I also informed him that I told Mr. Barnet Rudolff the same thing, and that said Rudolff then signed an order which I prepared, directing the said Prusakowski to pay the sum of \$400 for the contract, and also for any extra material, and I asked the said Ignatz Prusakowski whether he was willing to accept the said order and pay the amount therein directed to be paid by him to The Wood-

*Affidavit of Albert F. Woodward.*

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ward Company. He said that he was satisfied to do so, and he said he would sign the paper. That I then wrote upon the order the word accepted, and Mr. Ignatz Prusakowski signed his name thereunder. That after receiving acceptance of this order from Mr. Prusakowski, I notified Mr. Rudolff  
10 that Mr. Prusakowski had accepted the order, and that The Woodward Company was prepared to furnish the materials for the job.

Deponent further says that I had the personal supervision of the sale and delivery of the lumber to Mr. Barnet Rudolff, and that after the acceptance of this order by Mr. Prusakowski, The Woodward Company sold and delivered to Mr. Rudolff lumber for the said building of Prusakowski to the value of \$358.56.

20 Deponent further says, I demanded from the said Barnet Rudolff the payment of the said sum of \$258.56, but the said Barnet Rudolff neglected and refused to pay the same. That shortly after the delivery of the lumber by The Woodward Company, and before the completion of the building for the said Ignatz Prusakowski, the said Barnet Rudolff abandoned the said work and left the City of Bayonne, and was away from said City until the end of the year 1913, or the early part  
30 of 1914.

Deponent further says that The Woodward Company commenced suit in the District Court of the City of Bayonne, and procured judgment December 24th, 1908, for the sum of \$358.56 and \$21.53 costs of suit.

ALBERT F. WOODWARD.

Sworn and subscribed to before me  
this 28th day of July, 1916.

40 HANNAH WALSH,  
Commissioner of Deeds  
of New Jersey.

**Affidavit of James Benny.**

IN CHANCERY OF NEW JERSEY.

Between

IGNATZ PRUSAKOWSKI,  
Complt.,

and

WOODWARD LUMBER AND SUPPLY  
COMPANY *et al.*,  
Defts.On Bill, &c. 10  
Affidavit.STATE OF NEW JERSEY, }  
COUNTY OF HUDSON, } ss. :

JAMES BENNY, being duly sworn, on his oath 20  
says that he is a member of the law firm of Benny  
and Cruden; that he has personally attended to all  
the litigation between Ignatz Prusakowski and  
the Woodward Lumber and Supply Company, re-  
ferred to in the bill of complaint in this cause,  
and that he is therefore personally familiar with  
the details thereof.

Deponent further says that the said Woodward  
Lumber and Supply Company was originally in- 30  
corporated under the name of The Woodward Com-  
pany; that deponent prepared the necessary cer-  
tificates and resolutions of the said The Wood-  
ward Company for the change of its name to the  
Woodward Lumber and Supply Company; that  
the certificate for such change was made in the  
month of April, 1911, and was duly filed.

Deponent further says that he tried the case of  
the said Woodward Company against Ignatz  
Prusakowski in the Bayonne District Court, re-  
ferred to in the affidavit of Albert F. Woodward, 40

*Affidavit of James Benny.*

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10 one of the officials of the Woodward Lumber and Supply Company, on the 17th day of December, 1908. That the said case was defended in said Bayonne District Court by the defendant Ignatz Prusakowski; that he personally appeared with his attorney, Philip Botzong. That both sides were heard, and argument was made before the Judge of said Court, and that said Judge reserved his decision, and briefs were afterwards submitted, and that on the 24th day of December, 1908, the Judge of said District Court rendered judgment in favor of the plaintiff, The Woodward Company, for \$358.56 damages and \$21.53 costs of suit, making a total of \$380.09.

20 Deponent further says that he docketed the said judgment in the Hudson County Court of Common Pleas on April 1st, 1909, and that on October 24th, 1913, he caused execution to be issued thereon, and on November 1st, 1913, caused the Sheriff to make a levy upon the lands of the said Ignatz Prusakowski, referred to in the bill of complaint in this cause.

