

TO THE HONORABLE JAMES B. NEWMAN, CHANCELLOR HOLDING PART TWO
OF THE CHANCERY COURT AT NASHVILLE:

THE BILL OF COMPLAINT OF THE UNIVERSITY OF THE SOUTH,
a corporation, duly chartered and existing under the laws of
Tennessee, with its situs at Sewanee, Franklin County, Tennessee,

against

NASHVILLE BRANCH FEDERAL RESERVE BANK OF ATLANTA,
a corporation chartered and existing under the laws of the
United States, having its principal office at Nashville,
Davidson County, Tennessee.

Complainant respectfully shows to the Court:

I

That complainant is a charitable corporation, chartered
and existing under the laws of Tennessee, and is an educational
institution, with its buildings and equipment located at Sewanee,
in Franklin County, Tennessee.

That the defendant Nashville Branch Federal Reserve
Bank is a banking institution, chartered under the laws of the
United States, and engaged in business in Nashville, Davidson
County, Tennessee.

II

That the National Bank of Franklin was a corporation,
chartered under the laws of the United States and in Sep-

in the banking business in Franklin, Williamson County, Tennessee. The chief officials of said bank were E. E. Green, its Cashier, and Bates L. Green, its Assistant Cashier.

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Prior to September 1926, the Misses Claybrooke had on deposit in the said National Bank of Franklin a considerable amount of money, more than twenty thousand dollars (\$20,000.00) and also a fund in excess of eight thousand dollars (\$8,000.00) which stood in the name of Miss Eliza M. Claybrooke as Administratrix of their deceased sister, Miss Annie Claybrooke.

The Misses Claybrooke, being members of the Episcopal Church, wished to create a memorial for their deceased sister, and decided to do this by endowing a scholarship in the University of the South, which is an institution conducted under the auspices of that church. They, thereupon, expressed to the officials of the complainant University of the South their intention to make a gift of eight thousand dollars (\$8,000.00) for the purpose of endowing this scholarship which gift was thankfully accepted by the complainant.

III

The Misses Claybrooke, about September 1, 1926, went to the said National Bank of Franklin, and asked the Cashier to write a check for eight thousand dollars (\$8,000.00) payable to the University of the South, to be drawn against the account of Miss Eliza M. Claybrooke, as Administrator. As heretofore stated, there was a sum in excess of eight thousand dollars (\$8,000.00) standing to the credit of this account at that time, and no other check was ever drawn by

said Administratrix against said account.

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The said E. E. Green and his son, Bates L. Green, were then engaged in various fraudulent transactions, which caused the ruin of said bank, as hereinafter set forth, and were manipulating the books and the funds on deposit so as to conceal thefts and fraudulent abstractions amounting to many thousands of dollars perpetrated by the said E. E. Green with the connivance and assistance of his son, the said Bates L. Green.

When the Misses Claybrooke made this request the said E. E. Green informed them that under the law thirty days' notice was required before they could draw out their money. The Misses Claybrooke, being absolutely ignorant of business matters, and having the utmost confidence in the said E. E. Green (who was considered one of the leading citizens of Franklin, and who then enjoined the respect of the entire community) believed his false statement in this behalf, and he accordingly made out a check in favor of the University of the South, Sewanee, Tennessee, in the sum of eight thousand dollars (\$8,000.00) but it was dated thirty days ahead, namely, Oct. 1, 1926.

Said check is in words and figures as follows:

"Franklin Tenn. Oct.1st, 1926 No. _____

"NATIONAL BANK OF FRANKLIN 87-137
Franklin, Tenn.

Pay to University of the South Sewanee Tenn. or order \$8000.00
Eight Thousand ----- Dollars
For _____

Eliza M. Claybrooke, Admx.
of estate of Annie W. Claybrooke"

The original is in possession of complainant and will be filed on or before the hearing.

IV

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That said check for \$8,000.00 was sent to complainant and was acknowledged by its Vice-Chancellor in the early part of September, 1926. In accordance with the request made by the Misses Claybrooke, said check dated October 1, 1926, was not deposited when received, but was held by the officials of said University until October 1, 1926, at which time it was deposited in the Bank of Sewanee at Sewanee, Tennessee, to the credit of your complainant.

