

INDEX

	PAGE
Bill of Complaint	1
Affidavit of J. Tracy Horton.....	4
Notice of Motion to Strike out Bill.....	8
Answer	10
Order of Reference.....	14
Designation	16
Opinion of Vice-Chancellor.....	17
Order Denying Motion to Strike out Bill..	19
Final Decree	20
Notice of Settlement of Final Decree.....	22
Final Decree	23
Notice of Appeal.....	25
Petition of Appeal.....	26
Answer to Petition of Appeal.....	28

TESTIMONY.

Complainant's Witnesses.

Frank Kramerman,		
direct examination.....		31
cross "		36
re-direct "		59
I. Benjamin Glueckfield,		
direct examination.....		59
cross "		61
Jacques Hecht,		
direct examination.....		68
cross "		70
re-direct "		74
Louis Hecht,		
direct examination.....		75
cross "		76
Henry J. Ruck,		
direct examination.....		78
cross "		82
Henry I. Silberman,		
direct examination.....		86

	PAGE
<i>Jacob Fischel,</i>	
direct examination.....	90
cross "	94
re-direct "	104
re-cross "	107
<i>Charles Koos,</i>	
direct examination.....	108
cross "	111
re-direct "	114
 <i>Defendant's Witnesses.</i>	
<i>Charles Frankel,</i>	
direct examination.....	115
cross "	119
<i>J. Franklin Perry,</i>	
direct examination.....	124
cross "	141
<i>David M. Knoller,</i>	
direct examination.....	159
cross "	161
re-direct "	163
Off'd P't'd	
Exhibit C. 1. Agreement	36 164
Exhibit C. 2. Monthly Statement...	59 167

BILL OF COMPLAINT.

Filed May 19, 1927.

In Chancery of New Jersey

Between

J. TRACY HORTON, trustee of
Frank Kramerman, bank-
rupt,

Complainant,

and

J. FRANKLIN PERRY,

Defendant.

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On Bill.

Complaint.

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

Complainant, J. Tracy Horton, trustee of Frank Kramerman, bankrupt, complaining of the defendant, shows:

1. Frank Kramerman of the City of Newark, having filed a voluntary petition in bankruptcy in the United States District Court, in and for the District of New Jersey, on the 7th day of January, 1927, complainant was appointed receiver of the assets of the said Frank Kramerman and on or about February 11, 1927, was appointed trustee, duly qualified and is now acting as such.

30

2. In the month of June, 1926, Frank Kramerman being then involved in financial difficulties, caused a meeting of certain of his creditors to be called at the office of one, Jacob Fischel, a

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Bill of Complaint.

counsellor at law of the State of New Jersey, and there were present at said meeting, David Knoller, Charles Frankel, a member of the bar of the State of New Jersey; Henry Clark, Charles Koos, representing the Clinton Trust Company of Newark, New Jersey; Frank Kearney (now
10 deceased), Frank Kramerman and Jacob Fischel, counsel for Frank Kramerman.

3. Complainant charges that at said meeting aforementioned Frank Kramerman admitted that he was insolvent, and informed the creditors present that amongst other assets, he had in his possession a series of notes of the Leon Realty Company of Newark, which notes aggregated the sum of \$9,100, and were payable to the said Frank Kramerman.

20 4. Thereafter, and on or about the 9th day of June, 1926, it was agreed between the said Frank Kramerman and his creditors that all of the assets of Frank Kramerman should be assigned to J. Franklin Perry, Charles Koos, Henry Clark and David Knoller, as trustees for the benefit of all of the creditors of said Frank Kramerman, and that said trustees should salvage what they could from the assets of said
30 Frank Kramerman, and the funds be distributed proportionately amongst all of his creditors, and to which plan complainant charges the majority of the creditors and the trustees assented.

5. Thereafter, Frank Kramerman, did turn over to the defendant, J. Franklin Perry, the notes of the Leon Realty Company of Newark, aggregating approximately \$9,100, as aforementioned, and said defendant did accept said notes as a trustee for all of the creditors of
40 Frank Kramerman.

Bill of Complaint.

6. Thereafter at later meeting of the creditors of Frank Kramerman at the office of Jacob Fischel, counsel of Kramerman, at Newark, the defendant, J. Franklin Perry, did inform the creditors present that he was holding the said notes, aforementioned, as a trustee for the benefit of creditors. 10

7. Complainant further charges that there was no consideration which passed from the defendant, J. Franklin Perry to Frank Kramerman for said notes, and that said defendant received said notes from Frank Kramerman by virtue of his trusteeship.

8. Complainant charges that all of said notes were collected by the defendant, J. Franklin Perry, and the proceeds were retained by him, and that he refuses to turn said moneys over to the complainant. 20

9. Complainant charges that if said notes were received by the defendant, other than as trustee, that said transaction was a fraud upon the creditors of Frank Kramerman.

10. Complainant further charges that said J. Franklin Perry, holds said sum of \$9,100 together with accrued interest thereon, as trustee for the creditors of Frank Kramerman, and that complainant is entitled to said funds, as trustee of Frank Kramerman, bankrupt. 30

11. Complainant is without adequate remedy in the courts of law and therefore prays:

a. That the defendant, J. Franklin Perry, may answer this bill of complaint and each statement therein contained.

b. That the defendant be required to account to the complainant for the proceeds of the col- 40

Bill of Complaint—Affidavit of J. Tracy Horton.

lection of said notes, mentioned in the bill of complaint, together with interest.

10 c. That a decree be made adjudging the defendant to be a trustee for the benefit of the creditors of Frank Kramerman, and that he may account for said trusteeship insofar as said notes are concerned.

d. That a decree be made directing the defendant to account to the complainant for any other property of Frank Kramerman, which may have come into his hands.

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

20

S. SIDNEY SILVER,
Solicitor of Complainant.

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

J. TRACY HORTON, being duly sworn on his oath according to law, says:

30 That deponent is the trustee of Frank Kramerman, bankrupt, and is the complainant herein.

Frank Kramerman of the City of Newark, having filed a voluntary petition in bankruptcy in the United States District Court, in and for the District of New Jersey, on the 7th day of January, 1927, deponent was appointed receiver of the assets of the said Frank Kramerman, and on or about February 11, 1927, was appointed trustee, duly qualified and is now acting as such.

40 In the month of June, 1926, Frank Kramerman being then involved in financial difficulties,

Bill of Complaint—Affidavit of J. Tracy Horton.

caused a meeting of certain of his creditors to be called at the office of one, Jacob Fischel, a counsellor at law of the State of New Jersey, and there were present at said meeting, David Knoller, Charles Frankel, a member of the bar of the State of New Jersey; Henry Clark, Charles Koos, representing the Clinton Trust Company of Newark, New Jersey; Frank Kearney (now deceased), Frank Kramerman and Jacob Fischel, counsel for Frank Kramerman. 10

Deponent charges that at said meeting aforementioned Frank Kramerman admitted that he was insolvent, and informed the creditors present that amongst other assets, he had in his possession a series of notes of the Leon Realty Company of Newark, which notes aggregated the sum of \$9,100, and were payable to the said Frank Kramerman. 20

Thereafter, and on or about the 9th day of June, 1926, it was agreed between the said Frank Kramerman and his creditors that all of the assets of Frank Kramerman should be assigned to J. Franklin Perry, Charles Koos, Henry Clark, and David Knoller, as trustee for the benefit of all of the creditors of said Frank Kramerman, and that said trustees should salvage what they could from the assets of said Frank Kramerman, and the funds be distributed proportionately amongst all of his creditors, and to which plan deponent charges the majority of the creditors, and the trustees assented. 30

Thereafter, Frank Kramerman, did turn over to the defendant, J. Franklin Perry, the notes of the Leon Realty Company of Newark, aggregating approximately \$9,100, as aforementioned, and said defendant did accept said notes as a 40

Bill of Complaint—Affidavit of J. Tracy Horton.

trustee for all of the creditors of Frank Kramer-
man.

10 Thereafter, at later meetings of the creditors
of Frank Kramerman, at the office of Jacob
Fischel, counsel of Kramerman, at Newark, the
defendant, J. Franklin Perry, did inform the
creditors present that he was holding the said
notes aforementioned, as a trustee for the benefit
of creditors as deponent is informed and believes
to be true.

Deponent further charges that there was no
consideration which passed from the defendant,
J. Franklin Perry, to Frank Kramerman, for
said notes, and that said defendant received said
notes from Frank Kramerman by virtue of his
trusteeship.

20 Deponent charges that all of said notes were
collected by the defendant, J. Franklin Perry,
and the proceeds were retained by him, and that
he refused to turn said moneys over to the de-
ponent.

Deponent charges that if said notes were re-
ceived by the defendant, other than as trustee,
that said transaction was a fraud upon the
creditors of Frank Kramerman.

30 Deponent further charges that said J. Frank-
lin Perry, holds said sum of \$9,100 together with
accrued interest thereon, as trustee for the
creditors of Frank Kramerman, and that de-
ponent is entitled to said funds, as trustee of
Frank Kramerman, bankrupt. All of the con-
tents of this affidavit is made on information
and belief, based on information conveyed to
deponent by various creditors.

J. TRACY HORTON.

Bill of Complaint—Affidavit of J. Tracy Horton.

Sworn and subscribed to before
me this 18th day of May,
1927.

HELEN M. FOSTER,
Notary Public of New Jersey.

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NOTICE OF MOTION.

Filed June 21, 1927.

IN CHANCERY OF NEW JERSEY.

10 *Between*

J. TRACY HORTON, trustee of
Frank Kramerman, bank-
rupt,

Complainant,

and

J. FRANKLIN PERRY,
Defendant.

On Bill, &c.

*Notice of
Motion.*

20

To the complainant in the above-entitled cause
or whom it may concern:

PLEASE TAKE NOTICE, that on Tuesday, June
28, 1927, at nine o'clock in the forenoon (Stand-
ard Eastern Time) or as soon thereafter as
counsel can be heard, before the Chancellor, at
the Chancery Chambers, 1060 Broad street, New-
ark, N. J., we shall move first to strike out the
bill of complaint filed in the above-entitled action
and to dismiss said action (with counsel fee and
costs in favor of the defendant against the com-
plainant) on the ground that said bill of com-
plaint was not signed by counsel before it was
filed.

30

Newark, N. J., June 15, 1927.

KANTER & KANTER,
Solicitors of Defendant.

40

Notice of Motion.

Service of the within notice of motion is hereby acknowledged this 20th day of June, A. D., 1927.

S. SIDNEY SILVER,
Solicitor of Complainant.

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ANSWER.

Filed July 19, 1927.

IN CHANCERY OF NEW JERSEY.

10 *Between*

J. TRACY HORTON, trustee of
Frank Kramerman, bank-
rupt,

Complainant,

and

J. FRANKLIN PERRY,

Defendant.

On Bill, &c.

Answer.

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The defendant, J. Franklin Perry, residing in the Township of Maplewood, County of Essex and State of New Jersey, answering the bill of complaint herein, says that:

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1. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph 1 of the bill of complaint, and therefore neither admits nor denies the same, but leaves the complainant to make such proof thereof as may be properly required.

2. The allegations of paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the bill of complaint are denied.

FIRST SEPARATE ALTERNATIVE DEFENSE TO BILL OF COMPLAINT.

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3. Prior to, and in the month of June, 1926, Frank Kramerman was indebted to Geo. F.

Answer.

Perry & Sons, Inc., a corporation (of which corporation, this defendant was the treasurer) in a large sum of money, in partial payment of which, said Frank Kramerman, had agreed, to turn over certain notes (being those referred to in the bill of complaint herein) in order that said Geo. F. Perry & Sons, Inc., a corporation, would not assert, or attempt to assert, certain rights which it then had, or might acquire, pursuant to the Mechanic's Lien Law of the State of New Jersey.

10

4. Pursuant to said agreement, said Geo. F. Perry & Sons, Inc., a corporation, refrained from asserting its rights under the Mechanic's Lien Law of the State of New Jersey, and also pursuant to said agreement, said Frank Kramerman turned over the aforesaid notes to the aforesaid Geo. F. Perry & Sons, Inc., a corporation, this defendant receiving same as the treasurer of the said corporation.

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5. This defendant had no right or lawful authority to receive said notes, and he did not receive said notes, excepting as the treasurer of Geo. F. Perry & Sons, Inc., a corporation.

6. The receipt and collection of the aforesaid notes, by or on behalf of the said Geo. F. Perry & Sons, Inc., a corporation, and the retention and the collection of the proceeds thereof for its account and to its use, was known to the said Frank Kramerman, and was not questioned by him, or by any other person in his behalf, or claiming in his right, or through him, at any time, excepting by the complainant, for the first time, at some time in the month of April, 1927.

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Answer.

SECOND SEPARATE ALTERNATIVE DEFENSE TO BILL OF COMPLAINT.

7. The allegations of paragraph 3 above are hereby repeated.

8. The allegations of paragraph 4 above are hereby repeated.

9. After the said notes had been turned over, as aforesaid, the said Frank Krameran proposed to certain of his creditors, that he would transfer all his property, thereafter remaining, to J. Franklin Perry, Charles Koos, Henry Clark and David N. Knoller, as trustee under a certain written agreement, the original whereof, this defendant is informed and truly believes, is in the possession of the complainant.

10. Said trust was to take effect upon all creditors of said Frank Krameran executing and delivering the aforesaid written agreement.

11. Said written agreement was never executed and delivered by all the creditors of the said Frank Krameran, and the terms thereof were never assented to by the parties made parties thereto.

12. No property of any kind whatsoever, was received by this defendant, in pursuance of, or in furtherance of, the said agreement of trust.

THIRD SEPARATE ALTERNATIVE DEFENSE TO BILL OF COMPLAINT.

13. The allegations of paragraph 3 above are hereby repeated.

14. The allegations of paragraph 4 above are hereby repeated.

Answer.

15. By reason of said Geo. F. Perry & Sons, Inc., a corporation, from refraining to assert its rights, under the Mechanic's Lien Law of the State of New Jersey, its position was materially altered.

16. The complainant is estopped from prosecuting any action for the recovery of the aforesaid notes or the proceeds thereof. 10

FOURTH SEPARATE ALTERNATIVE DEFENSE TO BILL OF COMPLAINT.

17. The complainant has never received any lawful power, authority or permission, to institute this action or any other action, against this defendant.

LEGAL OBJECTION TO BILL OF COMPLAINT. 20

18. At or before the trial of this cause, this defendant will move to strike out the bill of complaint herein, on the ground that it states no cause of action in favor of the complainant against the defendant.

KANTER & KANTER,
Solicitors of Defendant. 30

ORDER OF REFERENCE.

Filed September 13, 1927.

IN CHANCERY OF NEW JERSEY.

10 *Between*J. TRACY HORTON, trustee of
Frank Kramerman, bank-
rupt,*Complainant,**and*

J. FRANKLIN PERRY,

*Defendant.**Order of
Reference.*

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This matter being opened to the Court by S. Sidney Silver, solicitor for and of counsel with the complainant, and Kanter & Kanter, solicitors for and of counsel with the defendant, and upon reading the consent hereto underwritten,

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It is thereupon on this 13th day of September, 1927, ORDERED, that the above-stated cause be referred to Hon. Alonzo Church, one of the Vice-Chancellors of this court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER,
Chancellor.

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Order of Reference.

We hereby consent to the making of the above order.

S. SIDNEY SILVER,
Solicitor for and of Counsel
with Complainant.

KANTER & KANTER, 10
Solicitors for and of Counsel
with Defendant.

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DESIGNATION.

Filed September 20, 1927.

IN CHANCERY OF NEW JERSEY.

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Between

J. TRACY HORTON, trustee of
Frank Kramerman, bank-
rupt,

Complainant,

and

J. FRANKLIN PERRY,

Defendant.

Designation.

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Application having been made to fix a time and place for the hearing of the above-stated cause, upon reading the annexed consent, it is hereby

ORDERED, that Wednesday the 19th day of October, 1927, at the hour of eleven in the forenoon, at the Chancery Chambers, at Newark, be, and the same is hereby designated as the time and place for the hearing of the said cause.

Dated September 20, 1927.

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ALONZO CHURCH,
Vice-Chancellor.

I hereby consent to the making of the above order.

KANTER & KANTER,
Solicitors for and of Counsel
with Defendant.

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OPINION OF VICE-CHANCELLOR.

Filed May 26, 1928.

IN CHANCERY OF NEW JERSEY.

Between

J. TRACY HORTON, trustee of
Frank Kramerman, bank-
rupt,

Complainant,

and

J. FRANKLIN PERRY,
Defendant.

10

Opinion.

S. Sidney Silver for complainant.
Kanter & Kanter for defendant.

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CHURCH, V.-C.

This is a bill brought by a receiver in bank-
ruptcy to recover the proceeds of certain notes
paid over by the bankrupt to the defendant.

The facts are that the defendant was and is
treasurer of F. Perry & Sons, Inc., wholesale
dealers in masons materials. In February, 1926,
Kramerman, the now bankrupt, went to Mr.
Perry and desired to secure mason materials
for a job on Market street, Newark, known as
the Leon Realty Company contract. It was
agreed that the Perry Company would furnish
the material and take the notes of the Leon
Realty Company made out to Kramerman to
the amount of about \$8,000 as consideration.
This was agreed to by Kramerman. In June,
1926, Mr. Perry found that Kramerman was in

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Opinion of Vice-Chancellor.

difficulties and had received notes from the Leon Realty Company, some of which he had disposed of. Mr. Perry then went immediately to the office of a Mr. Fischel, Kramerman's attorney, and in Kramerman's presence demanded the notes according to the agreement. Kramerman said, "I promised Mr. Perry the notes." The notes were then produced and turned over by Kramerman to Perry properly endorsed. After this there was another meeting in the outer room of Mr. Fischel's office, attended by Kramerman's creditors. At this meeting Perry listed the notes he had received and said, "The notes are out of the picture." After a discussion a trust agreement was drawn up appointing three trustees to manage Kramerman's affairs. No reference is made in this agreement which would lead to the conclusion that the trustees had any interest in the notes turned over to Perry or that he was holding them for the benefit of any other creditor except his own firm. It should be borne in mind that Perry could have enforced his rights by way of stop notice or mechanic's lien, had he so chosen, instead of relying on the agreement above recited.

Without reviewing the testimony further, we come to the question of whether or not Perry agreed to hold these notes in trust for the other creditors.

In the case of *Havens v. Brown*, 99 New Jersey Equity 75, Vice-Chancellor Backes discussed a similar situation. He held that on oral contract to hold property in trust for another would not be enforced, unless it is established by "clear unequivocal and convincing proof."

I do not think that this requirement has been met in this case before me. I will therefore advise a decree dismissing the bill.

ORDER DENYING MOTION.

Filed June 26, 1928.

IN CHANCERY OF NEW JERSEY.

Between

J. TRACY HORTON, trustee of
Frank Kramerman, bank-
rupt,

Complainant,

and

J. FRANKLIN PERRY,

Defendant.

#64-218.
On Bill, &c.
Order Deny-
ing Motion.

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The defendant in the above-entitled cause hav-
ing moved to strike out the bill of complaint
filed in the above-entitled cause, and to dismiss
the said action, and this matter having come on
to be heard before the Court at Chancery Cham-
bers, 1060 Broad street, Newark, New Jersey, on
the 28th day of June, 1927, and after hearing
Elias Kanter, of counsel for the defendant in
support of said motion, and S. Sidney Silver,
of counsel with the complainant in opposition
thereto, it is hereby on this day of June,
1927,

30

ORDERED, that the said motion be and the same
is hereby denied, defendant to file answer on
or before July 20, 1927.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

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FINAL DECREE.

Filed June 26, 1928.

IN CHANCERY OF NEW JERSEY.

10 *Between*

J. TRACY HORTON, trustee of
Frank Kramerman, bank-
rupt,

*Complainant,**and*

J. FRANKLIN PERRY,

Defendant.

*On Bill, etc.,
Final Decree.*

20

This cause coming on to be heard at the Chan-
cery Chambers in the City of Newark, in the
presence of S. Sidney Silver, Esq., of counsel
with the complainant, and Messrs. Kanter &
Kanter, of counsel with the defendant, and the
pleadings, proofs and arguments of respective
counsel having been read, heard and considered,
and settlement of this decree having been de-
termnied upon after due notice to, and in the
presence of, the solicitor of the complainant, and
it appearing to the Court that the complainant
is not entitled to the relief seeked and prayed for
by him in his bill of complaint;

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It is, on this 26th day of June, A. D. 1928,
by Hon. Edwin Robert Walker, Chancellor of
the State of New Jersey, ORDERED, ADJUDGED and
DECREED that the complainant's bill be, and the
same is, hereby dismissed with costs,

And it is further ORDERED and ADJUDGED that
the complainant pay to the defendant the costs

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Final Decree.

of this suit to be taxed, and that there be included in said cost a counsel fee of Three Hundred Dollars (\$300), to be paid to the counsel for the defendant, and that execution issue for said costs and counsel fee according to the practice of this Court.

E. R. WALKER,
C.

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Respectfully advised,

ALONZO CHURCH,
V.-C.

Order consented to as to form.

S. S. SILVER,
Solicitor of Complainant.

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**NOTICE OF SETTLEMENT OF FINAL
DECREE.**

Filed June 28, 1928.

IN CHANCERY OF NEW JERSEY.

10

Between

J. TRACY HORTON, trustee of
Frank Kramerman, bank-
rupt,

Complainant,

and

J. FRANKLIN PERRY,
Defendant.

On Bill, &c.

*Notice of
Settlement of
Final Decree.*

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To the complainant in the above-stated cause or whom it may concern:

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PLEASE TAKE NOTICE that on Tuesday, June 26, 1928, at 9 o'clock in the forenoon (Standard Eastern Time), or as soon thereafter as counsel can be heard, at the Chancery Chambers, 1060 Broad street, Newark, N. J., before the Hon. Alonzo Church, Vice-Chancellor, we shall move the settlement of the final decree in this cause and present for the advising thereof by the said Vice-Chancellor, the decree of which a copy is hereto annexed, the blank spaces in said decree to be appropriately completed by aforesaid Vice-Chancellor.

Yours, etc.,

KANTER & KANTER,
Solicitors of Defendant.

40

Newark, N. J., June 22, 1928.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between

J. TRACY HORTON, trustee of
Frank Kramerman, bank-
rupt,

Complainant,

and

J. FRANKLIN PERRY,

Defendant.

10

On Bill, &c.

Final Decree.

This cause coming on to be heard at the
Chancery Chambers in the City of Newark, in
the presence of S. Sidney Silver, Esq., of coun-
sel with the complainant, and Messrs. Kanter &
Kanter, of counsel with the defendant, and the
pleadings and evidence and proofs having been
read and considered, and the Court having duly
considered the said pleadings, evidence, proofs
and arguments, and it appearing to the Court
that the complainant is not entitled to the relief
sought and prayed for by him in his bill of com-
plaint,

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30

It is, on this day of June, A. D. 1928,
by Hon. Edwin Robert Walker, Chancellor of
the State of New Jersey, ORDERED, ADJUDGED and
DECREED that the complainant's bill be, and the
same is, hereby dismissed with costs,

And it is further ORDERED and ADJUDGED that
the complainant pay to the defendant the costs
of this suit to be taxed, and that there be in-
cluded in said costs a counsel fee of

40

Final Decree.

Dollars and
Cents (\$), to be paid to
the counsel for the defendant, and that execu-
tion issue for said costs and counsel fee accord-
ing to the practice of this Court.

10

C.

Respectfully advised,

V.-C.

Service of the within notice of settlement of
final decree is hereby acknowledged this 22nd
day of June, A. D., 1928.

20

S. SIDNEY SILVER,
Solicitor of Complainant.

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NOTICE OF APPEAL.

Filed August 23, 1928.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>J. TRACY HORTON, trustee of Frank Kramerman, bank- rupt,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>J. FRANKLIN PERRY,</p> <p style="text-align: right;"><i>Defendant.</i></p>	}	<p><i>On Bill, &c.</i></p> <p><i>Notice</i></p> <p><i>of Appeal.</i></p>	10
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The complainant, J. Tracy Horton, trustee of Frank Kramerman, bankrupt, hereby appeals from the final decree made in the above-entitled cause on June 26, 1928, to the Court of Errors and Appeals in the last resort in all causes.

Dated, August 6, 1928.

S. SIDNEY SILVER,
Solicitor for and of Counsel with
Complainant, J. Tracy Horton,
Trustee of Frank Kramerman, Bankrupt.

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

S. SIDNEY SILVER,
Of Counsel with Complainant,
J. Tracy Horton, Trustee of
Frank Kramerman, Bankrupt.

PETITION OF APPEAL.

Filed August 24, 1928.

NEW JERSEY COURT OF ERROR AND
APPEALS.

10

Between

J. TRACY HORTON, trustee of
Frank Kramerman, bank-
rupt,
Complainant-Appellant,

and

J. FRANKLIN PERRY,
Defendant-Appellee.

*On Appeal
from the
Court of
Chancery.*

*Petition
of Appeal.*

20

*To the Honorable, the Court of Errors and Ap-
peals, in the last resort in all causes:*

The petition of J. Tracy Horton, trustee of Frank Kramerman, bankrupt, the complainant in the above-entitled action, respectfully shows that:

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1. Petitioner finds himself aggrieved by a decree made in the Court of Chancery, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date of June 26, 1928, in a certain cause in said Court of Chancery, wherein J. Tracy Horton, trustee of Frank Kramerman, bankrupt, was the complainant, and J. Franklin Perry was the defendant, in this respect, to wit, the said decree dismisses the bill of complaint of the complainant.

40

And petitioner appeals from the decree of the Chancellor, which decrees as aforesaid, on the ground that the same is erroneous in that the

Petition of Appeal.

said decree is contrary to the evidence adduced upon the trial of the cause herein, and is contrary to law.

And said decree is further erroneous in that it fails to hold that the defendant, J. Franklin Perry, holds in trust for creditors of Frank Kramerman the sum of \$9,100 with interest. 10

And said decree is further erroneous in that it fails to direct the defendant, J. Franklin Perry, to account to complainant for the proceeds of all property of Frank Kramerman received by said J. Franklin Perry, in trust for creditors.

And said decree is further erroneous in that it fails to hold that J. Franklin Perry was a trustee for the benefit of the creditors of Frank Kramerman.

Petitioner therefore prays that the said decree of the said Chancellor may be wholly reversed, set aside, and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper. 20

S. SIDNEY SILVER,
Solicitor for and of Counsel with
Complainant-Appellant.

30

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ANSWER TO PETITION OF APPEAL.

Filed September 1, 1928.

NEW JERSEY COURT OF ERROR AND APPEALS.

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Between

J. TRACY HORTON, trustee of
Frank Kramerman, bank-
rupt,

Complainant-Appellant,

and

J. FRANKLIN PERRY,
Defendant-Appellee.

*On Appeal,
&c.*

*Answer to
Petition of
Appeal.*

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The answer of J. Franklin Perry, the defend-
ant-appellee, to the petition of appeal of J. Tracy
Horton, trustee of Frank Kramerman, bankrupt,
the above-named complainant-appellant.

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This defendant-appellee, J. Franklin Perry,
not acknowledging all or any of the matters
which the said petition of appeal are contained
to be true, for answer thereto, nevertheless, says
and admits, that a decree was, on June 26, 1928,
made and entered in the Court of Chancery, in
the cause for that purpose mentioned in the said
petition, as is therein stated; but to the substance
and form thereof, this defendant-appellee prays
to refer thereto when the same shall be pro-
duced. This defendant-appellee is advised and
believes that the said decree is agreeable to
equity, and he prays that the same may be af-

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Answer to Petition of Appeal.

firmed with costs to be adjudged to this defendant-appellee, J. Franklin Perry.

KANTER & KANTER,
Solicitors for and of Counsel
with the Defendant-Appellee,
J. Franklin Perry.

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August 31, 1928.

Service of the within answer to petition of appeal is hereby acknowledged this 31st day of August, A. D., 1928.

S. SIDNEY SILVER,
Solicitor for and of Counsel
with Complainant-Appellant.

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Opening.

IN CHANCERY OF NEW JERSEY.

December 15, 1927.

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Between

J. TRACY HORTON, trustee of
Frank Kramerman, bank-
rupt,

Complainant,

and

J. FRANKLIN PERRY,

Defendant.

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Transcript of shorthand notes of testimony taken in the above-entitled cause before his Honor, Alonzo Church, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of S. Sidney Silver for complainant; Kanter & Kanter (by Elias Kanter) for defendant.

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Mr. Silver: If your Honor please, this is an action brought by J. Tracy Horton as trustee in bankruptcy of Frank Kramerman, against the defendant, J. Franklin Perry.

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I understand that the attorney for the defendant will concede that J. Tracy Horton was appointed trustee of Frank Kramerman, bankrupt, and duly qualified as such. And it is conceded by the complainant that a voluntary petition in bankruptcy was filed in the office of the Clerk of the United States District Court in and for the District of New Jersey, on the 7th day of January, 1927, and that Mr. Horton was ap-

Frank Kramerman, direct.

pointed trustee and did qualify on the 14th day of February, 1927.

FRANK KRAMERMAN, sworn for the complainant.

Direct examination by Mr. Silver. 10

Q Mr. Kramerman, where do you live? A 17 Martins Place, Irvington.

Q You filed a voluntary petition in bankruptcy in January, 1927? A Yes.

Q What business were you in? A I was in the carpenter and builder's business.

Q Do you know J. Franklin Perry? A Yes, sir.

Q How long have you known him? A Approximately about five years, maybe, maybe more. 20

Q Did you have any conferences or conversations with Mr. Perry, sometime in the month of June or May of 1926, regarding your financial condition? A Yes, I did.

Q Will you state when and where this conversation was had? A The first conversation was in Mr. Perry's office.

Q Who were present? A Mr. Hecht and Mr. Cohen. 30

Mr. Kanter: The date of that, please.

Q Can you fix some approximate time when that meeting was held? A That was on the 5th of June, around ten o'clock in the morning.

Q 1926? A 1926.

Q Go ahead. A I received—on the second of June, I received an amount of notes which 40

Frank Kramerman, direct.