30 Deponent further says that after the levy was made, he notified the said Ignatz Prusakowski, either personally or through Roberson & Demarest, attorneys for Ignatz Prusakowski, that the Sheriff was about to advertise the said lands for sale to satisfy the said judgment. That thereupon the said Ignatz Prusakowski, on the 11th day of February, 1914, filed a bill of interpleader, in which bill he prayed for an injunction against the defendants therein, including the said Woodward Lumber and Supply Company, whereupon an injunction was issued on the 13th day of February, 1914, in and by which injunction all the defendants in said cause were commanded to absolutely desist and refrain from any and all further proceedings at law against the said Ignatz Prusa

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*Affidavit of James Benny.*

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kowski for the recovery of moneys claimed to be due from the said Ignatz Prusakowski, on account of the construction of the building mentioned and described in the bill of complaint in this cause.

Deponent further says that the said bill of interpleader was referred to the Honorable Eugene Stevenson, one of the Vice Chancellors of the Court of Chancery, and after hearing the parties in said cause, said Vice Chancellor advised a decree of interpleader, a true copy of which decree of interpleader is attached to the bill of complaint filed in this cause. 10

That this deponent represented the Woodward Lumber and Supply Company at the hearing of said matter before the said Vice Chancellor, and then and there applied for the dissolution of the injunction, theretofore issued, restraining the defendant Woodward Lumber and Supply Company from proceeding on its execution, or that such order should be made that would preserve the rights of the said Woodward Lumber and Supply Company under its said judgment, whereupon it was provided in said decree of interpleader as follows: 20

“And it is further ordered that leave is reserved to the defendant, the Woodward Lumber and Supply Company, upon notice to the complainant herein, to move for the vacation of the injunction heretofore issued in this cause after the order adjudicating the rights and priority of the several defendants herein to the fund deposited in court is made.” 30

Deponent further says that the several claimants to the said fund filed concise statements of their claims thereto according to the rules and practice of this court, and that this deponent files a statement of the claimant of the said Woodward Lumber and Supply Company, a true copy of which is also annexed to the bill of complaint in this cause. 40

*Affidavit of James Benny.*

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Deponent further says that all the parties entitled to any part of the said fund were heard by his Honor Vice Chancellor Stevenson, at Chancery Chambers, in the City of Jersey City, on the day of \_\_\_\_\_, 1915, and after hearing the evidence and the argument of counsel, an order of distribution was advised by him on January 12th, 1916, a copy of which order of distribution is annexed to the bill of complaint in this cause; and that the amount therein ordered paid to the Woodward Lumber and Supply Company was received for them by this deponent.

Deponent further says that after the making of the said order of distribution and the payment to the said Woodward Lumber and Supply Company of the amount directed to be paid to them, this deponent gave notice to the solicitors of the said Ignatz Prusakowski that application would be made to Vice Chancellor Stevenson on Monday, February 7th, 1916, at Chancery Chambers, in the City of Jersey City, at ten o'clock in the forenoon, or as soon thereafter as counsel could be heard for an order dissolving the said injunction, which application was continued from time to time at the request of the solicitors of the said Ignatz Prusakowski until March 27th, 1916, as will appear by a copy of the said notice and the continuance thereof and marked Schedule No. 1 more fully appear. That on March 27th, 1916, Roberson and Demarest, solicitors of the said Ignatz Prusakowski, entered into a stipulation in said cause, to the effect that the injunction issued therein might be dissolved and vacated, without costs to either party, a copy of which stipulation is hereunto annexed and marked Schedule No. 2.

That on said 27th day of March, 1916, an order dissolving the said injunction was advised by his

*Affidavit of James Benny.*

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Honor Vice Chancellor Stevenson, a copy of which order is hereunto annexed and marked Schedule No. 3.

Deponent further says that after the dissolution of the said injunction, this deponent instructed the sheriff of the County of Hudson to proceed to sell the said lands levied upon by him under the execution issued upon the said judgment so docketed in the Hudson County Court of Common Pleas aforesaid, and that shortly thereafter the said Ignatz Prusakowski filed a petition in the Hudson County Court of Common Pleas praying for the cancellation of the said judgment, on the ground that it ought to be satisfied, because the said Woodward Lumber and Supply Company had received the sum of \$142.00 as its share of said fund under the order of distribution made by the Court of Chancery in the aforesaid cause, whereupon the Honorable George G. Tennant, one of the judges of said Court of Common Pleas, made an order requiring the said Woodward Lumber and Supply Company to show cause at the Court House, Jersey City, on the 7th day of April, 1916, why the said judgment so recovered by the said Woodward Lumber and Supply Company against the said Ignatz Prusakowski should not be satisfied of record. That deponent represented the said Woodward Lumber and Supply Company on the return of the said rule to show cause, and the said Ignatz Prusakowski was represented by Mr. Horace Roberson. That the said matter was submitted to the Honorable George G. Tennant, the judge who made the said order to show cause, and after hearing the counsel for the respective parties he took the paper and reserved decision thereon, and on June 29th, 1916, he filed his conclusions denying the application, a copy of which conclusions is also annexed to the bill of complaint in this case.