The Bank of Sewanee in a cash letter, dated October 1, 1926, forwarded this check to the Hamilton National Bank at Chattanooga, Tennessee; but said letter probably missed the last mail on October 1, 1926 and did not leave Sewanee until October 2nd. The 3rd of October 1926 was Sunday, and the Hamilton National Bank (as complainant is informed and believes) did not receive this letter until Monday, October 4, 1926. On that date, to-wit, October 4, 1926, said check was forwarded to the defendant Nashville Branch Atlanta Federal Reserve Bank at Nashville, Tennessee, and was received by said defendant on October 5, 1926.

On said date, to-wit, October 5, 1926, said defendant forwarded this \$8,000.00 item, together with various other items, direct to the drawee bank, viz, the National Bank of Franklin. Said \$8,000.00 check was received by said National Bank of Franklin on October 6, 1926, and was listed by said bank as a cash item at the close of business hours on October 6, 1926, while said National Bank of Franklin was open and carrying on its business in the usual and customary manner.

No protest was made, nor was any notice of non-payment given, although such notice by wire is imperatively required in case of all items over \$500.00 by the rules of the Federal Reserve Bank. 420

The National Bank of Franklin then had to its credit with the defendant Nashville Branch Federal Reserve Bank of Atlanta a large amount of cash - more than twenty thousand dollars (\$20,000.00) and much more than sufficient to pay said \$8,000.00 check.

V

That the said National Bank of Franklin opened its doors for business in the usual way on the morning of October 7, 1926, but before the close of business hours suspended payment and closed its doors. The suspension of the bank was caused by the discovery of the thefts and defalcations on the part of the said E. E. Green and Eates L. Green, which resulted in the insolvency of said bank. Shortly thereafter, a receiver was appointed, and the assets of the bank are being liquidated under said receivership. Complainant states, on information and belief, that not more than ten (10) or fifteen (15) cents on the dollar will be paid to the depositors.

VI

That on October 7, 1926, the day of said suspension, the defendant Nashville Branch Federal Reserve Bank of Atlanta sent an employee and agent to Franklin, and although said \$8,000.00 check had regularly gone through as a cash item, in the regular course of business, on October 6, 1926, without

a check is not paid, the said defendant, through its said agent and employee, brought said check back to Nashville, and thereafter returned the same to the Hamilton National Bank which returned it to the Bank of Sewanee, claiming that said check was unpaid for lack of sufficient funds.

On and prior to October 7, 1926, the said National Bank of Franklin was indebted to the defendant in large amounts, some of them secured by notes or other collateral; and the purpose of said defendant in causing said \$8,000.00 check to be taken from the bank, after it had regularly gone through on the preceding day in due course of business, was to obtain for itself the benefit of said \$8,000.00, after it learned of the closing and possible insolvency of said Franklin Bank.

VII

Complainant is advised and charges that under the law of Tennessee the defendant was the agent of complainant, and as such was acting in a fiduciary capacity in collecting said check; and that as such agent, it could not lawfully take any step in furtherance of its own interest, as opposed to the interest of its principal, the holder of the check. That in attempting to recall said \$8,000.00 item, and charge the same back, after the check had been put through in the ordinary course of business, on the preceding day, said defendant was endeavoring to conserve for itself and to its own indebtedness the cash which it held for the credit of the National Bank of Franklin, and complainant is advised that this constituted a breach of trust on the part of said defendant, and a violation of the duty owed by agent to principal and that said defendant is in equity liable to account to complainant, as the holder of said check, in the sum of

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eight thousand dollars (\$8,000.00) with interest.

PREMISES CONSIDERED, COMPLAINANT PRAYS:

1. That process issue, requiring the said defendant to answer this bill, but not under oath, which is waived.
2. That complainant be given a decree against the defendant in the sum of eight thousand dollars (\$8,000.00) with interest.
3. That if complainant has in aught mistaken its remedy, it be given such other and further relief as it in equity may be entitled to ask.
4. And for general relief.

Thomas H. Malone,

Wm. J. Wade,

Solrs for Complt.

I am surety for costs,

Thomas H. Malone.