10 amounted, if I remember, to about fourteen thousand dollars or so. I don't exactly remember it now the amount of the notes. When I received those notes, I had the people who had been doing the work with me in the Leon Realty Company. They—of course, when I received those notes they came to me and they wanted to get their payment in full. Then I seen that I couldn't pay all my bills with this money that I have got. I handed out certain notes for amounts, I don't remember how much the amounts were—to the Colonial Woodworking Company, to the bank, some notes, and I was left with something like \$9,100, I think it was, that is what I was left with me that time. Mr. Cohen came up to my house. He was one of the
20 creditors and he was next trustee to Mr. Perry; he was my creditor; came to me, demanded the money, all that is due to him. There was due to him at that time, I guess, \$3,600. I told Mr. Cohen I couldn't pay him all, but I would pay a little, and he refused to take it, and he went out in the street and he said to—other creditors—

30 Mr. Kanter: I object to anything not transpiring in the presence of the defendant.

Q You came down to this meeting that you and Mr. Perry had? A I came in Mr. Perry's office. Mr. Cohen and Mr. Hecht brought me in there saying Mr. Perry wanted to see me. I came down and Mr. Perry asked me what was the trouble. I told Mr. Perry I was in a financial predicament now, that I can't meet my bills and they all fell on me, they want their money, so

Frank Kramerman, direct.

Mr. Perry suggested to me that I should call a meeting of the creditors and he will be present and will work out some way where we can proceed with my work and finish and then I will realize the money that is due to me.

Q Did you at that meeting disclose to the defendant that you had any promissory notes receivable? A Yes. I told him that I had notes, certainly. 10

Q Did you tell them how much worth of notes? A Yes. I told them I had in my hand, at that time, \$9,100.

Q All right. Go ahead. A And then I called a meeting on the 8th of the same month—now, that was on the 8th of June—I called a meeting. Before the meeting started it was in Mr. Fischel's office, he was my attorney, at that time—before the meeting started, Mr. Perry called me in Fischel's office, told me to give him those notes, that he will go out to the people and tell the people that I am not trying to go in any bankruptcy or trying to rob anybody, but that he will have those notes showing that, and then he will try to get all the people sign up their petitions that they should let me finish the work and that they will not do any proceeding of any kind, that they will let me finish the work of those notes that I got and then they will realize all that money. I told Mr. Perry that I would do anything to show the people I am not trying to get away with any money, but I simply can't pay at present, that I want to finish those jobs under the control of the people appointed by my creditors. 20 30

Q Had you, up to this time, turned over this \$9,100 in notes? A Not as yet. 40

Frank Kramerman, direct.

Q All right. Go on. A Mr. Perry had promised me that he was going to go out to those people and tell them the whole situation and how the thing is made and then he will show them that house and those notes, that these notes will be used so I can finish my job and
10 realize the rest of the money. On those conditions I gave Mr. Perry those notes in the room—when I came back, telling Mr. Fischel that Mr. Perry said to me Mr. Fischel says to me that he will not be a party—

Mr. Kanter: Now, I—

Q Was Perry there when you had the conversation with Fischel? A Yes, sir.

20 Q Perry was right in the room? A In the room.

Q Go on. A That he wouldn't be a party to turning over the notes, because he didn't know Mr. Perry had set some conditions in dealing with those notes, and I explained to Mr. Fischel he is going to do this whatever he told me and whatever I asked him to do and that is the reason I turned him the notes over.

30 Q It is true that, at the time you turned over these notes— A Yes.

Q To Mr. Perry— A Yes.

Q —that you were indebted to George Perry Sons for the sum of fifteen thousand dollars. Is that true? A Yes, sir.

40 Q Did you turn over the \$9,100 worth of notes as a payment on your indebtedness to Perry, or was it turned over to Perry for the conditions that you mentioned? A No, sir, I did not, because, if I had to do that, I could have—I wouldn't have had to call a meeting.

Frank Kramerman, direct.

I could have given it to him the day I was in his office. I did it for the purpose of showing the people that I wanted to finish the jobs. That was the reason I gave Mr. Perry the notes right on that meeting.

Q Well, now, go ahead, Mr. Kramerman. A
Then Mr. Perry come out with those notes 10
for the people that was there, for my creditors,
telling them that he knows I was an honest
man and that I wasn't trying to do the business,
and he showed them that I have jobs and where
my money was, because I brought to Mr. Perry
the contracts and showed him where my money
was laid. And Mr. Perry tried to tell the peo-
ple that they should sign up and they shouldn't
try to press me in any way until I finished
those jobs, all the money he has got. After the 20
meeting was over, we had something like—I
don't know how many had signed, but three
did not sign, so Mr. Perry called a—Mr. Perry
called a meeting up to Mr. Koos' at Clinton—
the Clinton Trust Company, just a week after
the meeting we had at first. Mr. Perry called
a meeting there. Mr. Koos was present, Mr.
Clark was at that time appointed also for treas-
urer—I think trustee. Mr. Koos and Mr. Clark
and Mr. Perry, they were appointed as trustees 30
to use that money—(interrupted).

Mr. Kanter: I object to this witness going into conferences of a written paper.

The Court: Is there a written paper.

Mr. Silver: All right. We will supply that in another way.

Q Mr. Kramerman, I show you a paper pur-
porting to be dated the 9th day of June, 1926, 40

Frank Kramerman, cross.

between Frank Kramerman, of the City of Newark, and J. Franklin Perry, Charles Koos, Henry Clark and David Knoller referred to as trustees, and ask you whether you ever saw this paper before. A Yes, sir, I did. That is my name signed right on it.

10 Q Do you know where you saw that paper?

A I saw it right at the meeting.

Q At what place? A In Mr. Fischel's office, at my attorney's office.

Q Do you know what that paper is? A This was the paper to get the people—(interrupted).

Mr. Kanter: I object to the witness characterizing the paper. It speaks for itself.

Mr. Silver: All right, sir.

20 I offer this paper in evidence, your Honor. It appears to bear the signature George Perry Company, signed by the defendant, J. Franklin Perry.

(Paper marked Exhibit C. 1.)

Cross examination by Mr. Kanter.

Q Mr. Kramerman, you started to tell about a meeting at Koos' office of a week later. A
30 Yes, sir.

Q Do you mean a week after June 9, 1926?

A It was a week after June 8 or 9.

Q By "Mr. Koos" you mean Koos, the president of the Clinton Trust Company? A Yes, sir.

Q Can you tell us who was present at that meeting? A Mr. Clark was present at that meeting; Mr. Koos was present at that meeting; Mr. Franklin Perry was present at that meet-
40

Frank Kramerman, cross.

ing. I don't recall—I think Mr. Knoller was. I am not quite sure.

G And you? A And I was there.

Q And the five people you have mentioned were the only people present? A Were the only people present in Mr. Koos' office, as far as I—(interrupted).

10

Q I repeat. I ask you whether these names are correct? A Yes, sir.

Q Mr. Koos, the president of the Clinton Trust Company? A Yes, sir.

Q Mr. Clark, connected with Clark and Company? A Yes, sir.

Q Mr. J. Franklin Perry? A Yes, sir.

Q Mr. David Knoller and yourself? A Yes, sir.

Q The people whose names I have mentioned were the only people present at this meeting in Mr. Koos' office? A As far as I know.

20

Q Was the subject of these notes held by Mr. Perry discussed in any way? A Yes, sir.

Q It was referred to? A Referred to what?

Q Was it spoken of? A Yes, sir.

Q And give us the entire conversation with reference to those notes on June 9th. A On June 9th in—where, at the meeting?

Q At Mr. Koos' office, we are speaking of. A That was not June 9th.

30

Q June 16th. I beg your pardon. A June 16th, Mr. Perry called the meeting there—(interrupted).

Q I am not asking you what he did. I am asking you what was the conversation at that meeting. A Oh, the conversation at that meeting was that Mr. Perry was to have someone else go on these notes, signed, and that money should be used for finishing my jobs.

40

Frank Kramerman, cross.

Q Was that said, at that time? A That was said, at that time.

Q Was anything further said about those notes, at that time? A Yes. It was also said that there were three creditors, that they would not sign, that they were small creditors, that
10 we should try a way to prevent them starting suit or to pay them off.

Q I am not asking you what was said about that. Was anything more said about the notes? A Just what I am telling you.

Q Repeat it now, please. A Mr. Perry said that he would not go on these notes himself, but he wanted someone else to go on and sign on the notes and cash those notes in so we can go on with the work, that I was to finish out and realize my money.
20

Q And that was the whole conversation with reference to the notes? A In reference to the notes.

Q All right. Now, you say that on June 5th you went to Perry's office for the first time, did you? A Oh, I have been several times before.

Q No. I mean when this subject of the notes was taken up. A June 5.

Q How do you remember the date? A The reason I remember the dates is because I remember when they started. I got my notes on the second of June and after—the day after my troubles have started. That is why I remember it very well.
30

Q And you went to that office and you met in that office whom? A I met Mr. Perry.

Q And whom else? A And I came with Mr. Hecht and Mr. Cohen.

Q Who is Mr. Hecht? A Hecht is one of my creditors.
40

Frank Kramerman, cross.

Q One of your creditors? A Yes, sir.

Q What is his first name? A Louis Hecht.

Q And who is Cohen? A Cohen was from the Uptown Iron Works, also a creditor.

Q And you came with this Mr. Cohen and this Mr. Hecht? A Yes, sir.

Q And you met Mr. Perry at his office on Fabyan Place, Newark? A Yes, sir. 10

Q And who else was there? A I don't recall anyone else.

Q All right. Now, these two men remained in the outer office, did they? A These two men that brought me there, you mean, Mr. Cohen and Mr. Hecht?

Q Yes. A They were right in the office with the persons with me.

Q They brought you to Perry's office? A There was a reason why they brought me. 20

Q I am not asking the reason why they brought you. They brought you to Perry's office? A Yes, sir.

Q And they went into the office with you? A Yes, sir.

Q In Mr. Perry's private office? A Yes, sir.

Q The three of you were there together? A Yes, sir. 30

Q And Mr. Perry? A Yes.

Q Nobody else was there except your two friends? A I don't recall.

Q You and Mr. Perry; is that correct? A Yes, sir.

Q These two men are friends of yours, are they not?

Mr. Silver: I object to that. That is not material.

The Court: I will allow it. 40

Frank Kramerman, cross.

Q Are they not? A Friends of mine?

Q Yes. A Creditors.

Q They were friends of yours, weren't they?

A Well, if you will let me explain the reason how I got them—

10 Q They are friends? I don't want the reason. A No, sir.

Q Were they friends of yours? A No, sir.

Q Why did you ask them to go with you?

A No. They asked me.

Q They asked you to go up to Perry's office?

A Yes, sir.

Q All right. They didn't know you had the notes, did they? A Yes; they knew I had the notes.

20 Q They knew you had them. All right. And, when you went up to Perry's office, on June 5, how many notes did you have? A On June 5, I had the \$9,100.

Q What had you done with the \$5,000 worth of notes? A Just—

Q What had you done with them? A Given them away to certain creditors.

Q Who? A I gave away to the Colonial Woodworking Company something like \$2,000.

Q In payment of a bill due it? A The payment of the bills due on certain jobs.

30 Q And who else did you give notes to? A The Clinton Trust Company.

Q How much? A \$1,000.

Q In partial payment of what was due it?

A Yes, sir.

Q Who else did you give notes to? A To painters.

Q Who? A I gave notes to painters that were working.

40 Q What are their names? A One was named Goldman and another Schwartz.

Frank Kramerman, cross.

Q How much did you give Goldman? A I think I gave him \$500.

Q And how much did you give Schwartz?
A \$500.

Q Whom else did you give notes to? A I gave a party \$800 in Roselle.

Q What is the name of this party? A Greenberg.

10

Q Who is Greenberg? A Greenberg was the man that just loaned me a week before \$800 for the payroll.

Q He is a friend of yours? A He is a friend of mine, yes. He gave me that money—loaned me that money.

Q And you gave him this note in payment of \$800 he loaned you? A Yes, sir.

Q How much of that note did you give him?
A \$800 I sent him a note for.

20

Q You gave it to Greenberg, didn't you?
A Yes.

Q He is a rabbi, isn't he? A Yes.

Q He is a friend of yours? A Yes.

Q Whom else did you give notes to? A That was about all.

Q How much did you give the Colonial Woodworking Company? A The Colonial Woodworking Company I think was nineteen hundred.

30

Q Now, nineteen hundred to the Colonial Woodworking Company, \$800 to your rabbi friend, Greenberg, a thousand dollars to Koos?
A Yes, sir.

Q \$500 to Goldman—how much did you give to Schwartz and the other plaintiff? A I don't recall just what the notes were, at that time. I don't know what it was. I couldn't recall.

Q In any event, every note you gave out was in payment of your bills? A Yes, sir.

40

Frank Kramerman, cross.

Q By whom were these notes made? A They were made by the Leon Realty Company.

Q You had done work for the Leon Realty Company? A Yes, sir.

Q On that job there. You had done work at 206 Market street? A Yes, sir.

10 Q How much did you owe the firm of George F. Perry & Sons on account of the material supplied to that job? A I couldn't recall the separate materials, because Mr. Perry supplied five of my jobs.

Q Do you remember the amounts? A I couldn't remember exactly, but I remember it was around fifteen thousand, whatever it was at that time, but from all the jobs.

Q And you owed Perry money for materials supplied on 57 Chancellor avenue, didn't you? A Yes, I did.

Q You owed George F. Perry & Sons money on other jobs? A Yes, sir.

Q For material furnished within four months from that date? A Yes, sir.

Q And this job, 206 Market street— A Yes, sir.

Q —there were no stop notices filed against that job, at that time, in June, 1926? A In June, 1926, there was no stop notices filed by anybody.

Q By anybody. All right. Now, the contract for the erection of this building for the Leon Realty Company at 206 Market street? A Yes, sir.

Q Was on file in the County Clerk's office, was it not? A I suppose so.

Q And Perry knew and you had discussed with him the fact that he had a right to file a stop notice on this job, didn't you? A Well,

Frank Kramerman, cross.

certainly, everybody had a right to file a stop notice.

Q Did you discuss that fact with him? A Never did.

Q When did you take the job of the Leon Realty Company? A I think it was on—I will remind me in about a minute. 10

Q Sir? A I will remind myself in about a minute and I will tell myself the date.

Q All right. I will wait a moment. A In February 5th.

Q 1926? A Yes, sir.

Q All right. Now, before you started this job, did you come to Perry and show him the contract? A Yes, sir.

Q Did you call his attention to the fact that your final payments were to come in the shape of notes? A Yes, sir. 20

Q And did you ask the firm of Perry to sell you materials to enable you to go on with your contracts? A Before I signed for anybody, I showed them my last payments for the notes with the bank and with everybody.

Q You showed that note to Mr. Perry for the Perry Company, didn't you? A Yes, sir.

Q And did you discuss with him as to what you would do with the notes? A Well, when I get payment in full, I was to pay him that. 30

Q And you were to give him the notes in payment? A Yes, certain notes, not all of them.

Q I didn't ask how many. You were to give him notes in payment of that check? A Yes.

Q That was your agreement, before you started in February, 1926; isn't that true? A With all my creditors was that agreement.

Q But that was your agreement with Perry, wasn't it? A Yes, sir. 40

Frank Kramerman, cross.

Q Perry didn't know of the fact that you got these notes, until you came up there in June, 1926? A Yes, sir.

Q Isn't it a fact that you got those notes before your job was actually completed? A Not—I didn't get my money in full before I got—
10 (interrupted).

Q I am asking you whether you got it in full? A Yes.

Q You got it before it was actually completed? A Yes.

Q And didn't Mr. Perry tell you that he was surprised to find those notes in your possession because the job was not finished? A I don't recall that.

Q You don't deny that, do you? A I don't deny it and I don't recall it. I won't say anything on it.
20

Q All these jobs on which you were working— A Yes.

Q —were jobs upon which the firm of George F. Perry & Sons had the right of stop notices or mechanic's lien? A At any time.

Q And that existed in June, 1926, didn't it? A Yes, sir.

Q So that in June, 1926, they could have filed the mechanic's lien—
30

Mr. Silver: I object to what they could have done.

The Court: I will sustain the objection.

Mr. Kanter: Withdrawn.

Q Have you told us everything that transpired at the meeting in Mr. Perry's office, on June 5, 1926? A That was all I have told.

Q Have you told us everything that happened there? A Yes, sir.
40

Frank Kramerman, cross.

Q How long did this conversation take? A It took, maybe, about fifteen or twenty minutes.

Q Now, you did not give the notes to Perry at that meeting, did you? A No, sir.

Q And the only thing you know that happened at that meeting, if I remember correctly, is that Perry made the statement that he thought it was advisable for you to have a meeting of your creditors called. That was the sum and substance of the entire conversation? A Yes, sir. 10

Q Is that correct? Nothing else? A Well, he had said that he would try to convince the people that I have got the notes, because there were rumors around that I went away with those notes.

Q All right. Then, the whole thing that was said was that Perry would try to convince the people that you had the notes? A Yes, sir. 20

Q That you ought to call a meeting of your creditors? A Yes, sir.

Q That was the whole conversation, was it? A Yes, sir.

Q Took a moment or two, did it? A Well, I was there about fifteen or twenty minutes.

Q Fifteen or twenty minutes. That was the whole conversation? A That was the conversation. 30

Q Following that conversation, did you go to the office of Mr. Jacob Fischel? A Yes, sir.

Q Was he your attorney? A Yes, sir.

Q He was not the attorney of George F. Perry & Sons? A No, sir.

Q He was not the attorney of Mr. Clark? A No, sir.

Q He was not the attorney of Mr. Koos? A I don't know. I only know about myself. 40

Frank Kramerman, cross.

Q All right. You know he was your attorney?

A That is all.

Q And you asked him to call a meeting of your creditors? A Yes, sir.

Q And a meeting of your creditors was called for the day of June 9, 1926; is that correct?

10 A Yes, sir.

Q The date that instrument is dated, instrument Exhibit C. 1. All right. What time of the day was that meeting called for, do you remember? A It was called for 10 o'clock in the morning.

Q All right. What time did Perry get there?

A Mr. Perry got there—I don't recall what time he got there.

Q But it was before the meeting was called?

20 A Yes; in the room, Perry waiting for an hour yet before the meeting was really called to order.

Q I see. Now, Mr. Fischel's office consists of a waiting room, doesn't it? A Yes, sir.

Q And an inside room? A There is other rooms inside besides the one.

Q Besides other rooms there is a general, large waiting room? A Yes, sir.

30 Q And Mr. Fischel's office is on the inside and beyond the waiting room, isn't it? A Yes, sir.

Q Now, these people who had been invited to this meeting were in the large waiting room of Mr. Fischel's? A Yes, sir.

Q Mr. Fischel's office is 24 Branford Place, Newark, isn't it? A Yes, sir.

Q And Mr. Perry, instead of staying in an outer room, went into Mr. Fischel's private office, didn't he? A Yes, sir.

Q All right. Were you there when he came in? A I was called in.

40

Frank Kramerman, cross.

Q You were called in. Who called you in?

A Mr. Perry.

Q And who was present when Mr. Perry called you into Mr. Fischel's private office? A If I recall, it was Mr. Koos and Mr. Fischel.

Q And Mr. Perry? A And Mr. Perry, naturally, and I.

10

Q Was Mr. Knoller there? A I don't recall Mr. Knoller.

Q Was a man by the name of Mr. Frankel there? A I think that Mr. Frankel was there.

Q Mr. Charles Frankel? A Yes, sir.

Q He represented what? A What Frankel was that?

Q Charles Frankel. A What was his business?

Q He is a lawyer. A Charles Frankel of Frankel & Distler?

20

Q That is correct, firm of Frankel & Distler. Was he there? A Yes, sir.

Q And who else? A That is about all.

Q Was Mr. Knoller there? A I don't recall.

Q Your recollection is that Mr. Fischel was there, Mr. Koos was there and Mr— A Yes.

Q —and Mr. Frankel was there? Mr. J. Franklin Perry and yourself? A Yes, sir.

Q All right. Now, at that time, did Mr. Franklin Perry ask you for the ninety-one hundred dollars in notes? A At that time, yes, he did.

30

Q Did you give it to him? A Not in the presence of the people I didn't give it to him.

Q Did those other people all go out of Mr. Fischel's private office? A No. Mr. Fischel said that he wouldn't be a party to see those notes given to anybody, so I called Mr. Perry in the next room with Mr. Fischel.

40

Frank Kramerman, cross.

Q Did Mr. Perry say to you— A Yes.

Q In effect these words: “Mr. Kramerman, you promised those notes to me and I want you to give them to me.” Did he say that to you? A No; he did not.

10 Q What words did he use to you when he asked for the notes? A He said to me that I should present to him the notes and that he will go out and show the creditors—there was rumors that I have got the notes, that I put them away somewhere—that he will show the creditors I have got the notes and that I want to do right and the best thing is to finish the job.

Q Was that the only thing Mr. Perry said to you? A That was the only thing.

20 Q And Mr. Fischel then said he didn't want to have anything to do with that, did he? A Yes, sir.

Q Then you left Mr. Fischel's private room?

A Yes, sir.

Q And you went into an adjoining room? A Yes, sir.

30 Q And there privately delivered the notes to Mr. J. Franklin Perry; is that right? A With delivering the notes, I delivered them right in front of everybody, the lawyer, Mr. Koos—(interrupted).

Q Wait a minute. I asked you when you went out of Mr. Fischel's room— A Yes.

Q —and you went into a private room with Mr. J. Franklin Perry alone? A Yes.

Q And there you gave him the notes? A I did not give him the notes.

40 Q You didn't say that on your direct? A I said I was in the room having a conversation with Mr. Perry and when—after I had the

Frank Kramerman, direct.

conversation with Mr. Perry, I came in and I presented the notes right in front with Mr. Fischel—or, Mr. Koos and whatever that fellow's name is—

Q Frankel. A Frankel. Presented the notes right in front of him right in that office.

Q Then, I misunderstood you. Then what you mean to say is you had first a private talk in the office of Mr. Frankel? A Yes, sir. 10

Q At which time Mr. Perry said, "I want those notes," and Mr. Fischel said, "I don't want to have anything to do with that transaction," you thereupon went to another private room— A Yes.

Q —had a conversation with Mr. Perry; is that correct? A Yes, sir.

Q Nobody else was there excepting you and Mr. Perry? A Excepting me and Mr. Perry. 20

Q And then you went back into Mr. Fischel's room? A Yes, sir.

Q And gave the note to Mr. J. Franklin Perry? A Yes, sir.

Q In the presence of your lawyer? A Yes, sir.

Q In the presence of Mr. Koos? A Yes, sir.

Q And in the presence of the other men whose names you have mentioned? A Yes, sir. 30

Q Now, after you delivered those notes to Mr. Fischel— A Yes. To Mr. Perry.

Mr. Silver: Perry.

Q —you went out into the big room, didn't you? A I went out, yes.

Q Now, when you went out into the large meeting— A Yes.

Q —that is in the waiting room of Mr. Fischel, the notes had been given to Mr. Perry? A 40

Frank Kramerman, cross.

Even—had been given to Mr. Perry for a purpose to use—

Q I am not asking you the purpose? A Yes.

Q They had been given to him? A Yes, sir.

10 Q Now, you—there was no conversation at the time you physically turned over the note to Mr. J. Franklin Perry in the presence of Mr. Fischel, was there? A No.

Q There was just merely the act? A Yes.

Q The only thing you did— A Yes.

Q —was to turn over the notes to Mr. Perry and nothing was said by you in the presence of these other men in Mr. Fischel's private room; is that correct? A Yes.

20 Q All right. Now, when you went out in the private room, there was a large number of men there? A Yes.

Q Creditors? A Yes, sir.

Q The question of these notes came up, didn't it? A Mr. Perry was the first speaker—

Q The question of these notes came up, didn't it? A Yes, sir.

30 Q Somebody asked you what had happened to the notes? A Nobody asked me what had happened to the notes.

Q Nobody asked you what happened to the notes? A Nobody asked me. Mr. Perry got up and spoke the first words.

Q I understand that. And the question of the notes was discussed? A Yes.

Q Somebody asked what happened to those notes? A Nobody asked me.

40 Q I didn't ask you whether anybody asked you. I said, somebody said, in the presence of this meeting: "What about those Leon Realty

Frank Kramerman, cross.

Company notes?" isn't that the fact? A They didn't have the chance. Mr Perry came out before anybody said a word. He was the first speaker. Nobody asked anything. He told them what he has got.

Q He told them that he had taken the notes?

A That he had taken the notes for a purpose, to use for the creditors, to finish the jobs. 10

Q Is that what he said at this open meeting?

A Yes, sir.

Q Didn't the conversation with reference to the notes come out in this way—strike it out. Did you reveal at that meeting that you had turned over \$5,000 of these notes to these other creditors?

Mr. Silver: I object to that as immaterial to this issue. 20

The Court: I don't know whether it is or not. I will allow it. If it is immaterial—

Mr. Kanter: Your Honor will disregard it.

The Court: I won't regard it.

Q Did you reveal at this open meeting that you had turned over \$5,000 of these notes to your various friends? A I hadn't said a word at that meeting. Didn't have two words to say. 30

Q Was the amount of notes stated by Mr. Perry? A Yes.

Q What did he say? A I have told Mr. Perry everything that I went over for—

Q Pardon me? A Yes, sir.

Q What did Mr. Perry say? I want Mr. Perry's words at this meeting. A Mr. Perry said to the creditors that he has the notes and, if they would all sign the papers they were not 40

Frank Kramerman, cross.

going to do any harm to me and let me finish those jobs, which there is money to be realized, he has got those notes for that purpose.

Q And that is all that was said in reference to those notes? A Yes, sir. It was said that he has got the notes for that purpose.

10 Q Did Mr. Perry say that he personally would assist you in financing the completion of your jobs? A He did not.

Q Did Mr. Perry say that this agreement, Exhibit C. 1, which you have seen, was not to be binding unless all the creditors signed the agreement? A Yes, sir; he said that.

Q Was Mr. Clark there at the meeting to accept the trusts specified in the agreement? A Yes, sir.

20 Q Clark was there, you say? A Mr. Clark.

Q And he knew he was appointed trustee, did he? A Yes, sir.

Q And Mr. Koos knew he was appointed a trustee? A Well—

Q And both Mr. Koos and Mr. Clark knew? A Yes.

30 Q (Continuing) According to what you say, that Perry had these notes which were to be applied— A Yes, sir.

Q —for your benefit— A Yes, sir.

Q —according to your statement. Now, you say Mr. Koos—

Mr. Kanter: Withdrawn.

Q Now, that was—and the meeting ended is that right on June 8th? A Yes.

Q June 9th? A All creditors have signed up, but three did not sign.

Frank Kramerman, cross.

Q Now, nothing further was said about those notes at that meeting? A Mr. Perry was elected as main trustee to go on with the job, paying me \$75 salary.

Q I am asking you whether there was anything else said at this meeting with reference to these notes? A I don't recall.

10

Q And you have given us all the conversation that happened at this meeting, have you? A Approximately.

Q And you have given us all the conversation that happened in Mr. Fischel's private office, preceding the meeting, haven't you? A Yes, sir.

Q Now, how were these notes payable? A They were payable—they were nine thousand—they were to be paid in five months with interest.

20

Q Weren't these notes dated so many months apart? A Yes, sir. Within five months they should all be paid.

Q When was the next note due? A The next note was due the second of May, \$2,800, I think.

Q All right. When was the next note due? A I couldn't recall exactly. I am telling you it is five months, that was how the agreement called to be paid and they were met and paid,

30

Q Sometime between June and November or December of that year, all those notes became due? A Yes, sir.

Q You had no further interest in those notes, after this meeting, did you? A Yes; I had interest in those notes.

Q Did you go to Mr. Koos— A Yes.

Q —and ever say to Mr. Koos, "Mr. Koos, Perry has in his possession nine thousand dol-

40

Frank Kramerman, cross.

lars which he failed to turn over to you?" A No, sir. Mr. Perry called on— (interrupted).

Q All right. You have answered that. Did you ever go to Mr. Clark and— A No, sir.

Q —and say, "Clark, Perry has in his possession \$9,000 which he failed to turn over"?
10 A No, sir.

Q Did you ever go to Perry and say that?
A I didn't have to go, because Mr. Perry— (interrupted).

Q You did not go, did you? A He called the meeting—

Q You didn't go?

Mr. Silver: I object, if the Court please.
The witness should be allowed to answer.
20

The Court: Let him answer.

Q You did not go, did you? A No; because he was appointed as trustee.

Q No? A I had to go—I was at every meeting called.

Q But you were not getting the \$9,000, were you? A I was waiting for it to be signed.

Q Nor any part of it?

30 Mr. Silver: I think counsel should permit the witness an opportunity to answer instead of crowding him all the time.

The Court: Yes, you should ask him the question and let him answer.

Q You didn't get the \$9,000 or any part of it, did you? A I turned it over.

Q You didn't—you turned over the notes, didn't you? A Notes.
40

Frank Kramerman, cross.

Q But you were not getting any cash? A We—each month I was supposed to pay cash.

Q But you were not getting the cash that you say you were supposed to get? A No. I didn't get anything.

Q No. You didn't go and demand the cash, did you? A Upon the notes? I cannot understand. What cash? 10

Q You said that Mr. Perry was going to give you cash as you went along, is that right? A Yes, sir.

Q The cash being the proceeds of these notes; is that correct? A Yes, sir.

Q You knew that you were not getting the cash as these notes were being collected? A Yes. I was supposed to proceed with the work. 20

Q You knew you were not getting the cash from Mr. Perry, didn't you? A Yes, sir.

Q And you didn't go and ask him for it? A I did.

Q When? A I didn't realize what was—(interrupted).

Q When did you ask him? A I asked him every week.

Q He didn't give it to you, did he? A I asked him to call—(interrupted). 30

Q He didn't give it to you, did he? A No; he did not.

Q And did you ever call upon the co-trustees with Mr. J. Franklin Perry, if they were such, Mr. Clark and Mr. Koos, to demand that money from Mr. Perry? A I went to Mr. Koos twice.

Q And you asked Mr. Koos to demand that money from Mr. Perry? A I didn't ask him to demand it, but they told me they are going to wait until they arrange to go on with the 40

Frank Kramerman, direct.

work, and they kept me four weeks without doing anything, and they didn't do anything.

Q That was four weeks—that was until the beginning of July? A Yes.

Q Now, there were notes coming due after July, weren't there? A Yes.

