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New York: J. B. Ford, 1884.

Petition of Appeal
(Filed Aug. 12, 1930.)
NEW JERSEY COURT OF ERRORS
AND APPEALS

The National Union Bank of Dover, Complainant-Appellee, vs. Martin C. Havens, et als., Defendants. Appeal of Benjamin D. Simmons, Defendant-Appellant. } On Appeal from the Court of Chancery	10
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PETITION OF APPEAL

To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Benjamin D. Simmons, the defendant-appellant in the above entitled cause, respectfully shows that: 20

1. Petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date July 14, 1930, in a certain cause in said Court of Chancery wherein the said The National Union Bank of Dover was complainant and the said Martin C. Havens and John M. Havens, Havensdale Farms, Inc., and the said Benjamin D. Simmons, conducting business under the business name of Decker & Simmons, were defendants, in this respect, to wit, that the said decree adjudges that the defendants Martin C. Havens and John M. Havens, by virtue of their transfer of the properties in said decree enumerated to Havensdale Farms, Inc., for the benefit of their creditors, have no long- 30

Petition of Appeal

- er any interest in any of the properties mentioned in said decree, or in any of the assets of the Havensdale Farms, Inc., or in the stock of said corporation, and that the conveyances to Havensdale Farms, Inc., being without consideration and for the benefit of the creditors of Martin C. Havens and John M. Havens, are void, and that Havensdale Farms, Inc., has no interest in any of the assets now belonging to said corporation and which were transferred to it
- 10 by the various deeds mentioned in said decree or by any other transfers, and orders that the receiver appointed by the said Court of Chancery proceed to dispose of all the assets of the defendant debtors, Martin C. Havens and John M. Havens, as represented by the transfers to and assets of Havensdale Farms, Inc., free from the lien of any and all the judgments in said decree mentioned against the defendant debtors and make distribution among all the
- 20 creditors, including Benjamin D. Simmons, pro rata, and that the complainant, the National Union Bank of Dover, be discharged from its office as trustee for the benefit of the defendant debtors' creditors and be relieved from all liability to such creditors for its administration of the defendant debtors' assets, and that the defendant Benjamin D. Simmons pay a counsel fee to the solicitor of the complainant of \$300, with costs, and that judgment may be entered
- 30 for the counsel fees granted.

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that the said Court of Chancery had no jurisdiction to decree that the defendant Martin C. Havens has no interest in the property and assets transferred by him to Havensdale Farms, Inc., or in the stock of said corpor-

Petition of Appeal

ation, or that said corporation has no interest in the property and assets transferred to it by the said Martin C. Havens, or to order that the receiver appointed by the said Court of Chancery proceed to dispose of said property and assets free from the lien of this appellants' judgment against the said Martin C. Havens, and had no jurisdiction to appoint a receiver of said property and assets, or to administer, dispose of or distribute said property and assets, or to discharge complainant as trustee or relieve it from its liability to the creditors of said Martin C. Havens for its administration of his property and assets, and should have discharged the receiver and dismissed the bill of complaint, and should not have awarded counsel fees and costs against petitioner; and further, said decree is erroneous in that it deprives this appellant of his lien on the property and assets of the said Martin C. Havens under his judgment against the said Martin C. Havens and the levies on said property and assets under the executions issued on said judgment, and bars this appellant from his right of action against the complainant for its administration of the capital stock of Havensdale Farms, Inc., received by it from said Martin C. Havens, and is contrary to the law of the land.

Petitioner therefore prays that the said decree of the said Chancellor may be reversed, set aside and for nothing holden, and that petitioner may have such other relief as to this Court shall seem proper.

Theodore E. Dennis,
Solicitor for and of
Counsel with Appellant.

Bill of Complaint

(Filed Dec. 7, 1929.)

BILL OF COMPLAINT**IN CHANCERY OF NEW JERSEY**

To His Honor, Edwin Robert Walker, Chancellor of
the State of New Jersey:

10 The National Union Bank of Dover, a corporation existing by and under the laws of the United States of America, with its principal office and banking place located in Dover, in the County of Morris and State of New Jersey, says:

1. By an article of agreement dated March 20, 1929, made by and between Martin C. Havens and John M. Havens, parties of the first part, and the creditors whose signatures are annexed to the said agreement, parties of the second part, did therein and thereby appoint petitioner, Trustee for the benefit of all the creditors of the party of the first part, which said agreement is annexed hereto, made part hereof and marked Schedule A.

2. That in and by said agreement the said Martin C. Havens and John M. Havens agreed to convey all their property both real and personal to the said Trustee and likewise deliver to it all the shares of stock of Havensdale Farms, Inc.

3. That prior thereto and on February 7th, 1929, 30 Martin C. Havens and Annie E. Havens, his wife, conveyed to Havensdale Farms, Inc., a corporation, two certain farms situate, lying and being in the Township of Wantage, County of Sussex and State of New Jersey, the first containing 155 acres, and the second farm which adjoins containing 192.22 acres; the first farm was conveyed subject to the encumbrance of a mortgage for \$14,450 held by the

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Farmers National Bank of Sussex; the second farm was conveyed subject to a mortgage of \$3,000 held by the First Baptist Church of Sussex. This deed was recorded on February 7th, 1929, in Book 308 for Deeds for Sussex County on pages 285 &c.

4. On the same day, said grantors conveyed to the Havensdale Farms, Inc., two lots in Dover, Morris County, one on Prospect St., and one on Blackwell St. This deed was dated February 7th, 1929, and is recorded in the Morris County Clerk's Office in Book N-31 for said County on pages 280 10 &c. The Prospect St. property is subject to a mortgage for \$3,000 now held by the National Union Bank of Dover, and the store property on Blackwell St. is encumbered by two mortgages totalling \$21,500, likewise held by the National Union Bank of Dover.

5. On April 15, 1929, John Martin Havens and wife conveyed to Havensdale Farms, Inc., a tract of land in the Town of Newton, in the County of 20 Sussex and State of New Jersey, being a house and lot on Trinity St. in said Town. This deed is recorded in the Clerk's Office of the County of Sussex in Book 308 of Deeds for said County on pages 283 &c. This house and lot is likewise encumbered by a mortgage of \$8,000 held by Sanford & Son of Lafayette, Sussex County, N. J.; thereafter on April 15, 1929, the said John M. Havens conveyed to Havensdale Farms, Inc., the same tract of land located 30 in the Town of Newton, County of Sussex, described in the aforesaid deed, which deed is likewise recorded in Book 308 for said County on pages 527 &c.

6. On February 7, 1929, said John Martin Havens and wife conveyed to Havensdale Farms, Inc., a house and lot situated on Prospect St. in the Town

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of Dover, in the County of Morris and State of New Jersey, which deed is dated February 7, 1929, and recorded in the Morris County Record of Deeds in Liber N-31 page 282 &c. This property is encumbered by a mortgage of approximately \$3,000, held by the Dover Building & Loan Association.

7. That all the stock of Havensdale Farms, Inc., has been turned over to said Trustee.

10 8. Complainant further shows that the said Martin C. Havens, one of the grantors above mentioned, had been conducting the two farms in Sussex County as a dairy farm, and was selling his milk in the Town of Newton and Borough of Sussex.

9. Complainant further shows that at the time of its appointment, it was represented to it, that all the creditors of Martin C. Havens, with claims in excess of \$100, were present, and the appointment of complainant as trustee was signed by twenty-
20 nine creditors aggregating about the sum of \$75,000.

10. Complainant accepted the appointment in good faith believing that all the creditors of the said Martin C. Havens with claims over \$100 were signatories to the said agreement. It now appears that said Martin C. Havens had many more creditors whose claims aggregate approximately \$18,000, and who were not parties to said agreement, that
30 while no suits have been instituted, threats have been made by some of the creditors not signatories to the agreement that they intended holding the bank personally responsible.

11. Complainant further shows that among others, that it received from the executors of the John K. Cook Est. in Dover, a claim setting forth that John K. Cook deceased, in his lifetime, with

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three others, including Martin C. Havens, were the endorsers on notes made by the North Jersey Steel Company, some of which notes were discounted at the bank of the petitioner; that the maker of the note was without any legal responsibility and that it was not a party to the agreement and making claim upon the bank that it would be held responsible for moneys distributed, unless the liability of Martin C. Havens in relation to his endorsement on the note was liquidated.

10

12. Complainant further shows that in good faith, it continued the operation of the farms under the management and control of said Martin C. Havens and his son, who were then on the farms. That the farms have not been a financial success; that there is on the farms a herd of about 72 cattle, which cattle are covered by a chattel mortgage of \$7,500 held by W. H. Sanford & Son, and which chattel mortgage is past due.

20

13. That Decker & Simmons of the Borough of Sussex, County of Sussex, New Jersey, obtained judgment against Martin C. Havens in which the suit was instituted and judgment obtained after the conveyance was made by Havens to the Havensdale Farms, Inc., above mentioned. Upon this judgment execution was issued and a levy made upon the farms hereinabove mentioned; said Decker & Simmons are signatories to the agreement creating and appointing the bank trustee under said agreement, in which they agreed and thereby released any and all properties levied on under said judgment, and thereby released from the lien of said judgment any property hereinafter mortgaged or sold by the trustee.

30

14. Among the other judgment creditors releasing their preference was Frank Snook and the Sus-

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sex & Merchants National Bank of Newton, likewise signatories under said agreement.

15. Your complainant has attempted to secure a sale of the said farms at Wantage Township, in Sussex County, for the sum of \$40,000.

16. Prior to this time and at a meeting held in Dover, the creditors present and representing the majority in amount had authorized the Trustee to sell the farms, cattle, machinery, &c., for the sum of \$40,000. This offer fell through and the offer of \$30,000 for the farms and milk route and \$36,000 for the farm, cattle and milk route was the only bona fide offer it has received.

17. When this offer was made, notwithstanding the fact that Decker and Simmons had signed the agreement and waived their lien, Decker & Simmons insisted upon receiving their money in full on the sale, or accepting a second mortgage for the amount of their judgment on the premises, and refused to release the lien as in and by said agreement they had undertaken to do.

18. Complainant further shows that it was unwilling to acknowledge the alleged lien of Decker & Simmons, and could not give them preferential position in reference to the distribution of the moneys; that if they were paid in full, in the opinion of complainant, the creditors signing the agreement would probably receive 50% of their claims more or less, depending entirely upon the amount realized.

19. Complainant further shows that the creditors who are not signatories to the agreement as far as the complainant is able to ascertain and their post office addresses, are as follows:

American Art Works Co., Coshollon, Ohio
S. C. Hume, Dover, N. J.

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- Greer Youngs, Newton, N. J.
 Newton Garage Co., Newton, N. J.
 Edwin Gould, Sussex, N. J.
 R. S. Huff, Newton, N. J.
 George Dymock, Sussex, N. J.
 O. P. Armstrong & Co., Lafayette, N. J.
 E. T. Thompson Estate, Greendell, N. J.
 Sussex Independent, Sussex, N. J.
 Dover Boiler Works, Dover, N. J.
 Charles Blume, Benj. Yanowsky, Care Harry Silver- 10
 stein, 60 Park Place, Newark, N. J.
 Sussex Garage Co., Sussex, N. J.
 Whitfield Gray, Newton, N. J.
 Sussex County Trust Co., Newton, N. J.
 William F. Cooper, Dover, N. J.
 First National Bank of Morristown, Morristown, N.
 J.
 James Trudgeon, Sussex, N. J.
 Billings-Chapin Co., 438 Pearl St., New York 20
 J. A. Roof, Newton, N. J.
 Louis Larison, Sussex, N. J.
 V. Edsall, Hamburg, N. J.
 Calvin C. Huff, 687 Kearny Ave., Arlington, N. J.
 Neurs Food Co., Auburn, N. Y.
 Amos Kimble, Sussex, N. J.
 N. J. Power & Light Co., Dover, N. J.
 J. T. Doremus Co., 66 Washington St., Paterson, N.
 J. 30
 Boss & Seiple, Inc, Newton, N. J.
 C. J. Styger, Sussex, N. J.
 York Ice Machine Co., 42nd St. & 2nd Ave., Brook-
 lyn, N. Y.
 Walter Taylor, Lafayette, N. J.
 Sundstrom Electric Co., Dover, N. J.
 Andrew Roderer, Dover, N. J.

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The Kerr Co., Dover, N. J.
 Frank Weeks & Co., Dover, N. J.
 Baker & Reiger, Inc., Dover, N. J.
 Harry L. Ike, Dover, N. J.
 Olaf Berg, Dover, N. J.
 Lankering Cigar Co., 13 Clark St., Paterson, N. J.
 Mansion House Garage, Dover, N. J.
 John P. Force, Dover, N. J.
 F. R. Mayberry, Dover, N. J.
 10 J. W. Farrow, M. D., Dover, N. J.
 Estate John K. Cook, Dover, N. J.
 Morris & Downing, Newton, N. J.
 First Baptist Church, Sussex, Sussex, N. J.
 F. L. Fritts, Dover, N. J.
 Harry M. Roche, Dover, N. J.
 William Hosking, Dover, N. J.

20. Complainant feels that the dairy farms in Sussex County, together with the machinery and equipment and the milk route should be sold at the earliest possible moment; that the same is unprofitable and the value of the cows is deteriorating, and there is insufficient fodder to carry them through the winter season.

21. Complainant further shows that it has received an offer from Elmer Floyd of Nanuet, N. Y., of \$36,000 for the dairy farms, the cattle thereon, farming machinery, equipment, and the milk route.

30 That the chattel mortgagee with the lien on the cattle has agreed to continue his mortgage with the purchaser, if the trustee makes sale.

22. If the sale is made at this price, there will be due and payable to L. N. Simmons, the real estate agent, the sum of 5% commissions on the sale price of \$36,000.

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23. In order to carry out this offer, the sum is computed in the manner following:

Mortgages thereon	\$14,000
Chattel Mortgage on cows	7,500
Conditional bill of sale on creamery .	1,500
Conditional bill of sale on truck	350
Cash	11,500
2nd Mortgages to be given	1,150
	—————\$36,000

24. There is a conditional bill of sale on the 10
truck and creamery equipment amounting to about
the sum of \$1,850, which must be deducted from
the purchase price, besides some taxes and insur-
ance and interest.

25. Complainant further shows that Martin C.
Havens desires the farm and farm machinery, cat-
tle &c., sold at public sale.

26. Complainant has found the proposed trustee-
ship absolutely unworkable; the main reason being 20
that only a percentage of the creditors of Martin
C. Havens are signatories to the trust agreement.
It is in doubt whether it can make a valid convey-
ance of the farms above described, to Mr. Floyd, or
to any purchaser, for that reason. It is in doubt
whether the property should be sold at a public or
private sale, and if so, upon what terms and what
conditions. It is in doubt as to its right to sell any
of the other real estate now in the name of Havens- 30
dale Farms, Inc., without having the unanimous con-
sent of all the stockholders. It is in doubt whether
it has a right to make distribuion of any funds
which are now in its hands, or which may hereafter
come into its hands, without the unanimous consent
of all the stockholders, and if it has such right, as
to what class of creditors would be entitled to dis-
tribution, and to what extent.

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Your complainant asserts that the properties are deteriorating in value, and that any appreciable delay would cause a great depreciation in the assets now in the hands of your complainant.

10 Your complainant further states that it cannot carry out its trust, due to the informal manner of its appointment, and the lack of consent of all the creditors thereto, your complainant believes it best for the interests of all the creditors that a custodial receiver, clothed with the power and authority of this Court, as such, and subject to the control of this Court, should be appointed to take over the assets and administer the said insolvent estate.

Your complainant is without adequate remedy in the Courts of law, and therefore prays:

1. That complainant may be authorized and empowered by order of this Court to sell said farms for \$30,000 or the farms and equipment and milk route
20 for \$36,000, or that it be directed to sell the farms and/or equipment at public auction, and to make, execute and deliver good and sufficient deed or deeds therefor, and a bill of sale for the personal property.

2. That by order of this Court, said Decker & Simmons shall be held not to have a preferred lien by virtue of their said judgment and that said premises may be sold free, clear and discharged therefrom.

30 3. That if it shall be found inequitable to make an order directing this Trustee to convey the property, then that a receiver may be appointed by this Court with authority to take over all the assets of said Martin C. Havens and John M. Havens, now in the hands of said Trustee or remaining in the hands of the said Martin C. Havens, and John M. Havens,

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and that said Trustee may be discharged by this Court from any further duties thereunder, except those arising from an accounting of the funds received by it, its disbursements therefrom and turning over the remaining funds in its hands to the receiver.

4. That a rule to show cause may be granted by this honorable Court in such form as the Court may direct to be served on the creditors signatories to said agreement and the other creditors of said Martin C. Havens and John M. Havens, in the manner therein directed, directing them and each of them to show cause before this Honorable Court at a time and place therein specified, why said Trustee should not be directed to sell and convey said farms for the sum of \$30,000, or said farms, equipment and milk route for \$36,000, or sold at public sale. 10

5. Or that a receiver be appointed by this Court, with authority to take over the assets of said Martin C. Havens and John M. Havens. 20

6. That an order may issue directed to all known creditors to file their claims with the present Trustee or such receiver as may be appointed by this Honorable Court, within a time therein limited, or forever disbarred in participation of said distribution of said assets.

7. That Martin C. Havens and John M. Havens and Havensdale Farms, Inc., and Benjamin D. Simmons, trading as Decker & Simmons, who are defendants in this suit, may answer this bill of complaint and each statement therein made. 20

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

Samuel C. Meyerson,
Solicitor of Petitioner.

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SCHEDULE A

This Agreement, made the 20th day of March, 1929, between Martin C. Havens and John M. Havens, as parties of the first part, and the creditors whose signatures are annexed to this agreement, as parties of the second part;

10 Witnesseth, whereas, the said Martin C. Havens and John M. Havens are now indebted to numerous creditors, and have heretofore transferred their real and personal property to the Havensdale Farms, Inc., a New Jersey corporation, the capital stock of which is owned by the said parties of the first part and their respective wives, and Whereas, the parties hereto desire to work out a trust arrangement whereby all the creditors of the said Martin C. Havens and John M. Havens will eventually receive the amount due them;

20 Therefore, in consideration of the premises, the parties hereto agree as follows:

First: That the National Union Bank, of Dover, New Jersey, is to be appointed a Trustee for the benefit of all the creditors of the parties of the first part.

30 Second: That the said Martin C. Havens and John M. Havens will convey all their property, both real and personal, to the said Trustee, and will transfer to it all the shares of stock of Havensdale Farms, Inc., together with the resignations of themselves and their wives, as officers and directors of the said corporation.

Third: That the said Trustee is to have the right and power:

(a) To operate the said Havensdale Farms, Inc., for the benefit of said creditors, putting in charge

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such fit and proper persons to take care of same, as in the discretion of the Trustee will be best for the interests of the creditors.

(b) To obligate, mortgage or sell any or all of the real and personal property, at such times and under such terms and conditions as may be best for the benefit of creditors.

(c) To immediately apply for a first mortgage on the Blackwell Street property, Dover, New Jersey, in the sum of \$35,000 and after paying the present encumbrance thereon, to apply the net proceeds towards the payment of all claims of creditors which are \$100 and under; to establish a reserve of \$1,000 for working capital and unforeseen contingencies, and to apply the balance pro rata among the unsecured creditors. 10

Fourth: It is hereby understood that by the term "unsecured creditors" shall be considered any debt for which the holder holds no collateral security. 20 An endorsed note unaccompanied by collateral is not to be considered as a secured debt.