*Affidavit of James Benny.*

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Deponent further says that upon the receipt of a copy of the conclusions so filed by his Honor George G. Tennant, this deponent wrote a letter to the said Ignatz Prusakowski advising him of the denial by Judge Tennant of his application to have the said judgment cancelled, and notified him that I would direct the sheriff to proceed to advertise and sell his property to raise the money necessary to pay the said judgment, unless some satisfactory arrangement was made by him for the payment of the judgment, whereupon the said Ignatz Prusakowski filed his bill of complaint, upon which the order now before the court was made. That an order was made by Judge Tennant denying the application of the said Ignatz Prusakowski for the satisfaction of said judgment and setting aside the said rule to show cause theretofore made, a copy of which order is hereunto annexed and marked Schedule No. 4.

Deponent further says that he has read the affidavit of the complainant Ignatz Prusakowski and of Horace Roberson, in which affidavits they set forth what Vice Chancellor Stevenson said during the hearing on the bill of interpleader hereinbefore referred to: that deponent does not suppose any oral statement made by the Vice Chancellor in the consideration of the matter then pending before him is either competent or relevant evidence to be considered in this application, but if it is competent to set forth what he did say, then this deponent says that the complainant Ignatz Prusakowski and Mr. Horace Roberson failed to set forth all that the Vice Chancellor said.

Deponent says that Vice Chancellor Stevenson stated that he must assume that sufficient facts were presented to the Bayonne District Court to warrant said Court in rendering judgment in favor of the Woodward Lumber and Supply Company and

*Affidavit of James Benny.*

against Prusakowski, who was defendant in said court. That if said Prusakowski was aggrieved by the judgment of the Bayonne District Court in matters of law, he should have appealed, and if the court was in error on matters of fact, he should have applied for a new trial, or at least have taken some action before that court. That said Prusakowski could have interposed the defense in said District Court that he had no money available to pay the amount claimed by said Woodward Company on the notice served by them, and if he could have maintained that defense, then no judgment could have been rendered against him, or if there were other claimants to the said fund, he could then, before judgment, have filed a bill of interpleader in Chancery, and thereby prevented said Woodward Company from recovering judgment, but having submitted himself to the jurisdiction of the District Court, and having failed either to obtain a new trial or to take an appeal, he did not see how the said judgment could be impeached in the proceeding then before him, and then suggested that if the said Ignatz Prusakowski had any remedy it was in the court in which the judgment was obtained.

JAMES BENNY. 30

Sworn and subscribed to before me  
this 31st day of July, 1916.

HANNAH WALSH,  
Commissioner of Deeds  
of New Jersey.





**Schedule No. 3.***Annex of the Affidavit of James Benny.*

IN CHANCERY OF NEW JERSEY.

10	Between IGNATZ PRUSAKOWSKI,  and  BARNET RUDOLPH <i>et als.</i> , Defendants.	}	On Bill, etc. Order Dissolving Injunction.
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20 It appearing that by virtue of an order made in the above-entitled cause, the money deposited by the complainant with the Clerk of this Court, has been distributed among the defendants entitled to receive the same, and the complainant having consented by a stipulation in writing that the injunction heretofore issued on the 13th day of February, 1914, restraining the Woodward Lumber and Supply Company, successors to the Woodward Company, from proceeding at law for the recovery of moneys claimed to be due by it from the complainant Ignatz Prusakowski may be dissolved and vacated,

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IT IS thereupon on this 27th day of March, 1916, Ordered, adjudged and decreed that the aforesaid injunction issued on the thirteenth day of February, 1914, be and the same is hereby dissolved and vacated.

Respectfully advised,

EUGENE STEVENS,  
 V. C.

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**Schedule No. 4.***Annex of the Affidavit of James Benny.*HUDSON COUNTY COURT OF COMMON  
PLEAS.

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 WOODWARD LUMBER AND SUPPLY  
COMPANY

vs.

IGNATZ PRUSAKOWSKI.  

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 Order Deny-  
ing Motion to  
Cancel Judg-  
ment.