10 Q Did you get any money of the notes that became due after July? A I never got a nickel.

Q And you never demanded a nickel? A I demanded all the time.

Q From whom? A But I couldn't demand it. I asked Mr. Perry—I called him up about fifty times. I asked Mr. Koos what was going to be the result, and there was a party they sent me a notice to do a certain job, which that job was going to get out of my hands, and we had the papers signed up by the Waldorf Lunch and everything was to be signed up so I should start the job, and Mr. Perry wouldn't sign the papers.

20 Q Was there any specific amount Mr. Perry was to give you to help you in going on with these jobs? A No. Mr. Perry was to see how much do I need and I was to have control of the work and be given \$75 a week. That was the agreement.

30 Q Wait a minute. Mr. Perry was not to return your \$9,100? A Not to me. Supposed to keep track of it.

Q He was not to advance \$9,100? A No.

Q He was going to loan you some money personally to go on with these jobs? A Why, he just as trustee watched that the money goes into certain work that is necessary to complete the jobs.

40 Q You didn't go on with those jobs? A They wouldn't let me. They didn't give me my material.

Frank Kramerman, direct.

Q You were not able to secure credit? A I could not.

Q And you did not go on with those jobs?

A No.

Q And the only reason—the condition upon which the money was to be advanced to you was if you went on with those jobs? A Certainly. 10

Q And you did not go on with those jobs?

A No. Mr. Perry wouldn't sign anything and wouldn't cash those notes and I couldn't go on with the work.

Q You knew of a meeting—Mr. Hecht, this man, was one of the men— A Yes, sir.

Q —that was friendly with you? A He was not friendly. He was a creditor of mine.

Q Well, substantial creditor? A Yes, he was quite substantial, next to, about, Mr. Perry. 20

Q What amount do you owe Mr. Hecht? A I think it was forty-one or forty-three hundred.

Q And Mr. Cohen, this Cohen man? A Mr. Cohen, I think was thirty-six.

Q Thirty-six hundred dollars. Now, you knew that the meeting—that the trial of this case was to be held here a month ago, didn't you? A I was told about it, but I didn't know the date. 30

Q And Mr. Silver asked you to come down?

A I didn't know the date.

Q Mr. Silver asked you to come down? A Yes.

Q And didn't you afterwards 'phone Mr. Silver that you forgot about it? A Yes; after it was over. I didn't know the—

Q You forgot it? A I couldn't think of it.

Q Did you call Mr. Franklin Perry on the wire last week? A Yes. 40

Frank Kramerman, cross.

Q What for? A Well, I had certain conversations to ask him whether he would give a certain man materials.

Q What man? A There he is right there (indicating).

10 Q You called him on the telephone? A Yes, sir.

Q And did you arrange to buy materials of him? A Not personally. I told Mr. Perry.

Mr. Silver: I can't understand what the purpose of this is.

Mr. Kanter: Interest, bias.

Mr. Silver: May I address myself to the Court?

20 The Court: Yes. Wait a minute, Mr. Kanter.

Mr. Silver: Counsel objects to the question, first, on the ground that it is not proper cross examination; and, secondly, it is something about an occurrence of a week ago, that cannot possibly help this court in any manner in deciding the main issue.

The Court: I will sustain the objection.

30 Q Isn't it a fact that your interest in this case is prompted by two motives; first, the desire to help your friends Hecht and Cohen get some money from the trustee in bankruptcy; and, secondly, your pique in being refused credit by George F. Perry and Sons last week?

Mr. Silver: I object to the question as highly improper.

The Court: I will sustain the objection.

40 Mr. Kanter: That is all.

I. Benjamin Glueckfield, direct.

Re-direct examination by Mr. Silver.

Q Mr. Kramerman, do you remember receiving this bill from George F. Perry and Sons in November, 1926? A November, yes.

Q It is a bill for \$15,000? A Yes, sir.

10

Mr. Silver: Any objection to the admission of this bill?

Mr. Kanter: I don't know what it is.

Mr. Silver: I will show it to you, Mr. Kanter. Any objection?

Mr. Kanter: No.

(Paper marked Exhibit C. 2.)

Q Why did you pay the Colonial Woodworking Company with some of those notes? 20

Mr. Kanter: I object to the question because his motive is immaterial. His motives were immaterial to my questions.

The Court: I will sustain the objection.

I. BENJAMIN GLUECKFIELD, sworn for the complainant. 30

Direct examination by Mr. Silver.

Q Mr. Glueckfield, you are a member of the bar of the State of New Jersey? A I am.

Q And sometime in June, 1926, you represented one of the creditors of Frank Kramerman? A I did.

Q Did you attend any meetings at the office of Mr. Fischel at which J. Franklin Perry was present? A I did; one meeting. 40

I. Benjamin Glueckfield, direct.

Q Did you have any conversation with the defendant, J. Franklin Perry, concerning these notes? A I did, sir.

The Court: When was the meeting, Mr. Glueckfield?

10 The Witness: I can't fix the exact date from memory, but I do recall distinctly that it was in the early part of June, 1926.

Q Will you state to the Court just what that conversation was?

Mr. Kanter: Have you any objection, Mr. Silver, to asking him who he represented?

Mr. Silver: Why, no.

20 Q Who did you represent? A I represented the man who was the second largest creditor, Mr. Benjamin Cohen, trading as the Uptown Iron Works.

Q Is he a friend of Mr. Kramerman?

Mr. Kanter: I object to that. How can this man know?

30 A I don't know.

(Discussion.)

The Court: What we want is the conversation and what occurred at the meeting.

40 The Witness: Mr. Perry stood up at the head of the room and I sat at a desk just several feet removed from him. Mr. Perry first gave some description of the status of Mr. Kramerman's affairs. He mentioned

I. Benjamin Glueckfield, cross.

the fact that there were several jobs in the course of operation and made particular reference to the fact that one of them was particularly good in the sense that there were already on hand a number of notes representing payment on account and that there was some additional work to be done upon completion of which the balance would be forthcoming. I thereupon asked Mr. Perry who had those notes. His reply was, "I have them." I asked Mr. Perry the amount of them and he said, "About nine thousand dollars." I asked Mr. Perry if there were any other tangible immediate assets. He said, none whatever with the exception of these notes. I asked Mr. Perry, then, whether these notes belonged to all of the creditors or whether he held them in payment of accounts due to him or his firm personally. He said, no; they were for the benefit of the creditors. I then asked that in case the meeting resulted in the appointment of a committee of creditors for which I was then moving, the notes would be turned over to that committee and the proceeds of them in due course divided among all of the creditors. Mr. Perry replied that that was exactly his intention, that he was holding these notes for the benefit of the creditors.

Mr. Silver: Your witness.

Cross examination by Mr. Kanter.

Q Mr. Glueckfield, then the version given by Mr. Kramerman of what Mr. Perry said at this meeting is different, is it not? A Mr. Kanter, I can tell you only—

I. Benjamin Glueckfield, cross.

Q No. Tell me, is it different? Answer yes or no? A That is for you to conclude.

10 The Court: It seems to me, we can realize that. If it is different, the testimony will show it. Mr. Glueckfield is telling his recollection of what the conversation was.

Q Have you an independent recollection of the month in which this meeting occurred? A Of the month?

Q Yes. A Yes. The month of June, 1926.

Q You have an independent recollection of that fact? A Yes, sir.

20 Q And you were not among the people in this star chamber proceeding in Mr. Fischel's office, were you? A Well, I don't know what you mean by the "star chamber proceeding."

Q You were attending this meeting in the outer office of Mr. Fischel? A And immediately after the conclusion of the meeting—(interrupting).

Q Will you please answer my question?

Mr. Silver: I object.

30 A I will, if you will let me.

Mr. Silver: I object.

The Court: Wait a minute, gentlemen. Go on. Finish your answer.

40 The Witness: (Continuing.) Immediately upon the conclusion of the meeting in the outer office, I attended a subsequent meeting in Mr. Fischel's private office whereat we drafted and I participated in the drafting of a creditor's agreement.

I. Benjamin Glueckfield, cross.

Q The creditor's agreement that you refer to is C. 1, isn't it? A Yes, sir.

Q Anything in that agreement said about turning over—

The Court: Wait a minute.

Mr. Silver: I object.

10

Q You knew, when that creditor's agreement was drawn, Exhibit C. 1, according to your present statement, that Perry held \$9,100 of these notes? A Yes, sir.

Q You assisted in the making of that agreement, Exhibit C. 1, didn't you? A Yes, sir.

Q How long have you been a lawyer?

The Court: Oh, don't ask that.

20

Mr. Kanter: I would like to know. This man is not a lawyer of inexperience.

The Court: I know he is not. He is an experienced lawyer.

Mr. Silver: The agreement—(interrupted).

Mr. Kanter: I didn't know how well the Court knows that.

The Court: I know Mr. Glueckfield.

30

Q Now, Mr. Glueckfield, you are a pretty busy lawyer, aren't you? A At times, yes.

Q You don't pretend to remember every conversation you have heard in the last year and a half, do you, Mr. Glueckfield?

Mr. Silver: I object to it.

The Court: I will allow that. He is testing his memory.

40

I. Benjamin Glueckfield, cross.

A Every conversation, no, sir.

Q Of course not. And you do not remember the details concerning the status of the jobs that he gave, do you? A In a general way I should say yes.

10 Q How many jobs were discussed where notes were involved? A Only one. And that was a Market street job.

Q You don't remember any other jobs being discussed with notes involved, do you? A Notes? Yes, but to the extent only that notes probably would have to be taken upon the completion of the job, but that there were no notes then in existence as to that job.

20 Q You didn't recollect that fact until your memory was refreshed by my question; is that correct? A That is correct.

Q You say you asked the question, "Have you any notes, Mr. Perry?" A Yes.

Q And Mr. Perry said he had \$9,100 of notes? A Yes, sir.

Q And the rest of the conversation was passed between you and him across the table or in the room? A Yes.

Q In the fashion that you have given it? A Correct.

30 Q In other words, you were interrogating him very much as you would in court?

Mr. Silver: I object.

A Not as I would in court.

The Court: I will sustain the objection.

40 Q You were interrogating him in the fashion that you have narrated? A Exactly, sir.

I. Benjamin Glueckfield, cross.

Q And Mr. Perry's statement was not given in narrative form? A In narrative form in answer to my questions, yes.

Q Without any response from your questions back and forth in that way, didn't he make a statement in narrative form? A I have already said that at the outset—at the commencement of the meeting, Mr. Perry made a general statement regarding the condition of Mr. Kramer's financial status. 10

Q Where the words—the note—what was Mr. Perry to do in reference to advancing the money? Do you remember that? A I heard nothing said by Mr. Perry or anyone else so far as Mr. Perry personally advancing money is concerned.

Q The word "personally" was not used at any time, was it? A The question, sir, was whether I heard anything said about Mr. Perry advancing money. 20

Q Was there anything said about Mr. Perry advancing money? A As an individual, no.

Q What did he say about advancing money? A He said this, following a discussion among the creditors, that Mr. Kramer would assist to the best of his ability, giving his full time to the completion of these jobs, and that the committee, which was to be headed by Mr. Perry, would advance the necessary moneys from the proceeds of these notes to complete the jobs, and, in addition, pay some sort of a living wage to Mr. Kramer to support himself and family, pending the completion of all the work. 30

Q And that is what was to be done with those notes? A Yes, sir.

Q Used for the completion of these jobs? A As much of the total amount as should be necessary. 40

I. Benjamin Glueckfield, cross.

Q That was Mr. Perry's statement, was it?

A Yes, sir.

Q The proceeds were not to be divided among the creditors as you stated? A The balance of the proceeds, after deducting the necessary amount to complete the job, plus the additional amount to be derived from the last payment upon the completion of the job, was to be put in the pot, so to speak, for the benefit of all the creditors.

Q Including George F. Perry and Sons? A Yes, sir.

Q Including to the extent of their liability of over fifteen or sixteen thousand dollars? A Yes.

Q That liability was stated to be so? A My recollection is that I myself asked Mr. Perry what the amount that he was in for aggregated and my recollection is that he said, "About \$15,000."

Q You have given us the whole conversation that you remember? A Substantially.

Q Yes. And then the meeting broke up and you went in to Mr. Fischel's private office and drafted this agreement, C. 1? A Yes, sir. That is, I didn't draft the entire agreement, I suggested two or three clauses, which were embodied.

Q You participated in it until the signatures of the people who were there signed the agreement? A No. I left just after the completing of the dictating of the agreement and as the stenographer started to type it I left the meeting and went back to my office. I saw no one sign it.

Q Was Mr. Clark at this meeting? A I don't know Mr. Clark, but I distinctly remember

I. Benjamin Glueckfield, cross.

Mr. Clark's name being referred to there several times, and my recollection is also that I believe that at Mr. Perry's suggestion, Mr. Clark was made a member of the creditors' committee.

Q You don't know Mr. Clark? A I do not.

Q You would not know him, if you saw him? 10

A I might.

Q Mr. Clark, kindly stand up. This gentleman here? A I can't say for sure whether I saw that gentleman there or not. I wouldn't say he was not there, but I don't recall his face.

Q Was Mr. Koos there? A Oh, yes, I remember speaking to Mr. Koos.

Q At that meeting? A Yes.

Q At the large meeting? A At the large meeting. 20

Q Did you see Mr. Koos come out of Mr. Fischel's private room, before attending the large meeting? A Yes.

Q He was with those men that came out of this small room? A The same four men came out altogether.

Q Can you tell us who they were? A The only two that I knew were Mr. Koos and Mr. Perry. 30

Q Did you know Mr. Charles Frankel? A Charles Frankel the lawyer? 30

Q Yes. A Yes.

Q Was he one of the men? A I didn't see him—pardon me, I didn't see him come out at the same time the others came out.

Q Did he come out a moment or two thereafter? A My recollection is I saw him a—several moments before Mr. Perry and Mr. Koos came out. 40

Jacques Hecht, direct.

Q Was Mr. Knoller in that room? A If Mr. Knoller is a thick set stoutish gentleman, yes.

Q That fits his description. He is a client of Mr. Charles Frankel? A I don't know whose client he is. But my recollection is that Mr. Knoller was in as a creditor for money advanced to Mr. Kramerman as loans. He was not a merchandise creditor.

Q You were not asked that question at all, were you? You are a lawyer. A I am endeavoring to identify the man.

Q Did anybody else come out of that room excepting Mr. Kramerman and Fischel? A And Mr. Koos.

Q And Mr. Koos? A And Frankel, you have mentioned him?

Q Yes. And Perry? A And Perry.

Q And Knoller? A And Mr. Knoller, yes, sir.

Q And your recollection is considerably aided by questions that may be put to you? A Yes; as you go along, you remind me of many things that had not become absolutely fixed in my mind.

Mr. Kanter: That is all.

30

JACQUES HECHT, sworn for the complainant.

Direct examination by Mr. Silver.

Q Mr. Hecht, you are a member of the Bar of this State? A Yes, sir.

Q Did you call at the office of J. Franklin Perry some time in June or July of 1926? A

40

Jacques Hecht, direct.

During the latter part of July, I believe, my brother, who is one of the creditors of Frank Kramerman, told me that—told me to go up to see Franklin Perry with him and find out exactly what has been done.

Q All right. Now, bring yourself into the office of Perry, at which you say were present the defendant, Perry, your brother, Louis Hecht and yourself. Correct? A Yes. 10

Q Now, tell us what was said by you and what was said by Perry? A We went up there for the—

The Court: What was said?

The Witness: My brother, if I recall, asked Mr. Perry what was doing. This was the first meeting. And Mr. Perry told him nothing had been done yet. I don't recall the exact conversation, but— 20

Mr. Kanter: I object to the witness going on, then. We want the exact conversation.

The Court: Yes.

Q Tell us what was said. Was anything said about the notes? 30

Mr. Kanter: I object to the question as being leading. He says he doesn't recall the conversation.

Mr. Silver: He may recall some of it and not recall the exact conversation.

The Court: Tell us what you recall.

The Witness: At the first meeting, my brother and I—that is, I asked—my brother, rather, asked Mr. Perry what was being done 40

Jacques Hecht, cross.

with the Kramerman jobs and Mr. Perry told him that nothing had been done, that practically everything was at a standstill. That was at the first meeting. At the second meeting—

10 Mr. Kanter: I would like to have the date of this.

The Witness: This was about the end of July, 1926.

Mr. Kanter: Now, you are talking about the second meeting?

20 The Witness: That was the first meeting. The second meeting took place about two or three weeks later in the month of August, 1926. And Mr. Perry, my brother and I were present. We came up—we came there and my brother told Mr. Perry that since nothing had been done, no distributions, had been made of the money and he needed some, he was hard up financially, and asked Mr. Perry to either advance him some out of that or else give him his share, and Mr. Perry told him there was nothing doing at that time, that he would wait a little longer before he would distribute any moneys.

30 *Cross examination by Mr. Kanter.*

Q You have given the exact conversations?
A Substantially.

Q Your brother said, "What is being done, and how are the jobs getting on, and are we going to get any money?" It that what your brother said, in effect? A Practically. At the first meeting.

40 Q At the first meeting? A Yes, sir.

Jacques Hecht, cross.

Q And Perry said, "Nothing is being done. The jobs are at a standstill." A Right. They were at a standstill at that time.

Q Please. You are a lawyer, too. Perry said, "The jobs are at a standstill." A Yes.

Q Then you went up there the last time on or about August 15—when I say "August 15" I mean to indicate the middle of August, 1926—
A About that time.

10

Q —and your brother said to Perry, "How are the jobs coming along? Are we going to get any money?" And Perry said, "No. There isn't any money yet, and the jobs are not getting along very well," or words to that effect? Is that correct? A He didn't say the jobs were not getting along. He said that there was nothing at all doing on the jobs.

20

Q Nothing at all doing on the jobs? A (Witness nods head).

Q And then your brother said, "Will you please advance the money to me personally?" Is that what your brother asked for? A He asked him to give him some of the money out of the—(interrupted).

Q Wait a minute. You said on direct your brother asked Mr. Perry to loan him some money personally, didn't you? A I didn't say that.

30

Q Your brother said, "I want some money personally," didn't he? A Yes, sir. He didn't say "loan." He said "some money."

Q "I want some money personally." A He wants some money out of the share—out of the money that Perry is holding as trustee.

Q You didn't say those words, "I want some money out of the share that Perry is holding as trustee," in your direct.

40

Jacques Hecht, cross.

Mr. Silver: I object to that.

The Court: No. He didn't say that.

Mr. Silver: The record speaks for itself.

The Court: Yes.

10 Q You didn't use those words, did you?

The Court: No. He did not.

The Witness: No.

Q But he said, "I want some money personally." A I didn't say that, either.

Q What were the words your brother used, now, that you say? A He said, "I am hard up financially."

20 Q Yes. A That "I want some of the money coming to me, or all of it, out of the moneys that you are holding as trustee."

Q Those are the exact words? A They are not the exact words. They are substantially what he said.

Q But the part you want to bring to this Court is that your brother was asking for moneys "that you are holding as trustee"—Perry. A Exactly.

30 Q That is the last time you saw Perry? A That was about the middle of August. I saw him after that. He walked into my office by accident.

Q That was nothing in reference to this matter? A Absolutely.

Q He came into your office by accident? A Yes, sir. I was on the twelfth floor of the Ordway Building. He went looking, he told me, for Harry Unger, and he walked into my office
40 by accident.

Jacques Hecht, cross.

Q When was this? A I should say, around December, 1926.

Q All right. The August conversation is the only conversation you referred to, and the July conversation, in your direct testimony? A Exactly.

Q Very good. And, do you remember being in the corridor of this court room last month? A Yes, sir. 10

Mr. Silver: I object to—

The Court: Wait a minute.

Q Do you remember my asking you to give me your version—

Mr. Kanter: Withdrawn. 20

Q Did you not tell me that you were present at this meeting of the creditors? A I was.

Q And did I not ask you to tell me your own version of the meeting of the creditors? A Exactly. And I refused to tell you.

Q All right. And you knew, as a lawyer, you had a right to tell me? A I knew, as a lawyer—

Mr. Silver: I object. 30

The Court: Wait a minute. Do not answer the question.

Q This creditor is your brother, isn't he? A Absolutely.

Q And what is his first name? A Louis.

Mr. Kanter: That is all.

Jacques Hecht, re-direct.

Re-direct examination by Mr. Silver.

Q You started to tell Mr. Kanter about Mr. Perry coming in in December.

10 Mr. Kanter: I object to the question. I did not go into that.

The Court: I will allow it.

Mr. Silver: He opened the door to it.

Mr. Kanter: He said, "I saw Mr. Perry," but I refrained from asking him anything about it.

Mr. Silver: No, sir. He was asked—

The Court: I want to hear what you did say to him.

20 Q Tell us what happened. A About December, 1926, he walked into my office on the twelfth floor, and I recognized him—on the twelfth floor of the Ordway Building—and I recognized him immediately, but I do not think he recognized me.

The Court: What did you say?

30 A He asked me where Harry Unger's office was, and I told him down at the end of the hall. I said, "What's doing in the Kramerian matter?" He says, "Nothing is doing at all."

Mr. Kanter: No questions.

Louis Hecht, direct.

LOUIS HECHT, sworn for the complainant.

Direct examination by Mr. Silver.

Q Mr. Hecht, you are a brother of Jacques Hecht, who was just on the stand? A Yes, sir.

Q You were a creditor of Frank Kramerman? A Yes, sir. 10

Q And do you recall accompanying your brother up to the office of J. Franklin Perry? A Yes, sir.

Q Can you fix the time when the first trip was taken up there? A It was around the latter part of July.

Q Do you remember having a conversation with Perry concerning these operations? A Yes. I says to Mr. Perry, I says, "Mr. Perry, why ain't we going ahead with the work? There is one job already has been taken away from us by three days' notice." I says, "There is a couple left we can still go ahead with." "Well," he says, "We will see what we can do about it." That was that conversation. 20

Q What happened at the next one? A The next one was around the middle of August. I seen I was getting fooled around, so I went up to him and I says, "Mr. Perry, why not split that money that you got, the \$9,100?" I said, "I need some money; I need it bad." He said, "No; I can't do that until I get the money from the Leon Realty Company, and then, when I get that money, we will share it all up." 30

Q Did Mr. Perry say anything about having applied that on the indebtedness of Mr. Kramerman to Perry himself? A No.

Mr. Kanter: I object to the question "himself." That is leading. 40

Louis Hecht, cross.

Mr. Silver: All right. Take the witness.

Cross examination by Mr. Kanter.

Q You knew that Mr. Koos was a trustee, didn't you? A Yes, sir.

10 Q You knew that Mr. Clark was a trustee?
A Mr. Clark's name I don't exactly remember.

Q Well, you knew Mr. Koos? A Yes, sir; I knew Mr. Koos as a trustee.

Q Well, according to your version, you thought you were going to get part of this \$9,100? A Yes, sir; my share.

Q What part of it you might have been entitled to, you don't know? A I don't know what share I was entitled to, but I knew I ought
20 to get some coming.

Q Well, weren't you being given the money by Mr. Perry? Did you— A Mr. Perry was supposed to share it up.

Q Mr. Perry was not giving it to you? A Mr. Perry—

Q You knew—

The Court: Just answer that question. He didn't give you any money, did he?

30 The Witness: He did not give me any money.

Q Did you then come to Mr. Koos and ask him? A No, sir.

Q Why not? A Because Mr. Perry had the money. He was holding the money. He was the one who told me to come up.

Q You thought that the three trustees who were to collect this money were Koos, Perry and Clark, didn't you? A He was the first
40

Louis Hecht, cross.

one; he was supposed to be the president of that trustee.

Q But you knew the three trustees were Koos, Perry and Clark and they were supposed to collect this money, didn't you? A I don't know. I didn't know who was supposed to collect the money. Mr. Perry was supposed to be a sort of president of this trustee and he was supposed to be in charge of it, so I went to him. 10

Q And you knew the notes were being collected, didn't you? A Yes, sir.

Q And you knew that in the month of May—or, July? A Oh, I didn't know what month they were being collected.

Q You knew all along from July and through the fall and winter of 1926? A I knew they were supposed to be collected every month or every other month. 20

Q Did you go to Mr. Fischel and ask for interest? A No, sir.

Q You knew that Mr. Fischel was supposed to be acting as attorney for these trustees? A I don't know whether he was or not.

Q You didn't know whether he was or not. That is all.

Mr. Silver: Is the bookkeeper here from Perry & Sons? 30

Mr. Perry: Yes. Right here.

Mr. Silver: Will you produce the account of Mr. Kramerman, please?

Henry J. Ruck, direct.

HENRY J. RUCK, sworn for the complainant.

Direct examination by Mr. Silver.

Q Mr. Ruck, you are employed by George Perry & Sons Company? A Yes, sir.

10 Q In what capacity? A As general manager in charge of the office.

Q Have you produced here the account as it relates to transactions between Perry and Sons and Frank Kramerman? A Yes, sir.

Q On the first day of December, 1927—1926, how much, according to your records, did Frank Kramerman owe you on the first day of December, 1926? A Do you want the exact figure?

20 Q Well, the sum total. You know that, don't you? A Well, approximately, over fifteen thousand. I have them all here, or do you want the sum total?

Q That was on the first day of December, 1926? A Yes, sir.

Q The records show that Kramerman owed fifteen thousand dollars. Now, tell us on what date in December your records give Kramerman credit for entering payments on account under what date? A On the 31st.

30 Q Thirty-first day of December, 1926. And that is the end of your fiscal year? A Yes, sir.

Q Will you explain to the Court why you did not credit these notes prior to the time you closed your books up for 1926, if you know? A Why, I did not credit the notes?

Q Why were the—

Mr. Silver: Strike it out, please.

40 Q I now ask you, why is it that no credits were given Frank Kramerman's indebtedness of

Henry J. Ruck, direct.

\$15,000 prior to December 31, 1926? A Mr. Perry had gotten the notes.

Q What is that? A Mr. Perry had gotten the notes.

Q Mr. Perry had gotten the notes. A He turned them over to me in the amount of \$9,100. He told me at the time that he, Mr. Perry, would complete some of this work of Mr. Frank Kramer- 10
erman and, as I understood it, a corporation—

Q No, no, not as you understood it. What did the defendant, Perry, tell you when he handed you those notes? A He told me that I should take those notes and upon the maturity of same I should collect on that and in turn turn the money over to him.

Q Personally? A Personally and—

Q That is right. Now— 20

Mr. Kanter: Now, let him finish.

The Witness: (Continuing) And he, Mr. Perry, would then take that money and complete some of the uncompleted work that Mr. Kramerman had started, providing all of the creditors go along and sign up.

Q When was this conversation between Mr. Perry and you? A At the very time that Mr. Perry gave me the notes. That was some time in, I believe it was June, when he first gave me the notes. 30

Q Will you refer to your account and tell us how much worth of notes the Franklin Company got of the \$9,100? A Franklin?

Q I mean, Perry Sons Company got of the \$9,100? A Yes, sir.

Mr. Silver: I withdraw that question. 40

Henry J. Ruck, direct.

Q I want to ask you, Mr. Ruck, how much credit did you give Frank Kramer's account out of those notes? A How much credit?

Q Yes. A \$8,283.86.

Q What became of the thousand dollars difference? A He got that; Mr. Perry held that.

10 Q Personally? A Personally. He thought that perhaps there might be some small work—

Q I don't want to know what he thought.

Mr. Kanter: What did he say?

The Witness: That is what he said, he told me.

Mr. Silver: If your Honor please, is Mr. Kanter examining or am I examining?

20 The Court: No. You objected to him saying what Mr. Perry thought, and Mr. Kanter said, "No, we want what he said," and I feel the same way about that. I don't want to know what he thinks Mr. Perry thought. I want him to say what Mr. Perry said.

Mr. Silver: The question as I put it was—I asked what became of the thousand dollars.

30 The Court: Yes.

Mr. Silver: Yes. And the answer was that J. Franklin Perry got that himself, and I am through, unless the Court wants something further on that.

The Court: I want to know what Mr. Perry said, why he took the \$1,000. That is what I want to know. What did he say when he took the \$1,000?

40 The Witness: I asked Mr. Perry if he would give me that \$1,000 and he told me, no,

Henry J. Ruck, direct.

that he would hold that in a special account—in his own account, rather, pending the proposition to finish up some of the smaller work to realize more cash, that is, out of Kramerman's work which was still incomplete.

10

Q This conversation was concerning the first note of a thousand dollars, was it not? A The first note.

Q Who got the first—(interrupted). A No, it was not, it was not the first note. It was just the thousand dollars in question.

Q Now, look at your books and tell us who got the first thousand dollars, whether Perry & Sons got it, according to your books, or whether Perry personally got it. A Perry & Sons got it. 20

Q Perry & Sons got it. Who got the second note? A Perry & Sons got it.

Q Which note did Perry & Sons not get? A Mr. Perry got that note, pardon me.

Q Mr. Perry got the first one? A Right. The first two.

Q The first two of five hundred each? A Yes.

Q And, up to this day, Mr. Perry personally still holds that \$1,000? A No, sir. Since that time, he turned it over. 30

Q Tell the Court when he turned it back to the company. Let me refresh your recollection. A I can't just recall it.

Q Was it after you were paid a visit by my certified accountant, or later? A It was after.

Q After you talked with the certified accountant? A (No answer.)

Mr. Silver: That is all.

40

Henry J. Ruck, cross.

Cross examination by Mr. Kanter.

Q The money was due to George F. Perry & Sons, was it not? A Yes, sir.

Q And you received the notes in May—in June, 1926? A Yes, sir.

10 Q And was it just a matter of bookkeeping convenience that you did not credit it in the account until the end of the year? A Yes, sir.

Q And did you then discover, when Mr. Silver sent up a gentleman—what is his name?

Mr. Silver: Mr. Silberman.

20 Q (Continuing.) He sent up Mr. Silberman that you had failed to charge up the money that Perry had received the other thousand dollars and credit the Kramerman account. Did you know of that account until he checked that up? A I didn't get that.

Q Did you intend to credit the entire amount received, of the \$9,100, whatever it was, and is it not a fact that as a result of your own error in bookkeeping that you failed to credit up the other thousand and it was discovered when Mr. Silberman came up? A It was.

30 Mr. Silver: The books speak for themselves.

The Court: We will just have the facts, and we can decide whether it was an error in bookkeeping. It appears he did not credit it until last December.