Fifth: The management of the dairy business now conducted under the name of "Havensdale Farms, Inc.," shall, at the discretion of the Trustee, be conducted by Martin C. Havens, and the said Martin C. Havens shall furnish a true and accurate statement to the Trustee on the 15th of each and every month for the business done during the preceding month, together with a check for the gross proceeds of the business of the said preceding month; it being understood that the said Martin C. Havens is to account for any moneys which are uncollected in the ordinary and usual course of the operation of the business, but is not to be obligated to pay for the same. Out of the 30

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said gross so paid to the Trustee, the Trustee shall pay first, the expenses of administration; second, the operating expenses of the said business, taxes, insurance and interest on mortgages and obligations, and of the net balance 50% is to be returned to the said Martin C. Havens for his living expenses not to exceed, however, \$2,000 per year, during such length of time as Martin C. Havens is employed by the Trustee as manager, and the balance is to be applied by the Trustee on account of the principal of the debts of the said Martin C. Havens and John M. Havens, pro rata according to the amounts due the said creditors, as provided in Paragraph Six hereof.

10

Sixth: The claims of creditors shall be paid in the following order: First: Unsecured claims as defined in paragraph four hereof. Second: Secondary obligations, collection of which cannot be made from the original obligors. Third: Secured claims. It being hereby agreed that any subscribing creditors holding securities, will surrender and give up the said securities when payment of the secured debt is eventually made to the said creditor.

20

Seventh: If, in the discretion of the Trustee, a proper and advantageous opportunity presents itself for the sale of any of the real or personal property, then the said Trustees hereby expressly given the right to make said sale and to divide the net proceeds thereof pro rata among the creditors.

30

Eighth: It is mutually agreed that this trust agreement shall run for the period of one year, but that if at the expiration of the said year, sufficient progress has been made to warrant the continuance of the said trust agreement, that then this trust agreement shall be renewed for a further period,

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and may be renewed as often as the majority in interest of the creditors consider that said renewal would be for the best interests of all the creditors.

Ninth: The parties hereto further agree that the Trustee shall be compensated for the work and responsibility of the Trusteeship at a sum to be fixed by a committee composed of the three creditors having the largest claims in amount with the exception of the Trustee and that the said Trustee shall have the right to make all necessary expenditures for clerical help and the incidentals of administration, and that the compensation of the said Trustee, counsel and expenditures, shall first be deducted before distribution of the funds among the creditors. 10

Tenth: The Trustee may employ counsel to help in the administration of the said trust, and said counsel shall receive reasonable compensation for services actually rendered. 20

Eleventh: The said parties of the second part each for themselves, hereby agree to take a note payable on demand to be executed by the parties of the first part, for their indebtedness, crediting thereon whatever payment they may receive from the Trustee on account of the principal of their indebtedness; and that during the continuance of the said trusteeship, they will neither of them bring any action, either at law or in equity, to enforce their claim against the parties of the first part. 30

Twelfth: The following creditors who have obtained judgments do hereby release any and all properties levied on under same and agree to release from the lien of said judgments any property hereafter mortgaged or sold by the trustee, namely:

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Decker and Simmons, Frank Snook and the Sussex and Merchants National Bank of Newton.

Thirteenth: Sandford and Son do hereby for themselves agree that they will not foreclose either the chattel or real estate mortgage now held by them, provided the herd on the Havensdale Farms, Inc., will be kept up to a minimum of 72 cows, which shall at all times be covered by the present chattel mortgage of Sandford and Son, whether any of said 72 cows are purchased by the Trustee or not.

10 Fourteenth: The said creditors shall furnish to the Trustee, a duly verified proof of claim of the obligations of the parties of the first part to them.

Fifteenth: The National Union Bank of Dover, New Jersey, and the Dover Trust Company hereby agree to deliver to the Trustee herein named, notes in the amount of \$16,300 hereinbefore transferred to them by Martin C. Havens, which said notes represent the balance due on the purchase price of the store business of the said Martin C. Havens, and the said Trustee is to use the said notes as a part of the assets of Martin C. Havens in liquidation of his debts in accordance with the terms of this agreement.

30 Sixteenth: When the debts of the parties of the second part have been fully liquidated, this trusteeship shall cease, and the said Trustee shall re-convey to the said parties of the first part any and all property then in the possession of the said Trustee.

In Witness Whereof, the said parties hereto have hereunto set their hands and seals the day and year first above written.

Martin C. Havens
John M. Havens
S. Royal Mills

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Andrew W. Roy
 Frank T. Snook
 Wm. H. Sandford & Son
 by Wm. H. Sandford
 Lawrence Hardware Co.
 by M. Lawrence, Pres.
 S. F. Quince Co.,
 S. F. Quince, Pres.
 Farmers Nat'l Bk., Sussex, N. J.
 F. W. Margarum, Pres. 10
 Subject to buildings on mort-
 gaged premises being kept
 fully insured.
 Sussex Electric Co.,
 Fred Nylan
 Tully & Dunning
 Anna C. Tully
 Ellen M. Dunning
 Harry E. Wells 20
 Decker & Simmons
 By B. D. Simmons
 Little Flower Monastery
 by Mich. Meinstein, O. F. B.
 The Sussex & Merchants Nat'l
 Bank, Newton, N. J.
 John P. Dalton, V. Pres.-
 Cashier
 The National Union Bank, 30
 Dover, N. J.
 William Otto, Prest.
 The Dover Trust Co., Dover, N.
 J.

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E. G. Kattermann, Pres.

The First Natl. Bank, Wharton

by Wilbur L. Cregar,

Cashier

The First Natl. Bk. of Rockaway

N. J.

By F. C. Engleman, Cashier

Doll and Kiefer

per H. Kiefer

10

Walter Taylor

A. T. Swarts & Son

C. J. Styger

W. W. Biesecker

The Newton Trust Co.

by Levi H. Morris, Pres.

Dover Advance, Inc.

H. R. Gill, Pres.

State of New Jersey

20

County of Morris

} ss.

William Otto, of full age, being duly sworn, on his oath, according to law, deposes and says: I am President of the National Union Bank of Dover, the complainant mentioned herein.

30

The National Union Bank was appointed Trustee under articles of agreement dated March 20th, 1929, made between Martin C. Havens and John M. Havens, parties of the first part and the creditors whose signatures are annexed to said agreement, a copy of which agreement is annexed to the bill of complaint and marked Schedule A.

That as such Trustee there came into its hands the stock of the Havensdale Farms, Inc.

The Havensdale Farms, Inc., was the owner of two farms in the Township of Wantage, County of

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Sussex and State of New Jersey; the first containing 155 acres, subject to a mortgage of \$14,450, and the second of 192.22 acres subject to a mortgage of \$3,000. It is also the owner of two lots in Dover, one on Prospect St., and one on Blackwell St., both in the County of Morris and State of New Jersey. The property on Blackwell St. is encumbered by a mortgage of \$3,000 and the store on Blackwell St. by two mortgages amounting to \$21,500.

It is the owner of a house and lot on Trinity St. 10 in Newton, Sussex County, N. J., encumbered by a mortgage of \$8,000, and also of a lot on Prospect St., Dover, N. J., encumbered by a mortgage of approximately \$3,000, held by the Dover Building & Loan Association.

The farms in Sussex County are used together as a dairy farm, the milk from which is sold in the Borough of Sussex and Town of Newton. At the time of the appointment of the said bank as Trustee 20 it was represented to it that all the creditors of Martin C. Havens were present and consented to the appointment. Twenty-nine creditors with claims aggregating about \$75,000 signed the agreement. It now learns that in addition to these creditors there are the other creditors mentioned in the bill of complaint, with claims aggregating about \$18,000, who are not signatories thereto.

In addition to those claims which are fixed in 30 amount, there is the claim of the executors of John K. Cook Estate, as set forth in paragraph eleven of the complaint. It is impossible to tell at this time the extent of the liability of Havens thereon. The operation of the farms has not been a financial success. A herd of seventy-two cattle are on the farms, covered by a chattel mortgage of \$7,500, which chattel mortgage is past due. If the chattel mortgage is foreclosed, there is no money with which to

Bill of Complaint

replace the cattle and as a dairy farm, it must be discontinued.

That Decker & Simmons of the Borough of Sussex signed the articles of agreement agreeing to waive their judgment lien and come in with the other creditors; they now attempt to repudiate this agreement and refuse to withdraw their levy on the property. A judgment was obtained against Havens at a time when the title was not in the names of Ha-

10 vensdale Farms, Inc.

Your petitioner has had an offer for the farms without the cattle for the sum of \$30,000 and the sum of \$36,000 with the cattle.

Complainant is advised that it is advantageous to sell the farms at this time on the terms set forth in paragraph twenty-three of said bill, but Decker & Simmons refuse to release their alleged lien, unless they are paid in full or are given a mortgage on the
20 farms. This, the said Trustee is unable to do. Martin C. Havens wants the farms, farm machinery, cattle &c. sold at public sale.

Complainant further shows that it is unable to give a marketable title on sale of said farms, because the title could be set aside in bankruptcy proceedings on application of a sufficient number of creditors who have not signed the agreement, and if the sale were made, and the title accepted, it would have
30 no authority to distribute the same to and among any others than those who have signed the agreement, and it wishes to perform its duties as Trustee, but is of the opinion that by reason of the large number of creditors who have not signed the same and the substantial amount represented by them, that it is unworkable.

William Otto

Sworn and Subscribed to before me this 29th day of November, 1929.

Meta J. Heinle,

Notary Public of N. J.

Order Appointing Receiver

(Filed December 31, 1929.)

IN CHANCERY OF NEW JERSEY

Between	}
National Union Bank of Dover,	
Complainant,	
and	
Martin C. Havens, et als.,	}
Defendants.	

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ORDER APPOINTING RECEIVER

This matter being opened to the Court by Samuel C. Meyerson, Solicitor for and of counsel with the complainant, and in the presence of Charles T. Downing, Solicitor for and of counsel with the defendant, Martin C. Havens, and Theodore E. Dennis, solicitor for and of counsel with Decker & Simmons; 20

And the Court having read the duly verified bill of complaint filed herein and the rule to show cause, dated December 7th, 1929, and the rule to show cause issued December 17th, 1929, and the Court being satisfied by proof filed this day that the bill of complaint, affidavits, rules to show cause and this order have been served on Martin C. Havens, John M. Havens and Havensdale Farms, Inc., each of the defendants, and on each and every of the 30 creditors of said defendants as required in said order.

And the Court being satisfied that a receiver should be appointed for the said Martin C. Havens, John M. Havens and Havensdale Farms, Inc., so that the assets assigned to The National Union Bank of Dover, as Trustee, together with any other

Order Appointing Receiver

assets in the hands of the said Martin C. Havens, John M. Havens and Havensdale Farms, Inc., or belonging to or held in trust for them or either of them, shall be administered in this Court.

It is, on this thirty-first day of December, 1929, Ordered that Joshua R. Salmon, of Morristown, N. J., be and he is hereby appointed Receiver of the assets of the said Martin C. Havens, John M. Havens and Havensdale Farms, Inc., whether heretofore assigned to The National Union Bank of Dover, as Trustee, or still held by them or either of them, or in trust, or otherwise for them, or either of them, to be administered in this Court.

And it is further Ordered that the National Union Bank of Dover, Trustee appointed under an agreement dated March 20, 1929, be and the same is hereby authorized and directed to turn over to the Receiver herein appointed all the assets received by it under said agreement or otherwise, and to account to the Receiver herein appointed for the administration of the assets which came into its hands under said agreement.

And it is further Ordered that said Receiver enter into a bond in the sum of \$10,000. for the faithful performance of his duties, said bond to be approved by Henry C. Pitney, Special Master.

E. R. Walker, C.

Respectfully advised,
Alonzo Church, V. C.

Answer

(Filed Feb. 4, 1930.)

IN CHANCERY OF NEW JERSEY

Between	}	On Bill
The National Union Bank of		
Dover,		
Complainant,		
and		
Martin C. Havens, et als.,	}	
Defendants.		

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ANSWER

The answer of the defendant Benjamin D. Simmons, conducting business under the name of Decker & Simmons.

This defendant, Benjamin D. Simmons, answering the bill of complaint, says that:

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1. Paragraph 1 is denied.
2. On March 11, 1929, a meeting was held at the office of Morris & Downing, in Newton, N. J., for the purpose of devising some plan, if possible, for the settlement of the financial difficulties of the said Martin C. Havens and his son John M. Havens and preventing proceedings in bankruptcy. There were present at this meeting the said Martin C. Havens and John M. Havens and their attorney, the attorney of The National Union Bank of Dover and this defendant and several of the other creditors of the said Martin C. Havens, and it was represented in said meeting that the said Martin C. Havens and John M. Havens were indebted to numerous creditors to the amount of about \$124,000.00 and had assets amounting to 30

Answer

about \$174,000.00, and were willing to turn over said assets to their creditors for payment thereof of their said indebtedness, and thereupon it was proposed and adopted by those present as a plan for settlement that the said Martin C. Havens and John M. Havens obtain the consent of all their creditors to said plan and turn over said assets to The National Union Bank of Dover as trustee for the benefit of said creditors, with power to convert the same
10 into money and pay thereout said indebtedness.

3. The agreement dated March 20, 1929, and mentioned in paragraph 1 of the complaint, was the means taken by the said Martin C. Havens to obtain the consent of his creditors to the proposed plan adopted at the said meeting held March 11, 1929, and he failed to obtain the signatures to said agreement of about two-thirds of his creditors, and The National Union Bank of Dover, the trustee pro-
20 posed, gave notice in writing to the creditors of the said Martin C. Havens of its refusal to act as trustee for the said Martin C. Havens, and by reason of the failure of the said Martin C. Havens to obtain the consent of all his creditors to said plan of settlement, said plan of settlement collapsed and was abandoned and said agreement never became or was of any force or effect.

A copy of said notice to the creditors of the said
30 Martin C. Havens is hereto annexed and marked Schedule No. 1.

4. Paragraphs 2 to 8 of the complaint, inclusive, are admitted.

5. The incorporation of Havensdale Farms, Inc., the said conveyances to said corporation of the property of the said Martin C. Havens and the transfer of all the stock of said corporation to The National

Answer

Union Bank of Dover, was a fraudulent scheme devised by the said Martin C. Havens to protect his property from his creditors, and was carried out by him prior to March 11, 1929, and this defendant charges that said corporation never had any legal existence or in fact ever was anything other than the said Martin C. Havens, that said conveyances to it of the property of the said Martin C. Havens were made without any consideration and to hinder and delay the creditors of the said Martin C. Havens in the collection of their claims against the said Martin C. Havens, and the transfer of all the stock of said corporation to The National Union Bank of Dover was made without consideration and in trust for the use and benefit of the said Martin C. Havens as owner, and that no part of said stock has ever been paid for. 10

6. Paragraph 9 is denied.

7. The statement in paragraph 10 that the complainant accepted the appointment in good faith believing that all the creditors of the said Martin C. Havens with claims over \$100 were signatories to said agreement, is denied, and the remainder of said paragraph 10 is admitted. 20

8. The complainant, at the meeting held March 11, 1929, at the office of Morris & Downing, as part of the plan there adopted, agreed to act as trustee, and after said plan collapsed and was abandoned, 30 gave notice in writing of its refusal to act.

A copy of said notice, marked Schedule No. 1, is hereto annexed.

9. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph 11.

10. Paragraph 12 is denied.

Answer

11. Paragraph 13 is admitted.

12. Paragraph 14 is denied.

13. Paragraphs 15 to 17 inclusive, and paragraphs 19, 21 and 22 are admitted.

14. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraphs 24 and 25.

15. Paragraph 26 is admitted.

10 16. The said Martin C. Havens, after the transfer to the National Union Bank of Dover of all the stock of Havensdale Farms, Inc., continued to hold and use as his own the two farms conveyed by him to Havensdale Farms, Inc., and received all the income therefrom to his own use, and paid thereout the judgment of the Sussex and Merchants National Bank and other claims against him.

20 17. The judgment mentioned in paragraph 13 of the complaint was recovered by this defendant, conducting business under the name of Decker & Simmons, against the said Martin C. Havens, in the Supreme Court of this State March 5, 1929, for \$7,953.95, and execution thereon against the goods and lands of the defendant was issued to the Sheriffs of Sussex and Morris Counties and levies made thereunder.

30 18. By virtue of said judgment and execution and levies, this defendant claims to have a lien to the amount due on all the lands conveyed by the said Martin C. Havens to Havensdale Farms, Inc., or of which he was seized March 5, 1929, and in all the personal property of the said Martin C. Havens levied upon under said execution.

19. The complainant is not now and never has been trustee of the assets of the said Martin C. Havens and John M. Havens for the benefit of their creditors, and knows that fact.

Answer

20. On or about November 12, 1929, this defendant attended a meeting called by the complainant at Morristown, and met in said meeting the said Martin C. Havens, John M. Havens, the representatives of the complainant, several of the creditors of the said Martin C. Havens, and Elmer Floyd, who made an offer of \$36,000.00 for the two farms in Sussex County and the cattle, farming machinery and equipment thereon and the milk route. All present, except the said Martin C. Havens, voted to accept said offer, and pay out of the purchase money the mortgages on said property, the judgments of Decker & Simmons and Frank Snook and the claims of creditors having claims under \$100, the deficiency of the proceeds of sale to make such payments, which was estimated to be about \$500, to be made up out of the Morris County property. Said Floyd informed said meeting that he did not have in hand to pay the whole of said purchase money, and this defendant made the offer to said Floyd that if he purchased the property this defendant would take from said Floyd a second mortgage on said two farms for the amount of this defendant's judgment against the said Martin C. Havens. The said Martin C. Havens refused to include in said proposed sale the said milk route unless the additional sum of \$2,000 was paid for said milk route, and said Floyd refused to pay such additional sum and said proposed sale fell through.

Theodore E. Dennis,
Solicitor of Defendant
Benjamin D. Simmons.

*Answer***SCHEDULE NO. 1**

To the Creditors of Martin C. Havens:

The undersigned, having signified its refusal to act as Trustee for Martin C. Havens, it is important that the creditors choose some one to act in its stead.

You are invited to attend a meeting for that purpose in the Directors' Room of the National Union Bank, on Monday, July 8th, 1929, at 2 P. M.

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National Union Bank of Dover, N. J.

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Replication

(Filed Feb. 19, 1930.)

IN CHANCERY OF NEW JERSEY

Between The National Union Bank of Dover, Complainant, and Martin C. Havens, et als., Defendants.	}	On Bill.
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REPLICATION

The Replication of the complainant, replying to the Answer filed by Benjamin D. Simmons, conducting business under the name of Decker & Simmons.