Application having been made to this Court by  
Horace Roberson, attorney for the defendant Ignatz  
Prusakowski, in the above-entitled cause, for an  
order to cancel the judgment recovered therein, on  
the ground that the defendant paid into the Court  
of Chancery all the money available on a stop-notice  
proceeding, and the Court having on the 31st day of  
March, 1916, on motion of Horace Roberson, attor-  
ney for the defendant, made an order requiring the  
plaintiff the Woodward Lumber & Supply Com-  
pany to show cause on the seventh day of April,  
1916, why the judgment heretofore recovered by  
the said plaintiff against the said defendant should  
not be satisfied of record, and the parties having  
appeared, and having submitted to the Court the  
facts, and the Court having read the petition of the  
said defendant, and having heard the argument of  
Horace Roberson, of counsel for him, and having  
heard the argument of James Benny, of counsel  
with the said plaintiff, and having considered the  
same, and the court being of the opinion that the de-  
fendant is not entitled to the relief sought by him  
in his said application,

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*Schedule 4—Order*

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10 IT IS thereupon on this twenty-fourth day of July, in the year of our Lord one thousand nine hundred and sixteen, on motion of Benny & Cruden, attorneys of plaintiff, and in the presence of Charles Hershenstein, of counsel with the defendant, ordered that the said order to show cause made herein on the 31st day of March, 1916, be and the same is hereby set aside, and

IT IS further ordered that the application of the said defendant be and the same is hereby denied.

GEORGE G. TENNANT,  
J.

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**Order and Final Decree.***(Filed Jan. 30, 1917.)*

## IN CHANCERY OF NEW JERSEY.

Between

IGNATZ PRUSAKOWSKI,  
Complainant,

and

WOODWARD LUMBER & SUPPLY  
COMPANY,  
Defendant.

10

On Bill, etc.

This cause coming on to be heard in the presence  
of Hershenstein and Finnerty, Solicitors and of  
counsel with the complainant, and of Benny and  
Cruden, Solicitors and of counsel with the defend-  
ant, and the pleadings and proofs in said cause  
having been read, and the arguments of the re-  
spective counsel having been heard, and the said  
pleadings, proofs and arguments having been duly  
considered by the Court, and it appearing that the  
plaintiff heretofore entered into a contract with  
one Barnet Rudolph, for the alteration of a build-  
ing and additions thereto for the said Ignatz Prusa-  
kowski, in the City of Bayonne, and that the said  
Barnet Rudolph procured lumber and other build-  
ing material from the defendant the Woodward  
Lumber and Supply Company, and used the same in  
the alteration of the said building, and the erection  
of the said addition thereto, for the said complain-  
ant; that the said Barnet Rudolph became indebted  
to the said Woodward Lumber and Supply Com-  
pany for said lumber, in the sum of \$358.56, the

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*Order and Final Decree.*

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10 payment of which sum the said Woodward Lumber  
and Supply Company demanded from the said  
Barnet Rudolph, and he having refused to pay the  
same, it thereupon served notice upon the com-  
plainant herein under the third section of the me-  
chanics lien law, requiring the complainant to re-  
tain out of the money then due, or to become due  
by him to the said Barnet Rudolph under the said  
contract for the said alteration and addition to the  
said building, the amount so due by the said Barnet  
Rudolph to it, the said Woodward Lumber and  
Supply Company, and to pay the same to it, that  
the said complainant having refused to pay the said  
amount upon the service of the said notice, the de-  
fendant the Woodward Lumber and Supply Com-  
20 pany thereupon commenced suit in the Bayonne  
District Court upon the said notice against the said  
Ignatz Prusakowski, and that the said complain-  
ant appeared and defended the said action, and that  
a judgment was recovered in the Bayonne District  
Court by the said Woodward Lumber and Supply  
Company against the said Ignatz Prusakowski, for  
the said sum of \$358.56, and costs, amounting to  
\$21.53, or a total of \$380.09, and that the said  
judgment was docketed in the Hudson County  
Court of Common Pleas, on the first day of April,  
30 1909, and an execution was issued thereon to the  
Sheriff of the County of Hudson on October 24th,  
1913, and a levy was made by the said Sheriff on  
the lands of the said Ignatz Prusakowski; that  
thereupon the said complainant on the 11th day of  
February, 1914, filed a bill of interpleader against  
the said Barnet Rudolph, and joining as party de-  
fendant, the said the Woodward Lumber and Sup-  
ply Company, as well as all other persons who  
served notices under the mechanics lien law upon  
40 the said Ignatz Prusakowski, claiming to be en-

