

INDEX.

	PAGE
Complaint	1
Affidavit of Clifford J. Heath.....	7
Order to Show Cause and Appointing Receiver	11
Order Continuing Receiver	15
Notice of Motion to Strike Out Complaint as to Defendant Henn	18
Order Striking Out Complaint as to Defendant Henn	20
Order for Abandonment by Receiver of Four Parcels of Henn Property	21
Petition of Frederick C. Henn That Receiver Account for and Pay Over Moneys Collected From Henn Properties.....	27
Order to Show Cause on Foregoing Petition	36
Order Continuing Until Filing of Receiver's Final Account the Matter of Foregoing Petition	37
Notice of Renewing Matter of Petition and Order of November 15, 1927.....	39
Proof of Service of Foregoing Notice.....	40
Affidavit of F. A. Sullivan of Order to Show Cause of November 16, 1927.....	42
Exhibit A, Accompanying Foregoing Affidavit	47
Affidavit in Support of Order to Show Cause of November 15, 1928.....	57
Proof of Service of Foregoing Affidavits....	58
Order Passing Account of Receivers, Etc...	60
Order Dismissing Petition and Order to Show Cause of November 15, 1927.....	64
Affidavit of John Drewen	65
Notice of Appeal	67
Petition of Appeal	68

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Complaint.

(Filed August 15, 1927.)

In Chancery of New Jersey

To his Honor, Edwin Robert Walker, Chancellor 10
of the State of New Jersey:

Complainant, Clifford J. Heath, of the Borough of Palisade Park, in the State of New Jersey, on behalf of complainant and all other stockholders and creditors who may come in and contribute to the expense of this suit, respectfully shows:

1. That the complainant is a stockholder of the defendant, Clifford J. Heath, Inc., a corporation 20
of New Jersey.

2. Defendant Clifford J. Heath, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having been incorporated in 1924 with an authorized capital stock of \$25,000 and a paid in capital stock of \$2,000.

3. The business of the defendant Clifford J. Heath, Inc., is purchase and sale of real estate, construction of real estate, insurance, and general real estate and insurance business. 30

4. The principal place of business of the defendant Clifford J. Heath, Inc., is at 19 Roff Avenue, Palisade Park. The officers of the defendant company are complainant, President, and Beatrice H. Heath, Secretary.

5. That the defendant Clifford J. Heath, Inc., is what is commonly known as a closed corporation, all the stock being owned by complainant 40

Complaint.

and his wife, with the exception of one share in the name of complainant's brother, Victor R. Heath, as qualifying director, but that part of same is pledged as collateral security for loan made to the defendant corporation by Frederick C. Henn, a counsellor at law of Jersey City, New Jersey.

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6. Complainant charges the fact to be that the defendant corporation is solvent within the meaning of the statute of the State of New Jersey in such case made and provided, but that the defendant company has no cash on hand with which to pay its creditors on accounts long past due and owing; that the defendant corporation is unable to meet its maturing debts and its business is at a standstill.

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7. That the assets of the defendant Clifford J. Heath, Inc., consist of a five store and six apartment building located on the southeast corner of Roff and Columbia Avenues, Palisade Park, New Jersey, valued at \$60,000 and upwards; 104-106-108 Columbia Avenue, Palisade Park, consisting of six apartments and eight garages valued at \$40,000; 110 Columbia Avenue consisting of eighteen apartments and twelve garages valued at \$70,000; 6-16 State Highway, Borough of Palisade Park consisting of a 175 car garage, six stores and twelve apartments valued at \$175,000; 13-19 Roff Avenue and 48-52 Columbia Avenue consisting of six stores and five apartments valued at \$60,000; 24 Columbia Avenue, a 62 apartment building valued at \$200,000; an uncompleted 8 story building located at 44 Columbia Avenue consisting of forty-five apartments and five stores and valued at \$175,000; three lots located on the northwest corner of Roff and Columbia Avenues

Complaint.

valued at \$20,000; a first mortgage in the amount of \$2,500 located on the north side of State Highway, being part of lots 18-19-20 in Block 39; a first mortgage in the amount of \$7,500 located on premises known as 1099 Linden Avenue in the Borough of Ridgefield; stock, machinery and office equipment of the value of approximately \$10,000, making a total of \$820,000.

10

8. That the liabilities of the defendant Clifford J. Heath, Inc., amount to \$488,000, consisting of mortgages covering the real estate aforementioned and the further sum of approximately \$75,000 of secured and unsecured claims.

8. That the defendant Frederick C. Henn is an attorney-at-law, formerly attorney for the defendant Clifford C. Heath, Inc.

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9. Complainant further charges that at various times, complainant, on behalf of the defendant corporation, did make, execute and deliver instruments purporting to be deeds on various of the buildings aforementioned of the defendant corporation to the defendant Frederick C. Henn, which deeds were intended to operate solely as collateral for a certain indebtedness of the defendant corporation, and complainant charges that the said instruments were intended to act as mortgages and not deeds.

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10. Complainant further charges that the said Frederick C. Henn acted as solicitor for the defendant company and that the indebtedness owing to the said Frederick C. Henn has never been definitely ascertained.

11. That there are pending at the present time several mechanic lien claims against the defendant's assets and defendant charges that the assets

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Complaint.

10 of the defendant company are subject to judgments, executions and suits that have been or may be brought against the defendant corporation by its creditors. That unless the assets of said defendant company are properly marshalled by a receiver or receivers to be appointed for the said company, said corporation will be subject to vexatious and costly litigation; and that in the event of forced sales, its property will bring very much less than its fair and reasonable value, all of which will be a great detriment to complainant and the other creditors and stockholders of the defendant corporation; and complainant believes that unless this court, in view of the facts aforesaid, will deal with its property as a single trust fund, and appoint a receiver, its property will be dissipated to 20 such an extent that its stockholders will realize little or nothing from its holdings and in all probabilities the creditors will be unable to collect their claims or any substantial part thereof against said defendant; and that the intervention of this court is necessary for the protection of the said stockholders and creditors.

30 12. Complainant further charges that the business of the defendant company is not being and has not been conducted with safety to the public and its creditors and advantage to its stockholders, nor is there any probability or likelihood of its becoming able to pay same within a reasonable time in the near future.

Complainant is without adequate remedy at law and therefore prays:

40 1. That the said defendants, Clifford J. Heath, Inc., a corporation, and Frederick C. Henn, may answer this bill of complaint without oath and each statement therein made.

Complaint.

2. That the said defendant, Clifford J. Heath, Inc. may be decreed that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its stockholders and creditors and that same cannot be conducted with safety to the public and advantage to the stockholders.

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3. That a receiver or receivers be appointed for the said defendant corporation according to the statute of this state in such case made and provided and the jurisdiction of this court in matters of this kind.

4. That an injunction issue from this Honorable Court restraining the said defendant corporation, and its officers, servants and agents, from exercising any of its right, privileges or franchises granted by the State of New Jersey to said corporation and from paying out, selling, assigning or transferring any of its assets, money, funds, lands and tenements or effects except to a receiver appointed by this court, until the court shall otherwise order.

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5. That the assets of the said defendant corporation and the rights of complainant and the receiver to be appointed and also of creditors and stockholders be ascertained.

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6. That the court fully administer the funds being the entire assets of the defendant corporation and for that purpose marshal and ascertain all of its assets, liens, and priorities, if any, existing on all parts thereof, and enforce the lawful liens and rights of all the creditors and stockholders of the defendant corporation as they may be finally ascertained.

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Complaint.

10 7. That a writ of injunction be issued against defendant, Frederick C. Henn, enjoining and restraining the said Frederick C. Henn from transferring, encumbering, mortgaging, exchanging or in any manner dealing with any other property now standing in his name that at any time was the property of the defendant corporation.

8. That the receiver to be appointed in this cause be authorized to take control of all of the properties, the title to which was in the name of the defendant, Clifford J. Heath, Inc. and which is now in the name of Frederick C. Henn.

20 9. That Frederick C. Henn account to the defendant, Clifford J. Heath, Inc., or to the receiver appointed in its stead, for all of the rents heretofore collected on properties in which title was formerly in Clifford J. Heath, Inc., and that all conveyances made to the said Frederick C. Henn be set aside or decreed to be as security for any sums found due by this Court to the said Frederick C. Henn, and that this Court determine the amount, if any, due to the said Frederick C. Henn from the defendant, Clifford J. Heath, Inc.

30 10. That a writ of subpoena may issue, commanding said defendants, Clifford J. Heath, Inc., and Frederick C. Henn, to answer the bill of complaint and to abide by such decree as this Court may make in the premises.

11. That the complainant may have such other and further relief as the nature of the case may require.

WILLIAM HARRIS,
Solicitor for and of Counsel
with Complainant.

Affidavit of Clifford J. Heath.

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

CLIFFORD J. HEATH, being duly sworn according to law upon his oath deposes and says: 10

1. I am the complainant named in the foregoing bill of complaint. I have read the same and the contents thereof is true to the best of my knowledge, information and belief.

2. I am a stockholder of the Clifford J. Heath, Inc., a corporation of New Jersey, which was organized under and by virtue of the laws of New Jersey, having been incorporated in 1924 with an authorized capital stock of \$25,000 and paid in capital stock of \$2,000. 20

3. That the business of the defendant company is to purchase and sell real estate, construction of real estate, insurance and general real estate and insurance business.

4. That the principal place of business of the defendant company is 19 Roff Avenue, Palisades Park, New Jersey. That the officers of the defendant company are myself as President, Beatrice Heath, secretary. 30

5. That the defendant company is, what is commonly known as a closed corporation, all stock being owned by myself and my wife, with the exception of one share in the name of my brother, as qualifying director, but that part of same is pledged as collateral security for a loan made to the defendant corporation by Frederick C. Henn, a counsellor at law of Jersey City, N. J. 40

Affidavit of Clifford J. Heath.

10 6. I believe that the defendant company is solvent within the meaning of the statute of the State of New Jersey in such case made and provided, but that the defendant company has no cash on hand with which to pay its creditors on accounts long past due and owing; that the defendant corporation is unable to meet its matured debts and its business is at a standstill.

20 7. That the assets of the defendant corporation consist of five-store and six-apartment building located on the southeast corner of Roff and Columbia Avenues, Palisades Park, N. J., valued at \$60,000—104-106-108 Columbia Avenue, consisting of six apartments and eight garages valued at \$40,000—110 Columbia Avenue, consisting of 18
30 apartments and 12 garages valued at \$70,000—175-car garage at 6-16 State Highway, 6 stores and 12 apartments valued at \$175,000—13-19 Roff Avenue, 48-52 Columbia Avenue, consisting of six stores and five apartments valued at \$60,000—24 Columbia Avenue, 62 apartment building valued at \$200,000—uncompleted 8-story building 44 Columbia Avenue, consisting of 45 apartments and 5 stores valued at \$175,000—3 lots located on the northwest corner of Roff and Columbia Avenue valued at \$20,000—first mortgage of \$2,500 located on the north side of State Highway being part of lots 18-19-20, block 39—first mortgage of \$7,500 located on premises known as 1099 Linden Avenue, Ridgefield—stock and machinery and office equipment valued at \$10,000.00 making a total of \$820,000.00.

40 8. That the liabilities of the defendant company amount to \$488,000, consisting of mortgages covering the real estate aforementioned and the further sum of \$75,000 on secured and unsecured claims.

Affidavit of Clifford J. Heath.

9. That the attorney for the company was Frederick C. Henn, and that while acting as attorney he advised me to have the corporation transfer to him various deeds and mortgages for various properties; that I did so with the understanding that it was merely to hold said deeds, mortgages, etc., for the company, that there is some money due to said Frederick C. Henn, but the amount is very small compared with the assets that was transferred to the said Frederick C. Henn, and that the said Frederick C. Henn promised to collect the rents, and account to me or the company for all moneys collected. It was distinctly understood between Frederick C. Henn and myself that the property was being transferred to the said Frederick C. Henn, and to be held by him for the company, and the exact reason why he wanted the same transferred was not made known to me, but he said that it was for my protection, and I hereby state that all of the properties are the properties of the company.

There are pending at the present time several mechanic lien proceedings against the defendant's assets and the assets of the defendant corporation are subject to judgments, executions and suits that have been or may be brought against the defendant corporation by its creditors. That unless the assets of said defendant corporation are properly marshalled by a receiver or receivers to be appointed, said corporation will be subject to vexatious and costly litigation. That in the event of forced sales its property will bring much less than its fair value, all of which will be detrimental to myself and other creditors and stockholders.

I believe that unless this court, in view of the facts aforesaid, deals with the property as a single trust fund and appoints a receiver, the

Affidavit of Clifford J. Heath.

10 property will be dissipated, and that the stockholders and creditors will realize little or nothing, and in all probabilities the creditors will be unable to collect their claims or a substantial portion thereof. I believe the intervention of this court is necessary for the protection of said stockholders and creditors.

I believe that the business of the defendant company is not being and has not been conducted with safety to the public and its creditors and advantage to its stockholders, nor is there any likelihood of it being or becoming able to pay same within a reasonable time, within the near future.

CLIFFORD J. HEATH.

20 Sworn and subscribed to before }
me this 12 day of August, 1927. }

CAROLINE ZIEGLER,
Notary Public of N. J.