1. Complainant repeats each and every allegation of its complaint. 20

2. It admits paragraph 2 of the answer.

3. It admits that part of paragraph 3 which states that the agreement dated March 20, 1929, mentioned in paragraph 1 of the complaint, was the plan adopted at the meeting held March 11, 1929, to help Martin C. Havens avoid bankruptcy, and to obtain the payment of the sums due the creditors. Complainant further admits that the said Martin C. 30 Havens failed to obtain the signatures of a number of his creditors. Complainant further admits that it gave notice to the creditors of the said Martin C. Havens, of its refusal to act as trustee, because of the failure of the said Martin C. Havens to obtain the consent of the creditors. Your complainant alleges, however, that its refusal to act as such trust-

Replication

ee did not, however, release the creditors who had signed the agreement, from their obligations by virtue of same. Your complainant further alleges that relying upon the written agreement of this defendant, to waive its alleged priority and judgment, that your complainant and The Dover Trust Company surrendered various notes which the said Martin C. Havens had received for the sale of his stationery store in Dover, to the extent of about \$16,000, and

10 which had been assigned by him to these creditors, and which the said complainant and The Dover Trust Company had a right to keep, as collateral for obligations due them. Your complainant further states that relying upon the said undertaking of the said defendant, Decker & Simmons, they did surrender the said collateral for the benefit of all the creditors, and that the estate of the said Martin C. Havens has been and still is benefited by the sur-

20 render of the said notes which were and are being collected as part of the assets of the said estate, and that because of the said agreement entered into by the said Benjamin D. Simmons, both your complainant, the National Union Bank, not as a trustee, but as a creditor, and The Dover Trust Company, another creditor, have suffered considerable loss and damage, and had their positions changed, and it would be unequitable to permit the said defendant,

30 Benjamin D. Simmons, to retract or withdraw from his agreement without restoring the National Union Bank, as a creditor, and The Dover Trust Company as a creditor, to their former positions, and having returned to them the collateral notes which they had surrendered. Your complainant therefore denies that the agreement of March 11, 1929, was abandoned or never became of any force or effect.

Replication

Your complainant further alleges that the said defendant stood by and permitted the National Union Bank and The Dover Trust Company to surrender their collateral and securities, and accepted the benefit thereof, without at any time intimating that he would not abide by his written agreement, and that the first the complainant was aware that the defendant would attempt to abrogate his agreement, was when the complainant had an opportunity to sell the two farms of the said Martin C. Havens, and was notified by the said defendant that he would insist upon his judgment being paid in full. 10

4. Your complainant concedes that the incorporation of Havensdale Farms, Inc., by Martin C. Havens, may have been a scheme devised by him to protect his property from creditors. Your complainant alleges, however, that that is immaterial to the issues involved herein, because of the fact that the defendant, Decker & Simmons, being aware of all the circumstances and facts in the case, entered into the written agreement of March 11, 1929, above referred to, and was therefore bound thereby, with full knowledge of what the said Martin C. Havens had done in incorporating Havensdale Farms, Inc., and did therefore waive his rights to any proceedings to set aside the conveyances to Havensdale Farms, Inc. Your complainant further denies that the said transfer of the stock of Havensdale Farms, Inc., to it was without consideration, or that it was for the use and benefit of Martin C. Havens, as owner, but on the contrary states that there is a true and valid consideration, in that, various creditors forbore pressing their claims, certain preferences and liens were given up, and the said National Union Bank, as a creditor, and The Dover 20 30

Replication

Trust Company, as a creditor, surrendered valuable collateral, and the result of the agreement has changed their positions, and cannot be restored to their status quo.

10 5. The complainant admits that part of paragraph 16 of the Answer, that the said Martin C. Havens continued to hold Havensdale Farms, Inc., but alleges that he held same as a representative of the trustee, it being necessary to have someone in charge. Your complainant has demanded an accounting from the said Martin C. Havens of the said money received by him while in charge of the said farms, but has received only one accounting, for the period of only one month. Your complainant believes, however, that an accounting has since been made by the said Martin C. Havens to Joshua R. Salmon, Receiver appointed by this Court.

20 6. Your complainant denies paragraph 18 of the Answer.

30 7. Your complainant admits that the defendant attended a meeting in Morristown, on November 12, 1929, at which several of the creditors of the said Martin C. Havens entertained an offer of \$36,000 for the two farms in Sussex County. Your complainant denies, however, that it was agreed to pay out of the purchase money, the judgments of Decker & Simmons. On the contrary, the sale fell through, because the issue was raised at that meeting that the National Union Bank, as trustee, had no right or power to make a sale without an Order of the Court, and further, that the defendant herein, Decker & Simmons, was not entitled to any priority or payment out of the moneys received, because of his agreement which he had entered into in good faith, with a number of creditors, on March 11, 1929.

Samuel C. Meyerson,
Solicitor of Complainant.

Conclusions

(Filed July 10, 1930.)

(Not to be published in any report.)

July 1, 1930.

IN CHANCERY OF NEW JERSEY

76-395

Between National Union Bank of Dover, New Jersey, Complainant, and Martin C. Havens, et al., Defendants	}	On Bill, &c.	10
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CONCLUSION:

Mr. Samuel C. Meyerson for complainant.

Mr. Theodore E. Dennis for defendant Simmons. 20
Fielder, V. C.

Being in financial difficulties, Martin C. Havens and John M. Havens transferred their property, real and personal to Havensdale Farms, Inc., a corporation formed by them for the purpose of taking title to their property, in which corporation they owned or controlled the entire stock issued. No consideration passed for the transfer and it seems to have been their hope that by transferring their property to a corporation they could in some way work out of their financial difficulties, but this hope failed to materialize and they then agreed to turn over the property which had been conveyed to the corporation, including all the stock of Havensdale Farms, Inc., to the complainant as trustee for the 30

Conclusions

- benefit of their creditors and when certain of the creditors signed a written agreement appointing the complainant trustee, I have no doubt that the parties thereto believed that all creditors whose claims amounted to less than \$100 would join in the proposed administration of the debtors' estate for the benefit of all creditors. The agreement provides, in effect, for the sale of the property by the trustee and a pro rata distribution to the creditors; that
- 10 Decker and Simmons, Frank T. Snook and the Sussex & Merchants National Bank, creditors holding judgments against the debtors, would release from the lien of their judgments, the property as and when sold by the trustee and that the complainant (as a creditor) and the Dover Trust Company would deliver to the trustee certain notes held by them as collateral, which notes the trustee should use as assets of the debtors in liquidation of their debts.
- 20 Among the signers of the agreement are Decker and Simmons, Frank T. Snook, Sussex & Merchants National Bank, the complainant (as a creditor) and Dover Trust Company. While all creditors with claims over \$100 did not sign the trust agreement, no creditor has endeavored to enforce his claim against the debtors' assets or to seek any preference, except Benjamin D. Simmons, trading as Decker & Simmons; all other creditors seem to have acquiesced in the assignment to the complainant as
- 30 trustee and to the proceedings in this suit.

The complainant endeavored to perform its duty as trustee by collecting some of the assets and it and the Dover Trust Company surrendered for the benefit of all creditors, notes which they held as collateral for their debts and the judgment creditors Frank T. Snook and Sussex & Merchants National Bank

Conclusions

refrained from attempting to collect under their judgments and expressed and still express their willingness to share in the assets pro rata with the other creditors. The trustee further attempted to make sale of some of the real estate and other assets but was met by the assertion of a lien thereon by Simmons by virtue of levy under his judgment, which he declined to release. Being unable to adjust the Simmons claim and being unable to further perform its duties as trustee, because of possible claims by creditors who had not signed the agreement, the complainant filed its bill of complaint in this cause, naming Martin C. Havens, John M. Havens, Havensdale Farms, Inc., and Benjamin D. Simmons as defendants and the prayers of the bill are that the debtors' assets be ordered sold; that Simmons be decreed not to have a preferred lien under his judgment; that a receiver be appointed to take over all the debtors' assets; that the complainant be discharged from further duties as trustee, except to account and turn over the property in its possession to a receiver; that all creditors be directed to show cause why the receiver should not sell the property; that all creditors file their claims with the receiver within a time limited, or be barred from participating in the distribution of the assets and that such other relief be granted as may be necessary to wind up the trust and make distribution of the assets. A decree pro confesso was entered against all defendants, except Simmons, who answered asserting a prior claim on the debtors' assets under his judgment and levy.

Upon the bill being filed an order was entered directing all defendants named in the bill to show cause why a receiver should not be appointed to take

Conclusions

over the debtors' assets for the benefit of all creditors and after hearing upon the return of said order, at which Simmons was represented by counsel, an order was entered December 31, 1929, appointing a receiver of all the assets of Martin C. Havens, John M. Havens and Havensdale Farms, Inc., theretofore assigned to the complainant to be administered under the direction of this court and directing the complainant to deliver to the receiver all assets received
10 by it and to account to the receiver for its administration of the assets which came to its hands. The defendant Simmons seems to have objected to the entry of this order, but he took no appeal therefrom and the order still stands. January 24, 1930, an order was made directing all creditors of the defendant debtors to file claims with the receiver within a time limited and March 31, 1927, the receiver filed a report showing the assets which had come to his
20 hands, the incumbrances thereon by way of mortgages (real and chattel) and a list of creditors who have filed claims with him, which list I understand includes all creditors of the defendant debtors.

All creditors except Simmons have acquiesced in the appointment of the receiver and the administration by him of the debtors' assets and the complainant has accounted to the receiver for the assets which came to his hands and has turned over such
30 assets to the receiver. The question presented is: Shall the receiver be permitted to administer the assets for the benefit of all creditors and shall he be permitted to sell the same free from the lien of the Simmons and other judgments? The other judgment creditors consent to such administration and sale and I think that Simmons should also be compelled to consent under a decree herein. The defend-

Conclusions

ant Simmons objects because he contends that he signed the trust agreement on the understanding that all creditors would join therein and that his agreement to release the debtors' property from the lien of his judgment and to share in the distribution of the assets pro rata, was predicated upon all creditors executing the agreement. The agreement does not so provide and none of the creditors who did not sign the agreement hold judgments against the debtors. Moreover, all creditors have agreed to distribution of the assets by the receiver and the effect is the same as though they had executed the trust agreement. Other judgment creditors have waived claim to preference under their judgments and on the strength of the Simmons agreement to release his judgment lien, the complainant as a creditor and the Dover Trust Company have surrendered their collateral to the amount of \$16,000 for the benefit of all the creditors and have thus changed their position as secured creditors. It would therefore be inequitable to permit Simmons to have an advantage over other creditors through the enforcement of the judgment which he agreed to release. 10 20

There should be a decree that the defendant Simmons has no lien upon the defendant debtors' assets under his judgment and levy and that the receiver proceed to dispose of all the assets of the defendant debtors as expeditiously as possible, free from the lien of all judgments against the defendant debtors and make distribution among the creditors, including Simmons, pro rata. The decree should also provide that all transfers of property, real and personal, made by the defendant debtors to Havensdale Farms, Inc., are void and of no effect and that sales made by the receiver shall be free from any 30

Conclusions

claim or interest therein by Havensdale Farms, Inc. The decree should further provide that the complainant be discharged from its office as trustee for the benefit of the defendant debtors' creditors and be relieved from liability to such creditors for its administration of the defendant debtors' assets.

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Final Decree

(Filed July 14, 1930.)

IN CHANCERY OF NEW JERSEY

Between National Union Bank of Dover, New Jersey, Complainant, and Martin C. Havens, et als., Defendants.	}	On Bill, &c.
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FINAL DECREE

This matter coming on to be heard on final hearing, in the presence of Samuel C. Meyerson, Solicitor of the Complainant, the National Union Bank, of Dover, New Jersey, and of Joshua R. Salmon, Receiver, and of Theodore E. Dennis, Solicitor of the Defendant, Benjamin D. Simmons, trading as Decker and Simmons, and the court having examined the pleadings and taken proofs in open court, and having heard and considered the arguments of counsel, and it appearing to the court that one Martin C. Havens and one John M. Havens, being in financial difficulties, had heretofore transferred all their property, real and personal to Havensdale Farms, Inc., a corporation formed by them for the purpose of taking title to their property, in which corporation they owned or controlled the entire stock issued, which transfer of their assets was without consideration, and was made by the following deeds:

Deed from Martin C. Havens and Annie E. Havens, his wife, dated February 7, 1929, and recorded in the Sussex County Record of Deeds, on Feb-

Final Decree

ruary 7, 1929, in Book 308 of Deeds, page 285; also by deed of Martin C. Havens and Annie E. Havens, his wife, to Havensdale Farms, Inc., dated February 7, 1929, and recorded on February 7, 1929, in the Morris County Clerk's Office in Book N-31 of Deeds, page 286; also by deed dated April 15, 1929, by John Martin Havens and wife, by deed recorded in the Sussex County Clerk's Office in Book 308 of Deeds, page 283; also by deed of
10 John M. Havens, dated April 16, 1929, and recorded in the Sussex County Clerk's Office in Book 308, page 527; also by deed dated March 7, 1929, made by John M. Havens and wife, and recorded on February 7, 1929, in the Morris County Clerk's Office in Book N-31 of Deeds, page 282;

It further appearing that the said Martin C. Havens and John M. Havens thereafter transferred all their stock of Havensdale Farms, Inc., to the com-
20 plainant, as trustee for the benefit of their creditors, under an agreement by which the assets were to be disposed of, and the proceeds distributed among said creditors; it further appearing that thereafter, Frank T. Snook recovered a judgment in the New Jersey Supreme Court against Martin C. Havens, on March 1, 1929, for the sum of \$2210.19, with costs of \$54.58; that thereafter, on March 5, 1929, a judgment was obtained by Benjamin D. Simmons,
30 conducting business under the business name of Decker and Simmons, against Martin C. Havens, in the New Jersey Supreme Court, for the sum of \$7943.95, with costs of \$10; and that thereafter, on March 18, 1929, a judgment was obtained in the New Jersey Supreme Court, by the Sussex and Merchants National Bank of Newton, New Jersey, against Martin C. Havens and John M. Havens, in the sum of \$403.50, with costs of \$59.22, and that

Final Decree

thereafter executions were issued on one or more of said judgments, and levy made on the assets of the said Martin C. Havens and John M. Havens; it further appearing that on March 20, 1929, an agreement was made among the various creditors, together with Martin C. Havens and John M. Havens, which agreement was signed by the said judgment creditors, Decker and Simmons, Frank T. Snook and the Sussex & Merchants National Bank, also by the National Union Bank, of Dover, New Jersey, as a creditor, and The Dover Trust Company, whereby those named signatories agreed to forego any preferences which they had against Martin C. Havens and John M. Havens, and whereby, in consideration of the National Union Bank, as a creditor, and The Dover Trust Company, giving up collateral securities which they were in possession of, the said Decker and Simmons, Frank T. Snook and the Sussex & Merchants National Bank, agreed to give up and cancel their judgments and priorities, and come in as a general creditor, and share in the proceeds of the assets pro rata, together with other creditors; it further appearing to the court that pursuant to the said trust agreement, by which the National Union Bank was appointed trustee for the benefit of creditors, the said bank did proceed to undertake the burdens of the said trusteeship, and administer the said trust property for the benefit of creditors; it further appearing that the trustee attempted to make sale of some of the real estate and other assets, but was met by the assertion of a lien thereon by Benjamin D. Simmons, trading as Decker and Simmons, by virtue of the levy under his judgment, which he declined to release; it further appearing that being unable to perform its duties as trustee.

Final Decree

because of possible claims of creditors who had not signed the agreement, the complainant filed its bill of complaint in this cause, naming the said Martin C. Havens, John M. Havens, Havensdale Farms, Inc., and Benjamin D. Simmons, trading as Decker and Simmons, as defendants, praying for relief to the extent that the debtors' assets be ordered sold, that Benjamin D. Simmons, trading as Decker and Simmons, be decreed not to have a preferred lien under his judgment, that a receiver be appointed to take over the debtors' assets, and the complainant be discharged from further duties as trustee, except to account and turn over the property in its possession to a receiver, and that all creditors be directed to show cause why the receiver should not sell the property, and file their claims with the receiver within a time limited, or be debarred from participating in the distribution of the assets, and that such further relief be granted as might be necessary to wind up the trust and make distribution of the assets; it further appearing that a rule to show cause was duly issued, served upon all the creditors, and on the return day thereof, Judge Joshua R. Salmon, of Morristown, was appointed receiver, at which hearing, the said Benjamin D. Simmons was present and represented by counsel; it further appearing that a Decree Pro Confesso has been duly entered against each and every one of the defendants, excepting Benjamin D. Simmons; it further appearing that the said National Union Bank has made an accounting of its trust, and has turned over all the assets in its possession, to Joshua R. Salmon, receiver appointed in this matter, and that the said receiver has approved the said accounting, and found the same to be correct; it further appearing

Final Decree

that on January 24, 1930, an Order was made directing all creditors of the defendant debtors to file claims with the receiver within a time limited by the court; and it further appearing that on March 31, 1930, the receiver filed his report, showing the assets which had come to his hands, and the encumbrances thereon, and a list of creditors who have filed claims with him; it further appearing that all the creditors except Benjamin D. Simmons, have acquiesced in the appointment of a receiver, and the administration by him of the debtors' assets, and that the complainant has accounted to the receiver for the assets which came to its hands, and has turned the same over to the receiver; it further appearing that all the judgment creditors herein named have agreed to forego their preferences, and have done so, and have consented to the administration and sale by the receiver of the assets of Martin C. Havens and John M. Havens, and of the distribution of the assets by the receiver, to the same effect as though they had each executed the said trust agreement; it further appearing that the said National Union Bank, as a creditor, and the Dover Trust Company, have surrendered their collateral to the extent of \$16,000, for the benefit of all creditors, and have thus changed their position as secured creditors;

It is thereupon, on this 14th day of July, 1930, Ordered, Adjudged and Decreed, that the said defendants, Martin C. Havens and John M. Havens, by virtue of their transfer of the properties hereinabove enumerated to Havensdale Farms, Inc., for the benefit of their creditors, and their voluntary surrender of the said properties for the benefit of the said creditors, have no longer any interest in

Final Decree

and to any of the properties mentioned in this decree, or in and to any of the assets of Havensdale Farms, Inc., or of the stock of Havensdale Farms, Inc.;

10 It is further Adjudged and Decreed that the conveyances to Havensdale Farms, Inc., being without consideration, and simply for the benefit of the creditors of Martin C. Havens and John M. Havens are void and of no effect, that the said Havensdale Farms, Inc., has no claim, demand, or interest in any of the assets, real, personal or mixed, now belonging to the said Havensdale Farms, Inc., and or which were transferred to it by the various deeds hereinabove mentioned, or by any other conveyances, transfers, bills of sale, or any other form of conveyance;

20 It is further Ordered, Adjudged and Decreed that the receiver, Joshua R. Salmon, proceed to dispose of all the assets of the defendant debtors, Martin C. Havens and John M. Havens, as represented by the transfers to and the assets of Havensdale Farms, Inc., as expeditiously as possible, free from the lien of any and all of the judgments hereinabove mentioned against the defendant debtors, and make distribution among all the creditors, including Benjamin D. Simmons, trading as Decker and Simmons, *pro rata*.

30 It is further Ordered, Adjudged and Decreed that any and all sales to be made by the receiver hereafter, shall be free from any claim or interest therein, either by Martin C. Havens, John M. Havens, or Havensdale Farms, Inc.

It is further Ordered, Adjudged and Decreed that the complainant, the National Union Bank, of Dover, New Jersey, be and it hereby is discharged from its

Final Decree

office as trustee for the benefit of the defendant debtors' creditors, and be relieved from all liability to such creditors, for its administration of the defendant debtors' assets;

It is further Ordered, Adjudged and Decreed that the defendant, Benjamin D. Simmons, trading as Decker and Simmons, pay a counsel fee to the solicitor of the complainant, Samuel C. Meyerson, of \$300.00 with costs; and that judgment may be entered for the counsel fees so granted.