*Order and Final Decree.*

titled to any money which the said Ignatz Prusowski may then have had in his hands remaining unpaid to the said Barnet Rudolph under the said contract for the making of the said alterations and additions to the said building, with a prayer for an injunction against the defendant the Woodward Lumber and Supply Company restraining it from proceeding under its said judgment and execution for the collection of the amount of the said judgment, and also praying for an injunction against Eugene F. Kinkead, Sheriff of the County of Hudson, restraining him from selling the said lands to satisfy the said judgment, and that on February 13th, 1914, a preliminary injunction was issued restraining the said defendant the Woodward Lumber and Supply Company and the said sheriff from proceeding under the said execution; that on April 25th, 1915, a decree of interpleader was advised by Vice Chancellor Stevenson, which decree contained the following order modifying the injunction so issued against the Woodward Lumber and Supply Company: "And it is further ordered that leave is reserved to the defendant the Woodward Lumber and Supply Company upon notice to the complainant herein to move for the vacation of the injunction heretofore issued in this cause, after the order adjudicating the rights and priorities of the several defendants herein to the fund deposited in Court."

It was further ordered that the complainant be dismissed from the further prosecution of the suit; and that he be released, acquitted and discharged from all claims or liability to either of the defendants in this suit upon or by reason of said fund. That thereupon a statement of the grounds of the claim of the defendant the Woodward Lumber and Supply Company to the said fund was filed, setting up, among other things, the service by the Wood-

*Order and Final Decree.*

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ward Lumber and Supply Company of the said order under the third section of the Mechanics' Lien Law, and also the judgment recovered by it against the said Ignatz Prusakowski by the said order in the Bayonne District Court, as aforesaid; that on the 12th day of January, 1916, an order of distribution was made in the said interpleader suit, in and by which, after directing the payment of certain laborers who were adjudged to be entitled to a lien upon the said fund prior and paramount to the lien of the defendant the Woodward Lumber and Supply Company, and the payment of the costs of suit, it was ordered that the balance of the said fund be paid to the said Woodward Lumber and Supply Company, which balance amounted to \$142.99, and which balance was applied by the said Woodward Lumber and Supply Company on account of the amount due to it upon its said judgment against the said Ignatz Prusakowski, and

It further appearing that after the said order of distribution was made the said Woodward Lumber and Supply Company gave notice to the said Ignatz Prusakowski of a motion to dissolve the said injunction, and it also appearing that on March 27th, 1916, a stipulation was entered into by the solicitors of the said Ignatz Prusakowski, consenting that the said injunction be dissolved, and on the same day an order was made dissolving the said injunction, whereupon the said Woodward Lumber and Supply Company caused notice to be given to the sheriff of the county of Hudson to proceed with the enforcement of said execution so issued to him as aforesaid, and

It further appearing that on March 31st, 1916, an order was made by the Honorable George G. Tennant, Judge of the Hudson County Court of Common Pleas, requiring the said Woodward Lumber and Supply Company to show cause on April

*Order and Final Decree.*

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7th, 1916, why the said judgment recovered by it against the said Ignatz Prusakowski should not be satisfied of record, and that the said George G. Tennant, Judge of the said Court of Common Pleas of Hudson County, after hearing the proofs and the argument of counsel, on the 29th day of June, 1916, rendered a decision denying the motion to satisfy the said judgment, and on July 24th, 1916, the said Judge of the Hudson County Court of Common Pleas, made an order setting aside the said order to show cause, and denying the application to satisfy the said judgment, and that thereupon the said Woodward Lumber and Supply Company again caused notice to be given to the said sheriff to proceed with the enforcement of the said execution, whereupon the said Ignatz Prusakowski filed a bill in this cause praying for a decree that said judgment so recovered by the said Woodward Lumber and Supply Company against him be cancelled of record, and that said Company and the said Eugene F. Kinkead, Sheriff of the County of Hudson, be enjoined and restrained from proceeding upon the said execution issued upon the said judgment,

And it further appearing that all the stop notices under the mechanics lien law, referred to in the complainant's bill, had been served upon the said complainant prior to November 24th, 1908, the day on which the original process was issued out of the Bayonne District Court at the suit of the said the Woodward Lumber and Supply Company against the said complainant, and that he submitted himself to the jurisdiction of the said District Court and defended said action therein, and

It further appearing that it was the material furnished by the said Woodward Lumber and Supply Company that helped to produce the said fund heretofore deposited in and distributed by this Court,