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Order to Show Cause and Appointing Receiver.

stockholders and creditors, and that same cannot be conducted with safety to the public and its creditors and advantage to the stockholders; and it is further

10 ORDERED that an injunction issue against Clifford J. Heath, Inc., a corporation, according to the prayer of the Bill of Complaint and that the said corporation, its officers, servants and agents absolutely desist and refrain and they are hereby enjoined and restrained from exercising any of its privileges or franchises and from collecting or receiving any debts or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements, or effects except to a receiver appointed by this Court; and it is further

20 ORDERED that Harry G. Hendricks, of the Town of South Orange, in the State be and he is hereby appointed receiver for the creditors and stockholders of the said Clifford J. Heath, Inc., a corporation, with all powers incident thereto and that he do perform all the duties imposed upon him by the Statutes of this State in such case made and provided; and it is further

30 ORDERED that the said receiver before entering upon his duties as such receiver take the oath prescribed by law and give bond to the Chancellor of the State of New Jersey, in the sum of \$20,000 conditioned for the faithful performance of his duties, to be approved as to form and security thereof by any one of the Special Masters of this Court; and it is further

40 ORDERED that the defendant, Frederick C. Henn, show cause before this court on the 22 day of August, 1927, at ten o'clock in the forenoon or as soon thereafter as the matter can be heard, at the

Order to Show Cause and Appointing Receiver.

Chancery Chambers in the City of Jersey City, New Jersey, why an injunction should not be issued against him, enjoining and restraining him from transferring, mortgaging, exchanging, collecting rents or in any manner dealing with the property, the title of which was heretofore in the name of the defendant, Clifford J. Heath, Inc. and then and there show cause why the receiver hereinbefore named should not take possession of said properties, and then and there show cause why the instruments purporting to be deeds, heretofore made by the defendant, Clifford J. Heath, Inc. to the said Frederick C. Henn should not be decreed to be mortgages, and then and there propound his claim as to the amount due him; and it is further

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ORDERED that pending the hearing of the rule to show cause in this matter the said Frederick C. Henn is hereby restrained from using any of the funds collected from rents from the properties heretofore owned by the said defendant, Clifford J. Heath, Inc., and all moneys that are collected shall be deposited in a separate account subject to further order of this court; and it is further

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ORDERED that the defendant, Frederick C. Henn, account to the defendant, Clifford J. Heath, Inc., or the receiver to be appointed in its place, for all rents heretofore collected or hereafter collected on properties at any time owned by the defendant, Clifford J. Heath, Inc., or title to which was in the name of Clifford J. Heath, Inc.; and it is further

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ORDERED that a copy of this order together with a copy of the bill, which may be certified to by the solicitor for the complainant, be served on the said

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Order to Show Cause and Appointing Receiver.

Frederick C. Henn within three days from the date hereof; and it is further

10 ORDERED that the creditors and stockholders of said defendant corporation show cause before this Court on the twenty-second day of August, 1926, at ten o'clock in the forenoon, at the Chancery Chambers, Jersey City, New Jersey, or as soon thereafter as the matter can be heard, why the said receiver should not be continued or why some other person should not be appointed receiver in his place or with him as co-receiver; and it is further

20 ORDERED that a notice of this order (which need not be certified) be mailed to all creditors and stockholders of said defendant corporation, whose names and addresses the said receiver shall be able to ascertain at their last known post-office addresses within three days of the date hereof.

Respectfully advised,

EDWIN ROBERT WALKER,
C.

ALONZO CHURCH,
V. C.

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Order Continuing Receiver.

(Filed August 22, 1927.)

IN CHANCERY OF NEW JERSEY.

Between

CLIFFORD J. HEATH,
Complainant,

and

CLIFFORD J. HEATH, INC., a Corpo-
ration, and FREDERICK C. HENN,
Defendant.

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On Bill, &c.
Order
Continuing
Receiver.

This matter being opened to the Court by Wil-
liam Harris, of counsel with complainant, and it
appearing to the Court that on the 15th day of
August, 1927, an order was made in this cause
wherein among other things the creditors and
stockholders of the defendant corporation were to
show cause before this Court on the 22nd day of
August, 1927, why the receiver heretofore ap-
pointed in this cause should not be continued re-
ceiver, why any other person should not be ap-
pointed receiver in his stead or with him as co-
receiver, and proof of mailing of a notice of said
order to the creditors and stockholders of said
defendant corporation, which the receiver was able
to ascertain, being presented to this Court and
being filed, and service of a copy of the order ap-
pointing statutory receiver upon Frederick C.
Henn having been filed; and this matter now
being opened to the Court in the presence of Ran-
dolph Perkins, solicitor for Frederick C. Henn,

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Order Continuing Receiver.

and counsel representing creditors, and due cause being shown for the granting of this order, it is on this 22nd day of August, 1927,

10 ORDERED, that Harry B. Hendricks of the Town of South Orange, County of Essex and State of New Jersey be and he is hereby continued as receiver of the above named defendant corporation with all powers and authorities incident thereto and conferred upon him by the order heretofore made, appointing him receiver and especially by the Act entitled "An Act concerning Corporations (Revision of 1906)" of the State of New Jersey, the supplements thereto and amendments thereof, and it is further

20 ORDERED that the bond of said receiver in the sum of \$20,000.00 for the faithful performance of his duties and obligations be and the same is hereby continued.

AND IT IS FURTHER ORDERED that Harry B. Hendricks as receiver, be and he is hereby authorized and appointed to collect all of the rents and the tenants are hereby directed to pay all of the rents to Harry B. Hendricks for all of the following properties, to wit:—

30 Five store and six apartment building southeast corner of Roff and Columbia Avenues, Palisades Park, N. J.

104-106-108 Columbia Avenue, Palisades Park, consisting of six apartments and 8 garages.

110 Columbia Avenue consisting of 18 apartments and 12 garages.

6-16 State Highway, Borough of Palisades Park consisting of a 175 car garage, six stores and 12 apartments.

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Order Continuing Receiver.

13-19 Roff Avenue and 48-52 Columbia Avenue
consisting of six stores and 5 apartments.

24 Columbia Avenue, a 62 apartment building.

An uncompleted 8 story building located at 44
Columbia Avenue consisting of 45 apartments and
5 stores.

10

3 lots located on the northwest corner of Roff
and Columbia Avenues.

Respectfully advised,

E. R. WALKER,
C.

ALONZO CHURCH,
V. C.

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A true copy.

WILLIAM HARRIS,
Of Counsel with Receiver.

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**Notice of Motion to Strike Out Complaint
as to Defendant Henn.**

(Filed September 19, 1927.)

IN CHANCERY OF NEW JERSEY.

10

Between:

CLIFFORD J. HEATH,
Complainant,

and

CLIFFORD J. HEATH, INC., a Cor-
poration, and FREDERICK C.
HENN,

20

Defendants.

On Bill, &c.
Notice of Motion.

To William Harris, Solicitor for Complainant:

30

PLEASE TAKE NOTICE that on Monday, September 19th, 1927, at ten o'clock in the forenoon at Chancery Chambers in Jersey City, we shall apply to the Chancellor for an order striking out the bill of complaint filed in the above entitled cause against the defendant Frederick C. Henn, on the following grounds:

1. Said bill contains no equity in favor of the complainant against the defendant Henn.

2. Defendant Henn is neither a proper or necessary party to said bill.

3. No relief can be granted to the complainant against Henn on said bill.

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*Notice of Motion to Strike Out Complaint as to
Defendant Henn.*

4. Said bill prays for relief against one defendant in favor of another.

5. The bill is irregular, defective and multifarious.

10

6. The bill discloses no common subject matter in respect to which complainant seeks relief against separate defendants.

7. The bill unites several matters of distinct nature against different defendants.

8. The bill contains a misjoinder of parties.

9. The bill misjoins causes of action.

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PERKINS & DREWEN,
Solicitors for Defendant
Frederick C. Henn.

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**Order Striking Out Complaint as to
Defendant Henn.**

(Filed October 10, 1927.)

IN CHANCERY OF NEW JERSEY.

Between:

10

CLIFFORD J. HEATH,
Complainant,

and

CLIFFORD J. HEATH, INC., a Cor-
poration, and FREDERICK C.
HENN,

Defendants.

On Bill, &c.
Order.

20

This matter being opened to the Court by Perkins & Drewen, Solicitors for the Defendant, Frederick C. Henn, on motion to strike out the bill of complaint filed in this cause, as against the said defendant, Frederick C. Henn; and upon reading the consent of William Harris, Solicitor for and of counsel with the complainant, hereto underwritten, it is on this 10th day of October, 1927,

30

ORDERED AND ADJUDGED that the said bill of complaint be, and the same hereby is, struck out as against the said defendant, Frederick C. Henn, without costs as to either party as against the other and without prejudice.

Respectfully advised,

ALONZO CHURCH,
V. C.

E. R. WALKER,
C.

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I hereto consent to the making and entry of the foregoing order.

WILLIAM HARRIS
Solicitors for and of counsel
with Complainant.

*Order for Abandonment by Receiver of Four
Parcels of Henn Property.*

10 ate, lying and being in the Borough of Palisades Park in the County of Bergen and State of New Jersey, known and designated on the map entitled "Map of Morsemere in the Borough of Ridgefield and Palisades Park, Bergen County, N. J.", made by Alfred Williams, Civil Engineer and Surveyor, and duly filed in the office of the Clerk of said County on Apr. 21, 1903, as Map #836, as lots numbered 34, 35, 36 and 37, and all that part of 38, 39, 40, 41 and 42 in block 23 not heretofore conveyed by Clifford J. Heath, Inc., to Robert G. Phillips Jr., by deed dated October 3, 1925, and duly recorded in the Clerk's Office of Bergen County on October 28, 1925, which said premises are described as follows:

20 BEGINNING at a point on the southwesterly side of Columbia Avenue also known as Columbia Boulevard distant one hundred and twenty-five (125) feet northwesterly from the corner formed by the intersection of the said side of Columbia Avenue with the northwesterly side of Roff Avenue; running thence (1) southwesterly and at right angles to Columbia Avenue 100 feet to a point; thence (2) northwesterly parallel with Columbia Avenue one hundred (100) feet to a point; thence (3) northeasterly parallel with the first course 10 feet to a point; thence (4) northwesterly parallel with Columbia Avenue 125 feet to a point; thence (5) northeasterly and at right angles to Columbia Avenue 90 feet to a point; thence (6) southeasterly and along Columbia Avenue 225 feet to the point or place of beginning.

30 BEING the same premises conveyed to Clifford J. Heath, Inc., by Hyman Pomerantz, *et ux.*, by
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*Order for Abandonment by Receiver of Four
Parcels of Henn Property.*

deed recorded in Book 1350 of deeds for Bergen County, page 447, by W. E. Leonard, *et ux.*, by deed recorded in the Clerk's Office of Bergen County, October 7th, 1925, and part of the same premises conveyed by Robert H. Phillips, Jr., *et ux.*, by deed recorded in the Clerk's Office of Bergen County on October 10th, 1925. 10

SECOND PARCEL.

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Palisades Park, in the County of Bergen and State of New Jersey: 20

BEGINNING at the corner formed by the intersection of the northwesterly side of Roff Avenue with the southwesterly side of Columbia Avenue, also known as Columbia Boulevard, and running from thence (1) northwesterly along Columbia Avenue 50 feet to a point; thence (2) southwesterly parallel with Roff Avenue 58 feet to a point; thence (3) northwesterly parallel with Columbia Avenue 6 feet to a point; thence (4) southwesterly and parallel with Roff Avenue 42 feet to a point; thence (5) southeasterly parallel with Columbia Avenue 56 feet to the northwesterly side of Roff Avenue; thence (6) northeasterly and along said side of Roff Avenue 100 feet to the point or place of beginning. 30

BEING part of the same premises conveyed to Clifford J. Heath, Inc., by Annie E. Heath, unmarried, by deed dated March 10, 1925, and duly recorded in the Clerk's Office of Bergen County 40

*Order for Abandonment by Receiver of Four
Parcels of Henn Property.*

on March 18, 1925, in Book 1319 of Deeds, page 146, etc.

THIRD PARCEL.

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ALL those certain tracts of land and premises situate in the Borough of Ridgefield in the County of Bergen and State of New Jersey, known and designated on a map entitled "Map of Morsemere in the Borough of Ridgefield and Palisades Park, Bergen County, N. J.," made by Alfred W. Williams, C. E. & S. and filed in the office of the Clerk of said Bergen County on April 21st, 1903, as Map No. 836, as lots numbered eighteen (18) to twenty-three (23) both inclusive, and twenty-eight (28) and twenty-nine (29) in block thirty-nine (39).

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Excepting and reserving, however, so much of said premises as was taken by the State of New Jersey for Highway purposes.

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BEING the same premises conveyed to Clifford J. Heath, Incorporated, by deed of Margaret Collins Murray and William S. Murray, her husband, dated December 11th, 1925, and duly recorded in the Clerk's Office of Bergen County, in Book 1386 of deeds for said County, page 250, &c.

FOURTH PARCEL.