10

E. R. Walker, C.

Respectfully advised,

James F. Fielder, V. C.

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Charles W. Downing—direct
IN CHANCERY OF NEW JERSEY

Between The National Union Bank of Dover, New Jersey, Complainant, and Martin C. Havens, et al., Defendants.	}	On Bill, &c.
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10 Transcript of Shorthand Notes of Testimony taken on final hearing in the above stated cause, May 8, 1930, at Chancery Chambers, Jersey City, before His Honor James F. Fielder, Vice Chancellor.

Appearances:

Samuel C. Meyerson, Esq., for complainant.
Joshua Salmon, Esq., Receiver pro se.
Theodore E. Dennis, Esq., for the defendant
20 Decker & Simmons.

Mr. Dennis—On the face of the pleadings I move for the dismissal of the bill of complaint upon the ground of want of jurisdiction in the Court of Chancery.

The Court—I will reserve decision on the motion.

30 COMPLAINTANT'S CASE

CHARLES W. DOWNING, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Meyerson:

Q. You are a counsellor at law of the State of New Jersey? A. No, sir; I am an attorney at law.

Charles W. Downing—direct

Q. You have been in practice for how many years? A. Fifteen years.

Q. You are a member of the firm of Morris & Downing? A. I am.

Q. Are you the attorney of Martin C. Havens? A. Yes.

Q. Will you state, as briefly as possible, how the property of Martin C. Havens came to be in the name of Havensdale Farms, Incorporated, and for what purpose it was so conveyed?

10

Mr. Dennis—I object. Is it material how it came to be conveyed?

The Court—I don't know. I am going to take it subject to any objections which you may wish to make.

A. Mr. Havens came to my office and told me of his financial condition—

20

Mr. Dennis—I object. How can he take the witness stand and swear to what took place between him and his client? I object on the ground that he should not be permitted to take the witness stand and testify as to what took place between him and his client.

The Court—You mean because it is a privileged communication; is that correct?

Mr. Dennis—Yes, certainly.

The Court—Objection overruled.

Q. Proceed. A. Mr. Havens came to my office—I cannot tell you just the date—some time in the early part of the year that this agreement was

Charles W. Downing—direct

entered into, and he told me of his financial condition. I went over the figures with him and found that he was insolvent in his own property and told him so frankly, and he told me that his son was perfectly willing that his property should also be used to aid his creditors, and thought that maybe we might organize a corporation. I told him that if he wanted a corporation I was perfectly willing to assist him in the organization of it. The corporation was organized and there was transferred to it the property of Martin C. Havens and the property of John M. Havens, his son.

By the Court:

Q. That corporation was Havensdale Farms, Incorporated? A. Yes.

By Mr. Meyerson:

20 Q. Go on.. A. With the assets of John M. Havens added, I felt that the corporation was solvent.

By the Court:

30 Q. To whom was the stock issued? A. The stock was issued to Martin C. Havens for the value that they told me the property that he transferred was worth, and stock was issued to John M. Havens for the value of his property, and I think there was a share or two shares issued to the wife of each of the parties. We then thought that we would secure the Sussex County creditors with Sussex County property and the Morris County creditors with Morris County property.

I called in John P. Dalton, of the Sussex & Mer-

Charles W. Downing—direct

chants Bank. It was then thought the Morris County creditors should be first seen before anything further was done, and he took it upon himself to see them. As a result of that, a meeting was called at our office, of all of the creditors.

Q. Morris County and Sussex County? A. Morris County and Sussex County, yes. They met. and we discussed the thing pro and con. Nothing was done at that meeting.

Q. Will you give us the approximate date of that meeting? A. It was shortly after the prop- 10
erty had been transferred to the corporation. I cannot give you the exact date.

By Mr. Meyerson:

Q. The transfer of the property was February 7, 1929? A. Then, I would say that this meeting was prior to the first of March.

20

The Court—Do you agree on that date, that that was the date of the transfer of the property to Havensdale Farms, Mr. Dennis?

Mr. Dennis—I don't know when it was done.

The Court—You have the pleadings before you.

Mr. Dennis—I do not think the pleadings say a word about when it was transferred. 30

The Court—Then I cannot take counsel's statement, if it is not admitted.

Mr. Meyerson—May I offer the original deeds in evidence?

The Court—Yes.

Charles W. Downing—direct

Q. Proceed. A. Without knowing the date of that organization, I know that it was shortly after the transfer of the property to the corporation that this first meeting was held. We afterward held another meeting at which a large number of creditors were present or represented, and a tentative form of agreement was devised at that time and was taken for drafting to the office of Mr. Meyerson, I believe. They afterwards met again in our office. Between the time of meeting when the tentative agreement was suggested, and the time for meeting for signing of the final agreement, a confessed judgment was entered by Decker & Simmons against Martin C. Havens. That came to my attention at the time of that third meeting of the creditors.

By the Court:

Q. Will you stop there for a moment? At these two meetings that you say were held before the final draft of the agreement was prepared, were Decker & Simmons represented? A. To the best of my recollection Mr. Simmons was present at the second meeting when the tentative draft was suggested.

Q. Did he raise any objection to the transfer of the property to the bank as trustee? A. No one raised any objection to the transfer of the property to the bank.

Q. After that second meeting and before the third meeting, this confessed judgment was entered in favor of Decker & Simmons? A. Yes; and I think there was another judgment—I know there was another judgment entered for Frank P. Snook, which had been entered, I think, by default.

At this third meeting of the creditors the agree-

Charles W. Downing—direct

ment as presented was redrafted with certain changes, and some of the creditors signed it at that time. Mr. Snook was called in from the street and signed it, because some of the creditors would not sign unless he signed.

Mr. Simmons was present and agreed to sign this agreement, and it was either the next day or the day following that Mr. Havens and I went out and got as many of the other creditors as we could. I called at Decker & Simmons' plant, after obtaining some 10 other creditors' signatures. Mr. Simmons refused, stating that he would not sign unless Mr. Dennis said it was all right. We drove over to Hamburg and met Mr. Dennis. Mr. Dennis looked the agreement over and said he would advise Mr. Simmons it was all right.

Q. Was Mr. Simmons there; did he go with you?

A. No. I suggested that he call Mr. Simmons right away, so that he would know by the time I got back 20 there, that I had been there. Mr. Dennis then called Mr. Simmons and told him it was all right if he wanted to sign it. I got back to Mr. Simmons' place and told him the conversation we had with Mr. Dennis. He said yes, that he had told him it was all right if he wanted to sign it, but he would not sign it then because he called up Dolan & Dolan in Newton and they told him not to sign until they saw it. That was as far as my dealings with Decker & Sim- 30 mons went on the signing of the agreement.

By Mr. Meyerson:

Q. I show you agreement dated March 20, 1929. Is this the agreement you are talking about? A. Yes. The last signature I saw made on that agree-

Charles W. Downing—direct

ment was the signature of Tully & Dunning.

Q. Do you know the personal signature of Mr. Simmons? A. I do not.

Mr. Meyerson—I offer this agreement in evidence.

By the Court:

Q. Is this paper the final draft of the agreement?

10 A. That is the final draft of the agreement.

Q. Is that the one you showed to Mr. Simmons?

A. Yes.

The Court—Let it be marked for identification.

20 Mr. Meyerson—I want to state at this time that the allegations as to the conveyances to the corporation are admitted by the answer. The allegations are included in paragraphs three to eight inclusive, in the bill, and the answer filed by Mr. Dennis says: "Paragraphs 2 to 8 in the complaint inclusive are admitted."

The Court—All right.

30 Mr. Meyerson—The bill of complaint gives the date of the conveyance to the corporation as February 7, 1929.

By Mr. Meyerson:

Q. Up to the time that these conveyances were made to Havensdale Farms, of the property of Mr. Havens and his son, was the National Union Bank a party to any of the proceedings up to that time?

A. The National Union Bank did not enter into

Charles W. Downing—direct

it until after the conveyances were made and until after I called in John P. Dalton.

Q. Do you know whether, subsequent to the execution of this agreement, all the assets of Havens and his son as represented by the shares of stock issued to him and his son and their respective wives, were turned over to the bank so that the bank had the complete title as trustee? A. As the agent in charge I turned over all of the books of the corporation and the certificates of stock signed in blank. 10

By the Court:

Q. The entire stock issue? A. The entire stock issue.

By Mr. Meyerson:

Q. Were you present at a meeting held in King & Vogt's office in Morristown in reference to a proposed sale of the farm? A. I was. 20

Q. Was Mr. Simmons there? A. Yes.

Q. And Mr. Dennis, his attorney? A. Yes.

Q. Did they or did they not make audible objection to the sales unless their priority was recognized by giving them a mortgage on the property? A. Yes; they objected to the sale of the property, stating that they would not release their lien on the property and wanted their judgment paid in full. 30 They were willing to take for their judgment a mortgage that would be equal in priority to the second mortgage on the property.

Q. But they insisted on a mortgage for the full amount of their claim? A. Yes.

Charles W. Downing—cross

Cross Examination by Mr. Dennis:

Q. From whom did they ask for a mortgage?

A. From the proposed purchaser of the farm.

Q. Do you remember the fact that they offered to do that, to help the purchaser buy? A. That was the alleged reason.

Q. What is that? A. That was their alleged reason for their offering to do that.

10 Q. The purchaser had no money; so Decker & Simmons offered to take a mortgage from the purchaser? A. In other words, Decker & Simmons did not ask cash for their judgment, but they wanted it secured for the full amount of their judgment.

20 The Court—Mr. Dennis, how would a mortgage given by the purchaser to Decker & Simmons help the purchaser buy the property if he did not have the cash? You said this was to help the purchaser buy the property.

Mr. Dennis—Yes, sir; and Decker & Simmons told the purchaser, when the bank or anybody else—

30 The Court—What Decker & Simmons wanted was a lien on the property after the purchaser had bought it for cash, with the proceeds of a first or second mortgage, giving Decker & Simmons a lien on the property for the full amount of the judgment. That was what they wanted.

Mr. Dennis—That was the amount of their judgment.

The Court—The effect of that would be that Decker & Simmons would have gotten

Charles W. Downing—cross

one hundred cents on the dollar for the judgment, if the mortgage was good.

Mr. Dennis—It certainly would have been good.

The Court—That would be the effect if the mortgage had been given by the purchaser to Decker & Simmons. That would have paid Decker & Simmons one hundred cents on the dollar for their judgment.

Mr. Dennis—Yes; if the property was 10
worth it, and it certainly was.

Q. Speaking of the time that you turned over the stock to the company, what company was it you turned it over to? A. I turned it over to Mr. Meyerson as attorney for the National Union Bank.

Q. When did you do that? A. After the agreement was signed.

Q. After the agreement was signed? A. Yes. 20

Q. Did you have control of the stock up to the time the agreement was signed? A. The stock was issued. I do not know whether it had been delivered to everyone or not.

Q. Do you remember the meeting at the office of Morris & Downing on March 11th? A. I cannot recall the specific date.

Q. That was a time that a plan was devised to try and help Havens out of his trouble, was it not? 30
A. I think that was the meeting prior to the final draft of the agreement, yes.

Q. What you call the draft of agreement was made after the 11th, was it? A. I think so.

Q. Had you at that time turned over the stock to Mr. Meyerson? A. I think not.

Charles W. Deuning—cross

Q. Do you remember the sheriff, on the 11th of March, coming to you with an execution and making a demand? A. I do.

Q. Making a demand for all stock in the name of Martin C. Havens? A. I do.

Q. What did you do? A. I signed a certificate that there was none standing in his name, and there was none.

Q. It had not been turned over to the Havensdale Farms? A. No; it was never turned over to the Havensdale Farms.

Q. Had it been issued at that time? A. Yes.

Q. To whom delivered? A. I cannot say whether that stock was ever delivered or not, or whether it was just signed and left in the book. It had been assigned, however.

Q. How did you come to turn it over to Mr. Meyerson? A. Because the party who had signed it in blank had turned it over to me, instructing me to turn it over to Mr. Meyerson.

Q. Then, the whole thing was done on paper; there was never any actual change of possession of stock or anything else? A. Well, there were new certificates issued and entries made in the stock ledger and transfer book.

By the Court:

30 Q. And transferred to the National Union Bank? A. I don't know. I turned it over without making that notation on the transfer ledger. I turned it over to Mr. Meyerson. I don't know whether new stock was ever issued to the National Union Bank or not.

Charles W. Downing—cross

By Mr. Meyerson:

Q. I would like to have you identify the stock certificates. Are these (showing witness) the certificates that were turned over to me in blank? A. Those are the certificatoes of stock that were turned over to you.

Mr. Meyerson—I offer these certificates in evidence showing how title was transferred to the National Union Bank. 10

Mr. Dennis—I object upon the ground that they are immaterial to the case—absolutely immaterial.

The Court—Objection overruled.
(Marked Exhibit C-2.)

By Mr. Dennis:

Q. When you made the arrangement for forming the corporation of the Havensdale Farms, was that your notion or did the bank have anything to do with that? A. The National Union Bank had nothing to do with the organization of Havensdale Farms or with the transfer of the property to Havensdale Farms. As far as I know they knew nothing about it. 20

Q. Now, at the time that agreement was made and signed, the Sussex National Bank had a judgment against Martin C. Havens, didn't it? A. I think they had their judgment after the agreement was signed, although I cannot remember exactly the date of that judgment. 30

Q. You don't know whether their name appears there or not? A. Their name does appear on the agreement I cannot tell you whether they had a judgment at that time.

Martin C. Havens—direct

Q. Do you know whether that judgment was paid? A. I don't know.

Q. Do you know whether any arrangement was made to pay Snook? A. I know of no arrangement.

10 Mr. Meyerson—I wish to offer in evidence at this time record showing that the Sussex & Merchants National Bank obtained a judgment against Martin C. Havens two days before this agreement to which the Sussex & Merchants National Bank is a party.

(Marked Exhibit C-3.)

Mr. Meyerson—Also showing the third judgment obtained by Mr. Snook.

MARTIN C. HAVENS, one of the defendants,
20 sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Meyerson:

Q. Did you turn over all your property to the corporation for the benefit of your creditors? A. Yes; absolutely.

Q. Were you present when Mr. Simmons signed this agreement of March 20, 1929, marked C-1 for
30 identification? A. Yes, sir.

Q. Did you see Mr. Simmons sign that? A. I did, in the presence of William Dolan, at Dolan & Dolan's office.

Q. Where? A. At Newton.

Martin C. Havens—cross

By the Court:

Q. Can you fix the date? A. Right after the 20th—the second day after the 20th—after we started out with it. I did not mark down any date.

By Mr. Meyerson:

Q. To the best of your recollection, was it within a couple of days? A. Within a few days.

Q. Did Mr. Simmons object to signing this agreement? A. Yes, he did. He wanted to consult Dolan & Dolan. 10

Q. Did he consult Dolan & Dolan? A. Yes.

Q. After he consulted Dolan & Dolan, did he sign? A. I waited in the office until he came in.

Q. Do you recognize his signature? A. Yes.

Q. It was signed in your presence? A. Yes.

Mr. Meyerson—I offer this agreement in evidence. 20

(Paper heretofore marked as C-1 for identification marked Exhibit C-1.)

Cross Examination by Mr. Dennis:

Q. Did you first see him before he did sign it; did you not see him with your attorney at his place of business? A. Yes; and then he said he would consult with Dolan, and I was to meet him there that afternoon. 30

Q. Do you remember that he told you that you did not seem to have any creditors who had signed it? A. What?

Q. Do you remember Mr. Simmons telling you that you did not have any creditors on the agree-

Martin C. Havens—cross

ment? A. I had just started out with it. He was one of the first ones I went to get, and I started with the biggest first and I worked down the line.

Q. Didn't you tell him that it was necessary for him to put his name on that agreement? A. I told him I wanted to get everyone; I said I wanted to get all.

10 Q. At the meeting held at the office of Morris & Downing, at which you were present with Mr. Simmons and a few other creditors, did you not undertake at that meeting to get the signatures of all your creditors, the consent of all your creditors, to the plan of settlement which was there agreed upon?

Mr. Meyerson—I object.

The Court—Objection overruled.

20 A. We started out to get all the creditors. Of course, I could not get them all at the first.

By the Court:

Q. Mr. Dennis asked you in effect: Did you not say at that meeting that you would undertake to get the consent of all creditors to that agreement? A. Yes.

30 By Mr. Dennis:

Q. Was not that the plan of settlement that was there agreed upon and assented to by everybody present, you included, that you should obtain the consent of all your creditors to the appointment of a trustee and that the Union Bank should be appointed trustee to sell the property, collect the pro-

Martin C. Havens—cross

ceeds of sale and pay the creditors out of the proceeds of sale? A. Yes, sir.

Q. Is not that so? A. Yes, sir.

Q. You started out then to get the creditors to sign, did you? A. I did. I had no one to refuse me.

Q. How many did you get? A. I think there were about twelve over \$100.

Q. Twelve creditors over \$100? A. I think so.

Q. And you got twenty-two or twenty-three signatures on this paper? A. Yes; I think more than that. I do not know how many is on there. 10

By Mr. Downing:

Q. In your bill of complaint you give the names of fifty or fifty-one creditors who did not sign?

The Court—It is not his bill of complaint, is it? 20

Mr. Dennis—I don't know.

The Court—You do know. You filed an answer to it.

Mr. Dennis—In part I would say as a matter of fact it is his.

By Mr. Dennis:

Q. What did you do with the agreement after you got these signatures? A. When I got through with it I turned it over to the bank, or to Mr. Downing, and he turned everything over to the bank. 30

Q. What bank? A. National Union Bank of Dover, my trustee.

Q. The Sussex & Merchants Bank had a judgment against you at that time? A. No, sir.

Martin C. Havens—cross

The Court—The record will show. The paper is dated March 20.

Q. It also shows that they signed that agreement? A. Yes.

Q. I ask you, as a matter of fact, was that judgment not paid? A. No, sir; it is not paid.

Q. It is not paid now? A. No, sir; it is still of record.

10 Q. When that stock was issued, was any of it ever delivered to you? A. No, sir; that was in trust. I did not take it out of the office. I left it in the book.

Q. In trust for what? A. I said I left the stock in the book.

Q. You left it in the book? A. Yes.

Q. Where was the book? A. The book was kept at Morris & Downing's office.

20 Q. Did you have any of that stock in your possession or custody? A. No, sir; not away from the office.

Q. How did it get into the hands of the Union Bank? A. Mr. Downing delivered it to them.

Q. Did you make an assignment of it to them? A. Yes, sir.

Q. How did you make the assignment? A. In blank.

30 Q. You signed it on the back of the stock, did you? A. Yes.

Q. Did you know what was to be done with it? A. Yes; according to that agreement.

Q. Did you have any understanding with the bank what was to be done with the stock? A. Only for the benefit of the creditors.

Martin C. Havens—cross

- Q. Benefit of your creditors? A. All creditors.
Q. All creditors? A. Yes.
Q. Has it been applied to the benefit of the creditors yet?

The Court—This whole suit is predicated on the proposition that it has not and they blame you for it.

By Mr. Meyerson:

10

Q. Just to get the record straight, is this (showing witness) a memorandum that you made of the various creditors above and under \$100? A. Yes.

Q. That is a list that you handed over to the National Union Bank? A. Yes.

Q. Are these the signatures that you attempted to get? A. That I attempted to get.

Q. Did you get the signatures? A. Everybody but the endorsers without security. 20

Mr. Meyerson—I offer this list in evidence.
(Marked Exhibit C-4.)