Mr. Kanter: Yes, that is correct. But the other thousand dollars he was speaking of, Mr. Silberman went up there, I think it was June or July—

Henry J. Ruck, cross.

Mr. Silberman: January of this year.

Mr. Kanter: After the bankruptcy proceedings?

Mr. Silver: It couldn't have been January, 1927?

Mr. Silberman: Yes, sir.

10

Mr. Kanter: No. I know that is not true. You don't mean it.

Mr. Silver: Make your point, Mr. Kanter.

Mr. Kanter: Mr. Silberman went up to Mr. Ruck in the latter part of April or the early part of May, 1927. Is that correct, Mr. Silberman?

Mr. Silberman: No.

Mr. Silver: If Mr. Kanter wants to take the stand and prove it, we will prove our case—(interrupted).

20

Mr. Kanter: I am asking if you will admit a fact if it is a fact.

Mr. Silver: We will have the proof.

Mr. Silberman: No.

Q Mr. Ruck, when Mr. Perry directed you to credit the \$9,100 when received, and he explained to you that he might use part of the money provided all of the creditors would consent to some arrangement that he had entered into with the creditors in reference to finishing Kramerman's work, was that explained to you by Mr. Perry? A Yes, sir.

30

Q And did you know how to enter that transaction in your books in June, 1926? A No, not then, because I didn't collect on the notes there.

40

Henry J. Ruck, cross.

Q All right. Now, by December, 1926, you had collected some part of it? A Right. That is right.

Q And the money had not been used for the purpose for which Mr. Perry said it might have to be used for? A Yes, sir.

10 Q And the money was due to Perry & Sons, was it not? A Yes, sir.

Q Is Mr. J. Franklin Perry the only stockholder of George F. Perry & Sons? A Of George F. Perry & Sons, no, sir.

Q Is he the only director of George F. Perry & Sons? A No, sir.

Q Then, did you credit that as of the close of your fiscal year, December 31, 1926, the matter of bookkeeping? A Yes, sir.

20 Q And the money came to the hands of George F. Perry & Sons? A Yes, sir.

Q And came into its hands as of June, 1926? A The note?

Q Yes. A Yes, sir.

Q All right. Now, did you know of the fact that only \$8,100 was credited in December 31, 1926, whereas there should have been ninety-one hundred credited? When did you first discover that fact? A That fact I discovered—(inter-
30 rupted).

Q Why did you—(interrupted).

The Court: Wait a minute. Let him answer, Mr. Kanter. (To witness.) When did you discover it?

The Witness: The balance of the thousand dollars?

Q Yes, sir. A That was at the time when I closed the door.
40

Henry J. Ruck, cross.

Q I understand. When was it? A That was on December 31st.

Q Then you knew there was another thousand-dollar credit? A Yes, sir; I did know.

Q Why didn't you give Mr. Kramerman the credit for the other thousand? A Because Mr. Perry told me there might be a possibility of using that money to clean up some of the small work, so he would still hold it and, if they wouldn't get together, why, he would then let me know. 10

Q All this was prior to the time that there was any thought of bankruptcy?

Mr. Silver: I object.

The Court: No. 20

Q All this was prior—(interrupted).

The Court: When was it? Ask him.

Q When was it?

Mr. Silver: I think he answered the question.

Q This was December 31, 1926? A Yes. I said December 31st. 30

The Court: All right.

Q Now, when did Mr. Silberman come up to see you and call your attention to the fact that the thousand dollars had not been credited to Kramerman's account? A Well, he did not call my attention to it. I told him.

Q When was it he called your attention to it? A Some time in April of 1927. 40

Henry I. Silberman, direct.

Mr. Kanter: That is—

Q Of this year? A Yes, sir.

Mr. Kanter: That is all.

10

HENRY I. SILBERMAN, sworn for the complainant.

Direct examination by Mr. Silver.

The Court: What do you expect to prove by this witness?

20 Mr. Silver: I want to show the Court the condition of the books of Perry & Sons when I sent the certified—the United States Court appointed Mr. Silberman as accountant to go over these books, after we conducted an examination with Mr. Perry in the United States Court, and I want to familiarize the Court with the actual condition of the books of George Perry respecting this account with Kramerman at the time. I think it is very material.

30 Mr. Kanter: Doesn't your Honor think that on that issue Mr. Ruck is the best witness, and the books are the best evidence, instead of Mr. Silberman's conclusions of what he thinks about it?

Mr. Silver: Coupled with the fact that Ruck—

40 The Court: I will listen to this testimony. There is no question about it that the books are the best evidence.

Henry I. Silberman, direct.

Mr. Silver: True, but your Honor will take expert testimony?

The Court: I will hear it.

Q Mr. Silverman, you are a certified public accountant of the State of New Jersey? A Yes, sir. 10

Q And sometime at the end of January, 1927, at my request and under your order of appointment of the United States Court, you went up to examine the books of Perry & Sons Company? A Yes.

Q And did you examine the books? A Yes.

Q Who did you speak to when you went up first? A First I met Mr. Perry and he referred me to Mr. Ruck, the head bookkeeper.

Q And Mr. Ruck—(interrupted). 20

Mr. Kanter: Pardon me. What date was this?

Mr. Silver: In the end of January.

The Witness: January.

Mr. Silver: 1927.

Q And you saw Mr. Ruck? A Yes, sir.

Q And you went over the accounts of Frank Kramerman? A Yes, sir. 30

Q And you found—what did you find Kramerman was charged on the books with owing Perry & Sons, on the 1st day of December, 1926? A \$15,826.65.

Q And when did you find any credits against that account? A They were made on December 31, 1926.

Q And did you ask Mr. Ruck why the credits were not made as the notes cleared the bank? A Yes, sir. 40

Henry I. Silberman, direct.

Mr. Kanter: I object to the question.

The Court: Why?

10

Mr. Kanter: What difference does it make as a matter of bookkeeping practice, when the notes clear the bank, because, if your Honor please, if I owe Mr. Silver a thousand dollars and I pay him five hundred dollars today, it doesn't make any difference on my liability to Mr. Silver or Mr. Silver's liability, if any, to me, whether he holds my check for six years or doesn't use it at all. I paid him whether I paid in cash or check.

20

Mr. Silver: That, if the Court please, is not the point. It is highly material in throwing light on how these notes were given, whether they were given in the trustee's capacity or in liquidation of a—(interrupted).

The Court: I told you I would receive the evidence. I think that is sufficient.

Mr. Silver: Will you read the question?

30

(Question and answer read as follows: "And did you ask Mr. Ruck why the credits were not made as the notes cleared the bank? Answer: Yes, sir.")

The Court: Mr. Kanter objects and I overrule the objection.

Mr. Kanter: The question here is, did you ask Mr. Ruck? Clearly, Mr. Ruck's statement to this witness is not Mr. J. Franklin Perry's statement to this witness.

The Court: No, certainly not. I will allow the question, however.

40

Q What answer did Mr. Ruck give?

Henry I. Silberman, direct.

Mr. Kanter. I object to that question on the ground it calls for a statement not made in the presence of this witness.

The Court: I will allow it.

A Mr. Ruck told me that Mr. Perry gave him a series of notes, about the first part of June, amounting to \$9,100, and I asked him why these notes were not credited to the accounts, if they were given to him. He said at that time the notes were given they didn't know what to do with them, but these notes were collected at different times beginning July and ending November, 1927, so I asked him again why these notes were not applied when they were collected. He said he had no instructions from anybody to credit these notes.

10

20

Mr. Silver: That is all. Take the witness.

The Court: I do not think there is any necessity of cross examining him now.

Mr. Kanter: I will follow your Honor's suggestion on that.

The Court: I do not see possibly how it binds Mr. Perry.

Mr. Silver: Your Honor does not want any legal argument at this time?

30

The Court: No. I don't want legal argument. I want facts.

40

Jacob Fischel, direct.

JACOB FISCHEL, sworn for the complainant.

Direct examination by Mr. Silver.

Q Mr. Fischel, you are a member of the Bar of New Jersey? A Yes, sir.

10 Q And you were the attorney for Frank Kramerman in 1926? A Yes, sir.

Q Will you just relate to the Court, briefly, your connection with that matter? A It was early in June, I think, that Mr. Kramerman came down to see me with reference to his financial affairs, and I think he had been to see Mr. Perry, or, at any rate, mentioned that he had seen him, and he had the notes with him, the \$9,100 worth of notes, and I said, "What are you going to do with those?" He said, "You keep them for me, Mr. Fischel. I want to try to get out of my difficulties somehow." And, "What do you think it best to do?" Well, I told him I thought the best thing would be to call a meeting of the creditors and see what arrangement he could make, and it was between the meeting that he came to see me and the date fixed for the meeting that I got in touch with Mr. Perry. I wouldn't be sure that I spoke to Mr. Perry before, but I think I did, because, when the meeting was called, Mr. Perry came there and came into my office, together with Mr. Kramerman. I think Mr. Frankel was there, Charlie Frankel. Mr. Knoller and Mr. Koos came in also. Mr. Clark, I don't think appeared in the picture at all—my best recollection. The question of the affair of Mr. Kramerman was discussed.

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Mr. Kanter: Now, if your Honor please, your Honor knows the testimony that came

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Jacob Fischel, direct.

before. We are going to have a little difficulty in separating one from the other. I would like to have the witness directed to state what happened in this private meeting, in his private office.

The Witness: Yes; that is what I am coming to. 10

The Court: That is what he is going to do.

The Witness: In my private office—

The Court: On what day?

The Witness: Your Honor please?

The Court: What was the date?

The Witness: On the date of the execution of this paper, or the preparation of it, the ninth day of June, as I said, Mr. Perry, Mr. Kramerman, Mr. Frankel, Mr. Knoller and Mr. Koos were present there. They may not all have been there at the same time. And the question as to what should be done to the note came up. It was suggested by several of them, among whom Mr. Perry, that he ought to get those notes; that he was the largest creditor, and that he felt that, if he had them, that he would be in a better position in the meeting that was being called for in the outer office to put it right up to the creditors, if they don't play ball, so to speak, well, he has got the club over them and he wanted me to direct Mr. Kramerman to turn them over to him. Mr. Frankel on behalf of his client, Mr. Knoller. Mr. Knoller also thought that Mr. Perry would do the right thing and that there was no question that Mr. Perry could be trusted with seeing that things were properly carried out 20
30
40

Jacob Fischel, direct.

and done for the best interests of everybody. I didn't feel—(interrupted).

Mr. Kanter: Now, if the Court please, Mr. Fischel is going on with a rambling explanation instead of giving us the words.

Mr. Silver: I don't think it is rambling.

10

The Court: Let him go on. (To witness.) Confine yourself to what was said.

The Witness: All right. I will try to get to that. I was requested to turn over notes, or have Mr. Kramerman turn over notes. The notes were in my safe and I brought them out to turn over the notes to Mr. Perry.

The Court: Who asked you to do that?

20

The Witness: Mr. Perry and Mr. Frankel and Mr. Knoller and Mr. Kramerman joined along in it—thought that it would be well to do that, possibly, and I raised the question—(interrupted).

The Court: What did you say?

30

The Witness: I said, "I will not advise you to do that, Mr. Kramerman, because you have got a lot of other creditors, and just to prefer Mr. Perry here would not seem fair to the others. Now, we will call this meeting of creditors and I think the next thing, if they don't all come along, we will have to put you in bankruptcy." So Mr. Frankel and Mr. Knoller argued along that they felt that Mr. Perry ought to have those notes, that he would be in a better position, if we had the meeting at this time to say to the creditors, "Now, here I have got them. What are you going to do about them?" And I said I wouldn't be a party to it, that, if Mr. Kramerman wanted to turn those notes over to Mr.

40

Jacob Fischel, direct.

Perry, that it would not be done in my presence, that I would not be a party to it. So Mr. Kramerman and Mr. Perry left my room, went into one of the other offices, I think it was the adjoining office, not the main office, if I recall, and what transpired there I don't know. The notes were not passed in my presence. I want to correct that, as far as Mr. Kramerman is concerned. The notes were not passed in my presence. And they later came in and said Mr. Perry had the notes, and we went out to the meeting and the meeting was called and I turned the chair over to Mr. Perry, who made his announcement. 10

Q Did you see Mr. Glueckfield in the outer office? A Mr. Glueckfield was there and I think Mr. Glueckfield came into the office afterwards, when that statement was—when this agreement was drafted between Mr. Frankel and myself, I think Mr. Glueckfield took part in it also. 20

Q And did you hear the testimony in Court this morning of Mr. Glueckfield as to an alleged conversation between him and the defendant, Perry? A There were questions asked of Mr. Perry there by some of the creditors. 30

Mr. Kanter: I ask that be stricken out. The witness is asked, "And what did you hear?" and then he goes on to say—(interrupted).

The Court: What did you hear?

The Witness: I can't recall the exact questions that were asked Mr. Perry.

The Court: Do you remember what Mr. Glueckfield asked Mr. Perry? 40

Jacob Fischel, cross.

The Witness: I wouldn't remember that definitely; no, sir.

Q Well, you do remember there was some conversation between—(interrupted). A Yes. There were others who asked questions, too.

10 Q Were any of those questions concerning these notes? A I believe there were.

Q And did Perry state at that time—(interrupted).

The Court: No.

Mr. Kanter: No: "What did Perry state?"

Q What did Perry state? A He said he had the notes.

20 Q For what purpose? A I don't believe he, to my recollection, stated for what purpose, except that he let out that, if they all came along, the affair could be wound up very nicely and everybody would share properly; that he figured, if the work were all completed, at least about seventy-five per cent. would be realized by the creditors. That was conditioned, of course, on all of them joining in there.

30 Q Was Mr. Koos there at any time? A Mr. Koos was in my office, and I think he was there during part of that meeting, in the outer office.

Cross examination by Mr. Kanter.

Q Mr. Fischel, the part that you objected to was the fact that Mr. Kramerman was preferring the firm of Perry in preference to the other creditors; is that right? A Yes.

40 Q And you thought that that was not right? A Yes.

Jacob Fischel, cross.

Q You didn't know whether or not that arrangement was in accordance with some arrangement that had been made in the previous February, did you? Did you know of the arrangement between George F. Perry & Sons and Kramer-
man in February when the Leon Realty Com-
pany contract was signed? A I don't believe
so, except there was some discussion about it, I
think. 10

Q But you didn't know of the fact as Kramer-
man admitted this morning that he had agreed to
turn over the notes—

Mr. Silver: I object to what Mr. Kramer-
man admitted.

Q You didn't know of the fact, if it was
a fact, that Kramerman had agreed to turn the
notes over to Perry in June? A No. 20

Q So you objected to the fact that Mr. Kram-
erman insisted on giving these notes to Perry
when he was in your private office on June 9,
1926? A Mr. Kramerman did not insist on
turning them over. He was listening to the dis-
cussion between various parties who were urging
him to do it.

Q And Perry was urging him, also, to get
them? A Yes, sir. 30

Q Wasn't Perry asking for them? A Yes,
sir.

Q Wasn't Perry telling him "That you prom-
ised them to me." A That was not the—(in-
terrupted).

Q Didn't Perry say, "Kramerman, I am en-
titled to those notes. You promised them to
me." Didn't Kramerman say that? A He
may have used that expression. 40

Jacob Fischel, cross.

Q And didn't he say that in your presence, before you went out to the large meeting? A Possibly, yes.

Q And then you didn't like the idea of Kramer-
erman turning these notes over to Perry? A
No, because Mr.—(interrupted).

10 Q I don't care for the reason.

The Court: Let him finish.

The Witness: Mr. Perry knew at that time the condition Frank was in and certainly should not have insisted upon it.

Q Should not have insisted upon it, but, in any event, Perry did insist upon it. A Well, he asked for it.

20 Q And Kramer-
erman was willing that he have it? A You will have to talk to Kramer-
erman.

Q And Kramer-
erman turned it over to him? A You will have to talk to Kramer-
erman.

Q In any event, they left your private room to go into an adjoining private room, in which adjoining private room you knew that Kramer-
erman—

The Court: No.

30 Q (Continuing) —in which adjoining room—
(interrupted).

The Court: He was not in the adjoining room.

Q You knew they left your room for the purpose of giving notes to Perry didn't you? A No. They were going to discuss it over there.

40 Q You had the notes in your office, when they
left your room? A Yes, sir.

Jacob Fischel, cross.

Q And when they came back to your room, they turned the notes over to Mr. Kramerman and Kramerman turned them over to Perry? A No, no. I gave it to Mr. Kramerman, when he left my room to go into the other room, I gave them to Kramerman and said, "Here they are, do as you please, but I wouldn't advise you to do it." 10

Q And Mr. Koos was there? A Yes, sir.

Q And Mr. Knoller was there? A Mr. Knoller I recollect was there.

Q And Mr. Charles Frankel was there? A Yes.

Q And when they came back from this adjoining private office to your own private office, Perry said, "I have the notes." Is that right? A He may have used that expression. I don't know if it was quite so formal. 20

Q It was not very formal. Now, when they went out into the large meeting outside, somebody asked Perry whether he had the notes. Is that correct? A Mr. Perry—

Q Pardon me. Answer my question. Is that correct? A I think my answer will explain it.

Q You—

Mr. Silver: Just let him answer. 30

The Witness: I opened the meeting outside and said that I was not quite as familiar with matters of this kind as possibly Mr. Perry, who was largely instrumental in getting it to a head as far as it is and knows more about the ins and outs of Kramerman's affairs than I do, because I had just come in recently and that I would ask Mr. Perry to conduct the meeting, and Mr. Perry started off and told about the condition of the affairs. 40

Jacob Fischel, cross.

The Court: What did he say?

Q What did he say? A And said that he had those notes. Now, whether it was in reply to a question by one of those present, who first asked, "Where are those notes?" and Mr. Perry said, "I have the notes," or whether he said it without that, I don't recall.

Q Was it this impression Mr. Perry used: "Those notes are out of the picture." A I think he used some expression of that kind.

Q Somebody asked the question and in response to that question Mr. Perry said: "Those notes are out of the picture. I have those notes." Is that right? A I recall an expression of that kind, just in—(interrupted).

Q That was said in the open meeting, where all of these men were present; is that correct? A That that would be—in my office, that, if he got those notes, that would be out of the picture. He may have used the expression in the other office. I wouldn't say he didn't use it.

Q You won't deny Mr. Perry did not use that? A No.

Q And it is your recollection that Perry may have used it? A May have used it.

Q And that was in the June meeting where a large number of people were present? A Yes.

Q Will you tell us, approximately, how many people were present at this large meeting? A I should say, approximately, twenty or twenty-five.

Q And at the close of this meeting in your outer office, did some men come back to your private office for the purpose of drafting Exhibit C. 1? A Yes.

Q What time of the day was this meeting held? A In my recollection, it was in the afternoon.

Jacob Fischel, cross.

Q Your recollection is it was in the afternoon. Do you remember what time the large meeting broke up? A Oh, it didn't last very long, except a lot of them waited to sign this paper.

Q I see. A Most of them signed it.

Q And was Mr. Glueckfield there during the entire meeting? A No. He left. I remember he left, saying he had another engagement. 10

Q And was Mr. Clark there during the entire meeting? A I don't think Mr. Clark was there.

Q Wasn't there at all? A I don't think I met Mr. Clark.

Q And, of course, that agreement Exhibit C. 1, it was understood was conditional upon all creditors of Frank Kramerman signing that agreement. Is that correct? It was so— A Well, I don't recall. 20

Q—expressed in the meeting? A It was understood or said—of course, everybody would have to come along or be taken care of before they could go ahead with it.

Q In other words, all that was contemplated by—you can read the agreement, if you want to refresh your recollection.

Mr. Kanter: May the witness do that, Vice-Chancellor? 30

The Court: It doesn't say anything in here about all of them having to sign.

Q But this was a common law proposition, wasn't it? A Yes, sir.

Q And it was contemplated that all the creditors of Kramerman would sign it and that Kramerman would turn over all his assets, and it was so expressed at the meeting, was it not?

A Yes. He did say— 40

Jacob Fischel, cross.

Q And do you know whether, as a matter of fact, all the creditors of Kramerman did sign that agreement? A No. There were two or three who had not signed it.

Q And they were who, do you remember?

A One I remember a fellow named—a plumber—
10 Crogan.

Q Crogan? A Cogan.

Q Cogan he was a substantial creditor, wasn't he? A Around \$1,000.

Q How about E. W. McClaveson? A I think they had some lien claim.

Q They were a substantial creditor? A So I heard.

Q How about Goldman, the painter? A I think he had some mortgage or some—

20 Q Lien claim? A —lien claim or other.

Q And how about the Herr Metal Ceiling Company? A They had started some action.

Q And they would not sign? A They weren't here to sign.

Q And they didn't ever sign that agreement, did they?

The Court: That is—(interrupted).

A No. They are not signed.

30 Q How about Max Mandig, was he a creditor? A That I wouldn't remember whether he was or not.

Q At any rate, his signature does not appear? A What is the name?

Q Max Mandig, a lather? A I think there is another copy there, Mr. Silver, I think there was another one.

Mr. Silver: Quinto is here.

The Witness: Cogan ultimately signed this one. I see Cogan's name is here.

Jacob Fischel, cross.

Q When did Cogan sign that agreement? A I don't recall. It was not at the time of the meeting, that is sure.

Q And it was not until about the following December or January? A I wouldn't say that. I have a recollection I was trying to adjust this matter with the office of McCarter & English, and Cogan was very anxious at that time. 10

Q And you did not? A He may have signed it, at that time.

Q That is around December, 1926, or January, 1927? A I don't recall. If I might look at some of the correspondence—

Q Go ahead. A —with McCarter's office, it might refresh my memory a little bit better.

Q I don't object to that. A About December, yes. 20

Q December, 1926? A 1926, yes.

Q And the others, whose names I have mentioned, have never signed the agreement and insisted upon their mechanic's lien rights, did they not? A I don't know what they insisted upon.

Q At any rate, they didn't sign the agreement? A They are not there, no.

Q And weren't you—wasn't it understood that you were to act as counsel for these trustees in assisting them in cleaning up the affairs of Mr.—(interrupted). A That was talked about, that I would act along. 30

Q And weren't you to prosecute a suit against a man named Dwork for the purpose of getting some money? A I had started proceedings for Kramerman.

Q For Kramerman. And you were to continue that suit for the benefit of Kramerman? A Certainly for the benefit of Kramerman. 40

Jacob Fischel, cross.

Q You never asked Mr. Perry for money, did you? A No.

Q Nor did you ask Mr. Koos for money? A No.

Q Nor did you ask Mr. Clark for money? A No.

10 Q Isn't it a fact that you didn't want to go ahead with the Dwork suit because you had received no money?

Mr. Silver: I object. Your Honor, I don't know how that is material to this issue here. I don't want to keep objecting, but I can't see how it is material.

The Court: You can ask him if he did as a matter of fact proceed.

20 Q Did you, as a matter of fact, receive a retainer in the Dwork case? A I did not.

Q And isn't it a fact that you didn't want to proceed with the Dwork case? A I figured I had done enough work there without involving a lot of the other time, but then I felt I wanted to help Mr. Kramerman out. The question whether I was paid or not was not material any more.

30 Q But you did not want to go ahead with that suit?

The Court: He did go ahead.

A I did absolutely go ahead. The case was on call. Mr. Silver, I think, is representing the trustee in bankruptcy and is handling that end of it.

40 Q That is the last conversation that you had with reference to these notes, when Mr. Perry was at this meeting, in June 9, 1926? A No. I think I met Mr. Perry after that.

Jacob Fischel, cross.

Q When? A Called him up on the telephone, spoke to him, I think, even when Cogan was pressing for closing up that matter, moneys that were coming from the lunch concern.

Q Those were conversations with reference to the progress of the work; is that right? A Yes.

10

Q And those conversations were—really you were trying to ascertain whether Kramerman was going ahead with any of the jobs? A No, no. I knew he was not going ahead with any of the jobs.

Q You knew— A Well, before the Waldorf Lunch people would make a settlement, they insisted on having the signatures of those acting as trustees named in this agreement because the attorney in McCarter and English's office who was representing the Hartford Lunch—the Waldorf Lunch knew of the existence of this agreement and they asked me to get the signatures of the trustees.

20

Q And that was what you called Mr. Perry up for? A That was one of the matters I called him up upon and then learned that Mr. Knoller was away and we couldn't get his signature. Mr. Perry, I think, would have signed.

30

Q Well, Knoller was not a trustee, was he? A Yes, he was. Mr. Knoller was a trustee. Mr. Clark I never, to my recollection, met there.

Q And, in any event, that was the only purpose of your calling up Mr. Perry, to get these signatures for the purpose of satisfying—(interrupted). A Oh, no. I think I spoke to him on another occasion or two, asking whether anything was doing in the matter. I think I came

40

Jacob Fischel, re-direct.

up to see Mr. Perry and spoke to him at his office, after the early part of June.

Q In the language that you have now used, "Is there anything doing on the matter," or substantially that? A Yes; along those lines.

10 Q And he said there was nothing doing? A As far as he was concerned, he hadn't done anything further.

Re-direct examination by Mr. Silver.

Q What did he mean, there wasn't anything doing?

Mr. Kanter: I object to that.

20 A He—(interrupted).

The Court: No. He must say what was said.

Q Now, Mr. Fischel, what assets was Kramer-man transferring in this trust agreement?

Mr. Kanter: I object to that question. The agreement speaks for itself.

30 Mr. Silver: If the Court please, this is an agreement that was prepared by Mr. Fischel as attorney. Certainly an attorney ought to be competent to testify as to what the agreement of the parties was, when the man was transferring assets, whether in a general way there was any talk.

The Court: The agreement speaks for itself.

40 Mr. Silver: I want to see if there is anything about these notes.

Jacob Fischel, re-direct.

The Court: You can ask him what assets were mentioned at this time.

Q What assets were mentioned as being assets of Kramerman at the time you drew this agreement? A Well, the question of the Dwork contract job on Chancellor avenue, where Kramerman had a large sized claim, which is now being prosecuted. That was one of the items. And his interest in the Leon Realty Company. 10

Q What do you mean by— A These notes.

Q These notes were considered? A Certainly. Prior to the meeting. It may not have been discussed after that.

Q Go ahead.

Mr. Kanter: I object to that. That is just the point. 20

The Court: Yes.

Mr. Kanter: What was said at the meeting with reference to these assets. Mr. Fischel said there was not a word said about these notes at the meeting. Isn't that correct, Mr. Fischel?

The Witness: I don't recall the question was put to me. 30

Q The question that is asked you now, Mr. Fischel, is: What assets were discussed as being assets of Kramerman, when you drew this agreement?

Mr. Kanter: Now, I want to know the time.

Mr. Silver: Well, it is dated the 9th of June. 40

Jacob Fischel, re-direct.

The Court: At the June meeting.

10 The Witness: Why, Mr. Perry made the statement as to the assets, before the general committee. Whether he used the expression with reference to the notes at that time, I don't recall. I said that he used an expression, "The notes are out of the picture." Now, whether that occurred in my office, before the meeting or after, I am not sure anymore. I want to be perfectly fair in this matter.

The Court: Yes. Well, all right.

The Witness: And I am giving the best of my recollection.

20 Q Weren't the assets—to refresh your recollection, Mr. Fischel, weren't the assets called off at the meeting? You say Perry went off and gave his version, or, as Mr. Glueckfield testified—(interrupted). A Of the different jobs where Kramerman had money coming to him.

Q Did he say how much was coming on the Leon Realty Company job?

30 Mr. Kanter: I object to the question. This witness has stated exactly what happened, and this is not rebuttal and he is now trying to get Mr. Fischel to make another statement, which is not fair.

Mr. Silver: There is no jury here. I am trying to get the facts out the best I can.

The Court: I will allow it.

40 A I think there was some other amounts coming on the actual completion of the building. I think there was a matter of \$2,000 still coming also.

Jacob Fischel, re-cross.

Q From the same job? A From the Leon Realty Company. They knew about these notes because mention was made of the notes.

Q Do you recall the meeting, at the time when this contract was dictated or discussed, that was done in your small—in your private office?

A Private office, immediately after the public meeting.

10

Q Was there any mention made there as to what assets you contemplated in this agreement?

A Nothing further said at that time.

Re-cross examination by Mr. Kanter.

Q And, Mr. Fischel, I want to see whether we are correct or not. Mr. Perry, according to your recollection, did mention a list of assets which, of course, Mr. Kamerman had given him. Is that correct? A Yes. Mr. Perry was familiar with this.

20

Q Accounts receivable upon the completion of jobs, including the Leon Realty Company jobs and various other jobs? A Yes, sir.

Q And he specifically mentioned with reference to the notes that the notes were out of the picture, didn't he? A Well, that was the statement he made in my office, before the general meeting.

30

Q And at the general meeting— A Was not that those were turned over to him. It was out of the picture as far as the creditors would be concerned. Then he would be in the position of saying—just as I said before—that “If they don't want to come along, then I have got it because I am the biggest creditor and I will hold that over them.”

40

Charles Koos, direct.

Q And that is exactly what he did say at the meeting, at the big general meeting in your office, that "the notes are out of the picture," didn't he? A I wouldn't say he did say that at the general meeting.

10 Q But you don't deny that he said it? A I won't deny that he said it.

CHARLES KOOS, sworn for the complainant.

Direct examination by Mr. Silver.

Q Mr. Koos, you are connected with the Clinton Trust Company? A I am.

Q In what capacity? A President.

20 Q And your bank was a creditor of Frank Kramerman? A Yes.

Q And you were one of the trustees, the Charles Koos mentioned in this agreement? A I was.

Q You were present in the office of Mr. Fischel when it was prepared? A Yes.

Q And this is your signature, "Clinton Trust Company, by Charles Koos, president"? A Yes, sir.

30 Q And do you remember the conversation in Mr. Fischel's office about the notes? Were you there when the question of turning over the notes to Perry came up? A Well, I was and I wasn't. I was really more outside, talking with some of the creditors, at the time.

Q All right. A But I heard then that the notes were turned over to Mr. Fischel—or, from Mr. Fischel to Mr. Perry, and I was perfectly satisfied then, at the time, that Mr. Perry had

40 them.

Charles Koos, direct.

Q Why were you satisfied?

Mr. Kanter: I object to that question.

Mr. Silver: Now—

The Court: I will allow it.

Mr. Kanter: "Why you were satisfied." 10
He should ask what was said.

The Court: Do not argue. I have already allowed it.