ALL those certain lots or parcels of land, situated in the Borough aforesaid, County of Bergen and State of New Jersey, and known and designated on a map entitled "Map of Morsemere in

40

*Order for Abandonment by Receiver of Four
Parcels of Henn Property.*

the Borough of Ridgefield & Palisades Park, Bergen County, N. J.," made by Alfred W. Williams, Civil Engineer and Surveyor, and duly filed in the Office of the Clerk of said County on April 21, 1903, as Map number 836, as lots numbered twenty-four (24) to twenty-seven (27) inclusive in block thirty-nine (39). 10

BEING the same premises conveyed to Clifford J. Heath, incorporated, by deed of Charles A. Welton, unmarried, and others, dated February 13th, 1926, and duly recorded in the Clerk's Office of Bergen County in Book 1390 of deeds for said County, page 395, &c.

And it being made to appear to the Court that title to the said parcels of land and premises, as conveyed by the said deeds, was taken and is now held by the said Frederick C. Henn as security for moneys advanced by him to the said defendant corporation; 20

And it being further represented to the Court by counsel for the said receiver that there is no equity in the said lands and premises for the benefit of creditors over and above the claim of the said Frederick C. Henn for moneys advanced to the said defendant corporation, and other liens on said property. 30

And it appearing to the Court that this Order should be made, and upon reading the consent of counsel of the said receiver hereto underwritten, it is on this 5th day of November, 1927;

ORDERED AND ADJUDGED that the receiver renounce and abandon any and all right, title interest, property or possession by him as such receiver in and to the said parcels of land and prem- 40

*Order for Abandonment by Receiver of Four
Parcels of Henn Property.*

ises and each of them, and the same are hereby
accordingly renounced and abandoned.

Respectfully advised,

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E. R. WALKER,
C.

ALONZO CHURCH,
V. C.

I hereby consent to the making and entering of
the foregoing order.

WILLIAM HARRIS.

A true copy.

20

THOMAS BARBER,
Clerk.

30

40

**Petition of Frederick C. Henn That Receiver
Account for and Pay Over Moneys
Collected from Henn Properties.**

(Filed November 15, 1927.)

IN CHANCERY OF NEW JERSEY.

Between:

CLIFFORD J. HEATH,
Complainant,

and

CLIFFORD J. HEATH, INC.,
Defendant.

(65-234)
On Bill, &c.
Petition.

10

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*To the Honorable Edwin Robert Walker, Chan-
cellor of the State of New Jersey:*

The petition of Frederick C. Henn respectfully shows unto your Honor:

1. That your petitioner resides in the Borough of Glen Ridge, in the County of Essex, State of New Jersey.

2. That by two deeds dated respectively, December 14th, 1926 and January 24th, 1927, Clifford J. Heath, Inc., the above named defendant corporation, conveyed to your petitioner, by good and valid deeds of conveyance, the fee simple of the following described lands and premises:

30

FIRST PARCEL.

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situ-

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*Petition of Frederick C. Henn that Receiver
Account for and Pay Over Moneys Collected
from Henn Properties.*

ate, lying and being in the Borough of Palisades
Park in the County of Bergen and State of New
Jersey, known and designated on the map entitled
"Map of Morsemere in the Borough of Ridgefield
and Palisades Park, Bergen County, N. J.", made
10 by Alfred Williams, Civil Engineer and Surveyor,
and duly filed in the office of the Clerk of said
County on April 21, 1903, as Map #836, as lots
numbered 34, 35, 36 and 37, and all that part of
38, 39, 40, 41 and 42 in block 23 not heretofore
conveyed by Clifford J. Heath, Inc., to Robert G.
Phillips, Jr., by deed dated October 3, 1925, and
duly recorded in the Clerk's Office of Bergen
County on October 28, 1925, which said premises
20 are described as follows:

BEGINNING at a point on the southwesterly side
of Columbia Avenue also known as Columbia
Boulevard distant one hundred and twenty-five
(125) feet northwesterly from the corner formed
by the intersection of the said side of Columbia
Avenue with the northwesterly side of Roff Ave-
nue; running thence (1) southwesterly and at
right angles to Columbia Avenue 100 feet to a
point; thence (2) northwesterly parallel with
30 Columbia Avenue one hundred (100) feet to a
point; thence (3) northeasterly parallel with the
first course 10 feet to a point; thence (4) north-
westerly parallel with Columbia Avenue 125 feet
to a point; thence (5) northeasterly and at right
angles to Columbia Avenue 90 feet to a point;
thence (6) southeasterly and along Columbia Ave-
nue 225 feet to the point or place of beginning.

BEING the same premises conveyed to Clifford
J. Heath, Inc., by Hyman Pomerantz, *et ux.*, by
40 deed recorded in Book 1350 of deeds for Bergen

*Petition of Frederick C. Henn that Receiver
Account for and Pay Over Moneys Collected
from Henn Properties.*

County, page 447, by W. E. Leonard, *et ux.*, by deed recorded in the Clerk's Office of Bergen County October 7th, 1925, and part of the same premises conveyed by Robert H. Phillips, Jr., *et ux.*, by deed recorded in the Clerk's Office of Bergen County on October 10th, 1925. 10

SECOND PARCEL.

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Palisades Park, in the County of Bergen and State of New Jersey:

BEGINNING at the corner formed by the intersection of the northwesterly side of Roff Avenue with the southwesterly side of Columbia Avenue, also known as Columbia Boulevard, and running from thence (1) northwesterly along Columbia Avenue 50 feet to a point; thence (2) southwesterly parallel with Roff Avenue 58 feet to a point; thence (3) northwesterly parallel with Columbia Avenue 6 feet to a point; thence (4) southwesterly and parallel with Roff Avenue 42 feet to a point; thence (5) southeasterly parallel with Columbia Avenue 56 feet to the northwesterly side of Roff Avenue; thence (6) northeasterly and along said side of Roff Avenue 100 feet to the point or place of beginning. 20 30

BEING part of the same premises conveyed to Clifford J. Heath, Inc., by Annie E. Heath, unmarried, by deed dated March 10, 1925, and duly recorded in the Clerk's Office of Bergen County on March 18, 1925, in Book 1319 of Deeds, page 146, etc. 40

*Petition of Frederick C. Henn that Receiver
Account for and Pay Over Moneys Collected
from Henn Properties.*

THIRD PARCEL.

10 ALL those certain tracts of land and premises
situate in the Borough of Ridgefield in the County
of Bergen and State of New Jersey, known and
designated on a map entitled "Map of Morsemere
in the Borough of Ridgefield and Palisades Park,
Bergen County, N. J.," made by Alfred W. Wil-
liams, C. E. & S. and filed in the office of the
Clerk of said Bergen County on April 21st, 1903,
as Map No. 836, as lots numbered eighteen (18)
to twenty-three (23) both inclusive, and twenty-
eight (28) and twenty-nine (29) in block thirty-
20 nine (39).

Excepting and reserving, however, so much of
said premises as was taken by the State of New
Jersey for Highway purposes.

BEING the same premises conveyed to Clifford
J. Heath, Incorporated, by deed of Margaret Col-
lins Murray and William S. Murray, her husband,
dated December 11th, 1925, and duly recorded in
the Clerk's Office of Bergen County, in Book 1386
of Deeds for said County, page 250, &c.

30

FOURTH PARCEL.

40 ALL those certain lots or parcels of land, situ-
ate in the Borough aforesaid, County of Bergen
and State of New Jersey, and known and desig-
nated on a map entitled "Map of Morsemere in
the Boroughs of Ridgefield & Palisades Park, Ber-
gen County, N. J." made by Alfred W. Williams,
Civil Engineer and Surveyor, and duly filed in
the Office of the Clerk of said County on April

*Petition of Frederick C. Henn that Receiver
Account for and Pay Over Moneys Collected
from Henn Properties.*

21, 1903, as Map number 836, as lots numbered twenty-four (24) to twenty-seven (27) inclusive in block thirty-nine (39).

BEING the same premises conveyed to Clifford J. Heath, Incorporated, by deed of Charles A. Welton, unmarried, and others, dated February 13th, 1926, and duly recorded in the Clerk's Office of Bergen County in Book 1390 of deeds for said County, page 395, &c.

Record title to the said lands and premises is still vested in your petitioner under the deeds of conveyance hereinabove mentioned.

3. The bill of complaint in this cause was filed on the 15th day of August, 1927, wherein the complainant did pray, among other things, for the appointment of a receiver of the above named defendant corporation, as in cases for the appointment of receivers of corporations not insolvent, and pursuant to the form of the statutes in such case made and provided and under the jurisdiction of this court in matters of the kind. Upon the filing of the bill of complaint, such proceedings were had that on the 15th day of August, 1927, an order was made and entered in this cause wherein it was ordered, adjudged and decreed that the business of the said defendant corporation is conducted at a great loss and in a manner prejudicial to the interests of the stockholders and creditors, and that the said defendant corporation be enjoined according to the prayer of the said bill in said cause filed; and in and by said last mentioned order, one Harry G. Hendricks, of South Orange, was appointed receiver of the creditors and stockholders of the said defendant corporation. And further proceedings were had in this cause on the

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*Petition of Frederick C. Henn that Receiver
Account for and Pay Over Moneys Collected
from Henn Properties.*

22nd day of August, 1927, upon the return of an order to show cause in the premises first had and obtained, that on said last mentioned day an order was made and entered herein, continuing the said
10 Harry G. Hendricks as such receiver.

4. And your petitioner further shows that the said Harry G. Hendricks, as such receiver, did forthwith file the bond in this court required of him, and thereupon did take unto himself the possession of the properties of the said defendant corporation; and did take possession also of the lands and premises hereinabove set forth and particularly described, title of which is and was in
20 the name of your petitioner as aforesaid. To the said bill of complaint and the several orders appointing and continuing the said receiver, your petitioner begs leave to refer and does hereby make the same a part of this petition.

5. Your petitioner was one of the parties defendant named in the said bill of complaint, and after the filing of the said bill did serve a notice upon counsel for the said receiver of a motion striking out the said bill of complaint as against
30 this petitioner on the ground, among others, that said bill contained no equity in favor of the complainant in this cause as against your petitioner as defendant therein. Thereafter and on or about the 5th day of October, 1927, an order was made and filed in this cause wherein it was Ordered and Adjudged that the said bill of complaint be struck out as against your petitioner. And your petitioner further shows that since the making and entry of said last mentioned order he has been at
40 no time a party defendant in this cause. To the

*Petition of Frederick C. Henn that Receiver
Account for and Pay Over Moneys Collected
from Henn Properties.*

said last mentioned order your petitioner begs leave to refer and does hereby make the same a part of this petition.

6. And your petitioner further shows that on the 5th day of November, 1927, an order was made and entered in this cause, wherein and whereby it is recited that title to the parcels of land and premises, hereinabove described, is vested in your petitioner by deeds of conveyance from the above named corporation, and in and by which Order it is Ordered, Adjudged and Decreed that possession and control of the said parcels of land and premises be renounced and abandoned by Harry G. Hendricks, receiver as aforesaid. Since the making and entry of the said last mentioned order your petitioner has resumed control and possession of the said lands and premises. He begs leave to refer to the said Order of November 5th, 1927, and does make the same a part of this petition.

7. And your petitioner respectfully shows that notwithstanding the fact that your petitioner was illegally and improvidently made a party defendant in the bill of complaint filed in this cause, and notwithstanding the fact that the said bill was struck out, as aforesaid, as against your petitioner as defendant therein; and notwithstanding the fact that title to the said parcels of land and premises was at all times throughout the pendency of this cause, and for a long time prior thereto, vested in your petitioner in manner aforesaid; and notwithstanding all the matters and things in this petition set forth, the said Harry G. Hendricks, as such receiver, did from the time of his appointment on August 15th, 1927, take unto himself pos-

*Petition of Frederick C. Henn that Receiver
Account for and Pay Over Moneys Collected
from Henn Properties.*

10 session and control of the said parcels of land and premises as well as of the collection of rents, issues and profits thereof, and that his collection of said rents, issues and profits, and his retention thereof to himself has hence continued until the time of making this petition.

8. The above described premises consist in part of a 62-family apartment house and of stores and offices. During the period of said receiver's collection of rents, issues and profits, and to the present time, the said premises have been occupied by tenants from whom rent has been collected and retained by the said receiver.

20 9. Your petitioner respectfully shows that as against your petitioner the said receiver has at no time had any legal right to the collection of rents, issues and profits of the above described lands and premises, but that the said rents, issues and profits and the collection thereof was of right and in equity the property of your petitioner. Your petitioner shows that large amounts of money as rents, issues and profits from the said lands and premises have been collected by the said receiver and are now retained by him though your petitioner does not know the exact amount thereof.

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WHEREFORE, your petitioner prays that the said receiver be Ordered at a short day to account to this court for all rents, issues and profits so collected and received by him as aforesaid, and to pay the same over to your petitioner.

And your petitioner will ever pray, etc.

PERKINS & DREWEN,
Solicitors of Petitioner.

*Petition of Frederick C. Henn that Receiver
Account for and Pay Over Moneys Collected
from Henn Properties.*

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

FREDERICK C. HENN, of full age, being duly 10
sworn, upon his oath deposes and says:

That he is the petitioner in the foregoing peti-
tion named. He has read the said petition, and all
matters and things therein contained are true to
the best of his knowledge, understanding and be-
lief.

FREDERICK C. HENN.

Subscribed and sworn to before me } 20
this 10th day of November, 1927. }

T. A. SULLIVAN,
Notary Public,
New Jersey.

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Order to Show Cause on Foregoing Petition.