Q. Do you know whether Mr. Simmons made a levy on the assets of the corporation subsequent to the signing of this agreement? A. Not the corporation.

30

Q. On what? A. On Mr. Havens' personal property, like cows, horses and things of that kind.

Q. He made a levy on the cows? A. Yes.

Q. Did the cows belong to Havensdale Farms?
A. No, sir.

Q. Is that all the levy that you know of? A. I had a list of it.

Martin C. Havens—cross

By Mr. Dennis:

Q. To whom did the cows belong? A. The cows belonged to Mr. William H. Sampson. He had a mortgage.

By Mr. Meyerson:

10 Q. (Showing witness) Is this a copy of the levy which the sheriff left with you at the time he made the levy? A. I went to the sheriff's office and got a copy myself.

Q. The sheriff gave that to you as a copy of the levy which he made? A. In my presence.

Q. You got it at the sheriff's office? A. I got it at the sheriff's office.

Q. From the sheriff? A. From the sheriff.

20 Mr. Meyerson—I offer this in evidence.
(Marked Exhibit C-5.)

By Mr. Dennis:

30 Q. Why did you make a transfer of your property to Havensdale Farms, Incorporated? A. To benefit my creditors by having increased assets, taking in everything I had under one head, so that if anything happened to me it would be all taken care of under one head. I went out and solicited the creditors for an extension of time so I could work out my plan.

Q. You had already given a bond and warrant to Mr. Simmons, had you not? A. I do not understand.

Martin C. Havens—cross

By the Court:

Q. You had given a bond and warrant to Mr. Simmons? A. Not before that.

By Mr. Dennis:

Q. Not before that? A. No, sir.

Q. You did that before you gave the bond and warrant to Mr. Simmons? A. Did what before?

Q. You turned over your property to the Havensdale Farms A. (Interrupting) On February 7th. 10

Q. Was not some of that stock turned over in March and some of it in April? A. No, sir.

Q. Your object in doing that was so that if anybody sued you they could not enforce their judgment? A. No, sir; I didn't think anything about any such thing at that time because I had never been sued in my life. 20

Q. You were advised that by forming a corporation and turning everything over to it, then the title would not be in you and they could not levy on it? A. No, sir; I was not advised.

Q. What possible motive could you have in forming the corporation and turning your property over to it, unless you had some motive for it?

The Court—He has already told you what his motive was. He said that his motive was to secure his creditors, to get all the property under one head or in one ownership, so that if anything happened to him—I suppose he means his death or something of that kind—the title of this property would be where 30

Martin C. Havens—cross

it could be used for the benefit of his creditors.

Q. Why didn't you make an assignment for the benefit of your creditors? A. I thought this was a better plan to be on the square.

Q. You thought this was a better plan? A. Yes, sir.

10 Q. Did the new corporation assume your debts when you turned over your property; did the new corporation assume the payment of your debts? A. I intended to take them out of the earnings of the company.

Q. What? A. I intended to pay them from the earnings of the company.

Q. Well, the company did not assume the payment of your debts, did it? A. Yes, sir; I signed all the stock to the company.

20 Q. What? A. I signed all of the company's stock to the creditors.

By the Court:

Q. Mr. Dennis, I think, refers to the time when you turned your property over to the company. Did the company at that time assume your debts and agree to pay them? A. Yes, sir.

30 Q. By resolution of the board of directors? A. Yes.

Q. Yes? A. Or by agreement. I think so as far as I can remember.

The Court—The minute book of the corporation will show that, if that is so.

Martin C. Havens—cross

By Mr. Dennis:

Q. You haven't the book? A. No, sir; I have not.

The Court—It is probably here in court.

Q. It has been suggested to me that you have not testified whether all of your creditors signed that agreement. Did all of your creditors who were known to you sign that agreement, Exhibit C-1? 10

A. The only ones, I think, that we did not get were the ones that were endorsers.

By the Court:

Q. That is, contingent liability? A. Contingent liability.

By Mr. Dennis:

20

Q. Where did you live at that time? A. Dover.

Q. You knew S. C. Hume? A. Yes, sir; he is under \$75. Any account under \$75 we were going to pay.

Q. Did you get the American Art Works Company? A. I was—

By the Court:

20

Q. Do you know the American Art Works Company? A. Yes, sir.

By Mr. Dennis:

Q. Did you get them? A. We were not to get them. We were going to pay any accounts under \$100.

Martin C. Havens—cross

Q. You have given the names of fifty creditors who did not sign that agreement. Check those under \$100.

The Court—What you want this witness to check is what purports to be a copy of an order of continuance and an order to show cause and the bill of complaint filed in this cause.

10

By the Court:

Q. He asks you to check on this list those creditors who were \$100 or less. A. (Witness does as requested.)

By Mr. Meyerson:

20 Q. Did you know, when you were signing the bond and warrant to enter up judgment, that you were creating a judgment lien against your property? A. I understood that we were signing a note covering it all in one lump. He said this is what he would like to get. I came up from milking with a pail of milk, and they stood out there, and of course I did it in good faith. I thought I was not doing anything wrong. I did not take into consideration that I should have consulted my counsel. I made a
30 mistake.

Q. What were you told it was that you were doing; what were you told it was? A. I was signing a note.

By the Court:

Q. Who told you that? A. Mr. Dennis.

William Otto—direct

By Mr. Dennis:

Q. Was not the paper read to you that you signed? A. No, sir; it was not.

Q. You owed the money, didn't you? A. Yes, sir; I owed the money.

Q. You did owe it? A. Yes, sir.

Q. Did it make any particular difference as to the form in which the debt stood; does that make any difference as to whether you should pay it or not? 10

The Court—It makes quite a difference. That is the whole trouble in this case. If you did not have a judgment you would not be here as a preferred creditor.

WILLIAM OTTO, sworn as a witness on the part of the complainant, testifies as follows: 20

Direct Examination by Mr. Meyerson:

Q. You are the president of the National Union Bank, the complainant herein? A. I am.

Q. At the time of the execution of this agreement, Exhibit C-1, did your bank hold collateral security for your debt? A. We did.

Q. To what extent? A. Approximately \$16,- 30 000.

Q. What did the collateral consist of? A. Notes that were given to Mr. Havens by the purchaser of his property.

Q. Which he had sold before this agreement? A. Yes.

William Otto—direct

Q. And were those notes good and collectible?

A. They were.

Q. Had they always been paid at maturity? A. They had.

Q. Were they a series of notes? A. They were.

Q. Maturing each month? A. Yes, sir.

Q. Were those notes held solely for your benefit or for the benefit of anyone else? A. The Trust Company and us.

10 Q. The Dover Trust Company? A. The Dover Trust Company and the National Union Bank.

Q. Upon the execution of this agreement did you surrender to your trust officer all the notes which you held as collateral, for the benefit of all creditors? A. We did.

Q. And have those notes, to your knowledge, been paid as they have matured? A. They all have been paid, yes.

20 Q. To whom? A. To us, to the bank.

Q. Do you know whether they have been paid since the appointment of the receiver, Judge Salmon? A. I think they have; I am not sure about that.

Q. Have you, on behalf of your bank, ever made any attempt to repudiate your agreement to throw in these notes for the benefit of the creditors? A. No, sir.

30 Q. You were and still are willing to abide by your agreement? A. Yes.

Q. And a result of it you have lost a priority of \$16,000, you and the Dover Trust Company? A. Yes.

Q. And your position has been changed to that

extent, to the extent of the collateral you have given up? A. Yes.

Q. (Showing witness) I show you an agreement bearing date February 19, 1929, executed by Martin Havens. Is this the collateral agreement by which the notes were turned over to you and the Dover Trust Company as collateral security for the obligation due your bank and the Dover Trust Company? A. Yes, sir.

Mr. Meyerson—I offer this agreement in evidence. 10

Mr. Dennis—I object. I understand it is an agreement between the bank and Havens.

The Court—Under which they held this collateral security.

Mr. Dennis—I object to it as being immaterial in this case and irrelevant.

The Court—Objection overruled. 20

(Marked Exhibit C-6.)

Cross Examination by Mr. Dennis:

Q. You made the affidavit annexed to the bill of complaint, did you not? A. Yes, sir.

By Mr. Meyerson:

Q. You are a signatory to this agreement marked Exhibit C-1? A. Yes, sir. 30

By Mr. Dennis:

Q. You say you are a signatory to that agreement? A. Yes, sir.

Q. Is not that the signature of the Union Bank

Emil C. Katterman—direct

by its president? A. I think the wording is "National Union Bank—William Otto, president."

By the Court:

Q. Mr. Dennis makes the distinction whether you signed it personally or for the bank? A. I signed it for the bank. The bank was the creditor.

10 EMIL G. KATTERMAN, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Meyerson:

Q. You are the president of the Dover Trust Company of Dover? A. Yes, sir.

Q. (Showing witness) I show you an agreement, Exhibit C-1. Is your bank a signatory by yourself
20 as president, on that agreement? A. Yes; I signed it.

Q. Did the Union National Bank hold collateral security for the benefit of your bank, as well as the Union Bank, by virtue of this agreement marked Exhibit C-6? A. It did.

Q. And did you authorize and permit Mr. Otto to surrender the collateral which you had upon the execution of this agreement, on which the judgment creditors agreed to give up their priority?
30 I did. A. I did.

Q. For what reason did you agree to give up your securities? A. As per agreement with the rest of them that we should not be preferred creditors by holding these notes. Provided the others would give up their security, we would do that.

Q. And it was conditioned upon their giving up their security? A. Absolutely.

Emil C. Katterman—cross

Q. If they had not given up their security, would you have agreed to give up your collateral? A. No; I would never have given it up.

Q. As a matter of fact you have never made any claim for this collateral since this agreement was signed? A. No, sir.

Q. You have never attempted to repudiate your surrender of your assets? A. No, sir.

Q. You are willing still to surrender, if the other parties abide by their agreement? A. I am. 10

Q. Your bank's position has been changed to the extent to which the assets that were a preference in the way of collateral were surrendered by you; in other words, you have lost that much on account of your claim? A. We lost security.

Q. Your position would be materially changed; you have given up your collateral, is that so? A. Yes.

Q. As a matter of fact, I show you a claim which 20 you filed with the receiver appointed by this Court, which shows the claim filed on an unsecured debt, showing that you have given up your collateral; is that your claim? A. That is right.

Mr. Meyerson—I offer the claim in evidence.

(Marked Exhibit C-7.)

30

Cross Examination by Mr. Dennis:

Q. In signing for your bank, did you do that by your own authority or by authority of the board of directors? A. By authority of the board of directors.

Q. They authorized you to do that? A. Yes, sir.

Frank Snook—direct

Frank Snook—cross

FRANK SNOOK, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Meyerson:

Q. You are one of the creditors of Martin Havens? A. Yes.

Q. You obtained a judgment against Martin Havens, did you not? A. Yes.

10 Q. Is this your signature to this agreement, Exhibit C-1? A. Yes.

Q. Have you made any attempt to repudiate your agreement by which you gave up the preference of your judgment? A. I have not done a thing.

Q. I show you a claim which you filed with the National Union Bank when it was functioning, in which you state that you have given up your judgment and file as an unsecured claimant; is that your
20 signature? A. Yes.

Cross Examination by Mr. Dennis:

Q. Did you issue execution on your judgment? A. I think so; yes.

Q. And made a levy? A. Yes, but I am not positive about that.

Q. Who presented that agreement to you to
30 have it signed—Exhibit C-1? A. It must have been in Morris & Downing's office.

Q. Do you remember specifically where it was. A. Yes. I do not remember signing anything else at any other place.

Q. What representation was made to you at that time—that it had to be signed by all? A. All creditors.

Sandford Girard—direct

SANDFORD GIRARD, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Meyerson:

Q. What is your position with the National Union Bank? A. Vice president and trust officer.

Q. Did you have charge of this trust from the date of the inception of it, on the 20th day of March, 1929? A. Well, it was shortly after that.

Q. Did you come into possession of the assets 10 of the corporation, Havensdale Farms? A. Yes.

Q. Were the stock certificates turned over to you? A. Yes.

Q. The books and documents of the corporation? A. Yes.

Q. And you functioned? A. We did.

Q. You functioned until such time as the receiver was appointed by the Court? A. We did.

Q. Did you receive any rents? A. We did. 20

Q. Interest? A. Yes.

Q. Did you make any disbursements? A. Yes.

Q. Did you receive the proceeds of the sale of the milk route? A. We did.

Q. Will you give us just the total figures of the amounts handled and disbursed by you, as trustee, to show the extent to which you functioned? A. We received a total, that is, including payment on the notes of Zuchman Brothers, \$14,193.93. That 30 is the amount received. The amount disbursed was \$7,110.37. That is for taxes, rent—

Q. You paid no claims? A. Outside of taxes, interest on mortgage and such things as that.

Sandford Girard—direct

By the Court:

Q. No general creditors? A. No general creditors, no.

By Mr. Meyerson:

Q. Did you also receive the sixteen odd thousand dollars worth of collateral, which your bank held for itself and the Dover Trust Company? A. We did, or I did.

10 Q. And when those notes were paid, what did you do with the money? A. We held it in trust in the National Union Bank.

Q. They never went back to the bank, did they? A. They did not.

Q. And when a receiver was appointed, did you turn over the cash and the notes which had not yet become due, to the receiver? A. I did.

20 Q. Judge Salmon? A. I did.

Q. And took his receipt for it? A. I did.

Q. Did you make an accounting to him when you turned over your office to him? A. I did.

Q. Has there ever been any objection to your functioning while you were functioning from the 20th day of March until December 31, a period of eight or nine months? A. There was no objection.

30 Q. Did Decker & Simmons ever object to the way the trusteeship was run? A. They did not.

Q. Whenever you gave notice of things that you as trustee did, did you also give notice to Decker & Simmons.

& Simmons. A. We gave notice to all of the creditors, including Decker & Simmons.

Q. Were there claims filed with you as trustee? A. There were.

Sandford Girard—cross

Q. So that you functioned in every regard as de facto trustee until such time as the Court relieved you of the burden? A. We did.

Q. Were you present at the time that the sale was going to be made of the farm in King & Vogt's office in Morristown? A. I was.

Q. Did you hear Mr. Dennis, on behalf of Mr. Simmons, make objection to the sale unless his claim had priority? A. I did.

Q. Was that the reason the sale fell through? 10
A. That was the reason.

Q. And shortly after that the Court appointed Judge Salmon receiver? A. Yes.

Q. Since that time you have had nothing to do with the trust? A. I have had nothing at all to do with the trust.

Q. Did Simmons file a claim with you? A. I believe there was one filed. Those papers were all turned over to Judge Salmon. 20

Q. (Showing witness) I show you a paper. Is this the claim that was filed with the National Union Bank acting as trustee, after this agreement was signed, on behalf of Decker & Simmons? A. Yes.

Mr. Meyerson—I offer it in evidence.
(Marked Exhibit C-9.)

Cross Examination by Mr. Dennis: 30

Q. You say that you sent out notices and know of notices being sent out to creditors? A. Well, the bank, or its attorney, sent them out. I supervised it.

Q. Do you know that the bank refused to act as trustee for creditors? A. I believe there was a notice sent out in July.

Sandford Girard—cross

Q. That they refused to act? A. Yes. They wanted a meeting of the creditors.

Q. Do you know the reason why they refused?

A. Well, because we found the agreement was unworkable.

Q. Was it not because the board of directors sat down on you and would not permit you to go on?

A. I believe the reason was because we found it unworkable.

10 Q. Did not the board of directors specifically say that the bank would not act? A. I do not recollect.

Q. Now, you say that you were present when there was a proposition made to sell this farm? At what price? A. The proposition, I understood, was to be \$40,000. At the time Mr. Floyd was in Morristown, I believe the offer Mr. Floyd made was \$36,000.

20 Q. Do you remember what was said as to what bills should be paid out of the \$36,000? A. I do not recollect about the bills. I remember your making objection to the sale unless you could be satisfied as to your claim.

Q. That is, I objected to the sale? A. Unless you could be satisfied as to your claim.

30 Q. Was it not agreed there at that time that out of that money should be paid the mortgages on the Sussex County property, the chattel mortgage on the cows, the judgment of Decker & Simmons, the judgment of Snook, and all creditors who had claims of \$100 or less? A. Not at Morristown.

Q. Did they not take a vote at that time to do that? A. Not at Morristown; no.

Q. You say that there was talk there about selling it and it fell through—about selling the two farms and the dairy. It fell through, didn't it, at

Sandford Girard—cross

Morristown? A. We spoke about selling the farms at Morristown.

Q. That is where we talked about it, selling the two farms up in Sussex. Was not the proposition of Mr. Floyd to buy those two farms up there and the stock on the farms for \$36,000? A. At Morristown. That was the agreement at Morristown. That is where the meeting was held.

Q. The meeting was held at Morristown, but was not that the proposition at that time? A. 10 There was nothing said about who was to be paid, as I recollect.

Q. Do you remember that it was figured out there and it fell about \$500 short of the amount of the proceeds of the sale? A. I recall there was something about \$500.

Q. And that was to be made out of the Morris County property? A. I do not recall anything said about the Morris County property at the meet- 20 ing at Morristown. We were still on the Sussex County farms.

Q. You say the sale fell through because Decker & Simmons insisted on being paid in full? A. You insisted either on cash or a mortgage to cover your claim.

Q. A mortgage from whom? A. From Mr. Floyd.

Q. From Mr. Floyd? A. Yes; a second mort- 30 gage. You were insisting upon cash or a second mortgage.

Q. Was it decided to take a vote on it there, either to sell or not to sell? A. I do not recollect.

Q. Let me refresh your memory. Did not all the creditors, Havens and everybody else, agree that

Sandford Girard—cross

the property should be sold at \$26,000; they were all willing that the property should be sold at that price, were they not? A. I cannot recollect. I remember the amount was \$40,000 originally. At the time we met at Morristown that was to be the amount, \$40,000.

Q. We are not talking about that at all. We are talking about the offer when Mr. Floyd was there and made an offer for the two farms and the stock?

10 A. I remember—

By the Court:

Q. Was there any such meeting that you recall at which the creditors agreed to sell to Floyd for \$36,000, anywhere at any time? A. I think there was in Morristown.

Q. You think there was? A. Yes.

20 By Mr. Dennis:

Q. Don't you know that the reason why the sale fell through was because Martin C. Havens wanted \$2,000 additional for his milk route which he was running at that time and Mr. Floyd would not pay it? A. I do not recall anything about a milk route and \$2,000.

30 By Mr. Meyerson:

Q. Mr. Girard, there was something said about the refusal of the bank to act as trustee. I want to get that straight. From the date of your appointment, March 20, 1929, until you received notice from the Cook Estate, was there any objection to you acting as trustee, either on behalf of the bank, its

Sandford Girard—cross

directors, or the creditors? A. There was not.

Q. When did you receive notice that the Cook Estate claimed to have an interest in this? A. I think May 16.

Q. Is that your notation? A. Yes; that is my notation—May 16, 1929, I received this notice.

Q. So that for two months you had acted without objection? A. Yes.

Q. Then you found that there were different angles to the trusteeship, which you said was un- 10
workable? A. Yes.

Q. Then you objected to acting as trustee? A. We did.

Q. Did you ever attempt to repudiate the agreement? A. No.

Q. You simply wanted to have a trustee appointed by the court who would have power to act? A. We did.

Q. Did you send notices to the creditors asking 20
them to join in a meeting for the purpose of making application to the court or taking such step as would result in the appointment of a legal receiver to relieve you from your duties as trustee? A. We did.