The Witness: Well, because I know that Mr. Perry was—his name was all right and we wasn't worried that the thing was not distributed properly after the work was to be finished.

Q So that you mean to tell this Court that 20
you understood at the time that the Clinton Trust Company was to get a portion of that \$9,100?

Mr. Kanter: I object to that question.

The Witness: I object to that. Of course, otherwise a trustee agreement would not be necessary. There is nothing else left.

Mr. Silver: Does your Honor want—

The Court: That is a very leading question, Mr. Silver; you are putting the words 30
right in his mouth.

Mr. Silver: Does your Honor want to—

The Court: What we would like to have Mr. Koos tell us is what was said at the general meeting of the creditors, without suggestion on your part as to what his answers are to be.

Mr. Silver: All right.

The Witness: Well, that the trustee be 40
appointed to finish the work. There was

Charles Koos, direct.

some jobs which there was a lot of money involved, I think, one on Chancellor avenue, about \$16,000.

Q Go ahead. Did you hear any—by the way, did you hear Mr. Glueckfield testify this morning, the lawyer that was on the stand? A Yes.

Q And were you present when he questioned Mr. Perry in the outer office? A I don't recall that. I must admit, I didn't bother much. There was a few of the creditors I was talking to outside.

Q Did you hear any discussion or statements made in the outer office as to the \$9,100 worth of notes which Perry had? A I wouldn't want to say what—I don't recall.

Q Was there any statement made about this \$9,100 in Mr. Fischel's private office?

Mr. Kanter: I object to that.

A Why, Mr. Perry was to act as trustee, of course. That was the understanding. Nothing else. I wouldn't stand for anyone to turn over anything unless there was somebody behind it.

Q What do you mean, you wouldn't have stood for turning over \$9,100 unless there was somebody behind it?

Mr. Kanter: I object to that question.

The Court: I will sustain the objection.

A Mr. Perry was—(interrupted).

Mr. Silver: No. The Court says you cannot answer this.

The Court: What was said in this private room about these notes?

Charles Koos, cross.

The Witness: I don't think I was in at the time when they were talking. There was quite an uproar there. There was about forty or fifty creditors, I judge.

Q Did you hear Mr. Perry say, in the outside meeting, that he had taken the notes out of the picture? A No; I did not. 10

Mr. Kanter: No questions.

The Court: That is all.

Mr. Kanter: Just a minute.

Cross examination by Mr. Kanter.

Q Tell us what time of the day the meeting was, Mr. Koos. A It was in the forenoon. 20

Q And were the notes passed in your presence? A Mr. Kramerman signed them, when I came in there.

Q Mr. Kramerman endorsed the back? A Endorsed the back. They were all made out to Mr. Kramerman.

Q I understand that. Was the endorsement made in your presence, Mr. Koos? A With some of them, perhaps. 30

Q Those you saw endorsed were in your presence? A Yes, sir.

Q And was that in Mr. Fischel's private office? A In Mr. Fischel's office, private or—I don't know.

Q When I speak of "private office," I mean as distinguished from the general waiting room. A Yes; it was on the side room.

Q And was Mr. Fischel there? A He was there, but I guess he went out—in and out. 40

Charles Koos, cross.

Q And were the notes turned over to Mr. Perry in Mr. Fischel's presence? A I think Mr. Fischel knew that they were turned over to him.

Q Yes. And was Mr. Knoller there? A Knoller, yes.

10 Q Was Mr. Charles Frankel there? A I don't know that.

Q You had received some of these Leon Realty Company notes for your bank, hadn't you? A Yes. I think one to take the place of a past due note of his own, but that was four days before.

Q Not as trustee? A No.

Q You were a trustee in this matter? A Yes, sir.

Q From June on? A Yes, sir.

20 Q Did you ever ask Mr. Perry to turn over the \$9,100 to you? A I didn't ask him that, but I asked him how is things going.

Q And then what did he say? A Well, I think on the one job he said they got a three-day notice and that wipes it out.

Q Did you ever read the terms of the agreement under which you were acting? A No; I did not.

Q You never read that? A No.

30 Q And you never—you knew that Perry had received this on account of his debts—this \$9,100—the same way you had received one of the others on account of the Clinton Trust Company debt? A Well, I don't think you can put it that way, because my—what we got was a note before—which went for that work and the note was due and he got the payment.

Q You got your note around June 5th, didn't you? A Oh, no. The same day he got the note.

40 Q June 2nd. Now— A Perhaps it might have been, or early next morning his note which was due that was placed on a—(interrupted).

Charles Koos, cross.

Q In understand. But your note that you got was of the same series as the note that went to Perry? A Right.

Q Excepting that you got one of the notes a few days before Perry got his. And it was upon the same understanding and condition? A No, no. 10

Q Was anything said to you about the—(interrupted). A At the time when we got this note from him, there was no trustee or there was no question about bankruptcy.

Q Exactly. A I had asked him, even says, "Give me all—give me some of these notes to take place personally," and he wouldn't do it.

Q I understood there was no trustee and there was no intention to give it to you as trustee. It was intended to give it to you in payment of your account or in part payment of your account? A Of course. 20

Q Of course. And when the notes were delivered to Parry, there was no trustee, either, was there? A Not before the notes were given over to him, no.

Q The notes were given over before any trustees were appointed or any trustees were elected; isn't that true? A Yes. 30

Q And when Perry came out of the meeting, in answer to a question, did he not say that "the notes are out of the picture"? A That I don't know.

Q You won't deny that statement, Mr. Koos? You wouldn't deny that statement, would you? A I didn't hear it.

The Court: He didn't know. 40

Charles Koos, re-direct.

Q Were you there during the entire meeting, Mr. Koos? A I might have been out of the room, because I had some business.

Q Were you there at the time the draft of this agreement was signed? A Yes. That was after.

10 Q But you were in and out of the room; is that the impression you wish to leave here? A Yes, sir.

Q And you—

Mr. Kanter: That is all.

Re-direct examination by Mr. Silver.

20 Q But the discussion about turning these notes over to Mr. Perry and having trustees was before the notes were turned over that day, wasn't it? A (Witness pauses.)

Q You remember that, don't you? A (Witness pauses.) Well, I wouldn't—couldn't say just how that was.

Q You mean— A It was—the understanding was, of course, that there be trustees appointed.

30 Q And then the notes were given to Perry? That is what I am trying to make clear. A I think they were given before.

Mr. Silver: That is the complainant's case. We rest.

Mr. Kanter: If your Honor please, I think on the complainant's case we are entitled to a dismissal.

The Court: No.

40 Mr. Kanter: All right; Mr. Charles Frankel.

Charles Frankel, direct.

CHARLES FRANKEL, sworn for the defendant.

Direct examination by Mr. Kanter.

Q Mr. Frankel, you are a member of the Bar, are you? A I am.

10

Q And do you recall this transaction in the office of Mr. Jacob Fischel? A I do, very well.

Q On June 9, 1926? A I do, very well.

Q Now, in the examination of the complainant's witnesses, it appears that there were two meetings. Were there two meetings? A That is all.

Q Private meeting in the office of Mr. Fischel and a general meeting outside? A Yes, sir.

Q All right. Now, I want you to tell us, first, what happened in Mr. Fischel's private office. A I had been asked by Mr. Knoller and Mr. Kramer-

20

man to come to Mr. Fischel's office. Q You got there? A We got there, and Mr. Perry came with us. We were in Mr. Fischel's private room and Mr. Kramerman—of course, I don't know who spoke first or last—Mr. Kramerman said that he didn't know what to do, that he had promised Mr. Perry these notes, that he realized that Mr. Perry was the largest creditor, that he would much prefer to see Mr. Perry have these notes. Mr. Perry asked for the notes. I represented truthfully at the time Mr. Knoller. Mr. Knoller was a creditor to the extent of about \$3,900. We, naturally—Mr. Knoller and Mr. Kramerman had been friendly and had relations on one job on Osborne Terrace and Mr. Knoller wanted me to try and help Mr. Kramerman out.

30

Mr. Silver: I object to all this.

40

Charles Frankel, direct.

Q Now, then, tell us about that.

The Court: Just tell us what was said.

Q Just tell us what the conversation was in Mr. Fischel's office. A I wanted to show our
10 interest was more or less for all.

Mr. Silver: I object to the witness arguing.

The Court: Just tell what was said, please. Nothing else.

The Witness: Request was made by Mr. Perry for the notes. Mr. Kramerman seemed willing to turn them over. Mr. Fischel said he didn't know whether they ought to be
20 turned over or not. I could see no wrong in it. Mr. Fischel did say he didn't want to be a party to it. However, the notes were turned over—Mr. Fischel got them out of the safe—after Mr. Kramerman said that he wanted Mr. Perry to have them; Mr. Fischel got the notes out of the safe and gave them to Mr. Kramerman, and Mr. Kramerman sat in the corner of the room and endorsed the notes over in blank. I think he just endorsed
30 his name on the back of them. There were several notes, I think in the aggregate of \$9,100—or, I don't know exactly, but I think there were. And Mr. Perry was there, Mr. Knoller was there, I was there, Mr. Kramerman was there and Mr. Fischel had been there. He did step out of his room for perhaps a moment into another adjoining room and then came back into the room just about the time when the notes were actually delivered by Mr. Kramerman, while they were
40

Charles Frankel, direct.

on the table, on his desk, over to Perry. Mr. Koos was not there.

Q Was Mr. Clark there? A Mr. Clark was not there.

Q Now, have you told us everything that happened in Mr. Fischel's private office, up to that time? A I think so. There may have been one or two words said here, there and elsewhere that did not amount to anything. 10

Q Was there ever a statement made directly or indirectly by Mr. Perry that he would hold those notes as trustee for the benefit of Mr. Kramer's creditors? A No.

Q Of no fashion at all? A No.

Q No words of that character at all? A No.

Q Did the general meeting succeed that little private conference? A Yes; within a very short time. 20

Q Did you go out to the general meeting? A I went out there.

Q Were you there during the entire time? A I was there during the entire meeting.

Q Was the question of these notes, these \$9,100 worth of Leon Realty notes, brought up in any way? A Only this, that Mr. Perry was asked something about the notes, and Mr. Perry said, "These notes are out of the picture. If you boys will come along and don't start any suits against Mr. Kramer and don't get—don't do anything in any way, I might play ball with you." 30

Q And did he say anything about his helping to finance the job then being completed? A I think Mr. Perry said he would do all he could to help the situation out. There was money coming on the Dwork job, quite a lot of extras, probably the bill would be \$14,000, and there was some 40

Charles Frankel, direct.

more on some other jobs, and he said, "You fellows will probably realize a pretty good percentage."

10 Q Then was the agreement, C. 1—have you seen that, Mr. Frankel? A In fact, I started to dictate this agreement. I dictated this agreement after the meeting, or started to dictate it, and they all got their hands in it more or less, and all of the creditors wanted to go, they didn't want to hang around, so we did the best we could about the agreement.

Q Was it suggested in any way that these notes that Perry had gotten were to be put in the schedule or Exhibit C. 1? A Not to my knowledge.

20 Q Were you there all the time? A I was there all the time.

Q Was it ever conceded by Mr. Perry, in response to anybody's question—lawyer or layman or otherwise—that he was holding those notes for the purpose of distributing them pro rata among the creditors? A Mr. Perry never said such a thing.

30 Q When, with reference to the election of the trustees, did Mr. Perry receive these notes? A Prior.

Q And prior to any suggestion of the trustees, too? A We didn't know what would transpire at any meeting.

Q The trustees were elected at that meeting? A The trustees were suggested at that meeting.

Q Was it known until the end of the meeting who were to be the trustees? A No; not until the close of the meeting.

40 Q How long did the meeting take? A Oh, possibly three-quarters of an hour, an hour.

Charles Frankel, cross.

Cross examination by Mr. Silver.

Q Mr. Frankel, the trustee in this case is suing your client, Knoller, in the Common Pleas Court, isn't he?

Mr. Kanter: I object. 10

Mr. Silver: I want to show—this is cross examination.

The Court: No. It is not. You wouldn't let him state what his attitude was in this matter on direct. Now you want to show it on cross.

Mr. Silver: I am cross examining.

The Court: I won't allow it.

Q Mr. Frankel, do you represent the defendant, Knoller, in the Common Pleas action of Dwork against Knoller? 20

Mr. Kanter: I object to the question. It is not material to this issue and it is not proper.

The Court: I will sustain the objection.

Q You say there was no discussion in Fischel's office about trustees? A No; there was no discussion in Mr. Fischel's office concerning trustees. 30

Q What was the discussion as to the purpose of holding this meeting? A To see whether we could work out some way or some means to help out Kramerman and the creditors.

Q Who is "we"? A We, Mr. Fischel, Mr. Perry, Mr. Knoller and myself. We did not consider Mr. Kramermann. 40

Charles Frankel, cross.

Q No. And you did not discuss, at that time, that the only way you could operate would be by a trusteeship? A We didn't know what they would decide. After all, the creditors have something to say about it, Mr. Silver.

10 Q Yes. You were representing a creditor at this private meeting? A Yes.

Q And nobody thought of having the trustees finish the jobs? A Well, maybe they did think it. I didn't know what anyone thought, Mr. Silver.

Q Had anybody said anything? A I wouldn't say—I won't say that—

Q Well, did anybody say anything, yes or no. A About appointing trustees?

Q Yes. A We didn't know at that time.

20 Q Then the answer is "no"? A The answer is "no."

Q And you say, Mr. Frankel, that Mr. Fischel did not approve of these notes being given to Perry; is that right? A Mr. Fischel said that he didn't know whether or not he ought to be a party to the turning over of these notes, by Kramerman to Mr. Perry.

Q And you, Mr. Frankel, represented a creditor for over three thousand dollars? A Yes.

30 Q And yet, when a man said that he was insolvent or on the verge of bankruptcy, you have testified that you could see nothing wrong in this Kramerman turning over \$9,100 to any one creditor?

Mr. Kanter: I object to the question because he is going on—(interrupted).

The Court: Wait a minute. It doesn't make any difference what the witness thinks about it. We are after the facts.

Charles Frankel, cross.

Mr. Silver: He said, your Honor—here is the point—

The Court: He said he didn't think there was anything wrong in it.

Mr. Silver: Now, if your Honor please—

The Court: You can ask him why he did not. Ask him that. 10

Q Why, Mr. Frankel, didn't you think it was wrong for this man Kramerman to turn over \$9,100 to one creditor? A Well, what I understood, Mr. Perry was a very large creditor. Just how much I didn't know.

Q How large was he? A I didn't know exactly, but I knew he was the largest creditor and he had quite a large sum invested, and I also understood that Mr. Kramerman had promised Mr. Perry these notes, and I came there with Mr. Perry and with Mr. Knoller. Now, I don't—I can't for the life of me, even at this moment, tell you why I didn't think at that time perhaps Mr. Kramerman should perhaps give Mr. Knoller a note. It didn't occur to me at the time. 20

Q Did it never occur to you, Mr. Frankel that you, having gone to a meeting—

Mr. Silver: I withdraw the question. 30

Q Whose interests were you protecting at that meeting? Mr. Knoller's or Mr. Perry's?

Mr. Kanter: If the Court please, I think it is immaterial.

Mr. Silver: Will your Honor hear me for a moment?

The Court: I will allow it. It is the quickest way out of it. 40

Charles Frankel, cross.

A Well, I started to say in the beginning—

Q Will you answer the question, Mr. Frankel? Whose interest were you protecting. It doesn't require a speech.

10 The Witness: With the Court's permission, I would be glad to answer that question. I have a certain amount of intelligence.

The Court: Answer it the way you think you ought to answer it.

20 The Witness: I felt for all of them, as a matter of fact. Mr. Kramerman had been in my office on other transactions, from time to time, and Mr. Knoller certainly was a client of mine. Mr. Knoller was a very personal friend of mine. I know Mr. Perry very well. I have done work for Mr. Perry on different occasions and I felt for all of them. I didn't single out any one particular person; I didn't try to do anything that I thought was improper, or anything. Mr. Fischel was there representing Mr. Kramerman.

30 Q Mr. Frankel, I ask you now why you didn't see anything wrong in turning these \$9,100 worth of notes over to Perry as a payment on account.

Mr. Kanter: If the Court please, isn't that argumentative? I will point that out to the Court why that is not wrong in equity and law.

Mr. Silver: I will withdraw the question.

40 Q Did you not know, as a member of the bar and as a lawyer, that that was a legal preference, at that time, within the meaning of the law?

Charles Frankel, cross.

The Court: No. I won't allow him to answer that.

Mr. Silver: Your Honor rules against that?

The Court: I certainly do.

Mr. Silver: That is all.

10

The Court: I can't see what difference it makes, what he thought. What we are interested to find out now is what was done, and it doesn't make any difference whether Mr. Frankel thought it was right or wrong. It was done, and it is up to the Court to say whether it was right or wrong, when we get the testimony in. That is my point.

Mr. Silver: All right. I agree with your Honor on that.

20

The Court: I don't, for a moment, believe that he would have advised anything that he didn't think was perfectly proper.

Mr. Silver: I don't make that charge, your Honor, but, if the Court will bear with me, if I have a hostile witness—

The Court: Yes.

Mr. Silver: And if, under the rules of cross examination I cannot develop, whether there be a jury here or not, if I can't develop that the witness is hostile, how are we ever going to bring before the Court the fact whether the witness is hostile or not?

30

The Court: I will allow you to cross examine him along the lines you desire, but I said then, and I say now. I don't think it is important.

Mr. Silver: All right.

Noon recess.

40

J. Franklin Perry, direct.

AFTER RECESS.

J. FRANKLIN PERRY, sworn for the defendant.

Direct examination by Mr. Kanter.

10

Q Mr. Perry, you are connected with George Perry & Sons? A I am.

Q As treasurer? A Treasurer.

Q How long has that firm been in business in this vicinity? A Twenty years.

Q How long have you been connected with the firm? A Eighteen.

20 Q And, in February of 1926, did you have any arrangement made with Mr. Kramer with reference to the note he was to receive from the Leon Realty Company? A I did.

Mr. Silver: That is objected to, any arrangement. I think the witness ought to be confined to testify to any conversations.

The Court: Let him bring it out. He said he had an arrangement.

30 Q He had an arrangement. What was the agreement you reached with him in respect to that job, and the notes? A In February or thereabout—I am not exactly positive of the date, because I haven't looked up the transaction—Kramer, with whom we had been dealing for several years, came to me with a proposition of a contract for the alteration of a building on Market street.

40 Q The name of the owner was who? A The owner was the Leon Realty Company. The methods of payment were rather unusual and that

J. Franklin Perry, direct.

is the reason Kramerman said to me—he spoke to particularly because it involved a last payment of approximately sixteen thousand dollars in notes and it was essential that Kramerman be able to pay his bills in notes, if he could take the contract. Consequently, he asked my approval. Before I would accept it for the company—(interrupted). 10

Q He was buying mason materials? A He was buying mason materials. Before I would state whether or not we would take the contract, I asked him to bring up a copy of it so that I could read the names on the contract and confirm the methods of payment. After reading it over, I told him that I would then want to check the responsibility of the contracting parties, undoubtedly, as well as the corporation, before passing credit. I found that they were perfectly reliable and then insisted that Mr. Kramerman have them endorse a note, before we would go on. On that basis we agreed to take around seven or eight thousand dollars, if I remember correctly, in notes in payment for materials. 20

Q And is that what he said he would pay you?

A That is what he said he would pay me.

Q You agreed to accept seven or eight thousand on these notes to be obtained from the Clinton Trust Company? A On that particular job. 30

Q And he agreed to pay that? A Absolutely.

Q Now, did you also have other jobs that you were supplying the materials on? A Yes. We had three or four other jobs.

Q Did you continue selling him goods until June of that year? A We did. Until March or June of—

Q 1926? A '6; oh, yes. 40

J. Franklin Perry, direct.

Q And part of these goods went to the job of the Leon Realty Company? A Part went there.

Q And the contract between the Leon Realty Company and Mr. Kramerman was on file in the County Clerk's office? A On file in the County
10 Clerk's office.

Q And the other job you also delivered the material? A We were also delivering the material.

Q And was your last date of delivery on each of these jobs within—well, within four months prior to June 9th, 1926?

Mr. Silver: I object, your Honor. I think the delivery sheets would show that.

20 The Court: Yes.

Q Well, how recently—or, how much prior to June 9, 1926, had you delivered the material?

Mr. Silver: I object. I think the books—

The Court: That is all right.

Mr. Silver: I think the books would be the best evidence.

30 Mr. Kanter: If he knows personally, he can tell.

The Court: He can tell.

The Witness: We were well within our lien rights, because we were supplying material within a few days of the time when this question arose of Kramerman not being able to finance the completion of his job.

Q That means, then, a few days prior to June 9, 1926? A I wouldn't say a few days—within
40 a few weeks; well, within our lien of four months.

J. Franklin Perry, direct.

Q You have seen Mr. Hecht on the stand here; not the lawyer; Mr. Louis Hecht, the plumber?

A I have.

Q And he referred in his testimony to a visit that he made to your office with a man by the name of Cohen? A Correct.

10

Q Did Mr. Hecht and Mr. Cohen come to see you prior to the time or after the time that you received the notes that are in question in this suit? A They came to see me prior to the time.

Q All right. Now, if you will tell us what they said to you on the occasion of their visit to you. A Mr. Hecht, and I believe it was Mr. Cohen—

Q Mr. Cohen is an iron man? A Yes. I believe it was an iron man, although I wouldn't recognize him now, came to my office; it must have been, well, shortly before the meeting was called in Mr. Fischel's office, and said they had been looking for Kramerman and had not been able to find him. There seemed to be difficulty on the job, which came as a thunderclap to me, because we had been watching his payments, particularly on the Leon Realty Company job. As a matter of fact, I had checked them at the Court House to make sure they were in keeping with the contract which Kramerman showed me originally.

20

30

Q Now, when these two men, Mr. Louis Hecht and Mr. Cohen, came to you, you say that was before the meeting that was held in Mr. Fischel's office, June 9th? A That was before that meeting.

Q And, on that occasion, they spoke to you concerning the absence of Mr. Kramerman? A Correct.

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J. Franklin Perry, direct.

Q Was that the only conversation? A Yes, sir; because they didn't know what became of him, and in their condition—(interrupted).

Q What did you say to them? A I said, "The best thing to do is to find out where Kramer-
10 merman is and have him come to the office and talk over the situation."

Q Did you, at that time, ever tell Mr. Hecht or Mr. Cohen that you had notes of Kramer-
erman which you were holding as trustee and were go-
ing to distribute to them or other creditors in
any manner? A Absolutely not.

Q Now, about how long prior to June 9, 1926,
was this first visit? A Oh, within two weeks, I
should say.

Q All right. Now, how soon after this first
20 visit did Mr. Hecht and Mr. Cohen come back to
you? A They came back several days later with
Mr. Kramer-erman, as I recall it.

Q Was that second visit prior to June 9th or
after June 9th? A That was prior.

Q Did Mr. Hecht and Mr. Cohen come to your
office at any time after June 9th with Mr. Kra-
mer-erman? A No; I don't think they had.

Mr. Silver: That was the testimony. The
30 testimony was they came alone.

The Court: That is the testimony.

Mr. Kanter: That is right.

Q Did they at any time—did Mr. Hecht and
Mr. Cohen at any time after June 9th come to
your office alone, after June 9th? A Louis Hecht
and Mr. Cohen, yes; I remember Mr. Hecht being
there with his brother.

Q I am speaking of Mr. Louis Hecht and Mr.
40 Cohen together. A I don't think they did. They

J. Franklin Perry, direct.

may have come to his office, because it is so long ago I am not exactly clear on it.

Q Now, on the second occasion when Mr. Hecht and Mr. Cohen came to your office with Mr. Kramerman, that was, you say, before June 9th? A Before June 9th.

Q What was the subject matter of the conversation then? A At that time, I endeavored to determine roughly just what the financial condition of Kramerman was. We got it very roughly, but he then advised me that Mr. Fischel could give me figures more accurately, but he said he did have difficulty in going on with his work because he couldn't finance it because he was tied up on several contracts. Consequently, I suggested to him that because of the fact that he was absolutely tied up that he call a creditors' meeting.

Q Did you, at that time, know that Mr. Kramerman had received the notes? A I did.

Q Now, did you know when he was to receive the last payment on that job? A I knew when he was to receive the last payment on that job.

Q When was he to receive the last payment? A He was to receive the last payment, if I recall rightly, \$16,000, when the building was completed.

Q And was the building completed at the time you knew he had the notes? A It was not completed, and that was why I was so absolutely dumbfounded when I found he had paid out a partial payment on the Leon Realty Company contract, when I knew that the contract was uncompleted.

Q Now, did you ask him for the notes? A I did.

J. Franklin Perry, direct.

Q You asked Kramerman for the notes? A I did.

Q Whom did he say had the notes? A He told me that he had disbursed some of the notes and that Mr. Fischel had the balance.

10 Q Now, did you go down to Mr. Fischel's office on June 9th? A I did.

Q And what time of the day were you there? A Well, I will tell you—I have heard testimony it was in the morning; it was in the afternoon. You ask me just when. I can't—it is my impression it was in the afternoon.

Q In the afternoon? A That is my impression.

20 Q Now, did you go to Mr. Fischel's private office? By that I mean distinguishing his private office from his general outer office? A I did.

Q Who were in his private office at the time the conversation was stated? A When we went to the private office and looked around the men to get the men I knew would probably be the larger creditors and get hold of Mr. Kearney, representing—

30 Q The late Frank Kearney? A Frank Kearney, representing Vreeland Kearney. Mr. Knoller was there, Mr. Frankel, Mr. Koos, Mr. Fischel, Mr. Kramerman.

Q What was the first thing you said when you came into that private—how did you open the conversation? Do you remember that? A I opened up the conversation, naturally, by trying to get a more definite idea as to his financial condition. At that time, Mr. Kramerman gave us again—not precisely, but rather roughly—the figures. We were then led to believe that we might be able to recover somewhere around seventy-five or eighty per cent., if the work could be pro-

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J. Franklin Perry, direct.

ceeded with. When that was the case, I said, "Gentlemen, here is our situation. We are the largest creditor by far. We have been promised these notes. It was because of our promising to take the notes that we are in the jam where we are." I will say frankly that the contract between Kramerman and the Leon Realty Company has not been lived up to, because I had checked up prior to the meeting our standing as to the right of stop notices on that job, and I knew from past experience that we had a right of stop notice, because they had paid out monies before their contract called for it. We also had a right of lien on the Dwork job. There was a contract on that job, but the contract was so distorted that the changes were made, the architecture was changed, the roof was raised. In other words, the building was so entirely distorted that—(interrupted). 10 20

Mr. Silver: Just a minute. May I ask what—(interrupted).

Q That is what you told this man? A That is what I was saying to the men in the room.

Q Yes. A That we have a right of lien. Taking it all in all, we have great rights which we can exercise. However, because the financial —(interrupted). 30

Q Wait a minute. I want to take you back a moment. You told us that it was February, or about the time they—or prior to the time the Leon Realty Company job was started, you had agreed to take seven or eight thousand dollars' worth of those notes. A Right, right.

Q During the course of that work, what arrangement was made in regard to the notes? A We were also supplying another job on Hershey 40

J. Franklin Perry, direct.

street. Our bill amounted to considerable there. When it was time for the last payment, a release was required of us.

10 Q On the Hershey street job? A On the Hershey street job. Kramerman came in and, after having promised me, he told me that he could not pay us any money on the Hershey street job, if he was to continue on with the Leon Realty Company job, because on that particular job he was working on a bonus and penalty contract and told me that he would give me three or four thousand dollars in additional notes, if we would release our rights on the Hershey street job without demanding—exactng the cash which he had promised us. On the strength of that, and the contract, I told him that we would, but we in-
20 sisted upon being with the Leon Realty Company job when he received his payment.

Q Now, I bring you back, again, to this meeting of June 9, you say you asked for the notes?

A I asked for the notes.

Q And you proceeded to give your reasons why you were entitled to them? A I asked for them.

30 Q What did Kramerman say? A Mr. Kramerman didn't know what to say. He said, "Well I promised Mr. Perry the notes, but," he said, "I owe other people money, and what can I do?" I then had to convince some of the other contractors—the other creditors there that our position was this: we were by far and large—by far and all the largest creditors; we were in a position to tie up all the work, which meant with nine thousand dollars of notes, which were probably liquid, a bankruptcy case. And our experience has been in the twenty years we have been in business—eighteen years I personally—that
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J. Franklin Perry, direct.

when a case goes into bankruptcy there is a very small chance of recovering anything like we might hope to get if we had a peaceful settlement. So I told the creditors that if they would make me a preferred creditor, taking the notes out of the picture, to use my exact words, I would then endeavor to have the jobs carry on, complete the jobs, putting up the cash myself to carry on, because, even though we had \$9,000 in notes, we had five or six or seven thousand dollars still at stake and that was what I was fighting for to recover. And that five or six thousand dollars made us still, by all means, the largest creditor. 10

Q The balance of \$6,000 still due you was larger than the balance due to any other creditors? A Absolutely. 20

Q And you had that balance at stake, also? A I had that balance at stake, too.

Q And you said, to resume your testimony, that you would finance the rest of the job to a completion. Now, what did Mr. Fischel say? A Mr. Fischel said, "I am not going to ask my client to do this." He said, "It is making George F. Perry a preferred creditor," he says, "and I don't want to be a party to it." 30

Q Well, you had your preference under the Mechanic's Lien Law? A We had our preference under the Mechanic's Lien Law.

Q And Mr. Kearney was there? A Mr. Kearney was there.

Q And Mr. Koos? A Mr. Koos.

Q Mr. Koos was there, and he was a creditor? A Mr. Koos was there.

Q Mr. Knoller was there? A Mr. Knoller was there. 40

J. Franklin Perry, direct.

Q Mr. Frankel was there? A Mr. Frankel was there.

10 Q And, as a result of this conversation, what happened with reference to the notes? A As a result of this conversation, they talked between themselves and they figured out—and I am saying what actually transpired there in the place—
they figured out they were between the devil and the deep blue sea. In other words, if we wouldn't play ball, it meant a bankruptcy case without any possible chance of recovering what they might be able to under a peaceful settlement, if they played ball with me, because we had the larger claim. I was willing to advance the money. None of the other creditors wanted to advance any more money to complete the work
20 and I was willing to, naturally, because we were the largest creditors, to endeavor to get more out of it. Consequently, it was decided then and there that these notes were out of the picture.