(Filed November 15, 1927.)

IN CHANCERY OF NEW JERSEY.

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Between:

CLIFFORD J. HEATH,
Complainant,

and

CLIFFORD J. HEATH, INC.,
Defendant.

(65-234)
On Bill, &c.
Order.

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Upon reading and filing the duly verified petition of Frederick C. Henn, and upon good cause shown, it is on this fifteenth day of November, 1927;

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ORDERED that Harry G. Hendricks, the receiver of the above named defendant corporation, show cause before this court at Chancery Chambers, in the Industrial Office Building, Broad Street, Newark, New Jersey, on the twenty-second day of November, 1927, at 10 o'clock in the forenoon or as soon thereafter as the court can attend to the same, why the prayer of the said petition should not be granted;

And it is further ORDERED that a true copy of said petition and of this order, certified by the solicitors of the said Frederick C. Henn, be served

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Order Continuing Until Filing of Receiver's Final Account the Matter of Foregoing Petition.

upon the counsel to the said receiver within three days from the date hereof.

E. R. WALKER,
C.

Respectfully advised,

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ALONZO CHURCH,
V. C.

Order Continuing Until Filing of Receiver's Final Account the Matter of Foregoing Petition.

IN CHANCERY OF NEW JERSEY.

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(Filed December 2, 1927.)

Between:

CLIFFORD J. HEATH,
Complainant,

and

CLIFFORD J. HEATH, INC.,
Defendant.

(65-234)
On Bill, &c.
Order.

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This matter being opened to the Court on return of order to show cause made herein under date of November 15, 1927, in the presence of John Drewen of Perkins & Drewen, solicitors for Frederick C. Henn, petitioner, in the matter of said order to show cause, and William Harris, by Herbert L. Elins, solicitor for and of counsel with

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*Order Continuing Until Filing of Receiver's Final
Account the Matter of Foregoing Petition.*

10 Harry G. Hendricks, receiver of Clifford J. Heath, Inc., the above named defendant corporation, and the court having read the duly verified petition upon which said order to show cause was made and having heard and considered the argument of the respective counsel, and due cause being shown for the granting of said order, it is on this 2nd day of December, 1927,

ORDERED AND ADJUDGED that the said order to show cause be and the same hereby is continued until such time as the receiver herein files his final report and account.

E. R. WALKER.

20 Respectfully advised,
ALONZO CHURCH,
V. C.

A true copy

WILLIAM HARRIS,
Solicitor for Complt.

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**Notice of Renewing Matter of Petition and
Order of November 15, 1927.**

(Filed February 20, 1927.)

IN CHANCERY OF NEW JERSEY.

Between:

CLIFFORD J. HEATH,
Complainant,

and

CLIFFORD J. HEATH, INC.,
Defendant.

(65-234)
On Bill, &c.
Notice.

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*To William Harris, Solicitor of Harry G. Hendricks,
Receiver of Clifford J. Heath, Inc.,
Kinney Building, Newark, New Jersey.*

Sir:

TAKE NOTICE that on Tuesday, the 28th day of February, 1928, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, we shall renew before the Chancellor, at Chancery Chambers in the Industrial Building, 1060 Broad Street, in the City of Newark, our application for an order requiring the said receiver to account for all rents, issues and profits received by him from lands and premises standing in the name of Frederick C. Henn, and to pay over to the said Frederick C. Henn all rents, issues and profits thus collected by the said receiver. Our renewal of said application shall be made

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Proof of Service of Foregoing Notice.

pursuant to the terms of an order made in this cause, and advised by Vice-Chancellor Church under date of December 2, 1927.

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PERKINS & DREWEN,
Solicitors for Defendant,
Frederick C. Henn.

Proof of Service of Foregoing Notice.

(Filed February 21, 1927.)

IN CHANCERY OF NEW JERSEY.

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Between:

CLIFFORD J. HEATH,
Complainant,

and

CLIFFORD J. HEATH, INC.,
Defendant.

On Bill, &c.
Affidavit.

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

JOHN A. KELLY, being duly sworn according to law, upon his oath deposes and says:

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I am a clerk in the office of Perkins & Drewen, solicitors for Frederick C. Henn, petitioner by whom a petition has been filed in the above-entitled cause.

Proof of Service of Foregoing Notice.

On Saturday, the 18th day of February, 1928, I served upon William Harris, Esq., Solicitor of Harry G. Hendricks, receiver of the above-named defendant corporation, the attached notice.

Said service was made by delivering a true and exact copy thereof, signed by the said Perkins & Drewen, to the person in charge of the office of the said William Harris, at No. 790 Broad Street, Newark, New Jersey. Said service was made at about 9.30 o'clock in the forenoon. 10

JOHN A. KELLY.

Subscribed and sworn to before me this }
20th day of February, A. D. 1928. }

EDWARD CLAXTON,
Attorney at Law 20
of New Jersey.

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**Affidavit of F. A. Sullivan in Support of Order
to Show Cause of November ~~16~~¹⁵, 1927.**

(Filed February 28, 1928)

IN CHANCERY OF NEW JERSEY.

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Between

CLIFFORD J. HEATH,
Complainant,

and

CLIFFORD J. HEATH, INC., a cor-
poration,
Defendant.

On Bill, &c.
Affidavit.

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

F. A. SULLIVAN, of full age, being duly sworn according to law, upon his oath, deposes and says:

I am an accountant and bookkeeper employed by Frederick C. Henn at his office, 665 Newark Avenue, in the City of Jersey City, State of New Jersey.

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I have been an accountant continuously for upwards of twenty years last past.

On Friday, the 24th day of February instant, I went to the office of Sergeant-at-Arms, Chancery Chambers, Industrial Office Building, in the City of Newark, for the purpose of there making an inspection of the account of the receiver in the above-entitled cause, which account is mentioned in the Order to Show Cause made herein on the 20th day of February, 1928.

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*Affidavit of F. A. Sullivan in Support of Order
to Show Cause of November ~~16~~¹⁵, 1927.*

I arrived at the Chancery Chambers in Newark at about 1.50 p. m. The office of the Sergeant-at-Arms was open, but there was no one in attendance. I waited there until 3 p. m., in the meantime no one appearing. I then asked the hallman as to the whereabouts of the person in charge of the Sergeant-at-Arms' office, and the hallman told me that an Assistant Sergeant-at-Arms had been in attendance during the morning, and said he did not think he would leave without closing the door, and therefore supposed he would return. I waited after this for twenty minutes longer, sitting in the office of the Sergeant-at-Arms. No one appeared, and I had to leave. 10

At 9 o'clock on the following morning (Saturday, February 25th, 1928), I returned to the office of the Sergeant-at-Arms, Chancery Chambers, Newark. There was in attendance at the office of the Sergeant-at-Arms or his Assistant, I do not know which. 20

I made inquiry for the above-mentioned receiver's account, but was informed by the person in attendance that the account was locked in a cabinet, and that the key was in the possession of another attache of the office who would not be there that day. My informant also told me there were papers in that cabinet that he himself then required, but that he would have to wait until Monday. 30

I then asked advice of Mr. Henn's attorney as to how I could examine a copy of the receiver's account, and as a result of such advice I went to the office of William Harris, counsel to the receiver.

I reached Mr. Harris' office at about 11.20. I was there given what was stated to be a copy of 40

*Affidavit of F. A. Sullivan in Support of Order
to Show Cause of November ~~16~~¹⁵, 1927.*

the account as filed by the receiver with the Sergeant-at-Arms. I was permitted to examine that account at Mr. Harris' office until about 1 o'clock, when the office was closed.

10 I have read the petition of Frederick C. Henn, sworn to by him under date of November 10th, 1927, and filed in this cause. I am familiar with the location and title of the several parcels of property in the said petition described, and also with the tenancies and occupancies in the said buildings and structures.

20 The account of the receiver as filed by him, as stated in the said Order to Show Cause of February 20th, 1928, charges the receiver with having a balance in his hands for distribution amounting to \$7,642.89.

The said account shows that, included in this last stated balance on hand, are rents which have been collected by the receiver from the properties belonging to the said Frederick C. Henn, as stated and set forth in the petition of the said Frederick C. Henn filed in this cause as aforesaid, and that the net total of the rents thus collected by the receiver from the said properties is \$7,142.42.

30 On or about the 15th day of November, 1927, it was arranged with the receiver that I be permitted to examine and make audit of all of the receiver's books, accounts, records and vouchers touching upon the receivership in the above-entitled cause. At an appointed time I went to the office of William Harris in Newark, counsel to the said receiver, and was there given for examination and audit by the receiver what the receiver and his counsel stated to me were all of the books, records, accounts and vouchers of the said re-
40 ceivership.

*Affidavit of F. A. Sullivan in Support of Order
to Show Cause of November ~~16,~~ 1927.*

15,

I made an examination of the same and a complete audit thereof for the purpose of determining what sum the receiver had collected as rents from the properties of the said Frederick C. Henn as stated in the said petition filed in this cause, and what sums were properly chargeable as items of disbursement made by the receiver on account of the said properties. 10

Attached hereto, marked "Exhibit A," and made a part of this affidavit is the audit made by me as aforesaid on or about the 15th day of November, 1927.

In addition to the receiver's records above stated, the attached audit includes also receipts given by the receiver for rent collected from the Henn properties, which receipts aggregate \$910 for the tenancies in the apartments, and \$509.64 for tenancies in the garage and sales made from the garage, making a total of \$1,419.64. This total of \$1,419.64 and the items which go to make it up are not shown in the receiver's accounts. The items covered by these receipts both as to the apartments and as to the garage, are set forth in Schedule 1 of the attached audit. Except for these receipts, said audit is based entirely upon the receiver's own records above stated, and shows that the receiver has collected from the Henn properties, including garage and apartments, a gross total of \$10,324.90. 20 30

As to the receiver's disbursements on account of the properties, there were at the time of my examination of his records, November 15th, 1927, in a majority of cases, no vouchers for said disbursements, so that it was impossible to tell against which parcel of property the disbursements should properly go, and the receiver's en- 40

*Affidavit of F. A. Sullivan in Support of Order
to Show Cause of November ~~16~~ 1927.*

151

10 tries of these disbursements in cases where there were no vouchers did not show the parcel of property against which the item was to stand. In this situation I made an aggregate of the items of which there was no record concerning the parcel for which the disbursements were made, and equally distributed this aggregate as between the Henn properties and the other properties—one-half to each of these two properties. Upon this basis the attached audit shows that the receiver is entitled to a credit for disbursements made on account of the Henn properties of \$3,182.48. This leaves a net balance in the receiver's hands representing the net of rents and receipts collected by him from the Henn properties of \$7,142.42.

20 The receiver's account mentioned in the above-stated Order to Show Cause of February 20th, 1928, which was exhibited to me at the office of receiver's counsel as aforesaid on Saturday, February 25th, was examined by me also for the purpose of determining any departure in that accounting from the records of the receiver examined by me on November 15th, 1927. I find no departure in the receiver's account as now filed, and the attached audit is a correct audit of that

30 account.

F. A. SULLIVAN.

Subscribed and sworn to before me this }
27th day of February, A. D. 1928. }

EDWARD CLAYTON,
Atty. at Law of New Jersey.

**Exhibit "A", Accompanying Foregoing
Affidavit.**

CLIFFORD J. HEATH, INC.
COMMENTS.

The records submitted by the Receiver as to rents collected from various units owned by Frederick C. Henn during the period of receivership, reflect a difference in favor of Frederick C. Henn of \$1,419.64 as per Schedule 1. 10

This difference was arrived at, by making a complete check of rents received from tenants per cash book submitted by the receiver and our records of occupancy of various apartments during period of receiver and which reflect a difference of \$910.00 collected from apartments not accounted for plus \$509.64 received from Garage as per receipts in our possession. 20

The cash disbursements submitted by receiver as per Schedule 2 have been separated and charged to units to which they apply. Painters salaries have been proportioned on a 65% and 35% basis as our check of books of Brookwell and Weise painters reflect a total of 179 hours labor during period of receivership 116 hours in units owned by Frederick C. Henn and 63 hours in other units. Vouchers covering majority of disbursements not available. 30

The disbursements by Check as per Schedule 3 were apportioned as to different units and in the absence of vouchers in many cases, were apportioned on a fifty-fifty basis.

For each disbursement there should be a voucher and upon questioning Receiver he stated, they are probably in the possession of Mrs. Stettler.

Exhibit "A", Accompanying Foregoing Affidavit.

10 The analysis of receipts and disbursements reflect, a balance due Frederick C. Henn of \$7142.42 in addition, however, an accounting should be made on the item of \$1000.00 for sale of personal property to Clifford J. Heath which our records show was not personal property and the market value of material, etc., taken was approximately \$6000.00 all of which being taken from premises owned by Frederick C. Henn.

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Exhibit "A", Accompanying Foregoing Affidavit.

CLIFFORD J. HEATH, INC.

SCHEDULE 1.

Statement of Rents Collected During the Period of Receivership from Various Units at Morsemere, New Jersey.