*Order and Final Decree.*

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and it also appearing that the complainant failed to deposit a sum of money equal to the amount due upon the said judgment, with costs, at the time when he filed his bill in this cause, or to furnish other satisfactory security by bond to the said Woodward Lumber and Supply Company, conditioned to abide such order and decree as the Chancellor should make in this cause, or in case of dismissal of his bill of complaint, to pay the amount of such judgment, with costs and interest, as required by the statute in such case made and provided, and the Chancellor being of the opinion that all the questions and controversies involved in this cause have been settled, concluded and adjudicated by the above recited orders and decrees made in the said cause, wherein the said Ignatz Prusakowski filed a bill of interpleader against the said Woodward Lumber and Supply Company, and in which the fund then deposited in this court by the said Ignatz Prusakowski was distributed among those having liens thereon, and by the said decision and order rendered and made by the Honorable George G. Tennant, one of the Judges of the Hudson County Court of Common Pleas; and that the complainant failed to allege or prove that he had an equitable defense to said action at law in the Bayonne District Court of which he could not have availed himself in said action in said District Court; and that the said defendant did not waive its right to be paid the amount due to it upon its said judgment by accepting out of the fund so deposited in this Court as aforesaid by the said Ignatz Prusakowski the balance of said fund, after the payment out of the same of the amount of the claims of the laborers, whose liens were adjudged in the said cause to be prior to the lien of the defendant the Woodward Lumber and Supply Com-

*Order and Final Decree.*

pany; and that it was for the benefit of the said complainant that the said amount so paid to the said Woodward Lumber and Supply Company, be applied on account of the amount due on its said judgment instead of having been paid to the other claimants against the said fund; and that the complainant is not entitled to the relief prayed for in his said bill, nor to the writ of injunction prayed for therein. 10

IT IS on this 29th day of January, 1917, on motion of Benny and Cruden, Solicitors and of counsel with the defendant, ordered, adjudged and decreed, and the Chancellor doth by virtue of the power and authority of this Court, hereby order, adjudge and decree that the defendant the Woodward Lumber and Supply Company had a lien upon the moneys deposited in this court in the said cause, wherein the said Ignatz Prusakowski filed a bill of interpleader against the said Barnet Rudolph, and the Woodward Lumber and Supply Company, and others, subject only to the prior liens of such claims as were due to persons for labor performed in the alteration of the said building and the erection of the additions thereto, and that after the payment of said money, the said Woodward Lumber and Supply Company was entitled to receive the balance of the fund then in Court to the extent of the amount due to it upon its said judgment, with costs, and that the said the Woodward Lumber and Supply Company did not waive its right to proceed for the recovery of the balance due upon its said judgment by accepting the amount ordered to be paid to it out of the said fund so deposited in this Court, and that it is now entitled to proceed for the collection of the balance still due, upon the said judgment, and that the complainant is not entitled to any of the relief prayed for in his said bill, and 20 30 40

*Order and Final Decree.*

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10 is not entitled either to restrain the said Woodward  
Lumber and Supply Company, or Eugene F. Kin-  
kead, Sheriff of the County of Hudson, their agents,  
employees or attorneys from proceeding upon the  
execution issued upon the said judgment docketed  
in the Court of Common Pleas of the County of  
Hudson in favor of the said the Woodward Lum-  
ber and Supply Company, and against the defend-  
ant Ignatz Prusakowski, as aforesaid, and that the  
said complainant is not entitled to a decree can-  
celling the judgment as recovered in the Bayonne  
District Court by the Woodward Lumber and Sup-  
ply Company against the complainant Ignatz  
Prusakowski on December 24th, 1908, for the said  
sum of \$380.09, which includes the costs of said  
20 action, and which judgment was docketed in the  
Court of Common Pleas for Hudson County on the  
1st day of April, 1909, for \$382.84, which includes  
the costs of docketing, and that the order made  
herein on the 31st day of July, 1916, restraining  
the defendant the Woodward Lumber and Supply  
Company from proceeding upon its said judgment  
and restraining the said Eugene F. Kinkead, Sheriff  
of Hudson County, from selling the lands and prem-  
ises of the complainant upon the execution issued  
upon the said judgment, be and the same is here-  
30 by set aside, and

It is further ordered, adjudged and decreed that  
said bill be dismissed, with costs, and that the com-  
plainant Ignatz Prusakowski pay to the defendant  
the Woodward Lumber and Supply Company a  
counsel fee of fifty dollars, and that the defendant  
have execution therefor according to law and the  
rules and practice of this Court.

Respectfully advised,

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VIVIAN M. LEWIS,  
V. C.