Q. You made several such attempts? A. We did.

Q. As a matter of fact, you continued to function until December when you were relieved? A. 30
Yes.

Mr. Meyerson—I offer in evidence this notice which was received from the Cook Estate.

(Marked Exhibit C-10.)

Joshua R. Salmon—direct

Q. Is this a contingent claim that was filed with you by the Cook Estate? A. It was a contingent claim.

Q. They were not a party to the original agreement? A. No; they were not.

Q. I show you two claims filed, one by the Union Bank and one by the Dover Trust Company. Did or did not your bank give up its claim to all collateral?

10

The Court—Mr. Otto testified to that and also identified the claim.

Q. (Showing witness) Is this the claim that the Union National Bank filed as an unsecured creditor? A. It is.

Q. And this one? A. Yes.

20

Mr. Meyerson—I offer these claims in evidence.

(Marked Exhibit C-11 and Exhibit C-12.)

JOSHUA R. SALMON, sworn as a witness on the part of the complainant, testifies as follows:

Direct Examination by Mr. Meyerson:

30

Q. You were appointed receiver of the assets of Havensdale Farms, incorporated? A. Yes.

Q. I show you a certified copy of the order appointing you as receiver? A. Yes.

Mr. Meyerson—I wish to offer it in evidence.

Joshua R. Salmon—direct

The Court—We have the original order here in the case.

Q. Were all the assets turned over to you as receiver by the Union Bank as trustee? A. They were, according to the statement, and the statement was checked up to my satisfaction, that it was correct.

Q. And they made a complete accounting to you?

A. Yes.

10

Q. And you are satisfied the accounting is correct? A. I am satisfied it is correct.

Q. And you are willing, as far as it is within your power, that an order permitting discharge of the trustee from its obligation as de facto trustee, be made by this court? A. I know of no reason why there should not be such an order.

No Cross Examination.

20

Complainant Rests.

DEFENDANTS' CASE.

Mr. Dennis—I did not intend to put any witnesses at all on the stand, but Mr. Simmons is here, and in view of the scandalous 30 charges made in the complaint and also here in the court room, I am going to put Mr. Simmons on the witness stand and let him make his statement.

Benjamin P. Simmons—direct

BENJAMIN P. SIMMONS, one of the defendants, sworn as a witness in his own behalf, testifies as follows:

Direct Examination by Mr. Dennis:

Q. Where do you live? A. Sussex, New Jersey.

Q. What is your business? A. Coal, milk and feed.

10 Q. Do you know Martin C. Havens? A. I do.

Q. You dealt with him for several years? A. Yes.

Q. And you obtained from him a bond and warrant for the amount of debt due you? A. I did.

Q. Where did you obtain that? A. At his farm, in your presence.

Q. About what time? A. It was on a Saturday afternoon, I think, in March a year ago.

20 Q. And you had judgment entered on that bond and warrant? A. I did.

Q. And execution issued? A. Yes.

Q. And levy made? A. Yes.

Q. Has anything ever been done on that? A. No, sir.

Q. Has any proposition been made looking to the payment of any part of the debt or the whole of the debt? A. Yes.

30 Q. When and where? A. At my office, one morning about ten-thirty, Mr. Havens and Mr.—

By the Court:

Q. "One morning about ten-thirty" is not definite. A. Well, it was about a year ago; it was in the spring.

Benjamin P. Simmons—direct

Q. Shortly after your judgment was entered?

A. Yes; I would say not more than two months after.

Q. Go ahead. What happened? A. Mr. Havens and Mr. Downing called at my office and asked me would I sign an agreement to go in with the other creditors on a pro rata basis, provided, however, that they could effect an immediate sale of the two farms and the stock. In view of the fact that I held this judgment, I felt a little leary about signing this paper. I told them to go see Mr. Dennis and get his opinion. Mr. Dennis 'phoned me back and said I could sign it if I wanted to, that he did not think it would affect the case any in case there was not a sale made. These gentlemen returned to my office and again asked me to sign it. I again refused, and they seemed rather indignant because I would not sign it. I said before so doing I wished to have a talk with Mr. William A. Dolan, of Newton, who was attorney for Little Flower Monastery. They still had an account. Two or three days later I was called to attend a meeting of the creditors to be held at the office of Morris & Downing, but before going to their office I went to the office of Mr. Dolan and we had a talk in the presence of Mr. Havens, and Mr. Dolan said he believed it would be all right to sign the paper, provided they put the sale through as they agreed to do, and I signed in the presence of Mr. Dolan and Mr. Havens and Mr. Dolan took the paper to the officers of the Little Flower Monastery and had them sign; he represented them. We held the meeting at the office of Morris & Downing and there was no sale made. The man who had offered \$40,000 for the two farms and the stock withdrew his offer and it fell through.

Later—I would say a couple of months—I was approached by a Mr. L. N. Simmons, a real estate broker of Bloomfield, who said he had a prospective customer.

- 10 Mr. Simmons called and said he had a client who would give \$30,000 for the farm, or \$36,000 for the farm and cattle, provided I would take a mortgage for the amount of my claim in the neighborhood of \$8,000, as he was short of cash. This man came from Nanuet, New York. He owns real estate there and had it on the market for sale, and as soon as he sold that property he would pay off my mortgage and the Farmers' National Bank mortgage as well, but he needed a little assistance to put the deal through until such time as he sold his other property. To this I said "Yes," also, because I felt I wanted to close up this deal as quickly as possible. In company with Mr. Dennis and some of the other creditors we met in Morristown a few days later, and Mr. Floyd, 20 after some discussion, agreed to take the two farms at \$30,000, with the understanding that my account would be covered by this mortgage; but Mr. Havens said that he would not consider \$30,000, because he must have \$2,000 additional to pay for a milk route in Sussex. To this Mr. Floyd said he would not pay it, as his offer was \$30,000 for the farm, or \$36,000 with the cattle. The deal fell through because Mr. Havens would not let him have it for \$30,000.
- 30 Mr. Havens' son, after the meeting in the basement of Lawyer King's office, said to me: "Why didn't father let the farm go and close it up. I am tired of staying around here, and I want to settle it up and get out."

Q. Did you, at any time, ever agree or suggest

Benjamin P. Simmons—cross

that your judgment should practically be set aside and you come in as an unsecured creditor, except as appeared in that agreement which was made for the purpose of closing out according to the terms that were formulated at the meeting at Morris & Downing's office? A. That is right.

Q. And after they got nowhere with that, they charge and do you admit and say that you have never agreed and do not agree to waive any lien you may have upon the property? A. I have never 10 made such agreement.

Cross Examination by Mr. Meyerson:

Q. You say that the only reason the deal fell through is because of a demand by Havens for \$2,000? A. Yes.

Q. Didn't you insist that your judgment be paid when that deal was going to be consummated? A. 20 That had nothing to do with the sale.

Q. Yes, or no? A. Yes.

Q. You insisted upon that? A. Yes.

Q. And that if they could not give cash, you would take a mortgage from the purchaser? A. That was my first offer.

Q. If you could not get the cash you would take a mortgage? A. Yes.

By the Court:

30

Q. The result of that would have been that if he paid \$30,000 and gave you a mortgage for \$7,000 ultimately, when he paid off that mortgage, the property would have stood him in \$37,000? A. No. The \$8,000 was to be deducted from the purchase price.

Lester N. Simmons—direct

Q. Instead of paying \$30,000 to the trustee, he was going to pay \$22,000? A. Less the first mortgage which the Farmers National Bank had.

Q. Leaving that out of consideration? A. Yes.

Q. You were getting approximately \$8,000 and he was to pay \$22,000, from which the other liens were to be deducted? A. Yes, sir. I made that offer at Mr. Floyd's suggestion to help him out.

10

LESTER N. SIMMONS, sworn as a witness on the part of the defendants, testifies as follows:

Direct Examination by Mr. Dennis:

Q. Where do you live? A. I live in Glen Ridge, New Jersey.

Q. What is your business? A. Real estate broker and insurance.

20 Q. Your name is the same as the defendant Simmons. Are you any relation to him? A. No, sir.

Q. How long have you known him? A. Almost a year.

Q. Were you the real estate agent who was trying to negotiate a sale to Mr. Floyd? A. Yes, sir.

Q. The farm in Sussex County? A. Yes, sir.

30 Q. And you attended the meetings at Dover and also at Morristown? A. Yes; at Dover and Morristown.

Q. Who employed you to negotiate the sale, to find a customer? A. Mr. Havens.

Q. Martin C. Havens? A. Martin C. Havens.

Q. You found a customer, did you? A. Yes; I found two.

Lester N. Simmons—direct

Q. Who was the first one? A. The Clifton Dairy of Clifton, New Jersey.

Q. Did you meet the Union Bank and some other creditors in regard to that sale? A. The Clifton Dairy?

Q. Yes. A. Yes.

Q. What was the proposition there?

Mr. Meyerson—I object. I do not think it is germane to the issue.

10

The Court—Objection sustained.

Mr. Dennis—I want to show what took place there.

Q. Where was the second—Mr. Floyd? A. Mr. Floyd is in Nanuet, New York. He owned quite a few acres up in Nanuet and several building development concerns were interested in buying it, and before he would sell he wanted to locate some- 20 where in New Jersey and purchase a new farm, a dairy farm, and that is where I got Mr. Floyd interested in Martin C. Havens' farm. I got a deposit from Mr. Floyd which was turned over to Mr. Meyerson, I believe. I do not know where it is now; it has never gone back to Mr. Floyd. Mr. Floyd's offer was \$40,000. The question of cash came up and Mr. Floyd was short approximately \$16,000 in cash, and I went to Mr. Otto of the National Union Bank and 30 also to Mr. Kattermann, of the Dover Trust Company, to see what arrangements could be made whereby Mr. Floyd could borrow \$16,000 necessary to purchase the farm. Both Mr. Kattermann and Mr. Otto checked up Mr. Floyd through the Pearl River Bank and found his credit to be A No. 1.

Lester N. Simmons—direct

Mr. Meyerson—May I object to this testimony? It is immaterial.

The Court—I do not see that it has anything to do with the case. What you want to do is to find out what happened at the meeting.

Q. Just state what took place at that meeting in regard to that? A. What I was leading up to
10 was—

By the Court:

Q. We do not want to know about what led up to it. What happened at the meeting? A. The understanding between Mr. Otto and Mr. Kattermann, Mr. Meyerson and myself, was that inasmuch, as Decker & Simmons were willing to take their claim of \$7,000 or \$8,000 in a second mortgage on
20 either the Sussex farm or the Nanuet farm, that the National Union Bank and the Dover Trust Company would lend Mr. Floyd the other \$8,000 and take back a note secured with a second mortgage on one of the two farms. That was the arrangement made, and then when we met in Morristown the arrangements evidently were cancelled and the \$8,000 judgment that Decker & Simmons had was not considered at all.

30

By Mr. Dennis:

Q. Did the sale go through or fall through? A. Evidently it fell through.

Q. Do you know the reason why it fell through? A. Well, there was a question of \$2,000 over a milk route.

Lester N. Simmons—cross

By the Court:

Q. They did not have enough cash. That was one reason. A. Before we met in Morristown that was the arrangement.

Q. Before the day of the meeting he did not have enough cash to put the deal through? A. No; but they knew that before the meeting.

Q. Then, you say there was another reason, that Mr. Havens wanted \$2,000 for a milk route? A. Mr. Floyd's original offer was \$40,000, but the cat- 10
tle had depreciated considerably.

Q. Tell us why the deal fell through on this day of the meeting? A. I believe it was because they could not get together on a new price.

Q. And did Mr. Havens' wanting \$2,000 for a milk route, have anything to do with it? A. Yes; that had something to do with it.

Cross Examination by Mr. Meyerson:

20

Q. In addition to the reasons that you have given for the deal falling through, is it not a fact that Mr. Simmons and Mr. Dennis were insisting on getting either cash for their judgment or a mortgage? A. I cannot answer that. That took place downstairs.

30

FRANK QUINCE, sworn as a witness on the part of the defendants, testifies as follows:

Direct Examination by Mr. Dennis:

Q. Are you one of the creditors of Martin Havens & Son, under the agreement of March 20?
A. I am.

Frank Quince—direct

Q. Who presented that to you? A. I was called down to Newton to a meeting in Mr. Downing's office. I think it was the second meeting that they had, and that paper was presented to me in Mr. Downing's office.

Q. How did you come to sign it?

Mr. Meyerson—I object as immaterial.

The Court—Objection sustained.

10

Q. You did sign it? A. I did.

Q. Were any representations made to you at the time?

Mr. Meyerson—I object.

The Court—Objection sustained.

Q. You had a bill at that time, had you? A.
20 Yes, sir.

The Court—If he had not been a creditor he probably would not have been at the meeting and would not have signed anything.

No Cross Examination.

Defendants Rest.

30

Case Closed.

Exhibit C-6

EXHIBITS

Exhibit C-6 on part of Complainants.

This Indenture, made the 19th day of February, A. D. 1929, by and between Martin C. Havens, party of the first part, and the National Union Bank, of Dover, New Jersey, party of the second part;

Whereas, the party of the first part has at present a line of credit with the National Union Bank, of Dover, New Jersey, and The Dover Trust Company, Dover, New Jersey, and owes various sums on negotiable papers, as maker, endorser or discounte; and Whereas, the said Martin C. Havens has sold his stationery business in Dover, to Abraham Zuckerman and William Zuckerman, and has received in part payment therefor a series of promissory notes, of which there are at present forty-one notes outstanding, forty being in the principal sum of Four Hundred Dollars (\$400) each, and one in the principal sum of Three Hundred Dollars (\$300), making a total of Sixteen Thousand Three Hundred Dollars (\$16,300); and Whereas, the said Martin C. Havens desires to reduce the amount owed by him to the said National Union Bank, of Dover, New Jersey, and The Dover Trust Company;

Therefore, in consideration of the premises, the said Martin C. Havens does hereby assign, transfer, sell and set over unto the National Union Bank, of Dover, New Jersey, all his right, title and interest in and to the said notes; it being understood that as said notes are paid by the makers, they are to be applied towards the reduction of the general account of indebtedness of the said Martin C. Havens, equally with the National Union Bank of Do-

Exhibit C-6

ver, New Jersey, and The Dover Trust Company; and that in the event there is any amount left over after the indebtedness of The Dover Trust Company has been satisfied, that then the balance as collected is to be credited solely to the account owed by the said Martin C. Havens, or which he may be liable for, either as maker or endorser, to the National Union Bank, of Dover, New Jersey.

10 In Witness Whereof, the said Martin C. Havens has set his hand and seal the day and year aforesaid.

(Signed) Martin C. Havens, L. S.
Signed, Sealed and Delivered in the presence of
Zelma L. King.

Exhibit C-8 on Part of Complainant.

Exhibit C-8

Exhibit C-8 on part of Complainant

National Union Bank, Trustee of Martin C. Havens
 To Frank T. Snook, Dr.
 49 Foster Street
 Newton, New Jersey

To amount of note with interest as and of

March 1, 1929\$2210.19

Judgment was entered on said day in New
 Jersey Supreme Court at Trenton with

costs of 54.58 10

Making total\$2264.77

The above mentioned note was signed by Frank
 T. Snook as accommodation endorser only and Mar-
 tin C. Havens received the full amount of said note.
 Frank T. Snook has received no part of the above
 claim. The above claim is not secured except by the
 judgment entered in the New Jersey Supreme Court 20
 at Trenton, New Jersey, which was nullified by a
 subsequent agreement signed by the said Frank T.
 Snook.

State of New Jersey }
 County of Sussex }

Frank T. Snook, being duly sworn according to
 law upon his oath, deposes and says that there is 30
 justly due and owing to him from the Trustee of
 Martin C. Havens the sum of \$2264.77.

(Signed) Frank T. Snook

Exhibit C-8

Sworn and subscribed to before me this 30th day
of April, 1929.

Serena Sherred nee Serena Hallett,
Notary Public of N. J.

(Seal)

My Commission Expires Mar. 22, 1931.

10

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New Jersey Court of Errors and Appeals

The National Union Bank of Dover, Complainant-Appellee, vs. Martin C. Havens, et als., Defendants. Appeal of Benjamin D. Simmons, Defendant-Appellant.	}	On Appeal from the Court of Chancery.
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Brief on Behalf of Appellant

STATEMENT OF CASE

The bill of complaint was filed by the National Union Bank of Dover against Martin C. Havens, his son John M. Havens, Havensdale Farms, Inc., and Benjamin D. Simmons, conducting business under the business name of Decker & Simmons, as defendants, and is predicated upon the allegation that the complainant was trustee of the assets of Martin C. Havens and John M. Havens for the benefit of their creditors, under an agreement dated March 20, 1929, a copy of which agreement, marked Schedule A, is annexed to the bill of complaint. (S. C. p. 4, paragraph 1 of complaint.)

The agreement dated March 20, 1929, was an attempt to carry out a plan proposed and adopted at a meeting held March 11, 1929, at the office of Morris & Downing, in Newton, at which there were present Martin C. Havens and John M. Havens and their attorney Charles W. Downing, the

attorney of the National Union Bank of Dover, and this appellant and several other creditors of Martin C. Havens, in which meeting it was represented that Martin C. Havens and John M. Havens were indebted to numerous creditors to the amount of about \$124,000 and had assets amounting to about \$174,000 and were willing to turn over said assets to their creditors for payment thereof of their said indebtedness, whereupon it was proposed and adopted by those present as a plan for settlement that Martin C. Havens and John M. Havens obtain the consent of all their creditors to the plan, and turn over said assets to The National Union Bank of Dover as trustee for the benefit of all the creditors, with power to convert the same into money and pay thereout said indebtedness. This is alleged in paragraph 2 of the answer (S. C. p. 25, line 22, to p. 26, line 10,) and is admitted in paragraph 2 of the replication (S. C. p. 31, line 22) and said Martin C. Havens undertook to get the signature of all his creditors, the consent of all his creditors, to the plan of settlement which was there agreed upon; testimony of Martin C. Havens. (S. C. p. 62, lines 8 to 29.)

At the time said plan of settlement was adopted Martin C. Havens had previously, on February 7, 1929, conveyed to Havensdale Farms, Inc., his two farms in Sussex County and his two lots in Dover, Morris County, and John M. Havens had at the same time conveyed to Havensdale Farms, Inc., his house and lot in Dover; paragraphs 3, 4 and 6 of the complaint (S. C. pp. 4, 5, 6) and Decker & Simmons then held a judgment against Martin C. Havens for \$7,953.95, which had been entered

in the Supreme Court of this State March 5, 1929, and on which executions had been issued to the Sheriffs of Sussex and Morris Counties and levies made thereunder; paragraph 13 of complaint (S. C. p. 7, lines 21 to 29,) and paragraph 17 of answer. (S. C. p. 28, lines 18 to 27.)

The draft of agreement dated March 20, 1929, was the means taken by Martin C. Havens to obtain the consent of all his creditors to the plan of settlement adopted at the meeting held March 11, 1929, and he failed to obtain the signatures of 51 of his creditors; paragraph 19 of complaint (S. C. p. 8, line 32 to p. 10, line 19,) and by reason thereof the proposed trustee found the proposed trusteeship absolutely unworkable (S. C. p. 11, lines 19 to 22,) and that it could not carry out its trust (S. C. p. 12, lines 5 to 8,) and gave notice in writing to the creditors of Martin C. Havens of its refusal to act as trustee. (S. C. p. 30, and p. 31, lines 32 to 36.)