<i>M. P. Arms 48/50 Col. Garage</i>				<i>Rents</i>	<i>—F. C. Henn Statement—</i>			<i>Total</i>	<i>Months Covered</i>		
<i>Receiver's Statement</i>				<i>Total</i>	<i>Name</i>	<i>Apt #</i>	<i>M. P. Arms</i>	<i>48/50 Col.</i>	<i>Garage</i>		
	7,348.00	550.00	492.00	8,390.00			7,348.00	550.00	492.00	8,390.00	
					Trott	12	45.00				November
					Gillette	13	55.00				"
					Danashaw	16	40.00				"
					Saul	20	40.00				October
					Gressel	23	40.00				November
					Grand	26	35.00				"
					DeLaschne	45	45.00				"
					Smith	49	15.00				Bal. September
					Connor	50	45.00				November
					Allinger	70	35.00				"
					Wittaker	74	45.00				"
					Oliver	75	45.00				"
					Savory	76	90.00				Oct. & Nov.
					Jardine	80	45.00				October
					Pickett	84	45.00				November
					Nissen	48 front		50.00			September
					Wehman	48 store		65.00			November
					Spagna	50 store		130.00			Oct. & Nov.
Short	665.00	245.00	.....	910.00						910.00	
	8,013.00	795.00	492.00	9,300.00			8,013.00	795.00	492.00	9,300.00	
Garage Rents			515.26	515.26							
Short			509.64	509.64					1,024.90	1,024.90	
	8,013.00	795.00	1,516.90	10,324.90			8,013.00	795.00	1,516.90	10,324.90	

Exhibit "A", Accompanying Foregoing Affidavit.

CLIFFORD J. HEATH, INC.

SCHEDULE 2.

Receiver's Statement of Cash Disbursements During Period from August 15, 1927 to
December 21, 1927.

	<i>Date</i>	<i>Name</i>	<i>Explanation</i>	<i>F. C. Henn's Unit</i>	<i>Other Units</i>	
10	Aug. 15	Chas. Overtner	Exterminating		25.00	
	Aug. 15	O. J. Crabbe	Hardware—Garage	12.55		
	Aug. 15	Wehman Bros.	Soap Powder, etc.....	1.41		
	Aug. 24	Ray Wood	Refund on Lock 104 Col.....		2.50	
	Aug. 24	Frank Walter	Refund on Lock MPA.....	2.50		
	Aug. 24	Frank Duffy	Janitor		25.00	Discharged prior to receivership
	Aug. 24	Socover	Shades Garage	20.40		
	Aug. 24	H. Hamilton	Refund on Lock MPA.....	2.50		
	Aug. 24	E. Paterson	“	2.50		
	Sep. 1	F. Duffy	Janitor		21.31	
	Sep. 1	E. F. Percival	Refund on Lock MPA.....	2.50		
	Sep. 2	J. J. Jossien	Plans 8 story bldg.....		6.00	
	Sep. 1	J. Brookwell	Painter	32.50	17.50	
	Sep. 1	F. Weise	Painter	29.25	15.75	
20	Sep. 1	W. Mellon	Superintendent	37.50		
	Sep. 1	C. J. Stettler	Office		30.00	
	Sep. 1	C. J. Heath			50.00	
	Sep. 1	W. Doremus	Garage	25.00		
	Sep. 1	E. Pickett	“	30.00		
	Sep. 1	A. Bloomfield	Carpenter Garage	26.35		
	Sep. 9	B. Heiden	Paper signs		2.50	
	Sep. 9	O. J. Crabbe	Hardware and ash can.....		4.80	
	Sep. 15	Morsemere Pharmacy	Candles Garage .....	.80		
	Sep. 15	B. Heiden	Sign painting		4.50	
	Sep. 15	S. Berderka	Plumbing		18.50	
	Sep. 27	Wehman Bros.	Soap Powder, etc. ....	.87		
	Sep. 27	Corbin Lock Co.	Keys MPA	1.00		
	Sep. 27	L. Marshal	Refund on Lock MPA	2.50		
	Sep. 27	S. Bederka	Plumbing		6.00	
	Sep. 29	Pay roll—353.72				
30		J. Brookwell	Painter	46.80	25.20	
		F. Weise	“	43.55	23.45	
		W. Doremus	Garage	25.00		
				345.48	278.01	

Exhibit "A", Accompanying Foregoing Affidavit.

CLIFFORD J. HEATH, INC.

SCHEDULE 2 (Continued).

Receiver's Statement of Cash Disbursements During Period from August 15, 1927 to
December 21, 1927.

<i>Date</i>	<i>Name</i>	<i>Explanation</i>	<i>F. C. Henn's Unit</i>	<i>Other Units</i>	
	Amount brought forward.....		345.48	278.01	10
Sep. 29	E. Pickett	Garage	30.00		
Sep. 29	W. Mellon	Supt.	37.50		
Sep. 29	Hodgings	Ast. Supt.	13.75	13.75	
Sep. 29	C. J. Heath			50.00	
Sep. 29	C. J. Stettler	Office		30.00	
Sep. 29	A. Bloomfield	Carpenter		14.72	
Oct. 7	A. Siemsen	Rubbish remover		3.00	
Oct. 7	Wehman Bros.	Powder, etc. ....		.76	
Oct. 10	C. J. Stettler	Office		30.00	
Oct. 17	"	Postage .....		.78	
Oct. 17	"	Letter Box key .....		.25	
Oct. 17	Morsemere Phar.	Candles		1.60	
Oct. 7	O. J. Crabbe	Hardware—Garage	2.70		
Oct. 17	Payroll—245.00				
	J. Brookwell	Painter	32.50	17.50	20
	F. Weise	"	29.25	15.75	
	W. Doremus	Garage	25.00		
	E. Pickett	"	30.00		
	W. Mellon	Supt.	37.50		
	Hodgings	Asst. Supt.	13.75	13.75	
	C. J. Stettler	Office		30.00	
Oct. 24	Broad Elec.			6.00	
Oct. 24	"	Shades & Lamps		7.92	
Oct. 24	Bederka & Gullo	Plumbing Garage	19.00		
Oct. 24	Wehman Bros.	Powder, etc. ....		.82	
Nov.	Apt. 56 MPA	Refund on lock	2.50		
Nov.	Apt. 75 MPA	"	2.75		
	Ohio State Stone	Grate Bar	2.11		
	Corbin Lock Co.	Key .....	.25		
	J. N. Meyers	Refund Lock MPA	2.50		
			626.54	514.61	30

Exhibit "A", Accompanying Foregoing Affidavit.

CLIFFORD J. HEATH, INC.

SCHEDULE 3.

Receiver's Statement of Cash Disbursements by Check Period from August 15, 1927
to December 21, 1927.

	<i>Date</i>	<i>Name</i>	<i>Explanation</i>	<i>F. C. Henn's Unit</i>	<i>Other Units</i>
10	Aug. 24	Pay roll—187.50			
		J. Brookwell	Painter	32.50	17.50
		F. Weise	"	29.25	15.75
		C. J. Stettler	Office		30.00
		W. J. Mellon	Supt.	37.50	
		W. Doremus	Garage	25.00	
	Aug. 21	Bank charges—45.45	Offset in receipts.....		
	Aug. 24	Pay roll—242.50			
		J. Brookwell	Painter	32.50	17.50
		F. Weise	"	29.25	15.75
		W. Mellon	Supt.	37.50	
		F. Duffy	Janitor		25.00
		W. Doremus	Garage	25.00	
		E. Pickett	"	30.00	
		C. J. Stettler	Office		30.00
20	Aug. 27	Great Amer. Ins.			135.00
	Sep. 7	H. G. Hendricks \$200.	Offset in receipts		
	Sep. 7	F. I. Siegel & Son	Paints		84.00
	Sep. 7	S. A. Bederka	Plumbing Garage	53.00	
	Sep. 7	N. Y. Telephone			18.45
	Sep. 7	Pub. Ser. G. & E.		167.14	167.13
	Sep. 7	W. E. Dobbins			50.00
	Sep. 7	Jersey Multi. Co.			11.80
	Sep. 7	Marion W. Ogden			40.00
	Sep. 7	Stewart Lumber	Screens garage	32.30	
	Sep. 7	Pay roll—296.42			
		J. Brookwell	Painter	32.50	17.50
		F. Weise	"	23.92	12.89
		C. J. Heath			50.00
		C. J. Stettler	Office		30.00
		W. J. Mellon	Supt.	37.50	
		Hodgins	Asst. Sup.	13.75	13.75
30				638.61	782.02

Exhibit "A", Accompanying Foregoing Affidavit.

CLIFFORD J. HEATH, INC.

SCHEDULE 3 (Continued).

Receiver's Statement of Cash Disbursements by Check Period from August 15, 1927
to December 21, 1927.

<i>Date</i>	<i>Name</i>	<i>Explanation</i>	<i>F. C. Henn's Unit</i>	<i>Other Units</i>	
	Amount brought forward.....		638.61	782.02	10
	W. Doremus	Garage	25.00		
	E. Pickett	"	30.00		
	J. Bloomfield	Carpenter		9.61	
Sep. 14	William Harris			80.00	
Sep. 14	Marian W. Ogden			25.50	
Sep. 14	Hackensack Water		52.50	52.50	
Sep. 17	Pay roll—307.40				
	J. Brookwell	Painter	32.50	17.50	
	F. Weise	"	29.25	15.75	
	C. J. Heath			50.00	
	C. J. Stettler	Office		30.00	
	W. Mellon	Supt.	37.50		
	Hodgins	Asst. Supt.	13.75	13.75	
	W. Doremus	Garage	25.00		
	E. Pickett	"	30.00		20
	J. Bloomfield	Carpenter		12.40	
Sep. 24	Pay roll—316.50				
	J. Brookwell	Painter	37.70	20.30	
	F. Weise	"	34.45	18.55	
	W. Mellon	Supt.	37.50		
	Hodgins	Asst. Supt.	13.75	13.75	
	J. Bloomfield	Carpenter		5.50	
	C. J. Heath			50.00	
	C. J. Stettler	Office		30.00	
	W. Doremus	Garage	25.00		
	E. Pickett	"	30.00		
Sep. 30	Erie R. R.	Freight on coal	121.32	121.32	
	Abers Fuel Corp.	Coal	71.10	71.10	
			1284.93	1419.55	

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Exhibit "A", Accompanying Foregoing Affidavit.

CLIFFORD J. HEATH, INC.

SCHEDULE 3 (Continued).

Receiver's Statement of Cash Disbursements by Check Period from August 15, 1927
to December 21, 1927.

	<i>Date</i>	<i>Name</i>	<i>Explanation</i>	<i>F. C. Henn's Unit</i>	<i>Other Units</i>
10		Amount brought forward.....		1248.93	1419.55
	Oct. 8	Pay roll—226.00			
		J. Brookwell	Painter	32.50	17.50
		F. Weise	"	29.25	15.75
		W. Doremus	Garage	30.00	
		E. Pickett	"	30.00	
		W. Mellon	Supt.	37.50	
		Hodgins	Asst. Supt.	13.75	13.75
		J. Bloomfield	Carpenter		11.00
		Bergen Found.	Removing ashes 8 St. Bldg.....	87.07	
	Oct. 10	N. Y. Tel.			14.80
	Oct. 10	Pub. Ser. G. & E.		45.51	45.50
	Oct. 10	Hackensack Water		64.72	64.72
	Oct. 10	F. I. Siegel & Son	Paints	96.75	
20	Oct. 15	Pay roll—245.00			
		J. Brookwell	Painter	32.50	17.50
		S. Weise	"	29.25	15.75
		W. Doremus	Garage	25.00	
		E. Pickett	"	30.00	
		W. Mellon	Supt.	37.50	
		Hodgins	Asst. Supt.	13.75	13.75
		C. J. Stettler	Office		30.00
	Oct. 29	Pay roll—268.50			
		J. Brookwell	Painter	37.70	20.30
		F. Weise	"	34.45	18.55
		W. Doremus	Garage	25.00	
		E. Pickett	"	30.00	
		W. Mellon	Supt.	42.50	
		Hodgins	Asst. Supt.	15.00	15.00
		C. J. Stettler	Office		30.00
		C. J. Stettler			8.00
		Broad Elec.	Supplies	15.27	15.26
30	Nov. 2	C. J. Stettler	Painter	74.04	39.86
				2188.94	1826.54

Exhibit "A", Accompanying Foregoing Affidavit.

CLIFFORD J. HEATH, INC.

SCHEDULE 3 (Continued).

Receiver's Statement of Cash Disbursements by Check Period from August 15, 1927
to December 21, 1927.

Date	Name	Explanation	F. C. Henn's Unit	Other Units	
	Amount brought forward.....		2188.94	1826.54	10
Nov. 8	Pay roll—157.50				
	W. Doremus	Garage	25.00		
	E. Pickett	"	30.00		
	W. Mellon	Supt.	42.50		
	Hodgins	Asst. Supt.	15.00	15.00	
	C. J. Stettler	Office		30.00	
Nov. 9	A. E. Kaveney	Refund on Lock MPA.....	2.50		
	M. N. Sanderson	" " " "	2.50		
	N. Y. Telephone			10.75	
	Pub. Ser. G. & E.			108.20	
	Stewart Lumber	Screens garage	24.50		
	Jersey Multi. Co.			6.90	
	Pay roll—157.50				
	W. Doremus	Garage	25.00		20
	E. Pickett	"	30.00		
	W. Mellon	Supt.	42.50		
	Hodgins	Asst. Supt.	15.00	15.00	
	C. J. Stettler	Office		30.00	
Nov. 10	Burns Bros.	Coal		168.75	
Nov. 16	Burns Bros.	Coal		75.25	
Nov. 19	W. Doremus	Garage	25.00		
	E. Pickett	"	30.00		
	W. Mellon	Superintendent	42.50		
	Hodgins	Asst. Supt.	15.00	15.00	
	C. J. Stettler	Office		30.00	
Nov. 26	Lonsha—\$45.00	Bank Charge Offset by receipt....			
Dec. 3	J. A. Chinn			200.00	
Dec. 15	Lippman & Lowy			100.00	
	L. A. Vinson			75.00	
	Walter Goerke			75.00	
	Burns Bros.	Coal		150.50	30
			2555.94	2931.89	

Exhibit "A", Accompanying Foregoing Affidavit.