*Opinion of Lewis, V. C.*

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ward Company in the District Court. He submitted himself to the jurisdiction of the law court, defending the action therein. He was fully cognizant of the fact that parties had made claims against any moneys he had belonging to Rudolph growing out of this transaction. I cannot agree with your contention that the defendant waived any right by accepting out of the moneys in the Court of Chancery payment on account of its judgment. It was the Woodward Company's material that helped to produce the fund, and it is entitled to have so much of it as it had a lien upon, applied upon account of the amount due on its judgment. It was for the benefit of Prusakowski that the defendant be permitted to accept part of the fund in payment of its judgment. If it had not done so, then the money paid to the Woodward Company would have been ordered paid to the other claimants.

There does not appear to be force in the suggestion that, because the defendant set up in its statement filed in the bill of interpleader the notice served by it as a ground for claiming part of the fund, it thereby waived its right to proceed with its execution for the balance thereof.

The answer, somewhat conclusive, to this claim is, that the defendant not only set up the notice it served to entitle it to part of said fund, but also set up its judgment.

The Woodward Company, in the statement filed by it in the eighth paragraph, claims to be entitled to part of this by reason of the service of the notice, etc., and in the ninth paragraph claims to be entitled to said fund by reason of its judgment.

The Woodward Company did not voluntarily go into the Court of Chancery. It was proceeding upon its judgment by issuing execution thereon, and

*Opinion of Lewis, V. C.*

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levying on the property of the complainant, when it was restrained by this court until the rights and priorities of the parties to the fund in the court were determined.

Upon this determination it appeared that the balance of the fund, after the payment of the laborers (Vice-Chancellor Stevenson having adjudged that the laborers under the amendment of the Lien Act had a prior lien upon the said fund from the Woodward Company), went to the Woodward Company. 10

An order was then made by the Vice-Chancellor dissolving the injunction restraining the defendant from proceeding on its execution.

This gives a clear indication of what his views were about the situation.

Further, it appears to me, that the contention of the defendant's solicitor that the injunction could not issue until the complainant had given satisfactory security to pay the judgment must be upheld. 20

The statutory provision regarding this is as follows:

"No injunction shall issue to stay proceedings at law in any personal action, after verdict or judgment, on the application of the defendant in the said proceedings at law, unless a sum of money equal to the amount due at the time of such deposit upon said verdict or judgment, with costs, shall be first deposited with the clerk of the court by the applicant for said injunction; and, on notice, said applicant shall give equal security by bond, as the Chancellor shall deem good, to the party or parties at law against whom such judgment is prayed, in double the amount then *due* on said verdict and judg- 30 40

*Opinion of Lewis, V. C.*

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ment of the cause at law, with the condition to abide such order and decree as the Chancellor shall make in the premises; or if the bill be dismissed, to pay the amount of such verdict and judgment, with costs, with interest thereon."

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In the case of the *Morris Canal and Banking Company v. Bartlett, Ayres and McFarland, 2 Gr.*, p. 9, which was a bill for interpleader and for injunction, it was held that the statute applies as well to a bill of interpleader where an injunction is prayed for as to other cases.

A true copy.

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ROBERT H. McADAMS,  
Clerk.

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**Notice of Appeal.***(Filed Feb. 5, 1917.)*

IN CHANCERY OF NEW JERSEY.

Between

IGNATZ PRUSAKOWSKI,  
Complainant,

and

WOODWARD LUMBER AND SUPPLY  
COMPANY,  
Defendant.

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The complainant hereby appeals from an order made by the Court of Chancery of New Jersey on the twenty-ninth day of January, 1917, in the above-stated cause, and from so much thereof as orders and adjudges that after the payment of the money deposited in the Court of Chancery by Ignatz Prusakowski in an interpleader suit filed by him in accordance with the order of said Court of Chancery made in said cause the said Woodward Lumber and Supply Company was entitled to receive the balance of the fund, and that the said Woodward Lumber and Supply Company did not waive its right to proceed for the recovery of the balance due upon its said judgment by accepting the amount ordered to be paid to it out of the said fund so deposited in this Court, and that it is now entitled to proceed for the collection of the balance still due upon the said judgment, and that the complainant is not entitled to any of the relief prayed for in his said bill and is not entitled either to restrain the said Woodward Lumber and Supply Company or Eugene F. Kinkead, Sheriff of the County of Hudson, their agents, employees or attorneys, from proceeding upon the execution issued upon the said