Havensdale Farms, Inc., was a corporation organized by Martin C. Havens when he was insolvent, some time in the early part of the year 1929, and when the corporation was organized there was transferred to it the property of Martin C. Havens and the property of John M. Havens; testimony of Charles W. Downing. (S. C. p. 49, lines 35 to p. 50, line 17.)

The stock of the corporation was issued to Martin C. Havens and John M. Havens and their respective wives (S. C. p. 50, lines 24 to 32) and the entire issue was turned over to the complainant (S. C. p. 6, lines 7 and 8,) by delivery of certificates of stock signed in blank, (S. C. p. 55, lines 7 to 10.)

After said capital stock was delivered to complainant, it tried to sell the two farms in Sussex County and the cattle and equipment thereon and called meetings of the creditors to obtain their consent to proposed sales (S. C. p. 8, lines 3 to 13, and p. 10. lines 25 to 32) but never made any sales.

Decker & Simmons, as one of the creditors of Martin C. Havens, signed said draft of agreement in pursuance and as a part of the plan of settlement adopted at the meeting held March 11, 1929, and since receiving notice in writing from the complainant of its refusal to act as trustee, have at all times claimed that their judgment was a lien and insisted upon payment thereof in full; paragraph 17 of complaint. (S. C. p. 8.)

Complainant, soon after giving notice of its refusal to act as trustee, filed its bill of complaint, praying the Court of Chancery to authorize it to sell said farms and their equipment; to decree that Decker & Simmons cannot have a preferred lien by virtue of their judgment and that the premises might be sold discharged therefrom; or, that a receiver be appointed to take over all the assets of Martin C. Havens and John M. Havens, and that said trustee be discharged. (S. C. p. 12, line 16 to p. 13, line 6.)

On the bill of complaint, and the affidavit of William Otto annexed to it (S. C. p. 20, line 18 to bottom of p. 22,) the Court of Chancery appointed a receiver of the assets of Martin C. Havens and John M. Havens and also of Havensdale Farms, Inc., to be administered in that Court. (S. C. pp. 23, 24.)

On the final hearing May 8, 1929, this appel-

lant moved for the dismissal of the bill of complaint upon the ground of want of jurisdiction of the Court of Chancery, and the Court reserved decision on the motion (S. C. p. 48,) and proceeded with the hearing of the case, and afterwards, by final decree (S. C. pp. 41 to 47,) dated July 14, 1930, adjudged and decreed:

That the said defendants, Martin C. Havens and John M. Havens, by virtue of their transfer of the properties thereinabove enumerated to Havensdale Farms, Inc., for the benefit of their creditors, and their voluntary surrender of said properties for the benefit of the said creditors, have no longer any interest in and to any of the properties mentioned in said decree, or in and to any of the assets of Havensdale Farms, Inc., or of the stock of Havensdale Farms, Inc.:

That the conveyances to Havensdale Farms, Inc., being without consideration, and simply for the benefit of the creditors of Martin C. Havens and John M. Havens are void and of no effect, and that the said Havensdale Farms, Inc., has no claim, demand, or interest in any of the assets, real, personal or mixed, now belonging to the said Havensdale Farms, Inc., and or which were transferred to it by the various deeds thereinabove mentioned, or by any other conveyances, transfers, bills of sale, or any other form of conveyance:

That the receiver, Joshua R. Salmon, proceed to dispose of all the assets of the defendant debtors, Martin C. Havens and John M. Havens, as represented by the transfers to and the assets of Havensdale Farms, Inc., as expeditiously as possi-

ble, free from the lien of any and of all the judgments thereinabove mentioned against the defendant debtors, and make distribution among all the creditors, including Benjamin D. Simmons, trading as Decker & Simmons, pro rata:

That any and all sales to be made by the receiver thereafter shall be free from any claim or interest therein, either by Martin C. Havens, John M. Havens, or Havensdale Farms, Inc.:

That the complainant be and thereby is discharged from its office as trustee for the benefit of the defendant debtors' creditors, and be relieved from all liability to such creditors, for its administration of the defendant debtors' assets: And

That the defendant, Benjamin D. Simmons, trading as Decker & Simmons, pay a counsel fee to the solicitor of the complainant, Samuel C. Meyerson, of \$300.00 with costs; and that judgment may be entered for the counsel fees so granted (S. C. p. 45, to bottom of p. 47.).

On this statement of facts, the appellant specifies as the grounds of appeal relied upon, the following

POINTS

1. The agreement dated March 20, 1929, Schedule A (S. C. p. 14,) under which complainant alleges it was appointed trustee, paragraph I of complaint (S. C. p. 4,) by reason of the failure of Martin C. Havens to obtain the signatures thereto of all his creditors, paragraph 19 of complaint

(S. C. pp. 8, 9, 10,) never became of any effect, and complainant never became trustee thereunder.

2. The bill of complaint discloses no grounds of action, and the Court of Chancery had no jurisdiction of the subject matter of the suit.

3. The Court of Chancery had no jurisdiction to appoint a receiver.

4. The Court of Chancery had no power or jurisdiction by its decree dated July 14, 1930, (S. C. p. 45, line 30 to bottom of p. 47,) to adjudge that Martin C. Havens, John M. Havens and Havensdale Farms, Inc., then had no interest in the property mentioned in the decree and order the same to be sold by the receiver free from the lien of this appellant's judgment against Martin C. Havens, or to order the discharge of complainant from its office of trustee for the benefit of the defendant debtors' creditors and relieve it from liability to such creditors for its administration of the defendant debtors' assets, or to order that this appellant pay a counsel fee to the solicitor of the complainant of \$300, with costs.

POINT I

The agreement dated March 20, 1929, Schedule A (S. C. p. 14,) under which complainant alleges it was appointed trustee, paragraph 1 of complaint (S. C. p. 4,) was the means taken by Martin C. Havens to obtain the consent of all his creditors to the plan of settlement adopted at the meeting held March 11, 1929, paragraph 3 of answer (S. C. p. 26) paragraph 3 of replication, (S. C.

p. 31, lines 23 to 29,) and he failed to obtain the signatures of about fifty creditors, paragraph 19 of complaint (S. C. p. 8, line 32 to p. 10, line 19,) and by reason thereof the proposed plan of settlement collapsed and said agreement never became of any effect and was waste paper.

POINT II

The bill of complaint discloses no grounds of action, and the Court of Chancery had no jurisdiction of the subject matter of the suit.

Upon this point the bill of complaint of necessity has to speak for itself. It relates the story of the conveyance by Martin C. Havens of his real estate to Havensdale Farms, Inc., and the transfer of the entire stock issue of that corporation to complainant, complainant's activities in attempting to sell real estate the title to which was in Havensdale Farms, Inc., and personal property the title to which was in Martin C. Havens, and upon all of which this appellant held a lien under his judgment and execution thereon against Martin C. Havens, vents complainant's spleen against Decker & Simmons because they would not release their lien, and sets out the false pretences upon which the bill was based, but fails to allege any jurisdictional fact giving the Court of Chancery jurisdiction of the subject matter of the suit, and shows on its face that the suit is a sham suit.

POINT III

The Court of Chancery had no jurisdiction to appoint a receiver.

Martin C. Havens and John M. Havens were private citizens, and there was no allegation, proof or pretense that Havensdale Farms, Inc., was insolvent, and the Court had no jurisdiction of the subject matter of the suit, and the appointment was void.

POINT IV

The Court of Chancery had no power or jurisdiction by its decree dated July 14, 1930, (S. C. p. 45, line 30 to bottom of p. 47,) to adjudge that Martin C. Havens, John M. Havens and Havensdale Farms, Inc., then had no interest in the property mentioned in the decree and order the same to be sold by the receiver free from the lien of this appellant's judgment against Martin C. Havens, or to order the discharge of complainant from its office of trustee for the benefit of the defendant debtors' creditors and relieve it from liability to such creditors for its administration of the defendant debtors' assets, or to order that this appellant pay a counsel fee to the solicitor of the complainant of \$300, with costs. (S. C. p. 45, line 30 to bottom of p. 47.)

That part of the final decree which adjudges that Martin C. Havens, John M. Havens and Havensdale Farms, Inc., have no interest in the properties mentioned in the decree amounts to a determination of the legal title of the real estate mentioned in the decree, and the Court of Chancery had no jurisdiction to determine the title; that part of said decree that orders that the receiver, Joshua R. Salmon, proceed to dispose of all the assets of

the defendants Martin C. Havens and John M. Havens as represented by the transfers to and the assets of Havensdale Farms, Inc., free from the lien of any and all judgments mentioned in the decree against the defendant debtors, and make distribution among all the creditors, including Benjamin D. Simmons, trading as Decker & Simmons, pro rata, destroyed the lien of appellant's judgment and deprived him of the benefit of his lien, contrary to both law and equity: the part of said decree which discharges complainant from its office as trustee for the benefit of the defendant debtors' creditors and relieves it from all liability to such creditors for its administration of the defendant debtors' assets, barred this appellant from any right of action he might have, as a creditor of Martin C. Havens, against complainant as holder of the unpaid capital stock of the defendant corporation, and that part of said decree that awarded costs and counsel fee was unlawful and inequitable and an abuse of the discretion of the Court, if it had any discretion as to costs in this action, and the whole decree was made in a case where the Court had no jurisdiction of the subject matter of the suit.

We respectfully submit that the decree of the Court of Chancery should be reversed and the bill of complaint dismissed.

THEODORE E. DENNIS

Solicitor for and of

Counsel with Appellant.

New Jersey Court of Errors and Appeals

THE NATIONAL UNION
BANK OF DOVER,
Complainant-Appellee,
vs
MARTIN C. HAVENS, et als,
Defendants-Appellants,

On Appeal from
Court of
Chancery.

Brief of Complainant-Appellee

OBJECTION TO STATE OF CASE

The State of Case as prepared by the defendant-appellant omitted therefrom the Answer to the Petition of Appeal. Objection to the said State of Case was made, and notice thereof given to the solicitor of the defendant-appellant on the 29th day of September, 1930. It was duly acknowledged by him, and said Objections were filed with the Clerk of this Court. The Answer to the Petition of Appeal, which was omitted from the State of Case, is hereinafter set forth and referred to as Schedule A.

FACTS

Martin C. Havens and John M. Havens, being in financial difficulties, transferred their property, real and personal, to Havensdale Farms, Inc., a corporation formed by them for the purpose of taking title to their property, in which corporation they owned the entire stock issued. The said property was transferred on February 7, 1929,

which is the date of record of the various deeds. No consideration passed for the transfer, and the intention of the transfer was to devise some way of working out of their financial difficulties. There is no allegation of fraud in this transfer, nor has any fraud been proved. It is conceded by all the parties that it always was the intention by incorporating, to devise some means of effecting a settlement with the creditors. To carry out such a plan, a meeting of the numerous creditors of Martin C. Havens and John M. Havens was called, at which the Havenses declared their willingness to turn over all the assets, which were then in the form of shares of capital stock of Havensdale Farms, Inc., to a trustee to be appointed by the creditors. It was then the intention to have the trustee negotiate a mortgage on the real estate, large enough to pay off all claims of creditors who had claims of \$100.00 or under, and that the larger creditors would wait for at least one year, during which time an attempt would be made to liquidate the assets, and pay off all claims. Quite a number of creditors were not present at this meeting, but as most of them represented claims of \$100.00 or under, it was decided to go ahead anyway, as the intention was to pay off all those small claims.

As a result of this meeting and several other meetings, the National Union Bank of Dover agreed to act as such trustee for the benefit of the creditors, and an agreement was entered into between all the creditors then present, a copy of which agreement is annexed to the complaint, and is set forth on page 14 of the State of Case, and

referred to as Schedule A. The defendant-appellant, Benjamin D. Simmons, trading as Decker & Simmons, was present at all the meetings of the creditors, and is one of the signatories to the trust agreement referred to.

Prior to the execution of this agreement, but after the transfer by Martin C. Havens and John M. Havens of their properties to the Havensdale Farms, Inc., the defendant-appellant, Decker & Simmons, recovered a judgment in the New Jersey Supreme Court, on March 5, 1929, against Martin C. Havens, in the sum of \$7943.95. Judgments were also obtained in the New Jersey Supreme Court by one Frank T. Snook, on March 1, 1929, for \$2210.19, and by the Sussex & Merchants National Bank of Newton, against Martin C. Havens and John M. Havens, on March 18, 1929, for \$403.50. The National Union Bank of Dover, and The Dover Trust Company, both as creditors, were then holding approximately \$16,000.00 worth of negotiable notes which had been given to Martin C. Havens, as part of the purchase price of a store which Martin C. Havens had a number of months previously sold to Zuckerman Brothers, at Dover, New Jersey. These notes were all financially good, and were being met at maturity, and both banks held these notes as collateral security for the obligations of Martin C. Havens and John M. Havens to them.

In the agreement between the creditors and Martin C. Havens and John M. Havens, referred to as Schedule A, and which is set up on page 14 of the State of Case, it was expressly agreed that all creditors then having collateral or preferred

claims by way of judgment, should each surrender their collateral for the benefit of all the creditors, and come in as a general creditor. This was done for the purpose of putting all creditors on an equal footing, and in an effort to further help the Havenses out of their financial difficulties.

The National Union Bank of Dover, as the trustee, entered into the performance of its duties, and functioned for a period of approximately seven months. The assets of the corporation were turned over to it. It accepted and paid out monies, took care of obligations on the property, such as interest and taxes, received the proceeds of the sale of a milk route which was sold with the acquiescence of the creditors, including the defendant-appellant, and most important of all, as a creditor, surrendered to itself, as trustee, the \$16,000.00 worth of collateral, which the said National Union Bank and The Dover Trust Company held. Both Frank T. Snook and the Sussex & Merchants National Bank of Newton, two of the judgment creditors, also surrendered up their preferences by way of judgments, and filed their claims as general creditors.

The defendant-appellant, Decker & Simmons, however, refused to abide by its written agreement, and caused a levy to be made upon what they supposed was the assets of Martin C. Havens and John M. Havens, by virtue of its judgment, although title at that time was no longer in Martin C. Havens and John M. Havens, but in Havensdale Farms, Inc. Thereafter, a customer was obtained who was willing to purchase the two farms which were part of the real estate transferred by

Martin C. Havens and his son, John M. Havens, to Havensdale Farms, Inc., but one of the reasons for the deal failing to go through was that Decker & Simmons and his attorney, Theodore E. Dennis, were present when the contract was supposed to be closed, and by asserting that they had a lien on the assets, caused such a cloud upon the transaction that the deal fell through.

In the meantime, the mortgage which the National Union Bank, as trustee, tried to negotiate to pay off all the small creditors, did not materialize, and although it attempted through many channels to place such a mortgage, and raise funds, the trustee found it impossible to accomplish the result required. Two mortgages which were then past due against the two Dover houses, which were part of the assets transferred to the Havensdale Farms, Inc., and incidentally to the trustee, were called, and foreclosure proceedings instituted. The trustee also received notice from a certain Cook Estate, that it had claims against Martin C. Havens on certain endorsements and money which had been paid by the Cook Estate, and warning the trustee that it would hold it responsible for any disbursements made without taking care of that claim. Due to the complications involved and the legal question as to whether the trustee, without the power of a court appointment, could legally function and give good title to real estate, without the unanimous consent of all creditors and parties in interest, and seeing that the trust was unworkable for that reason, the trustee filed its bill, (page 4 State of Case) praying among other things, that a custodial receiver be

appointed to take over the assets in its hands, which were then in the record name of Havensdale Farms, Inc., a New Jersey Corporation, asking further that the said trustee be permitted to make an accounting of all the assets received by it to a receiver to be appointed by this Court, and upon the making of the proper accounting to be discharged, and praying among other things that the defendant-appellant, Decker & Simmons, be compelled to abide by their agreement, to waive their alleged preference, as the other judgment creditors have done, and upon the strength of which the National Union Bank and The Dover Trust Company as creditors, had surrendered their collateral, and to compel the said defendant-appellant to come in as a general creditor.

All the creditors were brought into Court on a Rule to Show Cause, and at a full hearing thereof, at which Decker & Simmons and their counsel were present, the Court appointed the Honorable Joshua R. Salmon as custodial receiver of the Havensdale Farms, Inc., Martin C. Havens and John M. Havens. No appeal has been taken from the Order appointing receiver, (page 23 of State of Case) which was filed on December 31, 1929, and the receiver undertook the burden of the receivership, and has had an accounting made to him by the trustee, for the period during which the said trustee functioned. There have been no objections or exceptions taken by any creditor to any of the acts of the trustee while it functioned, or any of the acts of the custodial receiver, or of the accounting made by the trustee to the receiver, and the said custodial receiver is still functioning and

in control of the assets of the Havensdale Farms, Inc. The Final Decree held that the defendant-appellant, Decker & Simmons, as a party to the agreement of March 20, 1929, was bound by its terms, and that he should come in as a general creditor in the participation of the assets. It also discharged the trustee on its accounting, and directed the custodial receiver to wind up the affairs of the corporation as expeditiously as possible. None of the numerous creditors, or any of the other defendants has filed any objections, exceptions, or taken any appeal from any interlocutory or final decree of the Court in this matter, with the exception of the defendant-appellant, Decker & Simmons, and they have all acquiesced in the acts of the trustee and the receiver, with said exception, down to the present time.

POINTS

The defendant-appellant predicates four grounds for appeal, which I will take up in the order argued.

FIRST

The defendant-appellant claims that the agreement of March 20, 1929, which appointed the appellee trustee for the benefit of creditors of Martin C. Havens and John M. Havens was void, by reason of the failure of Martin C. Havens to obtain the signatures of all the creditors.

I respectfully draw the attention of this Hon-

orable Court to the agreement itself, which is marked Schedule A, and set up on page 14 of the State of Case. There is nothing in the agreement which says that it is to be valid only upon its execution by all the creditors. On the contrary, the first paragraph of the agreement states that it is an agreement between Martin C. Havens and John M. Havens, "and the creditors whose signatures are annexed to this agreement." By reading the agreement itself, it is very apparent that it never was intended that all the creditors should execute it, as it was recognized in the agreement that there were numerous creditors whose claims were \$100.00 or less, (see page 15, lines 11, 12 and 13 of the State of Case). The reference which defendant-appellant makes to that part of the complaint (page 8 State of Case, line 32, to page 10, line 19), is not germane to this point. The complainant never claimed in its complaint that the agreement itself was not legal or binding, but simply that by virtue of this agreement, the complainant was only a de facto trustee, not a de jure trustee, and without being clothed with proper authority by the Court, was not in a position to wind up its trust.

There is nothing in the agreement itself, which contemplates that it should be inoperative or void upon failure to obtain the signature of all the creditors.