CLIFFORD J. HEATH, INC.

SCHEDULE 3 (Continued).

Receiver's Statement of Cash Disbursements by Check Period from August 15, 1927
to December 21, 1927.

10	<i>Date</i>	<i>Name</i>	<i>Explanation</i>	<i>F. C. Henn's Unit</i>	<i>Other Units</i>
		Amount brought forward.....		2555.94	2931.89
	Dec. 15	N. Y. Telephone			13.25
		Bergen Evening Record Advertising			17.16
		Marian W. Odgen Stenographer			10.00
		Jersey Multi. Co.			7.30
		Publ. Ser. G. & E.			132.68
				<hr/>	<hr/>
				2555.94	3112.28
		Total Receiver Sheet	\$5958.67		
		Less amounts offset by receipts			
		Hazard bad check.....	45.45		
		Lonsha bad check	45.00		
		H. G. Hendricks	200.00	290.45	
			<hr/>	<hr/>	
		Our Total.....	\$5,668.22		

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CLIFFORD J. HEATH, INC.

Statement of Receipts and Disbursements applicable to Units owned by Frederick C. Henn.

Rents Receiver as per Sched- ule 1	\$10,324.90	Cash Disbursements from August 15 to December 21, 1927, per Schedule 2	\$ 626.54
		Disbursements by Check for same period per Schedule 3.....	2,555.94
		Due Frederick C. Henn.....	7,142.42
	<hr/>		
	\$10,324.90		\$10,324.90
	<hr/> <hr/>		<hr/> <hr/>

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**Affidavit in Support of Order to Show Cause
of November 15, 1928.**

(Filed February 28, 1928.)

IN CHANCERY OF NEW JERSEY.

<p>Between:</p> <p style="text-align: center;">CLIFFORD J. HEATH, Complainant,</p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">CLIFFORD J. HEATH, INC., Defendant.</p>	}	<p>On Bill, &c. Affidavit.</p>	<p>10</p>
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<p>STATE OF NEW JERSEY, } COUNTY OF HUDSON, } ss.:</p>	}	<p>20</p>
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JOHN DREWEN, being duly sworn according to law, upon his oath deposes and says:

I am a member of the firm of Perkins and Drewen, solicitors for and of counsel with Frederick C. Henn, the petitioner by whom petition sworn to on the 10th day of November, 1927, was filed in this cause. 30

I have had active charge and management of the case and claim of the said Frederick C. Henn in the above entitled cause.

The Order to Show Cause on receiver's account made herein, and advised by Honorable Alonzo Church, Vice-Chancellor, under date of February 20, 1928, and returnable February 28, 1928, was received at the office of said Perkins & Drewen, 921 Bergen Avenue, Jersey City, New Jersey, in the mail on Thursday, the 23rd day of February, 1928. A copy of said order as thus received 40

Proof of Service of Foregoing Affidavits.

in the mail was the only notice received by said Perkins and Drewen of the matters contained in the said Order to Show Cause on receiver's account.

JOHN DREWEN.

10 Subscribed and sworn to before me }
this 28th day of February, 1928. }

JOHN P. NUGENT,
Attorney-at-Law of New Jersey.

Proof of Service of Foregoing Affidavits.

(Filed February 28, 1928.)

20 IN CHANCERY OF NEW JERSEY.

Between:

CLIFFORD J. HEATH,
Complainant,

and

30 CLIFFORD J. HEATH, INC.,
Defendant.

(65-234)
On Bill, &c.
Affidavit.

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

JOHN DREWEN, being duly sworn according to law, upon his oath deposes and says:

40 I am a member of the firm of Perkins & Drewen, attorneys and counsellors at law of the State of New Jersey, and the solicitors of Frederick C.

Proof of Service of Foregoing Affidavits.

Henn, the petitioner, by whom petition, sworn to on November 10th, 1927, was filed in this cause.

A true copy of the affidavit of F. A. Sullivan in this cause, sworn to under date of February 27th, 1928, and a true copy of the affidavit of myself, sworn to on February 27th, 1928, was served by me on Herbert L. Elins, an attorney and counsellor at law of this state, and associated with William Harris, counsel for Harry G. Hendricks, receiver of the above-named defendant corporation, the said Elins being the person who has had charge of the above-entitled cause for and on behalf of the said receiver and as his counsel. 10

Said copies of affidavits were delivered by me to the said Herbert L. Elins, at Chancery Chambers, Industrial Office Building, in the City of Newark, at about 10:30 o'clock A. M. on this the 28th day of February, 1928. 20

JOHN DREWEN.

Subscribed and sworn to before me }
this 28th day of February, 1928. }

JOHN P. NUGENT
Attorney at Law
of New Jersey.

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Order Passing Account of Receivers, Etc.

(Filed February 28, 1928.)

IN CHANCERY OF NEW JERSEY.

10

Between:

CLIFFORD J. HEATH,
Complainant,

and

CLIFFORD J. HEATH, INC., a Cor-
poration,
Defendant.

On Bill, &c.
Order Passing
Account of
Receiver and
Discharging
Receiver.

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This matter being opened to the Court by William Harris, solicitor for and of counsel with Harry G. Hendricks, receiver of the above named defendant company, and in the presence of John Drewen, solicitor for Frederick C. Henn, and in the presence of R. A. Rindge, appearing for Rowland & Burns, a creditor, and in the presence of counsel representing Successors to Grossman Bros. and Rosenbaum, Inc., a creditor, and it appearing that an order to show cause was made herein dated the 20th day of February, 1928, returnable the 28th day of February, 1928, why the report of the receiver of the above named defendant company should not be approved, and the account filed by him allowed, and why an order should not be made fixing and determining the fees and allowances of said receiver in the administration of his trust, and fixing and determining the fees of counsel for the receiver and for the complainant, and of Hyman Besser & Co., ac-

Order Passing Account of Receivers, Etc.

countants, and it appearing that a copy of said order to show cause, together with a notice of filing of said account, and a statement of the allowance to be asked by the receiver, his counsel and solicitor for the complainant, has been mailed to each of the creditors of the above named defendant company, who have filed claims with the said receiver, and it appearing that a copy of the final report of said receiver, together with an audit of his account remained upon the files of the Sergeant-at-Arms of this Court, at Newark, in accordance with the direction of said order, and it further appearing that the account of said receiver has been audited by Joseph G. Wolber, one of the Special Masters of this Court, pursuant to the order aforementioned, and said Special Master's report and audit of account having been filed herewith, and the said Special Master reporting that the account appears to be full, proper and correct, and it appearing that the said receiver's account is correct and that the same ought to be allowed, and no reason appearing or being shown to the contrary, and no one objecting thereto, and due cause being shown for the granting of this order, it is, therefore, on this 28th day of February, 1928,

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ORDERED, ADJUDGED AND DECREED, that the account filed by said receiver in this cause be and the same is hereby allowed and confirmed, and it appearing that the receiver's receipts have amounted to \$17,760.64 and his total disbursements amount to \$10,117.75, leaving a balance in his hands of \$7,642.89, it is

ORDERED that Harry G. Hendricks, receiver, be and he is hereby allowed the sum of \$2,500, to-

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Order Passing Account of Receivers, Etc.

10 together with his taxed costs and disbursements, and that William Harris, solicitor for complainant and of counsel with receiver, be and he is hereby allowed the sum of \$2,500, together with his taxed costs and disbursements, and Hyman, Besser & Co., accountants, be and they are hereby allowed the sum of \$750, for services rendered, and that Joseph G. Wolber, Special Master appointed to audit the account of said receiver, be and he is hereby allowed \$250, and it is further

20 ORDERED that after payment of the fees and allowances and disbursements allowed to said receiver, the solicitor for complainant and of counsel with receiver, the said receiver pay and disburse from the balance remaining, if any, first to the priority creditors, their claims being set forth in the receiver's final account, according to their lawful priorities, and the balance remaining, if any, to pay or disburse to the general or common creditors of said receiver, pro rata, in proportion to their several and respective claims as proved and allowed before and by the said receiver, or to their several and respective solicitors, and it is further

30 ORDERED that the said receiver file with the Clerk of this Court a statement of his fees, disbursements and expenses in this proceeding, together with a statement and report of the distribution and disposition of the moneys that have come to his hands in this cause, and in case the receiver shall be unable to comply with the directions of this order in the payment of disbursements of any of the moneys aforesaid he shall in such case deposit such moneys with the Clerk of

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Order Passing Account of Receivers, Etc.

this Court, pursuant to the rules thereof, and it is further

ORDERED, ADJUDGED AND DECREED, that upon making the payments and disbursements aforesaid, and carrying out the directions of this decree, the said receiver be discharged from all obligations in relation to said trust to the extent of the moneys for which he has accounted and except as to further moneys coming to him.

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E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V. C.

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**Order Dismissing Petition and Order to Show
Cause of November 15, 1927.**

(Filed April 12, 1928.)

IN CHANCERY OF NEW JERSEY.

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Between:

CLIFFORD J. HEATH,
Complainant,

and

CLIFFORD J. HEATH, INC.,
Defendant.

On Bill, &c.
Order Dismissing
Petition of
Frederick C.
Henn.

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The matter of the petition of Frederick C. Henn, and of the order to show cause made thereon, dated November 15th, 1927, being now renewed before the court (pursuant to the order herein dated December 2nd, 1927) in the presence of John Drewen, of Perkins & Drewen, solicitors for the said petitioner, and of William Harris, by Herbert G. Elins, solicitor for and of counsel with Harry G. Hendricks, receiver of the above-named defendant corporation; and the court having read the petition of said Frederick C. Henn and the affidavits submitted by the said petitioner, and having heard and considered the arguments of the respective counsel:

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It is, on this twelfth day of April, 1928,

ORDERED AND ADJUDGED that the said petition of Frederick C. Henn be and the same hereby is dismissed.

E. R. WALKER,
C.

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Respectfully advised,

ALONZO CHURCH,
V. C.

Affidavit.

(Filed Sept. 20, 1928.)

IN CHANCERY OF NEW JERSEY.

Between:

CLIFFORD J. HEATH,
Complainant,*and*CLIFFORD J. HEATH, INC., a
corporation,
Defendant.

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(65-234)
On Bill, &c.
Affidavit.STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

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

I am an attorney and counsellor-at-law of the State of New Jersey, and a member of the firm of Perkins and Drewen, solicitors for and of counsel with Frederick C. Henn, petitioner in the above entitled cause.

I had charge of the matter of the petition of Frederick C. Henn and order to show cause issued thereon on the 15th day of November, 1927. 30

Said order to show cause was continued by order of this court, made on the 2nd day of December, 1927, until such time as the receiver herein filed his final report and account.

Thereafter the matter of the said order to show cause was renewed by notice and brought on before Vice-Chancellor Church at Newark on the 28th day of February, 1928, at the same time and 40

Affidavit.

place as the court heard the matter of the order to show cause for the passing of the receiver's account and the discharging of receiver herein.

10 Though the order dismissing the said petition of Frederick C. Henn and order to show cause issued thereon under date of November 15, 1927, was not signed by the Vice-Chancellor until the 12th day of April, 1928, it was pronounced by the Court on the 28th day of February, 1928.

The delay between the dismissing of the said petition and order to show cause and the making of the order therefor was caused by the necessity for the serving of formal notice upon counsel for the receiver for the signing and settling of the said order.

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JOHN DREWEN.

Subscribed and sworn to before me }
 this 20th day of September, 1928. }

EDWARD CLAXTON

Attorney at Law of New Jersey

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Notice of Appeal.

(Filed April 19, 1928.)

IN CHANCERY OF NEW JERSEY.

<p>Between:</p> <p style="text-align: center;">CLIFFORD J. HEATH, Complainant,</p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">CLIFFORD J. HEATH, INC., Defendant.</p>	}	<p style="text-align: right;">10</p> <p style="text-align: center;">On Bill, &c. Notice of Appeal.</p>
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Frederick C. Henn, one of the creditors of the above named defendant corporation, hereby appeals from the order made in the above entitled cause under date of April 12th, 1928, by the Chancellor, on the advice of Honorable Alonzo Church, Vice-Chancellor, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes. 20

Dated April 13, 1928.

PERKINS & DREWEN, 30
Solicitors for and of Counsel
with Frederick C. Henn.

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

PERKINS & DREWEN,
Solicitors for and of Counsel
with Frederick C. Henn.

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Petition of Appeal.

(Filed May 2, 1928.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

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Between:

CLIFFORD J. HEATH,
Complainant,FREDERICK C. HENN,
Petitioner-Appellant,*and*CLIFFORD J. HEATH, INC.,
(Harry G. Hendricks, Receiver)
Defendant-Appellee.