Q And were the notes turned over to you? A The notes were turned over to me.

Q By whom? A The notes were turned over to me and endorsed by Kramerman.

30 Q Was Mr. Fischel present when the notes were delivered? A Mr. Fischel came into the office and turned the notes over to Kramerman and Kramerman endorsed them over. Whether Mr. Fischel was actually in the room at the time of the passing of the notes, I am not prepared to say.

Q Were the other men there? A The other men were there.

40 Q After that was done—up to that period had there been any suggestion that you or Mr. Knoller or Mr. Koos or Mr. Clark or any of you should

J. Franklin Perry, direct.

be trustees of this man? A No; because—(interrupted).

Q Had any arrangement been worked out whereby his work would be completed? Had anything been worked out along those lines? A No.

Q Had you, at any time during the course of this conversation, promised that you would take the proceeds of these notes and pro rate them proportionately to all of the creditors? A Absolutely not. 10

Q And you took these notes in payment of the account due your firm? A Absolutely.

Q And for no other purpose? A For no other purpose.

Q And you were the treasurer of the company at the time? A I was the treasurer of the company at the time. 20

Q Now, when this conversation was concluded in Mr. Fischel's room, did you go out to the outer room? A I went out to the outer room.

Q And how many people were present there? A I should judge between twenty-five and thirty.

Q All right. And were you the presiding officer? A I was.

Q Tell us, in a brief way, what you said in reference to the matter? A I outlined the financial position of Kramerman, listing up the various jobs and amount of money that we might expect to receive if the contracts were completed. 30

Q Basing your judgment on what information? A On the information that Kramerman had given me in Fischel's office.

Q And that memoranda came from Mr. Fischel? A Mr. Fischel's office.

Q And, having given that information, what was the discussion? A Why, shortly after giving 40

J. Franklin Perry, direct.

ing that explanation, someone—I cannot recall whom, because I was more interested in keeping the subject in mind—asked me what happened to the notes.

10 Q Referring to the \$9,100 of notes? A Not specifically. The question was asked in a general way, “What happened to the notes?” Word had gotten abroad that Kramerman had received the notes.

Q The Leon Realty Company notes? A Leon Realty Company notes. I said, “Gentlemen, I will tell you what happened.” And I listed off from what Kramerman had given me in Fischel’s office.

20 Q Did you give information of the notes having been transferred to the Clinton Trust Company? A Yes, sir.

30 Q And other creditors? A Yes. I mentioned right down the list. And I also mentioned the fact that we had received \$9,100. I said, “Gentlemen, the notes are out of the picture, but,” I said, “because of the fact that we are the heaviest creditors, in an endeavor to get back some of the money which we had invested, if you will all agree to postpone your rights of lien and stop notices, I will endeavor to finance the jobs and help you through.” Then the meeting developed into a discussion of ways and means as to whether or not Kramerman was to be retained, and it was finally agreed that he was to be retained at a salary, I believe, of \$75.

40 Q Then was the arrangement worked out for four trustees? A The trustees then were suggested. They suggested who should be the trustee and, being the largest creditor and because of the fact, I presume, that I said I would help finance the job, they asked me to serve as a

J. Franklin Perry, direct.

creditor-trustee. The other creditors were suggested and a trusteeship was formed.

Q Was Mr. Clark there at that time? A Mr. Clark was there. I don't think he was there during the whole proceeding. He was not in Fischel's office.

Q Was he there at the time his name was suggested? A As to that I can't say.

Q He was there during the course of the meeting? A He was there some time during the meeting. I can't—

Q Mr. Knoller was there? A Mr. Knoller.

Q And Mr. Koos there? A Mr. Koos.

Q And, of course, you were there? A Yes.

Q Now, the meeting ended how long—(interrupted)? A After the details about the trusteeship had been worked out in a rough way, there were several attorneys there and I suggested that they all wait until they could sign up an agreement postponing their rights so we could immediately proceed with the completion of the contract, if at all possible.

Q So was the agreement C. 1 drafted? A That was drafted by several attorneys.

Q Was this man Glueckfield one of them? A I think he was, but I am not absolutely sure.

Q Was there, at any time prior to the drafting of this agreement, suggested, or was it even intimated, that the \$9,100 of notes that you had received were to be put in the schedule in that agreement? A Absolutely not, because one of the main reasons why it was not put in was—(interrupted).

Mr. Silver: I object.

J. Franklin Perry, direct.

Q There was absolutely none. All right. Now, that agreement was signed up June 9th? A Yes.

Q Was there anything said as to who was to sign that agreement? A Naturally, they all had to sign the agreement.

10 Q All the creditors? A All postponed their rights, all creditors, before the money could be advanced to complete the work.

Q Didn't, as a matter of fact, all the creditors sign the agreement? A They did not.

Q Now, can you mention some that did not? A McClave. The lumber company did not. I called on them with Henry Clark, one of the trustees, and endeavored to induce them to sign, but without results.

20 Q All right. Who else? A Goldman, the painter, was visited, I believe, by Mr. Koos and I also believe he was visited by Mr. Clark.

Q Well, he didn't sign? A He didn't sign.

Q Who else? A The Herr Metal Ceiling didn't sign. Mendig.

30 Q Max Mendig? A The lather doing the lathing work there. The Leon Realty Company would not sign. Cogan would not sign until there was money in sight. And there was money in sight just before the proceedings were started and that was when he signed, when he was assured, practically assured that there would be some money available.

Q That was in the latter part of 1926? A In the latter part of 1926, yes.

40 Q All right. So six months' time passed while waiting for Cogan to sign; is that right? A Oh, I wouldn't say six months, but there was a considerable lapse of time.

J. Franklin Perry, direct.

Q And in no event did the other creditors sign? A They would not sign.

Q And they insisted upon returning their mechanic's lien or other sacred rights that they had under the law, did they not? A They did.

Q Now, did you at any time ever tell anyone that you were holding these notes or the proceeds of any of these notes for the purpose of equitable distribution for the creditors? A Absolutely not.

10

Q Without my mentioning any man who so testified, is his testimony in that respect the truth? A Absolutely not. I never told anyone that I was holding these notes for distribution among the creditors.

Q Did Mr. Koos know of the fact that you were collecting these notes? A He did.

20

Q Did Mr. Clark know of the fact that you were collecting these notes? A I am not sure whether Mr. Clark was aware of all the details, because he was not present in Mr. Fischel's office, and I only saw him on one or two occasions, when we were endeavoring to work out some snarls to get the job going. How much he actually knew, I am not prepared to say.

30

Q He knew you had the notes? A I think he did.

Q Did either he or Mr. Koos ever ask you to account for the proceeds of those notes? A No.

Q Did they ever ask you to make a ratable distribution of the money you had received? A No.

Q In behalf of the creditors, whom they really represented? A No.

40

J. Franklin Perry, direct.

Q To the Clinton Trust Company or Clark & Company? A No.

Q Mr. Clark was an officer of Clark & Company, one of the creditors? A (Witness nods yes.)

10 Q Was any demand ever made of you by Mr. Kramerman, or any other person, for any part of the proceeds of those notes until after this receivership—until after the receiver in this case took charge of Mr. Kramerman's matters? A Yes. On one occasion, Mr. Hecht came up—I am not sure whether he was accompanied by his brother or not—and he told me he had a note to meet at the bank and he wanted to know if I couldn't help him out to do something.

20 Q Was that the occasion when Mr. Hecht probably referred to, Louis Hecht, that his brother, Jacques Hecht, came to your office? A Well, I am not sure whether Mr. Jacques Hecht was there at that time or not, because I had a number of people coming in to see me as to the progress of the work, and I cannot remember exactly when, but I know they were both there, and I remember Hecht coming up and asking me if I couldn't do something, and I told him I couldn't do it until a postponement was signed,
30 we couldn't finance the work to go on and we couldn't hope to give him any money until the jobs we had financed had reached a payment.

Q Did he intimate to you, at that time, or any time, that you were to make a ratable distribution in money? A No; he did not.

Q And what money did he ask you—how did he happen—what language did he use in asking you for the money? A He was just up against it because he had money coming from various
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J. Franklin Perry, cross.

jobs and he was not getting his payments and he needed some money to finance his business.

Q Did he ask it as a loan or as a right? A He didn't ask me directly as a loan, but he wanted to know whether I couldn't help him out in this situation. I also had the same request from Cogan. Cogan wanted to know if I couldn't finance something. I told him it was absolutely impossible. We wouldn't throw good money after bad, unless we had all the creditors signed up.

10

Cross examination by Mr. Silver.

Q Mr. Perry, I understood you, on your direct examination, to testify that you stood—when I say “you,” I refer to your company—stood in a peculiar position, an unusually peculiar position because you enjoyed certain lien rights. Is that correct?

20

Mr. Kanter: I object to that question.

A (Witness nods yes.)

Mr. Kanter: He didn't testify it was an unusual position.

The Court: Ask him if he did say it.

30

Q Weren't other creditors in a position of filing lien claims, or were they not? A Yes; some were. I am not sure whether all were. I know some were.

Q So that the position you occupied on the day of that meeting, Mr. Perry, was not unique with respect to the filing of mechanic's liens? A In regard—in some cases, yes, sir. The Clinton—(interrupted).

40

J. Franklin Perry, cross.

Q In what cases? A The Clinton Trust Company could not file a lien.

Q That is not the question. The question is—let us agree upon this—you gave certain testimony before Referee Porter in the United States Court? A I did.

10 Q And do you remember your being questioned at that time as to whether any other persons had lien rights? Do you remember that? A I can't recall.

Mr. Kanter: He has answered that question. I object to this question unless it is for the purpose of contradicting the witness only.

20 The Witness: If you will read what I said, I will—

Q I am trying to refresh your memory only?

The Court: I will allow it.

30 Q Do you remember me asking you this question: "What was the practical difficulty that arose in connection with financing these jobs?" Perhaps I better go a little further back. "What was the practical difficulty that arose in connection with financing these jobs?" There were several of—(interrupted).

Mr. Kanter: Wait a minute. That is an answer.

40 Q "Answer: There were several that stood on their rights of lien. McClave had a right of lien; Herr Metal Ceiling Company put a stop notice in refusing to move thinking their position

J. Franklin Perry, cross.

was stronger." Do you remember that? A Yes.

Q Anyway, as to the McClave Company, they were in a position, were they not, on the 9th day of June to proceed, if they wanted to? A They were in a small way, proportionately.

Q Do you mean—what you mean, then, is, after all, that your claim was considerably larger than the claims of other creditors? A Was considerably larger, and we had a right of stop notice and lien, which some of the other creditors did not have. 10

Q Did McClave have it? A McClave had it, yes.

Q Who was present at that meeting representing McClave? A That I couldn't tell you. I don't know. 20

Q Are you prepared to say now that the time you made this announcement about taking the notes out of the picture, in the outer office, that statement was made in the presence of any representative of the McClave Company?

Mr. Kanter: I object to that, because the witness says he doesn't know who represented McClave.

The Court: I will allow the question. 30

A I don't know whether McClave was there or represented.

Q You have heard the testimony of Mr. Glueckfield on the stand here this morning? A I have.

Q Mr. Glueckfield testified that he had a conversation with you in the outer office. Did you have any conversation with him? A Not directly. Only as he directed questions to me from the number of creditors there. 40

J. Franklin Perry, cross.

Q Do you remember Mr. Glueckfield testifying there in answer to his question as to what had become of the notes, that you stated you were holding them? A A question was asked me, not as to the notes I was holding. The question was asked me as to what happened to the notes.
10 Whether Mr. Glueckfield asked that question, or someone else, I don't know.

Q What notes did they have reference to? A At that time, they had reference to no particular notes, because it was not generally known that Kramerman had received notes, but a rumor had gotten around that Kramerman had received some notes and a question was asked for information as to what happened to the notes.

20 Q What was your answer? A My answer was that various companies had received notes, and I listed them from the slip which Kramerman gave me. And I may be able to recall, but perhaps no amounts. The Colonial Woodworking Company had received notes.

Q Do not enumerate them. You told him— (interrupted).

30 Mr. Kanter: I think the witness is entitled to give the statement.

The Witness: The Colonial—

The Court: I will allow him to enumerate them.

The Witness: The Colonial Woodworking Company received notes, or a note. The Clinton Trust Company received a note or notes. A Jewish rabbi, who was supposed to have advanced payroll money, was repaid in the form of a note. The painter, I thing it is Goldman, I wouldn't be sure of
40

J. Franklin Perry, cross.

the name, but I know it was a painter, received a note. And I also stated that George F. Perry & Sons had received notes, itemizing the amounts, for each one was after something, but I said, "Gentlemen, the notes are out of the picture. They cannot be considered as assets."

10

Q You are sure you said that. A Absolutely.

Q Now, had you received the notes that very day, the 9th day of June? A I had received the notes that very day.

Q Did you tell the creditors that you had just received the notes and had them in your pocket? A I didn't make any statement as to when I had received the notes.

Q Do you remember Glueckfield asking you for a statement of the assets of Kramerman? A I do not and, had he asked me, I couldn't have given them to him, because, at that time, they were only listed in the memorandum form and they were in Mr. Fischel's office, and I believe still retained there.

20

Q Well, here was a meeting of creditors. You had held a private conference in a small room and then you went out into the large room for the purpose of addressing these thirty odd creditors. What did you talk to them about? A I talked to them about the approximate amount of money which might be received from various jobs, when the contracts were completed.

30

Q Is that the way you opened your address to the creditors? A It is. I gave them a summary of the financial condition of Kramerman, at that time, naturally.

Q You gave them the financial condition. Now, in giving any body of men a summary of

40

J. Franklin Perry, cross.

the financial condition of a person, you generally give the liabilities and assets, don't you?

Mr. Kanter: I object to what he generally gives. The question is what was done in this case.

10 The Court: Ask him what he told.

Q What did you tell them as to liabilities and assets? A Do you want me to be specific?

Q In substance. A They amounted to, approximately, \$16,000 from the Dwork job.

Q Yes. A There was a balance of \$2,000 due from the Leon Realty Company job when that was completed.

20 Q Yes. A And there was about between five and seven thousand dollars which we hoped to realize from the Waldorf restaurant, which had a space inside the Leon Company's building but was in a separate contract.

30 Q Yes. A Then there were other doubtful assets which it was hard to fit a value on. For instance, Kramerman had a house, he had a machine that was mortgaged, and various other assets, we went over in general, but the main assets were about \$16,000 from the Dwork job, six or seven thousand dollars from the Leon Realty Company and \$2,000—no, that is six or seven thousand dollars from the Waldorf job and two thousand from the Leon Realty Company job, a doubtful equity in his house, and other things.

Q What were the liabilities? A I cannot recall.

Q What was the aggregate? A I cannot recall what they are.

J. Franklin Perry, cross.

Q Were the liabilities more or less than the assets? A The liabilities were more than the assets.

Q As a matter of fact, at the meeting that was held on June 9, 1926, it was no secret that Kramerman was insolvent, was it? A No secret at all.

10

Q As a matter of fact, you yourself made that announcement? A I probably did.

Q Well, you have testified you did. A Well, if I did not, I am willing to testify now.

Q Now, you have heard the testimony here that there were conversations had with you by Mr. Jacques Hecht, the attorney sitting at this table, and his brother, Louis Hecht. I think you have met the gentlemen? A I have.

Q And the testimony is to the effect that they called upon you at your place of business upon two occasions. Was there mention upon either occasion of this \$9,100 in notes. A Yes, sir; it was mentioned.

20

Q Was that mentioned on the first or second occasion? A I can't tell you when it was mentioned. As a matter of fact, I can't recall that Mr. Jacques Hecht was there two times. I know he was there. Whether he was there either once or twice or three times, I don't know, but I remember the gist of the conversation.

30

Q And you remember Hecht asking you when he would get some money out of that \$9,100 that you were holding? A No, he never did.

Q What was that? A He asked when he could get some money, because, naturally, he was anxious to complete his work, because the contractors who had started work on these operations would naturally expect to be paid.

Q Now, let us confine ourselves to the question. How was the \$9,100 mentioned. A How

40

J. Franklin Perry, cross.

was the \$9,100 mentioned by Jacques Hecht, do you mean?

Q Either of the Hechts. A In what way do you mean "how was it mentioned."

Q You have just testified, in answer to my question, that the \$9,100 was mentioned on one
10 of these visits. Now, how was it mentioned?

A It was mentioned in the fact that they were anxious for me to go ahead and complete the work, because they knew I had agreed to finance the work and they were anxious to go ahead and finish the work so they could reach the payment.

Q Why had you agreed to finance the work?

A I just told you before. Because we had six or seven thousand dollars involved.

Q How did they come to mention the \$9,100?
20

A Because I had told them in the creditor's meeting that I had had it and because of the fact that we were so heavily involved they were willing to go ahead and naturally they came to me and talked about it.

Q You are telling me that upon one of these occasions the sum of \$9,100 was mentioned. Who mentioned \$9,100, you or Hecht? A I am not sure whether I did or Hecht.

Q Why was it necessary in that conversation to mention the sum of \$9,100?
30

Mr. Kanter: Isn't that an argumentative question? Isn't it immaterial?

Mr. Silver: Now, I don't think it is immaterial. I want to show it corroborates the testimony of these Hechts.

The Court: I will allow it. It seems to me, it calls for a conclusion. You asked him why it was necessary.
40

J. Franklin Perry, cross.

Mr. Silver: What I am trying to get from this witness and what he succeeded in not telling us thus far is what this conversation was concerning this \$9,100, which he admits was mentioned.

The Court: Very well, ask him the question. (To witness.) What was the conversation about the \$9,100? 10

The Witness: The conversation, if I recall rightly, about the \$9,100 was that Hecht, knowing—having been told at the general meeting that I had \$9,100, wanted to know if I would kind of help him out until we could get the jobs up to a point where he could get a payment. I told him I could absolutely not do it, because I was not going to throw good money after bad. 20

Q Do you know who has charge of mailing the bills of George Perry Company?

Mr. Kanter: I object to that. We did not go into that in our case.

Mr. Silver: I think it is an exhibit. I think is it Exhibit 2.

Mr. Kanter: I press my objection.

Mr. Silver: This is Exhibit C. 2 I am referring to? 30

The Court: Yes.

Q Do you know who mailed that bill?

Mr. Kanter: I object to that question, sir, not asked on direct.

The Court: I will allow him to answer it.

A Probably the bookkeeper. 40

J. Franklin Perry, cross.

Q Mr. Ruck? A No.

Q Can you explain why, on the first day of November, 1926, a bill was sent to Frank Kramer for the entire amount of his indebtedness to your company? A I can do it.

10 Q Will you? A I will. When I received the notes from the Leon Realty Company, I turned them over to Mr. Ruck for our company. I told him not to make an entry because I had agreed to help finance the job. Not wanting to have our company involved in financing other jobs and having been made responsible for financing the job, I asked him if he would hold these notes in abeyance, first of all, to find out if they were collectable, second, so that I would have some money available to complete
20 my obligation, and promised to start in and finance the jobs if the occasion arose where the creditors had postponed their lien rights and we could go ahead with the operation. Mr. Ruck held the notes. It is a matter of bookkeeping—(interrupted).

Mr. Silver: I object to "a matter of bookkeeping." I just want to know the facts.

30 Mr. Kanter: He has asked for an explanation.

The Court: I will allow him to continue.

The Witness: I am giving the facts as they happened in our office. If, for any reason, an account is open on the books and without specific direction as to what to do, as a matter of routine, statements are mailed out. This is not the only case we have had like that. We have had two of them like it
40 this year, where we know there is no pos-

J. Franklin Perry, cross.

sible chance of collecting the account, but, having neglected to notify the girl who makes up the statements, the statements were simply continued sent out without notification. I can cite several cases; they are a matter of bookkeeping records.

10

Q Mr. Perry, you have just testified that the reason you did not want an entry made on the books of this \$9,100 is because you did not want your company involved. Is that your testimony?

Mr. Kanter: He didn't so testify, sir.

The Witness: I didn't say that.

Mr. Silver: Then I will ask the stenographer to go back and read what he said. It is only a few questions. May we, with your Honor's permission?

20

The Court: All right.

Two questions and answers read as follows:

"Can you explain why, on the first day of November, 1926, a bill was sent to Frank Kramerman for the entire amount of his indebtedness to your company? Answer: I can do it. Question? Will you? Answer: I will. When I received the notes from the Leon Realty Company, I turned them over to Mr. Ruck for our company. I told him not to make an entry because I had agreed to help finance the job. Not wanting to have our company involved in financing other jobs and having been made responsible for financing the job, I asked him—"

30

40

J. Franklin Perry, cross.

Mr. Silver: That is enough. Now the question is why he didn't want to have his company involved along those lines.

The Court: All right. Why didn't you want the company involved?

10 Q This \$9,100 which you received, did you receive this in your personal capacity, Mr. Perry, or did you receive it as trustee, or did you receive it as funds intended for George Perry Company? A I received it in the capacity which I was represented, as treasurer of George F. Perry & Sons. I was not personally interested in that meeting.

Q Exactly. Then how could it have involved your company, if funds intended for your company were noted on their records as a receipt?
20

Mr. Kanter: I object to that question, because the Court can judicially notice that a corporation of the State of New Jersey would become involved by attempting to make loans outside.

Mr. Silver: That is not—

Mr. Kanter: That is what he said, he didn't want his company involved in financing outside jobs.
30

Mr. Silver: That is not the question, your Honor. Here is a man who gives \$9,100, as he claims in his defense, in liquidation of the debt and in the ordinary course of business, when a sum of that kind is received, it is credited on the books. He said he did not credit it in the books, because it did not involve the company. I think we ought to get that. It is a very weak answer.

40

J. Franklin Perry, cross.

The Court: I will allow you to answer the question. It seems to me, he answered it once before.

The Witness: May I make a statement?

The Court: Answer the question.

10

A What is the question?

Q (Question read as follows: "Exactly. Then how could it have involved your company, if funds intended for your company were noted on their records as a receipt?") How could it involve your company if the notes intended for your company was noted on record as received?

A If we had started in financing a building operation—if you have had any experience with the auditors for income tax purpose, you know everything goes in, everything is questioned. It was a much easier transaction to credit Kramer-
 merman on our books, which we did. Kramer-
 man was credited on our books, but he was not
 credited on the ledger account. Now, I did
 not say he was not credited. Every note that
 came in bore the endorsement of George F.
 Perry & Sons and is on the stub of our check
 book.

20

Q And every dollar of that \$9,100 went to
 George F. Perry & Son? A Is right on the
 stubs of our check book.

30

Q And every dollar of that \$9,100 went to
 George F. Perry & Son? A Absolutely.

Q Isn't it a fact that one thousand of that
 went to George F. Perry & Son after the filing of
 this bill? A Yes. What happened—have I
 your permission to explain that?

The Court: Yes. Explain it.

40

J. Franklin Perry, cross.

10 The Witness: As these notes were presented by George F. Perry & Son, a check was issued to me. I opened up a special account, not my own private account—I opened up a special account to reserve that money to finance the jobs, as I had obligated myself to do, if it ever came to a point where I could, at the end of the year, if it was necessary for income tax purposes to show what was what. Consequently, we took the bulk of that money with that thousand dollars credited to Kramerman's account, which we had already done, not on the ledger account, but on the stubs of our check book, a thousand dollars was still open. The reason that was open was this: At that

20 time, at the end of the year, Mr. Fischel was supposed to be—I won't say "supposed to be." I think he was, although I don't know it of my own intimate knowledge, suing Dwork. Mr. Fischel had several times stated that he could not—did not care to go on with the work, because he didn't see where he was going to be reimbursed for his services. There were \$16,000 involved. I kept \$1,000 out, if there was any chance of realizing that money and it came to a point

30 of advancing a few hundred dollars to Mr. Fischel in order to serve papers and proceed with the suit, I was still in a position to do it and ready to do it. What happened then was that the \$1,000 was not crossed off the books; the \$1,000 went into a suspense account.

Q Suspense account? A Suspense account.

40 Q It was transferred from the suspense account after we filed this bill in Chancery, was it?

J. Franklin Perry, cross.

A Absolutely, because I knew when the bill—
(interrupted).

Q All right. You have answered it.

The Court: No. I want his explanation.

The Witness: I knew as soon as it went
into bankruptcy that—(interrupted). 10

Mr. Kanter: Mr. Perry—(interrupted).

Mr. Silver: Wait a minute. I want to
get a complete answer.

Mr. Kanter: Well, he said after we
started suit in Chancery. Get the date.

Mr. Silver: All right.

Q Mr. Perry—

20

The Court: Wouldn't the books show?

Mr. Kanter: That was in February,
wasn't it? February. This suit was started
in May 21, 1923.

Mr. Silver: What was the date that Mr.
George Perry personally reimbursed Perry
Company?

Mr. Kanter: Do you want that on the
record?

30

Mr. Silver: Yes.

Mr. Kanter: Have you got the date?

Voice: No; not just this transaction.

Mr. Kanter: 1927.

Q Can you tell us, Mr. Perry, when you
drew your personal check to reimburse George
Perry Company to the extent of \$1,000? A Yes.

Q Approximately? A It was after I had
learned that Kramerman was in bankruptcy. I 40

J. Franklin Perry, cross.

knew there was no hope of financing the jobs further than—(interrupted).

Q When you were examined on the 24th day of January, 1927, before Referee Porter in this suit, isn't it a fact that up to that date you had not reimbursed Perry Company with that
10 \$1,000? A It probably is. I don't know the exact date.

Q Will you say it is not? A No; I won't say it is not.

Q You say it probably is? A It probably is.

Q So we agree it is quite probable you paid that \$1,000 back after January 24 of this year?
A January 24 of this year, I think it is probable that I did.

Q And isn't it a fact that you paid it back
20 after the accountant went up there and examined the books of the Perry Company? A It probably is.

Q All right. Now, Mr. Perry, didn't Kramer-
man suggest to you turning over these notes and all of the assets to a trustee or trustees?

A I don't recall that he did, but probably he did.

Q Will you say that you have not testified
30 that Kramerman suggested turning over the notes and assets to you or other trustees?

Mr. Kanter: I object to that question. The proper way to contradict this witness is to quote the previous testimony and ask him whether that is right or not.

The Court: Yes.

Mr. Silver: We will do that, Mr. Kanter.

Mr. Kanter: Well, do it, then.

Q I am reading from page 28 of the minutes
40 taken in the United States Court before Referee

J. Franklin Perry, cross.

Porter in this district from the testimony of John Franklin Perry.

Q "Question: Did Mr. Kramerman not suggest—" (interrupted).

Mr. Kanter: Now, pardon me. Mr. Silver is deliberately leaving out the prior question, which does not suggest—which suggests the time. 10

Mr. Silver: We will read the whole page, with that insinuation. If Mr. Kanter wants to drag it out, we—(interrupted).

Mr. Kanter: Read the former question.

Mr. Silver: Where do you want me to start?

Mr. Kanter: Two or three questions ahead of that. 20

Q "Question: Was it agreed at that meeting or was there a discussion at that meeting that the bankrupt, Kramerman, should trustee his assets and uncompleted jobs to a committee of creditors? Answer: There was a discussion of various methods of finishing his work, but the expression was by all means to finish the work. Question: Was there anything mentioned at that meeting by Mr. Kramerman about having some notes amounting to \$9,400 in his possession? Answer: About the amount I'm not certain. It was around \$9,100. Question: Did Mr. Kramerman not suggest turning over these notes to the trustees for the purpose of collecting and liquidating this paper? Answer: He may have made this as one of the number of suggestions that he made." 30

The Court: There is not any— 40

J. Franklin Perry, cross.

Mr. Kanter: Contradiction.

The Court: —material variation between that testimony and what he has already told you.

Mr. Kanter: Exactly.

10 The Court: They evidently had a dispute and suggested various ways and means of doing it and finally they came to write out this Exhibit 1.

Mr. Kanter: As your Honor well knows, under Section 21-A—(interrupted).

Mr. Silver: Well, now—

Mr. Kanter: I would like to argue this thing, too.

20 The Court: There is nothing to argue about.

Mr. Kanter: The trustee could ask Mr. Perry a great plenty.

Mr. Silver: That statement is wholly untrue. It was an allegation of Mr. Kanter.

Mr. Kanter: And I was making him keep quiet after the trustee thought I had enough out of him.

30 The Court: The trustee seems to have more influence over you than I have, if he could make you keep quiet.

Q Did you ever tell anybody that if you had the notes you could go to the creditors and use them as a sort of club to make them fall in line?

A I practically admitted that in my other testimony, if I had the notes of George F. Perry & Sons which we had a right to have—

40 Q That is all right. We don't want to— A —there wouldn't be a chance of going into bankruptcy.

David M. Knoller, direct.

Q You have testified that Koos knew you were collecting the notes. Did you tell Koos you were collecting this \$9,100? A I don't know whether I told him I was collecting it. I may have done it. But he would have known it because he knew all about the notes.

Q You don't know, as a matter of fact, Mr. Koos did not think you were collecting this money for the benefit of all creditors? A Absolutely not. He couldn't think that.

10

Q Well, did you ever have any conversation like that? A No.

Q So, when you testified on direct examination that Koos knew you were collecting the notes, that is purely hearsay on your part? A Mr. Koos did not see me go collect the notes and pay the money.

20

Q Did you ever tell Koos you were collecting it? Yes or no. A Koos couldn't have known specifically that I went down and received the money, but the inference is there, naturally, if you have a note that you are going to collect the money on it.

Q Did you ever tell Koos that you had the \$9,100? A I may possibly have done so. I do not remember precisely that I did.

30

Q Then why did you testify on direct that Koos knew it? A Well, of course he knew it.

DAVID M. KNOLLER, sworn for the defendant.

Direct examination by Mr. Kanter.

Q Mr. Knoller, you were one of the trustees mentioned in this agreement, C. 1? A Yes, sir.

40

David M. Knoller, direct.

Q You are a client of Mr. Charles Frankel, are you not? A Yes, sir.

Q And you know the people involved in this agreement, Mr. Kramerman, Mr.— A I do.

10 Q All the people whose names have been mentioned here today. Now, at this meeting in Mr. Fischel's office, on June 9, 1926,—by "this meeting," I refer to a meeting held in Mr. Fischel's private office—were you present when the notes were turned over to Mr. Perry? A I was.