As a matter of fact, the evidence as set forth in the State of Case (testimony of Sanford Gerard, pages 77 to 83) shows that the complainant actually entered into the performance of its duties as de facto trustee, received rents, paid out interests and taxes, sold a milk route and received

the proceeds, received from itself as creditor, and the Dover Trust Company, over \$16,000.00 worth of negotiable collateral for the benefit of the creditors, prevented the disappearance of the assets by foreclosure, by taking over the mortgages itself, and functioning for a period of eight or ten months without any objection or criticism by any of the creditors, even including the defendant-appellant, so that the first point relied upon by the defendant-appellant must fall, because it is not predicated upon anything in the agreement itself, or upon the actual facts of the trusteeship. Furthermore, by virtue of the said trust agreement, four other creditors gave up preferences and changed their positions to a very material extent, with the consent and acquiescence of the defendant-appellant, and relying upon the agreement by the defendant-appellant, Decker & Simmons, that they too would give up their alleged preferences. It would be grossly inequitable after four other secured creditors had given up their preferences, for the benefit of all the creditors, relying upon the mutual promises made by them and Decker & Simmons, that now Decker & Simmons, the defendant-appellant in this case should be permitted to repudiate his agreement, he being unable to restore the parties to status quo.

POINT TWO

Point Two raised by the defendant-appellant contends that the bill of complaint discloses no ground of action, and the Court of Chancery had no jurisdiction of the subject matter of the suit.

It is rather a late date to challenge the complaint on the ground that it discloses no cause of action, or that the Court had no jurisdiction.

There has never been any motion made directed to the pleadings. An Answer was filed by this defendant, which in no manner questioned the jurisdiction of the Court. The defendant went to trial on the merits of the case, and thus submitted to its jurisdiction.

As far as the allegations of the bill are concerned, with reference to this defendant, it alleges the agreement which constituted the complainant the trustee; it alleges the fact that this defendant-appellant was a party to the agreement and agreed to give up an alleged preference which he had, in consideration of four other creditors giving up their judgments and collateral. It recites that the other creditors have surrendered their preferences for the benefit of all the creditors, but that the defendant-appellant, Decker & Simmons, refused to give up his alleged preference and abide by his written agreement. As far as this defendant is concerned, the relief sought for, is to compel him to abide by the terms of his solemn written agreement at a time when all the other signatories did abide by their agreement and did give up their preferences and changed their positions materially, and could no longer be restored to status quo. How the defendant-appellant can seriously raise the point that this does not set up an equitable cause of action on the part of the complainant, I cannot understand, and it seems that this argument is entirely too frivolous to merit further comment.

Further referring to the fact that this defendant-appellant claims that the Chancery Court had no jurisdiction, I need only draw to the attention of the Court the fact that the defendant-appellant by appearing and arguing the case on its merits, submitted to the jurisdiction of the Court, even though, for the sake of argument, it might be claimed that originally it had no jurisdiction.

"Court will not, after trial on merits, dismiss bill on ground that remedy at law is adequate." *Reeves vs Reeves*, 141 A. 175.

"A defendant who answers fully, on the merits, a bill in Chancery, submits to the jurisdiction of the court." *Polhemus vs Holland Trust Company*.

POINT THREE

The third point raised by the brief of the defendant-appellant is that the Court had no jurisdiction to appoint a receiver, and the brief goes on to say that Martin C. Havens and John M. Havens were private citizens, and that there was no allegation or proof that Havensdale Farms, Inc., was insolvent, and that therefore the Court had no jurisdiction of the subject matter, and that the appointment was void.

The facts as set up even by the defendant-appellant and which have been more fully set forth at the beginning of this brief, show that at the time of the application for receiver, title to all the property of Martin C. Havens and John M. Hav-

ens was in Havensdale Farms, Inc. It was admitted that the said corporation had paid no consideration for this conveyance, but that the corporation was being used as a vehicle for the purpose of eventually transferring legal title to a trustee, who would liquidate the estate for the benefit of the creditors. Thus a situation arose where a corporation had assets to which it had no right, and on which it had no claim, which were given without consideration. We also had a situation where it was the intention to liquidate the said corporation for the benefit of the creditors of Martin C. Havens and John M. Havens, and yet there was no proper vehicle to effect the legal liquidation of that corporation.

It has always been recognized that where there was no adequate remedy at law, remedy would be found in the court of equity, and although there may be no specific precedent for such an action, yet such a precedent will be established by the Court of Chancery in order to carry out the intentions of the parties.

"The Court of Chancery will make a precedent to fit a case, novel in incident, which comes within some head of equity jurisprudence." *Palmer vs Palmer*, 92 A. 241.

We also have here a situation where there has been a trust imposed upon the complainant, and the complainant finding it impossible to carry out the trust, had a right to ask the court to appoint a custodial receiver, and to take such further action as might be necessary and proper to

carry out the terms of the trust for the benefit of the creditors.

"The Court of Chancery has jurisdiction of matters of account and cases where the plaintiff claims trust." *Feld vs Kantrowitz*, 140 A. 426.

"Equity has jurisdiction in case of express trusts." *Russell vs Credit Men's Adjustment*, etc. 138 A. 385.

The court further has jurisdiction in such a case on an entirely different ground. We have seen the court take jurisdiction in cases of incompetency, in cases of lunacy, in cases of infants, probably upon the theory that where the person himself is incapable of attending to his affairs, the court will appoint a proper person to take charge of that person's affairs and wind up his assets. Here, Martin C. Havens and John M. Havens have admitted that they have come to an impasse; they were unable to settle with their creditors, and formed this corporation as a vehicle for making distribution equitably among all who had claims, and if there was no precedent for just such a situation, it seems to me the court, with the consent of Martin C. Havens and John M. Havens, who owned or controlled all the shares of stock of the corporation, and having assigned the stock to the complainant, certainly had a right to appoint a custodial receiver, to take charge of the corporation's affairs, and incidentally of their own, with their consent. May I point out at this time that no question of jurisdiction is raised by any of the

creditors, with the exception of the defendant-appellant, or by Martin C. Havens and John M. Havens the two most interested parties whose property is the subject of distribution in these proceedings? There were also no creditors of the corporation, as it had no debts, so there could have been no objection on that score.

There is one further ground upon which the court could entertain jurisdiction in this matter. The bill alleges as far as this defendant-appellant is concerned, that the said defendant-appellant is a party to an agreement which he is seeking to avoid and abrogate. It has always been the particular jurisdiction of the Court of Chancery to hold parties to their agreements.

"Equity should endeavor to hold parties to agreements." *Baumohl vs Goldstein*, 124 A. 118.

I wish to point out that it is rather too late, after submitting to the jurisdiction of the court, to question its jurisdiction.

"Where parties to a suit in equity have joined issue without raising the question—— of jurisdiction, and the case has gone to final hearing and proofs have been taken, it is too late for the parties to raise the question." *Harris vs Esperanza Mining Co.* 109 A. 826.

"Jurisdiction is waived by submitting to it where court has subject matter." *State vs Baker*, 133 A. 785.

Lastly, a custodial receiver was appointed, not only for Martin C. Havens and John M. Havens, but for the Havensdale Farms, Inc., by the Court of Chancery, at a full hearing, at which the defendant-appellant, Decker & Simmons and his counsel were present, and they took no appeal from the said Order appointing the receiver. The receiver has functioned ever since December 31, 1929. He has also become involved in a good many details of receivership, has appeared in court on numerous occasions, with reference to his duties as receiver, and to none of these proceedings has any objection been made, nor any appeal taken.

Further, even if this Honorable Court should decide that the Court of Chancery had no jurisdiction to appoint a receiver for Martin C. Havens and John M. Havens, but only for the corporation, Havensdale Farms, Inc., such a point would be greatly academic, because there were no assets in the hands of Martin C. Havens and John M. Havens, at the time of the appointment of the receiver. Title to all the assets, then was, in Havensdale Farms, Inc., and all the outstanding shares of capital stock were in the hands of the trustee so that the adding of the names of John M. Havens and Martin C. Havens to the Order appointing a receiver for Havensdale Farms, Inc. was merely surplusage, and has worked no harm to any of the parties, or to any of the creditors or parties in interest.

There has been no objection raised by any of the stockholders of Havensdale Farms, Inc., to the custodial receiver, as all of the stock issued and

outstanding was in the hands of the complainant, as trustee, and there were no outside interests that could be injured, as there were no creditors of the corporation itself.

POINT FOUR

The defendant-appellant raises the point that the Court of Chancery had no right to declare that Martin C. Havens, John M. Havens and Havensdale Farms, Inc. had no interest in the property mentioned in the decree.

There is no reason given by the defendant-appellant for his bald statement, but it is apparent from the testimony that Martin C. Havens and John M. Havens had made a voluntary conveyance of their property to the corporation. They had divested themselves of all interest in connection with their properties, for the benefit of their creditors. The decree, in stating that the said Martin C. Havens and John M. Havens had no interest, simply stated as a conclusion, a fact which had already been actually established.

When the Court of Chancery went further and stated that Havensdale Farms, Inc. had no interest in the property conveyed to it, it further confirmed a statement of fact that the property so conveyed to the corporation was for the purpose of distribution among the creditors of Martin C. Havens and John M. Havens. The corporation itself had paid no consideration for the conveyance to it, and the Court of Chancery was therefore correct in its decree that the property should be sold free and clear of all claims of the corpor-

ation itself, as the said corporation had no claims against the property which it held in escrow, so to speak, for Martin C. Havens and John M. Havens.

The defendant-appellant further protests in Point Four that the Court had no power to order the property sold by the receiver free from the lien of the appellant's judgment against Martin C. Havens, again without quoting any reason for it, but simply stating it as a bald fact. The answer to this proposition is that first of all, this defendant-appellant, Decker & Simmons, had no lien against the assets of Martin C. Havens, for he obtained his judgment March 5, 1929, whereas title was conveyed by Havens to the corporation on February 7, 1929, a month earlier. Whether or not the defendant-appellant would have been in a position to bring an action to set aside the conveyance by Havens to the corporation, is not here raised, but the fact remains that he never did so. As a matter of law, therefore, he had no lien on any of the assets, and the only reason he was brought into this suit in Chancery was because he was interfering with the sale of the property, by asserting that he claimed a lien, and because he had attempted to make a levy under his judgment, which resulted in raising such a doubt in the minds of the purchaser as to void the sale. But aside from this, the Court of Chancery had a further right and power to decree that the property should be sold free of the alleged lien of Decker & Simmons, because of the fact that Decker & Simmons, as I have before stated, were a party to the creditors' agreement of March 20, 1929, by which he agreed to forego his alleged

lien and preference, in consideration of other creditors doing likewise, and of the National Union Bank and The Dover Trust Company surrendering up \$16,000.00 worth of negotiable collateral which they held. The other creditors did forego their preferences, and the National Union Bank and The Dover Trust Company did give up their collateral security, and thus all the creditors changed their positions, and could not be restored to status quo, and it would therefore be highly inequitable for the defendant, Decker & Simmons, to be permitted to abrogate his written agreement, and refuse to abide by the terms thereof, and therefore the Court of Chancery had jurisdiction and power to compel him to abide by his agreement, by declaring that the property was free and clear of any alleged lien of the said defendant, by virtue of his written agreement to forego that lien.

The point is also raised in Point Four, that the Chancery Court had no right to discharge the complainant as trustee, from its office of trustee, or to order the appellant to pay a counsel fee to be taxed with the costs. There need hardly be any answer to this proposition. It is elementary that the Court of Chancery always has a right to discharge a trustee when a proper accounting has been made. The testimony of the receiver, Judge Joshua R. Salmon, page 85 of the State of Case, is to the effect that all the assets were turned over to him, as custodial receiver, by the bank, as trustee; that he has checked up the account, and that the account was correct, and that there was no

objection made to an Order being entered discharging the trustee from its obligations as such. There has been no objection made to the accounts of the trustee, or any exceptions taken to any act of the trustee as such. Why should there be any question as to the right of the Court to discharge the trustee under such circumstances?

As to the right of the court to grant a counsel fee to the prevailing party, that in my experience has never been questioned before, nor has the defendant shown any facts to warrant his statement that such an Order was an abuse of the discretion of the Court. The litigation was long and entailed, and considering the fact that the estate handled was in excess of \$75,000.00, a counsel fee of \$300.00 is indeed more than reasonable.

A further statement is made in Point Four by the defendant-appellant, that the decree adjudging that the defendants Martin C. Havens, John M. Havens and Havensdale Farms, Inc. had no interest in the properties mentioned, amounts to a determination of legal title. Again we have nothing but a bald statement, without any facts to support it, or any decisions quoted. The court at no time had before it the question of title. It was simply the question as to who was entitled to the assets, and the court by declaring that the custodial receiver should administer it for the benefit of creditors is simply carrying out not only the wishes of Martin C. Havens and his son, John M. Havens, but the agreement which they entered into with the creditors.

Another point raised by the defendant is that the decree directing the receiver to sell free and clear of judgments deprived this defendant-appellant, Benjamin D. Simmons, trading as Decker & Simmons, of his lien. The defendant overlooks in his entire argument that he never had a lien against the assets, as his judgment was never against Havensdale Farms, Inc., but only against Martin C. Havens, and the said Martin C. Havens had no title to the property involved at the time of the said judgment, as he had already a month previously transferred it to the corporation. No proceedings were taken by Decker & Simmons to void that conveyance or set it aside, or to fasten his lien upon the assets in the hands of Havensdale Farms, Inc., except that execution was issued on his judgment against Martin C. Havens and a levy made on property which no longer belonged to him. Even though Decker & Simmons had a lien to start with, the Court of Chancery had a right to deprive him of the benefit of his lien, because he was one of the parties who signed the agreement of March 20, 1929, by virtue of which other creditors gave up preferences by way of judgments, and surrendered collateral, relying upon his promise to do likewise, and after accepting the benefits of the acts of the other preferred creditors, now this defendant seeks to repudiate his agreement, and the Court of Chancery had a right to refuse to permit him to break his agreement.

"Equity should endeavor to hold parties to their agreements." Baumohl vs Goldstein, 124 A. 118.

The further point is raised that such decree discharging the complainant from its office as trustee relieves it from liability to the creditors, and bars the defendant-appellant in this case from any right of action he might have against the said trustee. One of the chief prayers of the bill filed in this cause was that the complainant be permitted to surrender its assets to a trustee to be appointed by the court, upon the making of a proper accounting. Such an accounting has been made (see testimony of Judge Salmon, custodial receiver, page 85 of State of Case). If this defendant had any objection to any acts of the complainant as trustee, or had any cause of action against it for its administration of the funds in its possession as trustee, it should have come forward with proof on final hearing, and given evidence of such acts which would make the trustee liable to any of the creditors. Not one iota of evidence has been produced by this defendant to show that anything the bank did, as trustee, was improper, or that it handled its trusteeship in anything but a proper form. The said defendant was present with his counsel at the final hearing, when Judge Salmon, the receiver, testified that a proper accounting had been made to him. No cross-examination was made of the receiver nor any evidence produced to the contrary, and in view of the evidence, the Court of Chancery could have come to no other decision but that the said complainant, as trustee, had during its incumbency, properly conducted his trust, and was entitled to a discharge upon proof of the surrender of its assets to the custodial receiver, and of a proper accounting.

WHEREFORE, we respectfully submit that the decree of the Court of Chancery should in all respects be affirmed.

SAMUEL C MEYERSON,
Solicitor for and Of Counsel with the
Complainant-Appellee

SCHEDULE A

The following is the Answer to the Petition of Appeal, which was omitted from the State of Case, objection to which was taken.

New Jersey Court of Errors and Appeals

NATIONAL UNION BANK
OF DOVER,

Complainant-Appellee,

vs

MARTIN C. HAVENS, et als,

Defendants.

ANSWER OF NATIONAL
UNION BANK OF DOVER,

Complainant-Appellee,
to PETITION OF APPEAL.

On Appeal
from the
Court of
Chancery.

ANSWER TO PETITION OF APPEAL

1. The first ground for appeal for defendant-appellant alleges that the Court of Chancery had no jurisdiction to decree that Martin C. Havens had no interest in the property and assets transferred by him to Havensdale Farms, Inc., or in the stock of said corporation. This the Complainant-Appellee denies, as the defendant has submitted to the jurisdiction of the Chancery Court by appearing and contesting the case on its merits, without objection. The court, in finding that Martin C. Havens had divested himself of

any interest in his assets, simply affirmed as a fact what had already actually been accomplished, as the said Martin C. Havens had previously transferred and surrendered all his assets to Havensdale Farms, Inc. to a trustee, to be administered for the benefit of his creditors.

2. The defendant-appellant alleges that the decree of the court was erroneous in that it held that the corporation of Havensdale Farms, Inc. had no interest in the property and assets transferred to it by Martin C. Havens. This the Complainant-appellee denies, inasmuch as the transfer to the said corporation was made without consideration, and simply for the benefit of the creditors of Martin C. Havens. Therefore, the said corporation, as such, did not hold the property of Martin C. Havens for a valuable consideration but simply as a convenient vehicle to operate the assets for the benefit of the creditors of Martin C. Havens.

3. The defendant-appellant alleges the decree of the court erroneous in that it ordered the receiver to dispose of the property and assets free from the lien of this appellant's judgment, and against Martin C. Havens.

This is denied by the complainant-appellee, who alleges that substantial proof has been offered in the Court of Chancery to show that the said defendant-appellant, Benjamin D. Simmons, has entered into a written agreement to waive the priority of his Judgment, if any priority he had, in consideration of several other creditors doing likewise, and of this complainant as a creditor surrendering up, for the benefit of creditors, certain

collateral, which was in possession of the Complainant. The Court of Chancery found that all the creditors who had entered into such an agreement, had complied with their contract, but that only this defendant refused to abide by his contract, and thus caused the other preferred creditors to change their position to their detriment. And the court had a right to declare that the said defendant-appellant should abide by his agreement as aforesaid. Furthermore, it is a matter of record, and it is an actual fact that the said appellant did not have any legal encumbrance against the assets of Martin C. Havens, as his judgment was obtained after the assets of Martin C. Havens had already been transferred to Havensdale Farms, Inc.

4. The defendant-appellant contends that the Chancery Court had no jurisdiction to appoint a receiver of the property and assets, and to administer, dispose of, or distribute said property and assets, and to discharge complainant as trustee, but should have discharged the receiver and dismissed the Bill of Complaint. Appellant further alleges that the decree of the court deprives the appellant of his lien on property of Martin C. Havens under his judgment, and bars him from his right of action against complainant for its administration of capital stock of Havensdale Farms, Inc. This complainant-appellee alleges in answer thereto, that the said appellant was present in court on the return of the rule to show cause why receiver should not be appointed; that he contested the application on its merits without objection to the jurisdiction of the court; that there-

after, upon the making of the order appointing the receiver, the said appellant took no appeal therefrom, but that, on the final hearing, he went to trial on the merits of the case, without objection, and this complainant-appellee avers that this defendant is now estopped from questioning the jurisdiction of the court with reference to the receivership, or of any interlocutory order which the court may have made concerning the administering of said receivership, or discharge of former trustee. As to the alleged lien of the said appellant on the property and assets of Martin C. Havens, the actual proofs show that the said defendant has no legal lien, or if he had one, that he waived it by his express agreement in writing, which the court so found. As to that part of the petition which alleges that appellant is barred from any action against complainant for administration of capital stock of Havensdale Farms, Inc., actual proof was taken in court that proper accounting had been made to receiver appointed by this court, and the receiver having testified to such a correct accounting, without any objection by this defendant. Without any evidence to the contrary, the court was within its rights in discharging the said trustee.

The complainant-appellee therefore prays that the said decree of the Chancellor may, in all respects, be affirmed.

Samuel C. Meyerson,
Solicitor for and Of Counsel
with Complainant-appellee.