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On Appeal
from the
Court of
Chancery.
Petition of
Appeal.*To the Honorable the Court of Errors and Ap-
peals in the Last Resort In All Causes:*The petition of Frederick C. Henn, the appel-
lant in the above-entitled cause, respectfully shows
that:

1. Your petitioner finds himself aggrieved by
a final order made in the Court of Chancery by
his Honor Edwin Robert Walker, Chancellor of
the State of New Jersey, and advised by Alonzo
Church, one of the Vice-Chancellors, bearing date
the 12th day of April, 1928, in a certain cause in
said Court of Chancery, wherein one Clifford J.
Heath was complainant and Clifford J. Heath,
Inc., a corporation, was defendant, in this re-
spect, to wit: that the said order adjudges that
the petition of petitioner filed in this cause, so
pending in the Court of Chancery as aforesaid,
be dismissed.

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Petition.

2. And your petitioner appeals from the order of the Chancellor, which decrees as aforesaid, on the ground that the same is erroneous in that it should have adjudged and decreed that the said petition be allowed and that Harry G. Hendricks, receiver of the above named Clifford J. Heath, Inc., account to petitioner for all rents collected by him, the said receiver, and turn the same over to petitioner, pursuant to the prayer of said petition. 10

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 honorable court shall seem proper.

PERKINS & DREWEN, 20
Solicitors for and of Counsel
with Appellant.

(Answer to petition of appeal filed in common form.)

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31 OCT. 1. 1928

New Jersey Court of Errors and Appeals
OCTOBER TERM, 1928.

Between: FREDERICK C. HENN, Petitioner-Appellant, <i>and</i> CLIFFORD J. HEATH, Complainant, CLIFFORD J. HEATH, INC. (Harry G. Hendricks, Receiver), Defendant-Appellee.	ON APPEAL FROM THE COURT OF CHANCERY.
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**BRIEF OF FREDERICK C. HENN,
PETITIONER-APPELLANT.**

In this case, Harry G. Hendricks, receiver of Clifford J. Heath, Inc., collected rents aggregating a large sum, to which rents he had no color or semblance of right.

The object of this appeal is to undo the order of the Court of Chancery by which it refused to require the receiver to account for the rents and turn them over to the lawful owner.

Where the wrong is obvious, the strongest argument against it is the clearest statement of the facts.

Facts.

On December 14, 1926, and January 24, 1927, Clifford J. Heath, Inc., a solvent corporation, conveyed to Frederick C. Henn, petitioner-appellant,

by valid deeds of conveyance, the fee simple of four parcels of real estate.

Eight months thereafter (August 15, 1927) a bill was filed asking for the appointment of a receiver of the corporation.

The case presented by the bill was not one of insolvency; and it is expressly alleged in paragraph 6 (Case, page 2) that the

“corporation is *solvent* within the meaning of the statute of the State of New Jersey * * * but that the defendant has no cash on hand with which to pay its creditors on accounts long past due and owing * * *”.

Frederick C. Henn, the owner of the properties above mentioned, was named as co-defendant in the bill for receiver. But there was no equity whatever alleged as against him. (As later shown the bill was struck out as to him.)

The receiver was appointed upon the filing of the bill and an order was made to show cause why the receiver should not be continued, etc. (Case, page 11). As to Henn, the order directed that he show cause

“why the receiver hereinbefore named should not take possession of said properties, (the properties here in question) and then and there show cause why the instruments purporting to be deeds, heretofore made by the defendant, Clifford J. Heath, Inc. to the said Frederick C. Henn should not be decreed to be mortgages, and then and there propound his claim as to the amount due him” (Case, page 13, lines 10-20).

On August 22, 1928, an order was made continuing the receiver (Case, page 15). It provided, among other things, that the receiver is authorized to collect:

“All of the rents and the tenants are hereby directed to pay all of the rents to Harry B. Hendricks for all of the following properties” (Case, page 16, line 30, *et seq.*).

And then follows a list of the properties which had been conveyed to Henn eight months before the making of this order.

Henn gave notice of motion to strike out the bill (Case, page 18). The bill was struck out and the order therefor was consented to by receiver's counsel (Case, page 20).

Henn did not appear in the cause except to strike the bill.

Thereafter, on November 5, 1927, an order was entered by which the receiver was ordered and adjudged to

“renounce and abandon any and all right, title, interest, property or possession by him as such receiver in and to the said parcels of land and premises and each of them, and the same are hereby accordingly renounced and abandoned” (Case, page 25, line 35, *et seq.*).

The parcels of land and premises abandoned were the four parcels conveyed to Henn by the corporation (Case, page 21). They are the properties from which the receiver collected the rents in question.

Having been no party in the suit against the corporation, and the receiver having abandoned and renounced any interest in the properties, and this abandonment and renunciation being based upon his (Henn's) valid deeds of conveyance made by a solvent corporation eight months prior to the beginning of the suit, and having already suffered the collection and retention by the receiver of the rents, issues and profits of his property continuously from the 15th day of August,

1927, Mr. Henn on the 15th day of November following, petitioned the Court for relief (Petition, Case, page 27).

This petition sets forth all the facts related in this brief and it prays:

“That the said receiver be Ordered at a short day to account to this court for all rents, issues and profits so collected and received by him as aforesaid, and to pay the same over to your petitioner” (Case, page 34, line 34).

An order to show cause pursuant to the prayer of this petition was made (Case, page 36). Upon its return the matter was argued. *There was no contravening proof of any kind submitted by the receiver.* But for some reason the Court would not then rule on the merits of the order to show cause. It ordered that the matter

“be and the same hereby is continued until such time as the receiver herein files his final account and report” (Case, page 38, line 15).

The receiver gave notice of motion for the approval of his final account and report, returnable on February 28, 1928. And for the same day Henn gave notice of the renewal of the matter of his petition and order to show cause (Case, page 39). Again the matter of these rents was argued and with additional details in support of the order to show cause (see affidavit of Sullivan, Case, pages 42-56). *And again there was no proof of any contravening fact offered by the receiver.*

The Court, nevertheless, without opinion or reason expressed, dismissed the order to show cause, the order of dismissal being signed April 12, 1928 (Case, page 64).

At the time of the dismissal of Henn's petition and order on February 28, 1928, the receiver's

account was passed and the funds in the receiver's hands, *made up almost entirely of the rents which he had collected from Henn's properties*, was disbursed in fees and allowances as shown in the order (Case, pages 60-63).

So much for a statement of events.

Now the order by which the receiver abandoned the properties contains recitals that are important, especially in view of the fact that the order is consented to by receiver's counsel.

The recitals are that the parcels of land were conveyed to Henn by the corporation and that the deeds of conveyance were taken and held by Henn

“as security for moneys advanced by him to the said defendant corporation” (Case, page 25, line 22)

and that it is

“further represented to the Court *by counsel for the said receiver* that there is *no equity in the said lands and premises* for the benefit of creditors over and above the claim of the said Frederick C. Henn for moneys advanced to the said defendant corporation, and other liens on said property” (Case, page 25, lines 25-30).

It is to be noted concerning the transfer of these properties to Henn, first, that this was not a case of insolvency; and second, that the conveyances to Henn were made by two deeds bearing date December 14, 1926, and January 24, 1927, respectively (Case, page 27, line 30). The first of these deeds was given eight months prior to the filing of a bill for a receiver. The second of the deeds was given just short of seven months prior to the filing of the bill.

The time by which these deeds antedate the filing of the bill is mentioned by way of emphasizing the comparison of the circumstances here with

the terms and provisions of the only section of our statute that might be said to impose restrictions. We refer to Section 2 of Chapter 208 of the Laws of 1919. By this statute the period is fixed as "within *four months* prior to the filing of a bill or petition against the corporation for the appointment of a receiver"; and the terms of the statute are made to apply only when, at the time of the lien, etc., the corporation was *insolvent*. Here the corporation was at no time shown to be insolvent, and the allegations of the bill were that it was not so.

But it should suffice to say, without more, that the validity of the title in Henn was *never questioned by the receiver*. And this validity is confirmed in the recitals of the order by which the receiver renounced any claim to or interest in the property.

And as to so much of the order to show cause, made on the filing of the bill, as was directed to the then defendant Henn, how can it be maintained that this order survived the bill upon which it was based? Certainly the subsequent striking out of the bill as against Henn necessarily involved the dismissal of the order to show cause as to Henn. But any possible doubt of this was unquestionably removed by the order of November 5 (Case, page 21), made with the receiver's consent, renouncing and abandoning by the receiver:

"Any and all right, title, interest, property or possession by him as such receiver in and to the said parcels of land and premises and each of them" (Case, *supra*).

In the light of the order of October 10th, striking the bill as against Henn, and of the order of November 5th, by which the receiver abandoned the properties for the reasons stated in the order,

it is seen that the provisions of the order of August 22nd continuing the receiver (Case, page 15), which expressly authorized the receiver to collect the rents from Henn's properties, were without doubt improvident and their effect should have been promptly relieved against.

Needless to say, from the making of this order on August 22, 1927, the receiver did collect the rents. And he collected, before he finished, a net total of rents and receipts from the Henn properties of \$7,142.42 (Case, page 46, lines 18-20).

Facts like these exact principles and invoke law independent of any need for authority. But that the receiver succeeded to the corporate property, subject to all prior acts exercised over that property by the corporation itself, is a principle nowhere disputed. *Miller vs. Savage*, 60 N. J. Eq. 204.

And this Court, while reversing the decree in *Miller vs. Savage*, affirms the principle stated. 62 N. J. Eq. 746.

Furthermore, in *Miller vs. Savage* the Court deals with a situation in which the corporation was not solvent.

The order of renunciation and abandonment was based, in part, upon the fact as recited therein, that the properties were conveyed to Henn "as security for moneys advanced by him to the said defendant corporation", and that there "is no equity in the said lands and premises for the benefit of creditors over and above the claim of the said Frederick G. Henn for moneys advanced to the said corporation * * *."

In the face of this what can be said of the receiver's collection and retention of the rents and their disbursement by the Court below except that these things amount to the misappropriation and conversion by the receiver of moneys which

another was compelled by the Court's power to yield to the receiver, though to these moneys the receiver never had a vestige of right?

The receiver took possession of the properties only as a means of gaining access to the rents, and when possession became a burden and a charge, then it was that the Court, upon the receiver's consent, gave relief to the receiver by the order of abandonment. And though the Court thus separated the fruits of property from the burdens of property, the receiver was permitted to renounce the one and retain the other.

It is respectfully submitted that the order signed on April 12, 1928, dismissing the order to show cause of November 15, 1927, should be reversed and set aside and the order to show cause made absolute to the end that the receiver account to the petitioner-appellant for the rents which have been wrongfully appropriated.

PERKINS & DREWEN,
~~Solicitors for and of Counsel with for~~
Petitioner-Appellant.

New Jersey Court of Errors and Appeals

October Term, 1928.

Between

FREDERICK C. HENN,
Petitioner-Appellant,

and

CLIFFORD J. HEATH,
Complainant,

and

CLIFFORD J. HEATH, INC.
(Harry G. Hendricks, re-
ceiver),

Defendant-Appellee.

*On Appeal
from the
Court of
Chancery.*

BRIEF OF HARRY G. HENDRICKS, RECEIVER, Defendant-Appellee.

The facts in this case are as follows:

On August 15, 1927, Clifford J. Heath, as complainant filed a bill of complaint in the Court of Chancery of New Jersey, setting forth that the defendant corporation, Clifford J. Heath, Inc., was engaged in the real estate business, and that while solvent, it could not continue its business with safety to the public and its creditors, and advantage to its stockholders, and such proceedings were had thereon, that a receiver was appointed to take possession of the assets of said defendant company consisting of real estate, stores, apartment houses, garages and the like.

The bill charged that the corporation had theretofore transacted a considerable amount of

business with one Frederick C. Henn, an attorney at law of New Jersey, and who had been the former attorney of the defendant corporation.

The bill charged and nowheres in the record is it denied that Mr. Henn had loaned money to the corporation, and that instead of taking the ordinary bond and mortgage to secure the indebtedness, he caused the corporation to execute to him various deeds and thereby purported to convey to him the property which is more particularly described in the said deeds (State of the Case, pp. 3 and 9).

The Court appointed a statutory receiver, and specifically ordered him to collect the rent from the properties which had been theretofore allegedly conveyed to Mr. Henn. No appeal was ever taken from this order (State of the Case, p. 16).

In the testimony taken before the receiver, but which inadvertently was omitted by the appellant from the State of the Case, it appears that the corporation had continued in possession of the property, had collected the rents through its agent up to the time of the appointment of the receiver, and that Mr. Henn had never exercised any real dominion over this property, but had always treated the transaction as a loan, even though he appeared to have apparent title to the properties. Mr. Henn always recognized, and properly so, that the transaction between him and the corporation, constituted the relationship of mortgagor and mortgagee, and not that of vendor and vendee.

In this testimony before the receiver, Mr. Henn testified at length, time and time again, that he took these deeds as security for the

loans theretofore made by him to the defendant corporation, and that upon payment to him of the indebtedness, it was agreed that he was to reconvey the properties to the corporation.