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*Notice of Appeal.*

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10 judgment docketed in the Court of Common Pleas  
of Hudson County in favor of the said Woodward  
Lumber and Supply Company and against the said  
Ignatz Prusakowski as aforesaid, and that the said  
complainant is not entitled to a decree cancelling  
the judgment as recovered in the Bayonne District  
Court by the Woodward Lumber and Supply Com-  
pany against the complainant, Ignatz Prusakowski,  
on December 24th, 1908, for the sum of \$380.09,  
which includes the costs of said action, and which  
judgment was docketed in the Court of Common  
Pleas for Hudson County on the first day of April,  
1909, for \$382.84, which includes the costs of docket-  
ing, and that the order made herein on the 21st day  
of July, 1916, restraining the defendant, the Wood-  
ward Lumber and Supply Company, from proceed-  
20 ing upon its said judgment and restraining the said  
Eugene F. Kinkead, Sheriff of Hudson County, from  
selling the lands and premises of the complainant  
upon the execution issued upon the said judgment,  
be, and the same is, hereby set aside, and that there-  
fore the bill should be dismissed, with costs, to the  
Court of Errors and Appeals in the last resort in  
all causes.

Dated, January 31st, 1917.

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HERSHENSTEIN & FINNERTY,  
Solicitors of Complainant.

CHAS. HERSHENSTEIN,  
Of Counsel.

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

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CHAS. HERSHENSTEIN,  
Of Counsel with Complainant.

**Petition on Appeal.***(Filed Feb. 5, 1917.)*NEW JERSEY  
COURT OF ERRORS AND APPEALS.

IGNATZ PRUSAKOWSKI, Complainant-Appellant,  VS.  WOODWARD LUMBER AND SUPPLY COMPANY, Defendant-Respondent.	}	On Bill, &c.
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*To the Honorable Court of Errors and Appeals in  
 the Last Resort in All Causes:*

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The petition of Ignatz Prusakowski, the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by an order made by the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the twenty-ninth day of January, 1917, wherein the said Ignatz Prusakowski is the complainant and the Woodward Lumber and Supply Company is the defendant, in this respect, to wit: That the said decree orders and adjudges that after the payment of the money deposited in the Court of Chancery by Ignatz Prusakowski in an interpleader suit filed by him in accordance with the order of said Court of Chancery made in said cause, the said Woodward Lumber and Supply Company was entitled to receive the balance of the fund, and that the said Woodward Lumber and Supply Company did not waive its right to proceed for the recovery of the balance due upon

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*Petition on Appeal.*

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10 its said judgment by accepting the amount ordered to be paid to it out of the said fund so deposited in this Court, and that it is now entitled to proceed for the collection of the balance still due upon the said judgment, and that the complainant is not entitled to any of the relief prayed for in his said bill and is not entitled either to restrain the said Woodward Lumber and Supply Company or Eugene F. Kinkead, Sheriff of the County of Hudson, their agents, employees or attorneys, from proceeding upon the execution issued upon the said judgment docketed in the Court of Common Pleas of Hudson County in favor of the said Woodward Lumber and Supply Company and against the said Ignatz Prusakowski as aforesaid, and that the said complainant is not entitled to a decree cancelling the judgment as recovered in the Bayonne District Court by the Woodward Lumber and Supply Company against the complainant, Ignatz Prusakowski, on December 24th, 1908, for the sum of \$380.09, which includes the costs of said action, and which judgment was docketed in the Court of Common Pleas for Hudson County on the first day of April, 1909, for \$382.84, which includes the costs of docketing, and that the order made herein on the 31st day of July, 1916, restraining the defendant, the Woodward Lumber and Supply Company from proceeding upon its said judgment and restraining the said Eugene F. Kinkead, Sheriff of Hudson County, from selling the lands and premises of the complainant upon the execution issued upon the said judgment, be, and the same is, hereby set aside, and that therefore the bill should be dismissed, with costs.

30 And your petitioner humbly appeals from that part of the order as aforesaid upon the ground that the same is erroneous, for that the said Court  
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*Petition on Appeal.*

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should have adjudged that the claim of the Woodward Lumber and Supply Company was fully paid and satisfied by the decree and order of distribution in the interpleader action aforementioned, and that the said defendant should have been decreed to cancel the judgment hereinabove referred to, and the said Woodward Lumber and Supply Company, their agents, employees and attorneys should be enjoined and restrained from proceeding upon the execution issued upon the said judgment. 10

Your petitioner therefore prays that the said order of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden.

And your petitioner further prays that he may have such relief in the premises as this Honorable Court shall seem meet. 20

HERSHENSTEIN & FINNERTY,  
Solicitors of Appellant.

CHAS. HERSHENSTEIN,  
Of Counsel.

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