Q Was there any promise on the part of Mr. Perry that those notes would be held a part by him in trust or to distribute the notes for the benefit of creditors? A No, sir.

20 Q At the meeting outside, did Mr. Perry say he had received the \$9,100 worth of notes? A Repeat that, please.

Q At the meeting held outside in Mr. Fischel's general office— A Yes.

Q —where the general meeting was held, did Mr. Perry make mention of the fact that he had received the \$9,100? A I think he did.

30 Q What was his specific language in reference to that? A He said something about playing ball. He would be willing to play ball with the crowd providing they lived up to certain things that he wanted them to do.

Q Providing they all signed the agreement, C. 1? A Yes, sir.

Q Did he conceal the fact in any way that he had received the \$9,100? A No, sir.

40 Q What did he say with reference to the \$9,100? A He said something about if the crowd were willing to play ball with him that he would finish some of the jobs that Mr. Kramerman had left unfinished.

David M. Knoller, cross.

Q Did he say that he was going to distribute this—did he use the expression “out of the picture” with reference to this \$9,100? A I am not certain, but I think he did.

Q Did he at any time say outside of the meeting in the presence of Mr. Glueckfield, or anybody who was there, that he was going to use the proceeds of those notes ratably for the benefit of all creditors? A I didn't hear that. 10

Q Did you have anything to do with reference to the administration of this trust after June 9, 1926? A No, sir.

Q Did you meet at any time with Mr. Koos and Mr. Clark? A I think we did.

Q And Mr. Perry? A Yes, sir.

Q Was demand ever made upon Mr. Perry for the \$9,100 or any part of the \$9,100? A By whom? 20

Q By any of you co-trustees? A Not to my knowledge.

Q You were a creditor? A Yes.

Cross examination by Mr. Silver.

Q Did you consider the \$9,100 as an asset? A Did I consider it? I don't think—they were considered as an asset. 30

Q By whom?

Mr. Kanter: He said “I don't think they were.”

The Witness: They were not considered as an asset.

Q You considered the \$9,100 worth of notes went out of the picture? A I think I did at the time. 40

David M. Knoller, cross.

Q You think you did? When did you first make up your mind about that? A Why immediately after that I went away. I was not feeling well. I went away on a trip. I didn't give it any thought until about four weeks ago, when I was summoned to court.

10 Q You had different ideas about this situation, didn't you, Mr. Knoller? A Just what do you mean?

Q I say, you had different ideas about the situation?

Mr. Kanter: I object to that.

Mr. Silver: I will withdraw that.

Mr. Kanter: You mean to say he made a statement before?

20

Q Did you call to see Mr. Perry in connection with this case, Mr. Knoller?

Mr. Kanter: I object to that question. What difference does that make if he did?

The Court: I don't think it makes any difference.

Mr. Silver: Well, except that it might be some admission.

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Mr. Kanter: You can put it on record that he talked to me about it, if you want to, Mr. Silver.

Q Mr. Knoller, the trustee in bankruptcy has a suit pending against you? A I think he has. I don't know—

Q Weren't you present before Referee Porter's court on a certain application to dispose of this claim of the trustee? Weren't you there in court?

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David M. Knoller, re-direct.

Mr. Kanter: I object to the question.

(Discussion.)

The Court: You can ask him if he appeared and what he said when he did appear.

Q Did you appear before Referee Porter in the post office building in this city? A Yes. 10

Q Do you remember having a conversation with me in the hall? A I don't recollect. Perhaps I did.

Q Do you remember telling me that you were going to oppose the trustee settling this claim against Mr. Perry, unless the claim made against — A No, sir.

Q —you received the same consideration? A I did not.

Q You did not? A No, sir. 20

Re-direct examination by Mr. Kanter.

Q Have you got a counter claim against that case they are suing you in? A I have.

Mr. Kanter: We rest.

Mr. Silver: We rest. If your Honor please, I think we will probably require the testimony for the purpose of submitting a memorandum. 30

EXHIBIT C. 1.

THIS AGREEMENT, entered into this ninth day of June, 1926, between FRANK KRAMERMAN, of the City of Newark, County of Essex and State of New Jersey, hereinafter referred to as the party of the first part, and hereinafter referred to as the parties of the second part, and J. FRANKLIN PERRY, CHARLES KOOS, HENRY CLARK and DAVID N. KNOLLER, hereinafter referred to as the Trustees, as parties of the third part: WITNESSETH:

WHEREAS, the party of the first part is indebted to the parties of the second part in the various sums of money set forth herein, on Schedule A, hereto annexed, and is unable to pay the same, and desires therefore to turn over unto the parties of the third part, all of his estates, rights and credits, and

WHEREAS, the parties of the third part are willing to accept the same for the benefit of the parties of the second part hereto and to use the best endeavors to realize as much monies as it may be possible to distribute proportionately to all of the creditors herein named, without any expense or charges, excepting for cost of completion of said work, and the said trustees and creditors consenting thereto, it is agreed by and between the respective parties hereto, as follows:

1. The party of the first part does hereby assign, transfer and set over unto the Trustees, all of his estate, rights, credits and assets for the benefit of the parties of the second part to this agreement.

2. The parties of the second part by the signing hereto do consent and agree to release

Exhibit C. 1.

any and all rights or claims under the New Jersey Mechanic's Lien Law upon any of the buildings, or against any of the funds remaining in the hands of the owners thereof, and the said creditors do also agree to refrain from instituting any action at law or suits in equity or proceedings against the said FRANK KRAMERMAN or against said lands or assets, until after the completion of the work to be completed by this agreement and the disbursements of the funds, included thereunder. 10

3. The trustees herein named promise and agree to use their best endeavors to complete the said job as speedily as possible and to report to the parties of the second part, from time to time as the work of completion progresses.

It is understood and agreed that the trustees may employ the party of the first part, as supervisor of the job, at a salary not exceeding the sum of \$75.00 per week. 20

IN WITNESS WHEREOF, the parties hereto, have set their hands and seals, the day and year first above written.

Signed, sealed and delivered in
the presence of

Frank Kramerman	(L. S.)	30
Robert McCloery	(L. S.)	
Albert Armstrong, Elic.	(L. S.)	
Jock Simon	(L. S.)	
Newark Glass Co.	(L. S.)	
Edward J. Eichee, Atty.	(L. S.)	
Louis Hecht	(L. S.)	
Frank Cicalese	(L. S.)	
Vreeland-Kearny Lh. Co.	(L. S.)	
By Frank Kearney, Trs.	(L. S.)	
David N. Knoller	(L. S.)	40

Exhibit C. 1.

	M. Arthur Wolf	(L. S.)
	Jack Weeks	(L. S.)
	M. A. Wolf, Atty in Fact	(L. S.)
	Uptown Iron Works	(L. S.)
	Colonial Woodcraft Co.	(L. S.)
	Carl Goldberg, Pres.	(L. S.)
10	The R. Isinberg Co.	(L. S.)
	S. W. S. Landy, Pres.	(L. S.)
	Clinton Trust Co.	(L. S.)
	Chas. Koos, Pres.	(L. S.)
	Geo. F. Perry & Sons, Inc.	(L. S.)
	J. Franklin Perry, Treas.	(L. S.)
	Ben. Lifshitz	(L. S.)
	I. Burstein and Winarsky	(L. S.)
	R. Lifke	(L. S.)
	Max Glass	(L. S.)
20	Joseph Sandsee	(L. S.)
	D. Joseph Cogan	(L. S.)
	David N. Knoller, Trustee	(L. S.)
	Charles Koos	(L. S.)
	J. Franklin Perry	(L. S.)
	Trustees	(L. S.)
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EXHIBIT C. 2.

Monthly Statement

GEO. F. PERRY & SONS, Inc.

Office & Yard

Fabyan Pl. & Lyons Ave.

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Masons' Material—Concrete Block

(Cut.)

Sewer Pipe—High Grade Coal

Phones Terrace 0060-1-2

Frank Kramerman

Nov. 1, 1926

Mat. Acct.

9/30	154 Baldwin St.	124.20	20
10/30	Interest	.62	
9/30	130 Goodwin Ave.	2.40	
9/30	Horatio & Cortland	3547.72	
10/30	Interest	17.65	
9/30	206 Market St.	6677.35	
10/30	Interest	33.22	
9/30	57 Chancellor Ave.	3554.95	
10/30	Interest	17.69	
9/30	43 Custer Ave.	1578.54	
10/30	Interest	7.85	30
	Block Acct.		
9/30	43 Custer Ave.	107.63	
10/30	Interest	.53	

 15670.35

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ALBERT A.

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New Jersey Court of Errors and Appeals

J. TRACEY HORTON, Trustee of
Frank Kramerman, Bankrupt,
Complainant-Appellant,

vs.

J. FRANKLIN PERRY,
Defendant-Appellee.

BRIEF OF COMPLAINANT-APPELLANT.

Statement of Facts.

This action was brought by J. Tracey Horton, as trustee of Frank Kramerman, bankrupt, to recover from the appellee the proceeds of the collection of a series of notes made by Leon Realty Co., to the bankrupt, Frank Kramerman, which notes were delivered to the appellee by Frank Kramerman, in the early part of June, 1926. Appellant contends that these notes were given to the appellee to hold as trustee for all the creditors of Frank Kramerman, and the appellee denies accepting the notes under such an agreement but states that the notes were in part payment of an indebtedness existing from the said Kramerman to George F. Perry & Sons. It appears that these notes were paid by the maker, that Frank Kramerman was adjudicated a voluntary bankrupt on January 7, 1927, and that the appellant qualified as trustee on the 14th day of February, 1927.

As to the Evidence.

The appellant in reviewing the testimony adduced upon the trial calls the Court's attention to what he deems the important facts taken from the testimony of the various witnesses and briefly sums them up as follows:

FRANK KRAMERMAN:

Kramerman testified (p. 32) that he was brought to the office of the appellee by two creditors, Mr. Cohen and Mr. Louis Hecht, and that when he came there Mr. Perry asked him what was the trouble. He told Mr. Perry that he was in a financial predicament and could not meet his bills and that they had all fallen on him and wanted their money, and Perry suggested calling a meeting of creditors to work out some solution.

A meeting was called at the office of Jacob Fischel, around June 8th, and the appellee was present at that meeting (p. 33), and he asked Frank Kramerman for the notes in question, which notes Kramerman, had informed Mr. Perry he had, and that Perry would go out to the people and tell them that Mr. Kramerman was not trying to go into bankruptcy or trying to rob anybody and that he would show the notes to the people, and Mr. Kramerman told Mr. Perry that he would do anything to convince the people that he could not pay at that time and wanted to finish the jobs under the control of the creditors.

Mr. Perry then promised (p. 34) that he would go out and tell the people the whole situation and show them the notes and to quote Mr. Kramerman's testimony "that these notes will be used so that I can finish my jobs and realize the

rest of the money. On these conditions I gave Mr. Perry those notes.”

Upon being asked by appellant's counsel (pp. 34-35) whether the \$9,100 worth of notes were turned over as a payment of his indebtedness to Mr. Perry, Mr. Kramerman answered, “No, sir, I did not, because, if I had to do that, I could have given it to him the day I was in his office.”

Subsequently, there was an agreement drawn up designating J. Franklin Perry, Charles Koos, and David Knoller, as trustees, and that paper received the signature of a great many creditors, and in particular the signature of George Perry Company signed by J. Franklin Perry (p. 35).

Going back to the meeting in the office of George Perry & Sons, Mr. Kramerman is insistent on cross examination that he was brought to Mr. Perry by Messrs. Hecht & Cohen, and that they remained right in the private office throughout the conference (p. 39). This fact will be referred to further in this memorandum.

Mr. Kramerman on cross examination stated that with respect to this meeting that Mr. Perry (p. 45) would try to convince the people that Kramerman had not gone away and taken the notes with him and it was testified that there was such rumor prior to the creditors' meeting at Mr. Fischel's office. Mr. Kramerman then went to Mr. Fischel's office and had Mr. Fischel call a meeting of creditors. The importance of this meeting at Mr. Perry's office is the fact that in the ordinary course of events, if Kramerman had any intention of turning over the \$9,100 to George F. Perry & Sons, in part payment of their account, Mr. Kramerman could have turned over the notes to Mr. Perry then and

there, and in any event without waiting for the formality of a creditors' meeting, and if the intention was not as Kramerman testified that these notes should be used for the purpose of completing the unfinished jobs and if creditors were not to benefit from this \$9,100 why was there any discussion between Mr. Perry and Mr. Kramerman about showing these notes to the creditors to dispel the rumor that Kramerman had gone away with the notes? In this connection the Court's attention is called to the cross examination of Mr. Kramerman (p. 48).

Mr. Kramerman testified (p. 51) that Mr. Perry stated to creditors in the outer room at the creditors' meeting that he had taken the notes for a purpose, to use for the creditors, to finish the jobs.

Mr. Perry did not say that he would personally assist Kramerman in the completion of the jobs (p. 52). Mr. Kramerman testified that Mr. Perry was elected "as main trustee to go on with the job, paying me \$75.00 salary" (p. 53).

Mr. Kramerman when asked on cross examination whether he ever went to Mr. Perry to tell him that he had in his possession \$9,000 which he failed to turn over answered, "No, because he was appointed as trustee." Mr. Kramerman was asked on cross examination whether Mr. Perry was to return the \$9,100 and his answer is (p. 56) "not to me. Supposed to keep track of it."

Kramerman testified (p. 59) that in November 1926 (the notes were turned over to Perry in June, 1926), that he received a bill from George Perry & Sons for \$15,000 which paper is exhibited C. 2. That fact stands as a mute witness

of the true situation existing in this case. A statement taken from the regular books of account of George Perry Sons, and giving no credit to Frank Kramerman for the \$9,100 received by George Perry does clearly indicate that the \$9,100 was never to apply as a credit and had nothing to do with the account existing between Frank Kramerman and George F. Perry & Sons, as debtor and creditor.

JACQUES HECHT:

Mr. Hecht is a member of the Bar. He testified (p. 70) that in the month of August, 1926, he and his brother, Louis Hecht, a creditor, called upon the appellee at his place of business, and that (p. 53) Louis Hecht asked for a distribution out of the funds in the hands of Mr. Perry, and Mr. Perry stated he would wait a little longer before he would distribute any moneys.

On cross examination Mr. Hecht insists that he used the language in addressing Mr. Perry, "that you are holding as trustee," and he insisted that that was "exactly" (p. 72), what was said.

LOUIS HECHT:

He testified that in the middle of August, 1926 (p. 75), while he was at Mr. Perry's office with his brother (the previous witness, Jacques Hecht), that he asked Mr. Perry why he did not split the \$9,100, that Mr. Perry answered (p. 75) "no, I can't do that until I get the money from the Leon Realty Company, and then, when I get that money, we will share it all up."

This version of an alleged conversation seems to be founded on truth when it is recalled that in August, 1926, all of the \$9,100 of notes of the

Leon Realty Company had as a matter of fact not been collected.

HENRY J. RUCK:

The appellant called Mr. Ruck, the bookkeeper, of George Perry & Sons Company, and he testified that on the first day of December, 1926 (p. 78), the records of this concern showed that Mr. Kramerman owed \$15,000 to George Perry & Sons Company and when asked why it was that no credits were given to Kramerman prior to December 3, 1926 (almost one-half year after Perry received the notes, and a matter of days before Kramerman filed bankruptcy proceedings), Ruck's answer is (p. 79) "He, Perry, told me that I should take these notes and upon the maturity of same I should collect on that and *in turn, turn the money over to him, Perry, personally.*"

It is respectfully submitted that if this court is in any doubt as to where the truth lies in this case that the testimony of Perry's own bookkeeper just referred to, clears the situation.

Here is an officer of a corporation, receiving \$9,100 (to accept Perry's story) to apply on an indebtedness existing to that corporation, and instructing the bookkeeper to turn over the money when collected on the notes to him personally. Does that not bear out the appellant's contention that Mr. Perry knew the funds were trustee's funds, and that he had no authority to leave them with George Perry & Sons. More than that is the startling fact that in the manipulation of these funds, through some oversight \$1,000 of this \$9,100 was retained by J. Franklin Perry (p. 80) and was only turned over to George Perry & Sons after a visit of the

trustee's accountant who went to inspect the books of George Perry & Sons (p. 81). It is urged that that fact is the strongest ray of light that penetrates any darkness of doubt, which might exist and the explanation of Mr. Perry's bookkeeper that Mr. Perry would hold the \$1,000 in a special account "in his own account" (p. 81) is a flimsy excuse to try to explain, a condition that can only have one explanation.

Why is there talk of special accounts of George Perry & Sons? Why was there something peculiar about this credit of \$9,100? If it was a payment received by Mr. Perry and the notes "were out of the picture" to quote Mr. Perry as far as creditors were concerned why was the \$9,100 split up by George Perry and why was the \$9,100 not credited as the notes matured and paid. That, it is submitted, is the ordinary course taken by any organization which employs a bookkeeper, and has a regular set of books.

The credit of \$1,000 in passing, was not made on the books of George Perry & Sons, until April, 1927 (p. 81), nine months after Mr. Perry received these notes from Mr. Kramerman, three months after Kramerman was in bankruptcy, after the trustee's accountant called upon Perry's bookkeeper, six or seven months after the \$1,000 was collected.

HENRY I. SILBERMAN:

This witness, a certified accountant, was the man who discovered for the trustee the fact that on the first day of December, 1926, Kramerman's indebtedness to Mr. Perry appeared as on the books of George F. Perry & Sons, as \$15,826.65 (p. 87).

Mr. Silberman testified that when he asked Mr. Ruck the bookkeeper of George Perry & Sons, why the notes amounting to \$9,100, received from the first part of June, 1926, were not credited to the account as collected and that the bookkeeper told him that *he had no instructions from any one to credit these notes* (p. 89). Does that not bear out the testimony as to the purpose for what these notes were given, as testified to by Kramerman, and Hecht.

JACOB FISCHEL:

This witness, a member of the Bar, was the attorney of Mr. Kramerman. He testified (pp. 90-91) that in June, 1926, Kramerman came to see him regarding his financial affairs, and Kramerman had been to see Mr. Perry, and Kramerman had \$9,100 worth of notes and he left them with Mr. Fischel. That subsequently there was a meeting (the witness thought on the 9th day of June, 1926), and that Mr. Perry was at the meeting, and Kramerman, Frankel, Knoller, and a Mr. Koos, were present, and that it was suggested by *several* of the creditors that Perry ought to get the notes because he was the largest creditor and that he would be in a better position to tell the creditors if they "didn't play ball" that he had the club over them, and Perry asked Fischel to direct Kramerman to turn over the notes to Perry.

Mr. Frankel, and Mr. Knoller thought that Mr. Perry would do the right thing and there was no question that Mr. Perry could be trusted with seeing that things were properly carried out and done for the best interest of everybody (p. 91).

The witness testified that he told Mr. Kramerman that he had a lot of other creditors, and just

to prefer Mr. Perry would not be fair. That he would call this meeting of creditors and that if they did not all come along he would put Kramerman in bankruptcy (p. 92).

Mr. Knoller and Mr. Frankel thought they felt that Mr. Perry ought to have the notes and that he would be in a better position at the meeting to tell the creditors "now here I have got them." Mr. Fischel stated he would not be a party to the turning over of the notes to Perry.

CHARLES KOOS:

This witness is president of the Clinton Trust Co. of Newark, New Jersey, and was present at the meeting. He testified that (p. 109) Mr. Perry had the notes "because I know that Mr. Perry was—his name was all right and we wasn't worried that the thing was not distributed properly after the work was to be finished," and the witness testified on (p. 110) "Why, Mr. Perry was to act as trustee, of course." "That was the understanding. Nothing else. I wouldn't stand for anyone to turn over anything unless there was somebody behind it," and at (p. 111) Q Did you hear Mr. Perry say, in the outside meeting, that he had taken the notes out of the picture? A No; I did not.

CHARLES FRANKEL:

This witness, a lawyer, testified that he went to the creditors meeting, representing a creditor, a Mr. Knoller, and that in answer to the question of whether he did not think it was wrong for Kramerman to turn over \$9,100 to one creditor his answer is (p. 121) "Now, I don't,—I can't for the life of me, even at this moment, tell you why I didn't think at that time, perhaps Mr. Kramer-

man should perhaps give Mr. Knoller a note. It didn't occur to me at the time."

It is submitted that it is very unusual to say the least, that a lawyer should attend a meeting, knowing that the debtor is heavily involved and should sit by seeing \$9,100 turned over to one creditor in clear preference without raising a finger to object, and not have insisted on one of the notes being given to his client.

J. FRANKLIN PERRY:

The appellee testified (p. 127-129) that Mr. Hecht and Mr. Cohen, called upon him twice, the first time looking for Mr. Kramerman and the second time coming with him and he suggested the calling of a creditors' meeting. That he knew that Kramerman had some notes. That at the creditors' meeting he told creditors, that if they would make him a preferred creditor and "take the notes out of the picture" that he would endeavor to complete the jobs and put up the cash monies (p. 133), and that Mr. Fischel would not ask Kramerman to turn over the notes to him because it would be making George F. Perry & Sons a preferred creditor. That he took these notes in payment of the account due his firm (p. 135). That he told the creditors at the meeting that he had the notes and that (p. 136) Kramerman was to be retained at a salary of \$75.00 a week. The trustees were then suggested to that he, Perry, being the largest creditor, and because he stated that he would help finance he job, was made a trustee. That Louis Hecht called to see him and that he never asked for any money as testified by Mr. Hecht and Mr. Hecht told him that he was up against it and needed some money to finance his business. (p. 148-149.)

It is submitted that it seems preposterous that Louis Hecht should have gone to Mr. Perry for financial assistance in his own business and that the more probable story is the one of Hecht, demanding the distribution of the funds, and receiving the answer from Perry, attributed to him.

The witness Perry further testified that it was no secret that Kramerman was insolvent on June 9, 1926 (p. 147), and that he made an announcement to the creditors at the meeting and we are asked to believe that the creditors knew that the defendant was pocketing \$9,100 of the insolvent's assets. In fact, the only tangible assets, and that the creditors sat by mute.

The testimony of Louis Hecht as to his conversation with the appellee, it is submitted, is corroborated by the appellee's admission under cross examination that the subject of \$9,100 was mentioned by Hecht at the meeting in the appellee's place of business when the Hechts called there, and the appellee says Hecht wanted to know "if I would agree to help him out until we could get the jobs up to a point where he could get a payment." (p. 147.)

The appellee Perry (p. 153) admitted that he did not turn over the \$1,000 held by him to the Perry Company until after the bankruptcy proceedings, and that it probably was after the accountant had examined the books of the Perry Company (p. 156).

The appellee admitted that Kramerman probably suggested turning over the notes to a trustee or trustees (page 156).

DAVID KNOLLER:

Mr. Knoller was one of the trustees mentioned in Exhibit C. 1 (p. 159). When asked on cross

examination whether he considered the \$9,100 worth of notes had passed out of the picture stated that he thought he had at the time and that he made up his mind when he went away on a trip that he was not feeling well (p. 161-162). The Court's attention is again called to the fact that Mr. Knoller, a creditor, and co-trustee, knew that the appellee had the \$9,100 worth of notes and we are to believe made no objections to this preference made by the insolvent debtor. Is it not more logical to assume that Knoller knew that the funds were being held for the benefit of creditors and that is why he made no objection.

This witness when asked if the trustee in bankruptcy has not a suit pending against him answered (p. 162) "I think he has. I don't know." Yet on a cross examination when asked by Mr. Kanter (p. 163) whether the witness has a counter-claim against the trustee answered, "I have." It is respectfully submitted that the testimony of a witness who on direct examination answers that he does not know whether there is a suit pending against him and then on re-direct examination that he has a counter-claim filed, cannot be given much weight.

POINT 1.

The defendant-appellee holds the proceeds of the notes amounting to \$9,100 turned over to him by Frank Kramerman in June, 1926, as the trustee of the creditors of Frank Kramerman.

Reviewing the evidence, we have on the one hand the testimony of Mr. Kramerman, to the effect that the \$9,100 of notes in question was turned over to Mr. J. Franklin Perry, as trustee for the benefit of Kramerman's creditors and it is respectfully urged that the courts have always

been guided to a great extent by the intentions of the donor of the trust.

It has been held that the trusteeship in personalty can be constituted by parole, and by the acts of the parties. *Eaton v. Cooke*, 25 N. J. Equity 55. *Pitney v. Bolton*, 45 N. J. Equity 639, was an action to establish a trust of personal property. Bolton received certain securities to hold in trust for the brothers Pitney for the purpose of concealing from one of the Pitney brother's creditors his assets. The stock was transferred to Bolton and after the brothers demanded an accounting Bolton disputed the trusteeship and asserted that Kay Pitney was considerably indebted to him. The Court there held that the securities were passed to Bolton in his capacity as trustee and that even if Kay Pitney was indebted to Bolton the securities were received as trust property. In that case it was also held that a parole declaration of trust was valid. So that even if the agreement with Perry and his co-trustees was never completed by the signing of the signatures of all creditors, yet the appellee could not obtain the notes in question in the case at bar, and then seek to appropriate these notes to the use of Perry & Sons under any pretext.

The testimony of Kramerman was that if he had any intention of turning over the notes to the appellee Perry to be applied on his indebtedness to George Perry & Sons that he could have turned the notes over to Perry the first time he was at his office. It is submitted, that, the transfer of the notes by Kramerman to Perry was in effect an assignment for the benefit of creditors and under the cases the effect of such an assignment is to create a trust and the beneficial interest vest in creditors, the cestui que trusts, though they knew nothing of it.

In *Scull & Thompson v. Reeves*, 3 N. J. Equity, page 84, it is held that there is no particular formality necessary to the acceptance of a trust. If a person actually consents, or if he takes the property and exercises any power or right over it, it may be considered an acceptance, and especially when the rights of third persons are interested. It is not necessary that there should be an actual consent in writing or by parol; acts fairly implying a consent are sufficient.

There are really no defined methods by which the Court may determine the question of a trusteeship other than by the testimony of the parties and the surrounding facts. That Kramerman was insolvent at the time that the notes were turned over to Perry is not disputed. It is hard to conceive that the creditors would sit by and see the only tangible or quick assets of an insolvent debtor be turned over to a representative of one creditor without complaint. It is the fact that such is not the usual human conduct which lends strength to the story of the witnesses that Perry never claimed these notes for George F. Perry & Sons.

What stronger fact can be offered to the Court to show where the truth lies than the fact that Kramerman many months after he had turned the notes over to the appellee received a bill from the creditors, George F. Perry & Sons, for \$15,000, which bill did not give him any credit for the \$9,100 given to the appellee? Does that not of itself arouse the suspicion of the Court that there was something unusual about this transaction? Does not the testimony of Perry's own bookkeeper, Ruck, that he should collect on these notes and on the maturity of the same turn the money over to the appellee personally, destroy the contention of Perry that these notes were received to be turned over to George F. Perry & Sons in partial liquidation of Perry's indebtedness?

If the version of Perry is true and these notes were turned over in June as an absolute payment what was there strange about a debtor paying \$9,100 on a \$15,000 bill and why were not the credits made as the notes were collected?

If this is not enough to convince the Court that at the time when Perry got these notes he knew he received them as a trust fund which caused the instructions given to his bookkeeper, what explanation can the appellee give to explain the fact that after and at the close of the fiscal year of George F. Perry & Sons, for 1926, the account of Kramerman was credited with \$8,100, \$1,000.00 *was retained by J. Franklin Perry personally?* Is that a system of bookkeeping used by an organization having regular books?

The version of Kramerman is certainly corroborated by these silent witnesses brought from the books of the appellee's own concern who point their fingers to the truth. Are we to disbelieve the testimony of Kramerman who has nothing to gain from the outcome of this case? Are we to disbelieve the sworn testimony of Jacques Hecht a member of the Bar, that Perry stated that he would wait a little longer before he distributed the monies or the testimony of Louis Hecht, who corroborated by his testimony the conversation had between Perry and his brother (Jacques Hecht), or are we going to disbelieve the testimony of Perry's own bookkeeper who can only testify to the truth as emphasized by the records of George F. Perry & Sons? Are we going to sweep by the testimony of a disinterested certified accountant that the bookkeeper, Ruck, informed him when the notes were turned over by the appellee that he had no instructions from any one to credit the notes? Are we going to discredit the testimony of Jacob Fischel that Mr.

Fischel and Mr. Kramerman thought that Mr. Perry would do the right thing and there was no question that Mr. Perry could be trusted with seeing that things were properly carried out and done for the best interest of everybody. Is there no value to the testimony of Mr. Fischel that he told Kramerman "that he had a lot of creditors and just to prefer Mr. Perry would not be fair and that he would call a meeting of creditors and that if they did not all come along that he would put Kramerman into bankruptcy?" Are we to sweep away the testimony of Charles Koos, a bank president in the City of Newark, who testified that Mr. Perry was to act as trustee and that that was the understanding and that he would not stand for any one to turn over anything unless there was somebody behind it? Does the law call for more corroboration than the appellant has submitted?

The Court's attention is called to the testimony of Frankel (who attended the meeting of creditors representing a creditor) that he couldn't for the life of himself "even at this moment tell you why Kramerman should give Knoller a note." Can the testimony of Knoller, who testified in one breath that he did not know whether the trustee of Kramerman was suing *him* and in the next that he had filed a counter-claim against the trustee, lead the Court towards the light of truth? What then is left of the defense? The testimony of the appellee who testified that he received the notes and "put them out of the picture" that he wanted George F. Perry & Sons to be made a preferred creditor (and through all this the creditors sat hypnotized). Perry denies the testimony of Louis Hecht and says that Hecht came to him for financial assistance. He (Hecht) picked, in the city of a half million people, the appellee Perry

as a good samaritan. He went to him not to ask for an accounting of his trusteeship but for help in his business. We leave that story to the Court for weighing.

In closing the Court's attention is called to the fact that the appellee admitted on the trial that he did not turn over the \$1,000 held by him out of the \$9,100 to the Perry company until *after* the bankruptcy proceedings, and that it *was* probably after the accountant had examined the books of the Perry company. He also admitted that Kramererman probably suggested turning over the notes to a trustee or trustees.

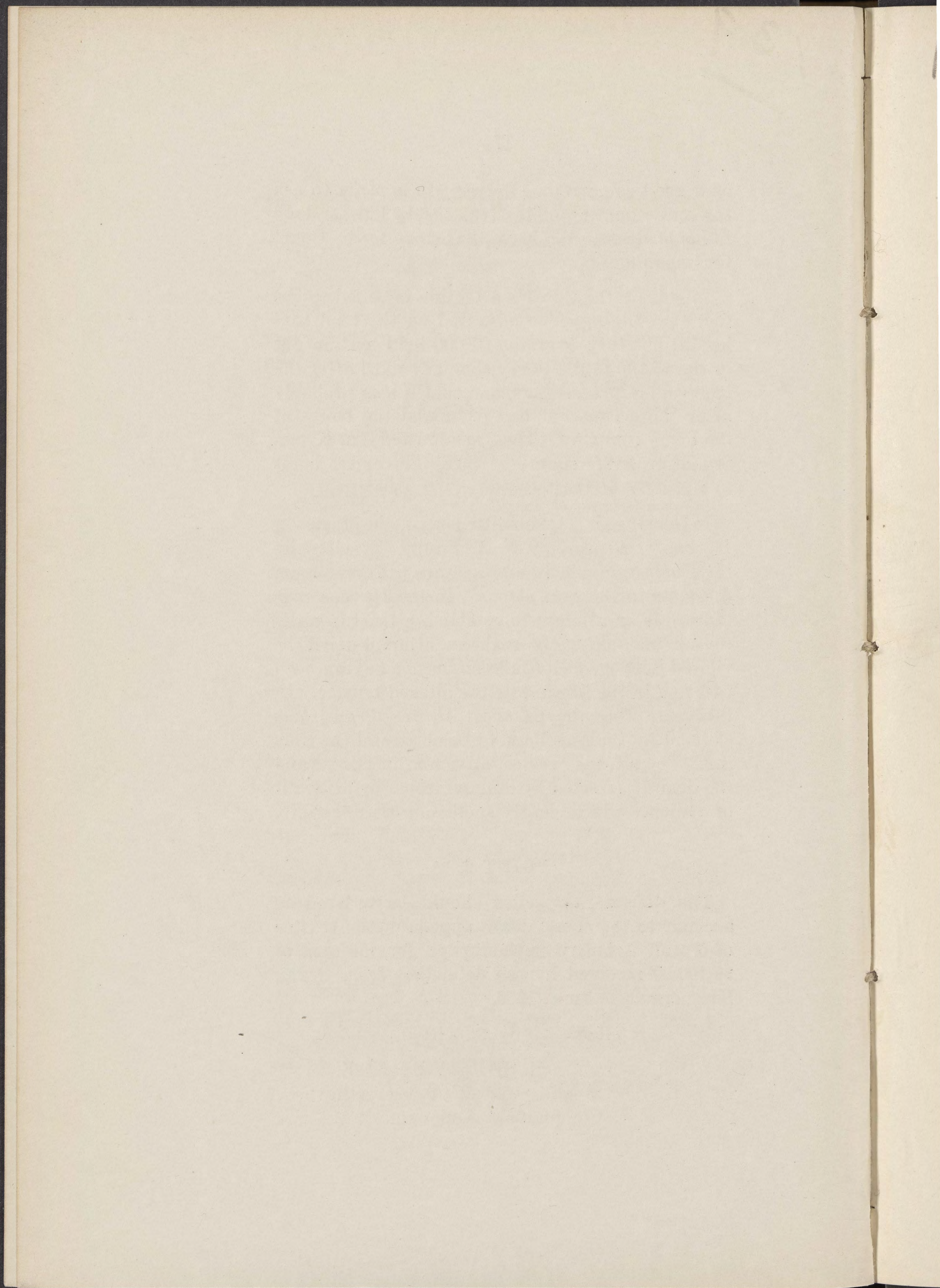
In closing it is submitted that the facts in *Havens v. Brown* (99 N. J. Equity 75) cited by the Court below in its opinion are different from the facts in the case at bar. In the Havens case there was an attempt to establish a trust in a deceased and naturally such an attempt must be viewed with suspicion, the claim not having been asserted in the lifetime of the alleged trustee. In this case the alleged trust is based on facts claimed by the appellant to be clear and convincing. The alleged trustee, alive and in Court, and the denials asserted by him overcome by a weight of evidence which clearly spells out a trusteeship.

POINT 2.

The defendant-appellee should be ordered to account to the complainant-appellant, the trustee of Frank Kramererman, bankrupt, for the sum of \$9,100.00 received by the defendant from Frank Kramererman in June, 1926.

Respectfully submitted,

S. SIDNEY SILVER,
Solicitor and of Counsel with the
Complainant-Appellant.



New Jersey Court of Errors and Appeals

J. TRACY HORTON, Trustee of
Frank Kramerman, bank-
rupt,

Complainant-Appellant,

vs.

J. FRANKLIN PERRY,

Defendant-Appellee.

BRIEF FOR DEFENDANT-APPELLEE.

Scope of the Appeal.

The bill of complaint in this action charged that the defendant, Mr. J. Franklin Perry, in June, 1926, received from Frank Kramerman notes aggregating Ninety-one Hundred (9,100) Dollars upon an alleged agreement that Mr. Perry would distribute the proceeds thereof among all the creditors of Frank Kramerman. The trustee in bankruptcy brought the suit *not* for the purpose of having payment distributed among all the creditors ratably, but for the purpose of having this Ninety-one Hundred (\$9,100) Dollars turned over to him, the trustee. *The appellant's brief indicates that this appeal is designed solely to review a question of fact, decided adversely to him.*

POINT I.

The evidence established that Mr. Perry received the notes, not in trust, but as treasurer of the Perry firm, in partial payment due to it, pursuant to, and in accordance with, prior arrangements made with the Perry firm.

1. Mr. J. Franklin Perry in June, 1926, was, and for many years prior thereto had been, the

treasurer of Geo. F. Perry & Sons, Inc., a corporation, one of the oldest and most reputable wholesale dealers of mason materials in New Jersey. Frank Kramerman had been dealing with the Perry firm. In February of 1926, Kramerman came to Mr. Perry and wanted to buy mason materials for the so-called Leon Realty Company job, on Market street (State of Case, bottom p. 124 and top p. 125). The terms of the payments to be made by Leon Realty Company to Kramerman were very unusual, "because it involved a payment of approximately sixteen thousand dollars in notes" (State of Case, p. 125, l. 3). After checking over the matter, the Perry firm agreed to supply mason materials for the Leon Realty job to Kramerman, and agreed to take "around seven or eight thousand dollars (of the Leon Realty notes) in payment of materials" (State of Case, p. 125, l. 30). These notes, Kramerman agreed to turn over in payment of the materials on that particular job (State of Case, p. 125, l. 32). During the same time, the Perry firm was supplying materials on three or four other jobs of Kramerman, continuing to sell materials until about March of that year, the last delivery date on each of these jobs being well within four months prior to June 9, 1926 (State of Case, p. 126, l. 15). Also during this time, the Perry firm was supplying materials for the Hershey street job, and being requested by Kramerman to release the right of lien on that job, agreed to do so upon the stipulation that an additional three or four thousand dollars of Leon notes were to be turned over for the release of the Hershey street job, instead of receiving cash from that job (State of Case, bottom p. 131 and top p. 132). Around June 9, 1926, Mr. Perry ascertained that Kramerman was "tied up" (State of Case, p. 129,

l. 20), and although the Leon Realty Company job was not completed, Kramerman had, as a matter of fact, to the surprise of Mr. Perry, actually received sixteen thousand dollars notes from the Leon Realty Company (State of Case, p. 129, ll. 28-38). Perry then asked for his notes, and was told by Kramerman that he, Kramerman, had disbursed some of the notes, and that the balance were in Mr. Fischel's possession (State of Case, p. 130, ll. 1-8).

2. Mr. Perry promptly went to Mr. Fischel's office, the meeting taking place in the private office of Mr. Fischel, in the presence of Mr. Fischel and at least also Mr. Frankel, Mr. Koos, Mr. Knoller, Mr. Kramerman and the late Frank Kearney (State of Case, p. 130, l. 25). Mr. Perry explained that under his firm's contracts with Mr. Kramerman, his firm had the right to the notes (State of Case, pp. 131-132), that his firm has the right of enforcing payment by a stop-notice on the Leon job (State of Case, top of p. 131, ll. 10-15), and by way of lien on the Dwork job, as well as the right of three or four thousand dollars of additional notes for releasing the Hershey street job (State of Case, p. 132, ll. 10-20). Mr. Kramerman then said "*I PROMISED MR. PERRY THE NOTES*" (State of Case, p. 132, l. 30). Then followed some general conversation to the effect that the Perry firm was being made a preferred creditor, but as a result of the conversation, the notes were turned over, endorsed by Kramerman, to the Perry firm (State of Case, p. 135). This transaction was not a secret transaction; it was done in the presence of at least Mr. Fischel (the attorney of Mr. Kramerman), Mr. Knoller, Mr. Koos, Mr. Frankel, the late Mr. Kearney, and possibly also Mr. Clark. *This transaction simply carried out*

the arrangement that Kramerman had made with the Perry firm to turn over the notes, in part as payment for the materials furnished for the Leon Realty job, and in part for the release of lien on the Hershey street job. Mr. Perry at no time agreed to take over the proceeds of the notes and pro-rate them proportionately to all the creditors (State of Case, p. 135, ll. 10-15). Mr. Perry took these notes in payment on account of the amount due to his firm and for no other reason or purpose (State of Case, p. 135, l. 15).

3. *After the notes had been turned over, there was another meeting in the outer room of Mr. Fischel's office, at which the affairs of Kramerman were discussed. Somebody asked about what had happened to the notes. Mr. Perry listed the notes that had been given to him by Mr. Kramerman (State of Case, p. 136, ll. 10-25), gave the information about the notes that had been given by Kramerman to the Clinton Trust Company and the other creditors (State of Case, p. 136, l. 25), and stated specifically "the notes are out of the picture." A suggestion was then made and adopted for the appointment of three trustees. A trust agreement was immediately drawn up, but there is not a single word in this trust agreement that the trustees were holding these notes, or that Perry was holding them, for the benefit of the creditors, or to distribute the the proceeds of the notes pro-rata.*

4. Of course, no attempt is being made, or will be made, to recite all of the evidence; the foregoing is only a brief summary of the acts and of statements made contemporaneously with those acts. The acts, which speak louder than words, clearly show that Mr. Perry received these notes simply as the treasurer of his firm.

His co-trustees, Mr. Clark and Mr. Koos, never asked him to turn over the collected proceeds. Mr. Clark is the head of a very large lumber concern in this city and Mr. Koos is the president of the Clinton Trust Company. Both of these concerns were creditors of Mr. Kramerman. Would not these men have asked Mr. Perry to turn over the proceeds of these notes if he had received the notes for the benefit of the creditors? The fact that these men never made any such request is most persuasive of the fact that Mr. Perry received them for his firm, and not as a trustee.

POINT II.

The credible evidence in this case is against the contention of the complainant, and supports the defendant's version of the transaction.

5. Kramerman was one of the witnesses called by the complainants. He testifies that of the Leon notes that he had received, he had given about two thousand dollars to the Colonial Woodworking Company in partial payment of what was due it (State of Case, p. 40, l. 26), had given one thousand dollars to the Clinton Trust Company in partial payment of what was due it (State of Case, p. 14, l. 30), had given Goldman & Schwartz, about a thousand dollars, and had given eight hundred dollars to a rabbi, a certain party in Roselle, by the name of Greenberg (State of Case, p. 40, and top of p. 41). In an unguarded moment, Mr. Kramerman, at bottom of page 41, says:

Q In any event, *every note you gave out was in payment of your bills?* A Yes, sir (State of Case, bottom p. 41).

If that is true, what reason is there for saying that the notes given to the Perry firm were

given on any other basis? Kramerman says that Perry supplied materials on five jobs (State of Case, p. 42, l. 12), that he owed the Perry firm about fifteen thousand dollars (State of Case, p. 42, l. 16), these being materials furnished within four months (State of Case, p. 42, l. 25), and that in June, 1926, no stop-notices had been filed in respect to the Leon job at 206 Market street (State of Case, p. 42, l. 30). Kramerman also said that when he started the Leon job, in February, 1926, he and Mr. Perry discussed the fact that the last payment from the Leon job was to be made in notes, and he, **KRAMERMAN, AGREED TO GIVE THE PERRY FIRM THE NOTES IN PAYMENT OF THAT JOB** (State of Case, p. 43, l. 35). Kramerman admits that he got the notes before he had actually completed the Leon job and does not deny that Perry expressed surprise that Kramerman had the notes before the job was finished (State of Case, p. 44, ll. 5-20). All of the jobs were jobs upon which the Perry firm had either a right of stop-notice or mechanic's lien (State of Case, p. 44, ll. 22-25). On June 9, 1926, Kramerman testifies, there was a conference in Mr. Fischel's private office between him, Kramerman, Mr. Fischel (Kramerman's attorney), Mr. Koos, Mr. Perry, Mr. Frankel and Mr. Knoller (State of Case, top of p. 23), at which time Mr. Perry asked for the notes (State of Case, p. 47, l. 30), and that after some conversation, which has no mention of trust in it, Kramerman delivered the notes to Mr. Perry in the presence of Mr. Fischel, Mr. Koos, Mr. Frankel and Mr. Knoller (State of Case, p. 49, ll. 25-30). Then followed the meeting in the outer room (State of Case, p. 49, ll. 30-40), where the question of what happened to the notes came up, and Mr. Perry "told them what he has got"

(State of Case, p. 51, l. 8), and told them the amount of the notes (State of Case, p. 51, l. 32). *Kramerman never went either to Koos or to Clark to complain of any alleged failure of Mr. Perry in turning over the proceeds of the notes* (State of Case, p. 54, ll. 10-12), even though no cash was being advanced for any jobs (State of Case, p. 55, l. 22). Clearly, this testimony of Mr. Kramerman corroborates Mr. Perry.

6. Henry J. Ruck was another witness called by the complainant. He testified that all of the ninety-one hundred dollar notes were credited to the account of Kramerman by the Perry firm in 1926 (State of Case, p. 79, l. 38), with the exception of two five hundred dollar notes that had been collected by Mr. Perry personally, but which was subsequently credited to the account of Mr. Kramerman (State of Case, p. 81, l. 30). Certainly, this testimony also is corroborative of Mr. Perry's testimony.

7. Jacob Fischel, another witness called by the complainant, instead of contradicting Mr. Perry, seems to bear out the material portions of Mr. Perry's statement of the facts. At page 92, he testifies:

The Witness: All right. I will try to get to that. I was requested to turn over notes, or have Mr. Kramerman turn over notes. The notes were in my safe and I brought them out to turn over the notes to Mr. Perry.

The Court: *Who asked you to do that?*

The Witness: *Mr. Perry and Mr. Frankel and Mr. Knoller and Mr. Kramerman joined along in it—thought that it would be well to do that, possibly, and I raised the question—(interrupted) (State of Case, top of p. 92).*

Further on, at page 94, line 10, *et seq.*, he says:

Q Were any of those questions concerning these notes? A I believe there were.

Q And did Perry state at that time—
(interrupted).

The Court: No.

Mr. Kanter: No. "What did Perry state?"

Q What did Perry state? A He said he had the notes.

Q *For what purpose?* A *I don't believe he, to my recollection, stated for what purpose, except that he let out that, if they all came along, the affair could be wound up very nicely and everybody would share properly; that he figured, if the work were all competed, at least about seventy-five per cent. would be realized by the creditors. That was conditioned, of course, on all of them joining in there.*

Q Was Mr. Koos there at any time? A Mr. Koos was in my office, and I think he was there during part of that meeting, in the outer office (State of Case, p. 94).

It must be noticed that the foregoing testimony of Mr. Fischel, all given under direct examination, DOES NOT CONTAIN ONE WORD IMPLYING THAT MR. PERRY IN ANY WAY AGREED TO HOLD THE NOTES AS TRUSTEE OR TO MAKE ANY PRO-RATA DISTRIBUTION THEREOF. Mr. Fischel admits that there was some discussion about the fact that these notes were to be turned over in accordance with some previous arrangements (State of Case, top of p. 95), but as he did not know whether that arrangement was the fact or not, he, Fischel, did not want to advise his client to turn over the notes. He further says, at page 83:

Q Didn't Perry say, "*Kramerman, I am entitled to those notes. You promised them*"

to me." Didn't Kramerman say that? A *He may have used that expression.*

Q And didn't he say that in your presence, before you went out to the large meeting? A Possibly, yes (State of Case, p. 95, ll. 35-40).

The notes were then turned over, and after that there was a general meeting in the outer office of Mr. Fischel. With reference to the conversation at that meeting, Mr. Fischel, at page 98, states:

The Court: What did he (meaning Mr. Perry) say?

Q What did he say? A And said that he had those notes. Now, whether it was in reply to a question by one of those present, who first asked, "where are those notes?" and Mr. Perry said, "I have the notes," or whether he said it without that, I don't recall.

Q *Was it this expression Mr. Perry used: "Those notes are out of the picture."* A I think he used some expression of that kind (State of Case, p. 98, ll. 1-15).

It is thus seen that Mr. Fischel's testimony also corroborates the testimony of Mr. J. Franklin Perry.

8. Another witness called by the complainant was Mr. Charles Koos, the president of Clinton Trust Company, the latter being one of the creditors of Frank Kramerman. Counsel for the complainant attempted to put in the mouth of this witness a version of the transaction that would be favorable to the complainant, but the Court prevented this, as is illustrated at the bottom of page 109, and top of page 110:

Mr. Silver: Does your Honor want—

The Court: That is a very leading question, Mr. Silver, you are putting the words right in his mouth.

Mr. Silver: Does your Honor want to—

The Court: What we would like to have Mr. Koos tell us is, what was said at the general meeting of the creditors, *without suggestion on your part as to what his answers are to be.*

Mr. Silver: All right.

The Witness: *Well, that the trustee be appointed to finish the work.* There was some jobs which there was a lot of money involved, I think, one on Chancellor avenue, about sixteen thousand dollars (State of Case, bottom of p. 109, and top of p. 110).

In other words, when this witness is not being prompted, he states that the only thing that happened at the general meeting was a discussion of the completion of the jobs, and mentions no statement that Perry took the notes for distribution. When counsel for the complainant, notwithstanding the Court's admonishing which has just been alluded to, asks this witness the direct question concerning the ninety-one hundred dollar notes, the testimony is as follows:

Q *Did you hear any discussion or statements made in the outer office as to the \$9,100 worth of notes which Perry had?*

A *I wouldn't want to say that—I don't recall* (State of Case, p. 110, ll. 15-20).

This witness goes on to explain, under cross examination, that the Clinton Trust Company had received one of the Leon Realty notes, that the notes turned over to Mr. Perry were so turned over in the presence of Koos, Fischel, Knoller and Frankel in the private office of Mr. Fischel, and specifically testified:

Q Of course. And when the notes were delivered to Perry, there was no trustee, either, was there? A Not before the notes were given over to him, no.

Q *The notes were given over before any trustees were appointed or any trustees were*

elected; isn't that true? A *Yes* (State of Case, p. 113, ll. 25-30).

Mr. Koos' testimony is barren of any actual evidence that Mr. Perry received these notes as a trustee. Counsel for the complainant attempted to cure Mr. Koos' testimony, so fatal to the complainant, by his re-direct examination (State of Case, p. 114, ll. 19-31), as follows:

Q But the discussion about turning notes over to Mr. Perry and having trustees was before the notes were turned over that day, wasn't it? A (Witness pauses.)

Q You remember that, don't you? A (Witness pauses.) Well, I wouldn't—couldn't say just how that was.

Q You mean— A It was—the understanding was, of course, that there be trustees appointed.

Q *And then the notes were given to Perry?* That is what I am *trying to make clear.* A *I think they (meaning the notes) were given before* (State of Case, p. 114, ll. 19-31).

In other words, the notes were turned over to Perry before there was any suggestion of trustees, and in this aspect of the case, Mr. Koos' testimony supports the contention of the defendant.

9. It is significant to observe that counsel for the complainant failed to call as his witness Mr. Clark, who was present in court (State of Case, p. 67, l. 13), failed to call Mr. Knoller, and failed to call Mr. Frankel. Instead of calling these witnesses, counsel for the complainant attempted to rely upon some half-baked statements of admissions, or quasi-admissions, alleged to have been made by Mr. Perry to the Hecht witnesses. All the other witnesses called by the complainant, who testified to any material facts, that is, Mr. Kramerman himself, Mr. Fischel, Mr.

Koos, and not excluding even Mr. Glueckfield (whom the Court knows, as indicated on page 63, line 30) corroborate the contention of the defendant that Mr. Perry received the notes, in accordance with previous arrangement, in partial payment of the accounts due to the Perry firm.

This Court will observe that the testimony of Mr. Glueckfield, a witness called by the complainant, whose testimony on direct examination seems so helpful to the complainant, is not even mentioned in the present brief of counsel for the complainant-appellant. It is fair to assume that counsel for complainant-appellant does not wish to assume the responsibility of arguing for the credibility of the evidence given by Mr. Glueckfield.

10. One of the witnesses which counsel for the complainant failed to call but whom the defendant called, was Mr. Charles Frankel. Mr. Frankel recalls the meetings in Mr. Fischel's office clearly. He points out there were two meetings. One meeting was in the private office of Mr. Fischel, and following that there was a general meeting in the outside office (State of Case, p. 115, l. 18). Mr. Frankel was representing Mr. Knoller who was a large creditor of Mr. Kramerman (State of Case, p. 115, l. 33). Mr. Perry requested the notes which Mr. Kramerman seemed willing to turn over, but Mr. Fischel didn't know whether they should be turned over or not. In any event, the notes were turned over, and this was all that happened in Mr. Fischel's private office. Particular emphasis is laid on the following testimony, at page 117, line 9, *et seq.*:

Q Now, have you told us everything that happened in Mr. Fischel's private office, up to that time? A I think so. There may have been one or two words said here, there

and elsewhere that did not amount to anything.

Q Was there ever a statement made directly or indirectly by *Mr. Perry* that he would hold those notes as trustee for the benefit of *Mr. Kramer*'s creditors? A No.

Q Of no fashion at all? A No.

Q No words of that character at all? A No (State of Case, p. 117, line 9, *et seq.*).

After this, there was a general meeting in the outside office of *Mr. Fischel*, and the only thing said in reference to those notes is contained in the following testimony (State of Case, p. 117, ll. 23-33):

Q Did you go out to the general meeting?

A I went out there.

Q Were you there during the entire time?

A I was there during the entire meeting.

Q Was the question of these notes, these \$9,100 worth of *Leon Realty* notes, brought up in any way? A Only this, that *Mr. Perry* was asked something about the notes, and *Mr. Perry* said, "**THESE NOTES ARE OUT OF THE PICTURE.** If you boys will come along and don't start any suits against *Mr. Kramer* and don't get—don't do anything in any way, I might play ball with you" (State of Case, p. 117, ll. 23-33).

Some time afterward, Exhibit C. 1, the trust agreement was drawn, but there was no suggestion that these notes were to be put in that paper's schedule of the assets held by the trustees (State of Case, p. 118, l. 18), and there was never any suggestion that *Perry* held the notes for the purpose of distributing them pro rata among the creditors (State of Case, p. 118, ll. 22-30). The notes were received by *Mr. Perry* before there was any election of trustees, and it was not known until the close of the general meeting whether there were to be any trustees or

who the trustees were to be. The rigorous cross examination of complainant's counsel did not in any way destroy this straightforward and truthful statement of this well reputed member of the Bar, corroborative of the defendant.

11. Mr. J. Franklin Perry was called as a witness in his own behalf. The circumstances to which he testifies and the statements of the parties made at the time, which have been alluded to under Point I, indicate clearly and forcibly that there was nothing underhanded or dishonest about the transaction, that the notes were received by him purely in part payment of the debts due to the Perry firm, and that he never, either at the time that he received the notes or at any time afterwards, agreed to make distribution of the proceeds thereof. The rigorous cross examination of counsel for the complainant did not in any way destroy this statement. It is a pleasure to have presented a witness of this character to the Court, and we asked the Court to consider the demeanor and attitude of this witness on the stand as well as his frank and straightforward statements as strong evidence of the truth of his version of the transaction.

12. Another witness which counsel for the complainant failed to call was Mr. David M. Knoller. He also was present at the meeting in Mr. Fischel's private office, and his evidence briefly is as follows:

Q *Was there any promise on the part of Mr. Perry that those notes would be held apart by him in trust or to distribute the notes for the benefit of creditors?* A No, sir (State of Case, p. 160, l. 15).

Q *Did he say that he was going to distribute this—did he use the expression "out of the picture" with reference to this \$9,100?* A I am not certain, but *I think he did* (State of Case, p. 161, l. 1).

Q *Did you consider the \$9,100 as an asset?* A *Did I consider it? I don't think —they were considered as an asset.*

Q *By whom?*

Mr. Kanter: He said "I don't think they were."

The Witness: *They were not considered as an asset* (State of Case, p. 161, l. 35).

Q *You considered the \$9,100 worth of notes went out of the picture?* A *I think I did at the time* (State of Case, bottom of p. 161).

Mr. Knoller was a witness who would gain by a distribution of the notes and his testimony is, therefore, against his financial interests. Certainly, when a witness testifies to that effect, his testimony is entitled to great weight, and it corroborates the defendant's version of this transaction.

13. It is axiomatic that the complainant, under the law, is obliged to prove his case by the greater weight of the evidence. This, he has singularly failed to do. Instead of the testimony favoring the complainant, we respectfully contend that it weighs, and overweighs, in favor of the defendant. Mr. J. Franklin Perry is supported not only by the circumstances, but by the testimony of Mr. Kramerman, Mr. Ruck, Mr. Fischel, Mr. Koos, Mr. Frankel, and Mr. Knoller; as against this testimony, we have the inconsequential testimony of the Hecht boys and Mr. Glueckfield; the less said of the latter, the better. The testimony of Mr. Silberman does not in any way bear on the issues, as the Court, in the course of the trial, indicated (State of Case, p. 89, l. 25) that there was no necessity for cross examining that witness. We urge that on the facts themselves there should be an adjudication in favor of the defendant. It must

be clearly borne in mind that the Perry firm received nothing as a result of this transaction, excepting, what under the law it could have received, had it enforced its rights by way of stop-notice or by way of mechanic's lien.

POINT III.

The record before the Court does not, in equity, justify any decree in favor of the complainant.

14. It has been repeatedly held that a promise to hold property in trust will not be enforced, unless the trust is established by clear, unequivocal and convincing proof. Only a few of the late cases on this subject will be referred to.

15. Thus in the case of *Havens v. Brown*, 99 Eq. 75, 132 Atl. 755, decided by Vice-Chancellor Backes, in March, 1926, after examining a large mass of testimony, some of which indicated that the property was to be held in trust, the Court found that the intention to create the trust was *highly improbable* and was challenged by acts *inconsistent* with the idea of the trust. So, in the case at bar, that Mr. Perry should have created a trust in respect to the notes, when the Perry firm could have recovered all of its money either by way of stop-notice or by way of mechanic's lien is *highly improbable*. *Furthermore, it is uncontradicted in this case that Kramermerman had promised these notes long prior to the time that the Perry firm received them, and contemporaneously with the time that the Perry firm first extended credit on the Leon job, and again at the time that the Perry firm released its right of lien on the Hershey street job. THE PERRY FIRM CAN NO LONGER BE RESTORED TO THE POSITION IT THEN OC-*

CUPIED. IN VIEW OF THESE FACTS, IT IS ONLY EQUITABLE THAT THE PERRY FIRM SHOULD BE PERMITTED TO CONTINUE TO HAVE WHAT IT IS JUSTLY AND EQUITABLY ENTITLED TO. The fact that none of the creditors, and none of the co-trustees, ever asked Mr. Perry to turn over any part of the proceeds shows conclusively that, at the time that the notes were received by Perry, from his firm, it was understood to be in part payment of its account, and *the silence of these creditors and co-trustees is inconsistent with the claim of alleged trust.* The present suit is only an afterthought. And neither Perry, nor any other honest man can guard himself against testimony of alleged admission of the character testified to by the Hecht boys.

16. In the case of *Stines v. Carton*, 98 Eq. 415, where the opinion of the late Vice-Chancellor Foster was upheld by the Court of Errors and Appeals, for the reasons given by the Vice-Chancellor, that opinion, in the last paragraph thereof, in part, reads as follows:

“While it is, of course, true that no special language need be employed to create a trust such as White now claims, it is equally true that an intention to establish such a trust and an effort to give effect to intention must be shown by a clear preponderance of the proof, in order to establish such a trust. As no such proof is present here, a decree will be advised that the fund be paid to the executor of O’Malley’s estate.” *Stines v. Carton*, 98 Eq. 415, 419.

Where, in the case at bar, is there a “clear preponderance” of evidence in favor of the complainant?

17. Applying the principle of the case cited in the preceding paragraph to the facts of the

case at bar, it seems clear to us that the complainant failed to establish his case by proof preponderating in his favor. The cold record, now before this Court, establishes the truth of the defendant's version of the transaction under consideration. It is impossible to transmit with this record the witness's blush, the hard swallowing, the nervous twitch or the other reflex action which indicates that the witness is not telling the truth. These things were before the trial court; unfortunately, they cannot be demonstrated to this Court. But the members of this Court know that in deciding questions of fact, the trier of the facts is properly influenced, not only by the spoken testimony, but by the silent testimony which is also important. Under these circumstances, we respectfully submit that this Court cannot very well conclude that the decision of the Vice-Chancellor was erroneous. Even with this silent testimony omitted, the cold record itself demonstrates that the decision below is correct.

POINT IV.

For the reasons herein urged, it is submitted that the decree of dismissal of the bill of complaint should be affirmed with costs and counsel fee be taxed in favor of the appellee against the appellant.

KANTER & KANTER,
Solicitors for and of Counsel with
the Defendant-Appellee.

INDEX.

	PAGE
Writ of Habeas Corpus (December 28, 1882)	1
Order	3
Indorsement	4
Indorsement	12
Certificate of Indorsement	14
Signature	15
Order of Indorsement	17
Transfer	18
Case of	108
Signature	108
Judges	150
Signature	157
Indorsement	158
Signature	157
Opinion of	158
Rule on	161
Writ of	163
Writ of	17
	37
	30
	30
	38
	148
	148