The receiver collected the rents of the properties from the time of his appointment up to November 5, 1927, when he was permitted to abandon the property by order of the Court, because there was no equity therein over and above the indebtedness due to Mr. Henn. The order, which was prepared by the solicitor for Mr. Henn, authorizing the receiver to abandon the property, recited that it was:

“made to appear to the Court that title to the said parcels of land and premises as conveyed by the said deeds, was taken and is now held by the said Frederick C. Henn as security for moneys advanced by him to the said defendant corporation.”

The attorney for the receiver consented to the entry of this order (State of the Case, p. 25). They are bound by this order.

It may be noted that the Court merely directed the receiver to abandon the property—*it did not direct him to convey to Mr. Henn and convert his mortgage title into a real title.*

The receiver collected, according to his final report and account, from the properties claimed by Henn, the sum of \$11,250, and these funds were deposited in the general receiver's account along with other funds of the estate, so that the entire receipts collected by the receiver from all sources were \$17,760.04. From this general fund, he made all the disbursements which aggregated \$9,261.75, leaving a balance of \$8,498.89, which latter sum was partially distributed for administration costs and expenses. The receiver made disbursements from this fund from August 15,

1927, to November 10, 1927, without notice that Mr. Henn claimed any portion of this fund.

The affidavit of Mr. Sullivan (State of the Case, p. 42) is not an accurate statement of the receiver's report and account which had been audited and approved by the Court. It contains arbitrary figures, the sources of which are unknown to the receiver. The apportionments of the funds as set forth in Mr. Sullivan's affidavit, are arbitrary and are not in accordance with the receiver's report, which appellant again omitted from the State of the Case.

Mr. Henn now claims that of this fund \$7,142-.42, an arbitrary figure, should be turned over to him as mortgagee. He claims it pursuant to a petition that he filed in the court, that the receiver account to him for the rents collected by him. The petition is verified November 10, 1927, five days after the receiver had abandoned the property. The Court denied the prayer of the petition on April 12, 1927, and this appeal is from the order dated April 12, 1928, dismissing Mr. Henn's petition that the receiver account to him for the rents collected.

The question presented is whether Mr. Henn, as mortgagee, is entitled to the rents collected by the receiver as representing the corporation, the owner of the property.

POINT I.

Frederick C. Henn was merely a mortgagee and not the owner of the property from which the rents were collected.

It is important preliminarily to remember the status of Frederick C. Henn. Mr. Henn was an attorney at law of New Jersey. He was also

the attorney of the defendant corporation. The proofs clearly showed that he loaned money to the corporation, and took these deeds as security for advances. The evidence also shows that he properly recognized his obligation under these deeds, namely, to reconvey the property to the defendant corporation on the payment to him of his debt. As a matter of fact, the attorney for the appellant, in his brief on page seven, in reciting the order of abandonment, recites the order of the Court which is quoted above, to the effect that the properties had been conveyed to Henn "as security for moneys advanced by him to the said defendant corporation."

The law of New Jersey is that where a conveyance has been made as security for a debt, and there is a right to redeem, that transaction constitutes a mortgage. In *Hastings v. Fithian*, 71 New Jersey Law 311, the Court of Errors and Appeals held that whenever a conveyance was made to secure an indebtedness, and that there was a right to redeem by payment of the indebtedness, the transaction was a mortgage. The Court said:

"The transaction therefore presented all the elements that have ever been deemed necessary to constitute a mortgage—an indebtedness, a transfer of property by the debtor to the creditor to ensure the payment of the debt and a right in the debtor to have all that remains after the debt is paid. These circumstances inevitably create a right to redeem by payment of the debt. *Shields v. Lozear*, 5 Vroom 496; *Crane v. DeCamp*, 6 C. E. Gr. 414; *Pace v. Bartles*, 2 Dick. Ch. Rep. 170."

See also *Carton v. Phelps*, 89 N. J. Equity 599.

Since, therefore, the debt was a mortgage, the defendant corporation had all the rights that

exist between mortgagor and mortgagee. It had the right to redeem. Henn could not assert title against the defendant corporation until he filed a bill to foreclose his mortgage and cut off the equity of redemption. He might have conveyed a good title to an innocent purchaser for value without notice, but as between the parties, he was nothing but a mortgagee on the equitable theory that once a mortgage, always a mortgage.

POINT II.

The Laws of New Jersey do not give to a mortgagee rights in the rents collected by the receiver, superior to those of the receiver.

In consideration of this point, it may not be without profit briefly to consider the rights which the laws of New Jersey give to a mortgagee:

(a) In land.

(b) In the rents, issues and profits to be derived from the land.

A. RIGHTS IN LAND.

In New Jersey, a mortgage, though in form a conveyance of title, is only security for the payment of money. The land seems to be a mere pledge in equity for the payment of a debt. It is not an estate in land, "But on the contrary, the interest of the mortgagor carries with it almost all of the qualities and concomitants of ownership," including the rents and profits.

Wade v. Miller, 32 N. J. Law 296.

And although his debt is due, if the mortgagee has not entered into possession, he cannot maintain replevin for a specific chattel which the mortgagor, or his assigns, has served or removed

from the realty and which, before severance, was a fixture or part of the realty, and subject to the mortgage.

Kircher v. Schalk, 39 N. J. Law 335.

And as against receivers appointed in insolvency proceedings against a corporation mortgagor, the mortgagees are not entitled:

“to follow into the hands of the receivers the funds received for damages to the property by fire caused by a railroad company

* * * * *

“The receivers, who were appointed in insolvency proceedings against the corporation mortgagor and owner, and who therefore represented the owner and mortgagor, received these amounts, not as the result of judgments in suits which would have concluded the mortgagees, but in private settlements, which, so far as appears in the case, left unaffected the mortgagees' rights to recover against the railroad company for the impairment of their security. As to the money received by the receivers from the sale of wood and timber, the right of the mortgagees to follow these into the hands of the receivers is based on the theory that it was a wasting of the estate, for which they are entitled to follow the proceeds or to compensation. The evidence does not support this claim of waste by the receivers; but on the contrary, shows, I think, that by the removal of the wood in question the estate, which was a tract of about thirty thousand acres, largely woodland, suffered no material injury in the receivers' hands, and that the mortgagees have been benefited, rather than injured, by the custody and protection of the property, under the receiver, pending the foreclosure. It was competent for the mortgagees, at any time after the foreclosure proceedings commenced, to have made application for a receiver under their mortgage, but if such application had been granted the mortgagees would have been put

to the expense of the advances for the receivership."

Nessler v. Industrial Land Development Company, 65 N. J. Equity 491, at pages 492 and 493.

B. RIGHTS AS TO RENTS.

The cases in this State uniformly hold that as between mortgagor and mortgagee, until the latter goes into possession, or takes some proceeding to sequester the rents, issues and profits to be derived from the mortgaged premises (such as an application for a receiver to collect them, in a suit to foreclose the mortgage), the rents, issues and profits belong to the mortgagor, and he may dispose of them at will.

And even where a foreclosure proceeding is instituted by the mortgagee, he is not entitled to the appointment of a receiver to collect the rents, unless he shows affirmatively *that his security is uncertain or precarious, and that the mortgagor cannot be made to respond to any deficiency which may arise in the foreclosure sale.*

Where such an application is made by the mortgagee, and the affirmative proof is made as hereinabove stated, he is entitled to have the rents applied toward a deficiency decree in the foreclosure proceeding, *but only such rents as have accrued subsequent to the appointment of the receiver.*

He must be diligent and apply for a receiver to collect the rents promptly. Otherwise a subsequent mortgagee may make a similar application to have the rents collected by a receiver applied on account of his mortgage, although a deficiency may exist in favor of the prior mortgagee.

Leeds v. Gifford, 41 N. J. Equity 464-467;

Land Title & Trust Company v. Kellogg,
73 N. J. Equity 524-526;

Long Dock Mills & Elevator Company v. Alpen, 82 N. J. Equity 190;

Conover v. Grover, 31 N. J. Equity 539-542;

Leeds v. Gifford, *supra*.

This was a suit for foreclosure of a mortgage. The premises were encumbered by five mortgages, the complainant holding the third and the defendant the first two and the last two mortgages. The suit was for the foreclosure of the third mortgage. No receiver was appointed. The defendant collected the rents, and the Master making the report credited the rents then collected on the first mortgages of the defendant. The defendant filed exceptions to the Master's report. The Master's report was corrected by changing the credit of the rents from the defendant's first mortgages to his last mortgages. It was held:

“A mortgage which does not by its terms pledge the rents and profits of the mortgaged premises for the payment of the mortgage debt gives the mortgagee no lien on them, and the mortgagor may take them or assign them without liability to account to the mortgagee for them.

Under the rule now in force, a prior encumbrancer has a right, as against the mortgagor and subsequent encumbrancers, in case his security is precarious, to have the rents of the mortgaged premises *accruing subsequent to the appointment of a receiver, sequestered for his benefit.*”

At page 468, the Court said:

“I regard it as entirely free from doubt if the defendant had taken possession under either of his last two mortgages, the complainant could not have deprived him of the rents, except by the appointment of a re-

ceiver. And so, too, if the mortgagor had collected the rents himself, and paid them over to the defendant, either with direction to apply them to his last mortgage, or without direction, leaving the defendant free to make such application of them as his interest might dictate, there can be no doubt that the defendant would have had an unquestionable right, not only as against the mortgagor, but also as against the complainant, to apply them to his last mortgage."

And at page 470:

"In legal substance, the rents were paid to the defendant, under authority from the mortgagor and with permission from him to the defendant to apply them as he saw fit, and the complainant, at the time the defendant made an appropriation of them, having neither a lien on them, nor any right to them, has no right to have such appropriation changed."

Land Title & Trust Company v. Kellogg (supra).

Pending the foreclosure of a mortgage held by complainant against defendant, a receiver was appointed by the Court to collect the rents and profits of the mortgaged premises. The receiver applied for an order directing the distribution of the rents collected by him.

The mortgage foreclosed was a first mortgage and was the only lien against the mortgaged premises. It contained the usual clause, after the description of the mortgaged premises:

"Together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances whatsoever to the same belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof."

The Court said (p. 526):

“I am satisfied, however, that a consistent application of equitable principles should extend to a first mortgagee the right to the appointment of a receiver to collect the rents and profits of the mortgaged premises for his benefit in all cases where it appears *that his security is uncertain or precarious and that the mortgagor cannot be made to respond to any deficiency which may arise at the foreclosure sale.* This view is, I think, fully supported by the more modern practice in this State. *Mahon v. Crothers*, 28 N. J. Eq. (1 Stew.) 567; *Leeds v. Gifford*, 41 N. J. Eq. (14 Stew.) 464; *New Jersey Title Guarantee and Trust Co. v. Cone*, 64 N. J. Eq. (19 Dick) 45; see, also, *Warwick v. Hammell*, 32 N. J. Eq. (5 Stew.) 427; *Conover v. Grover*, 31 N. J. Eq. (4 Stew.) 539; *Brasted v. Sutton*, 30 N. J. Eq. (3 Stew.) 462.”

Long Dock Mills & Elevator Company v. Alpen (supra).

The hearing was on an application concerning moneys in the hands of a receiver appointed by the Court to collect rents, pending the final settlement of the suit, the receiver having been appointed upon the application of the third mortgagee. There were first and second mortgagees, who were not parties to the suit. A bill was subsequently filed by the first mortgagee to foreclose his mortgage, but no application was made by him, or the second mortgagee, for the purpose of having a receiver appointed to collect the rents. The property was sold, and there was a deficiency of \$5,000 on the second mortgage. The application was that the rents collected by the receiver should be applied toward that deficiency. The Court said:

“When proceedings were instituted on the Zurlage mortgage (the first mortgage), they made no application whatsoever for the pur-

pose of having a receiver appointed in the case or for any protection from the court by way of a receiver, or by way of having the rents of the property held as further security for their mortgages. They chose to litigate, hoping that at the sale the property would bring sufficient to satisfy their liens. The law will protect and reward the junior mortgagee who, by superior diligence, obtains the appointment of a receiver for his own benefit. *New Jersey Title, Guarantee & Trust Co. v. Cone & Co.*, 64 N. J. Eq. (19 Dick.) 45; *Coddington v. Bispham*, 36 N. J. Eq. (9 Stew.) 574.

If the mortgagor had remained in possession and collected the rents himself and then paid the money over to the defendant he would have had a right to control their appropriation, and if he had failed to exercise such right the right of appropriation would have then belonged to the defendant, and he might have exercised it in such a manner as would best protect his security.

An examination of the cases leads to the conclusion that the practice is well established of permitting the receiver, appointed at the instance of a junior encumbrancer, to receive the rents and profits until the prior mortgagee takes possession.

In the case under consideration, the junior mortgagee has acquired a specific lien on the rents and is entitled to retain them and apply them on its mortgage.

I will advise an order accordingly."

Conover v. Grover (supra).

In this case a bill was filed to foreclose a mortgage made by Grover and his wife to Sally A. Grover, dated July 8, 1876, and which had been assigned to complainant.

On August 31, 1876, Grover leased the mortgaged premises for five years from April 1, 1877, which lease was assigned, after filing the foreclosure bill, to one Leggett. One of the ques-

tions which arose was whether rent under the lease for the mortgaged premises was applicable to the payment of the mortgages (a receiver having been appointed) or whether it belonged to Leggett.

At page 542, the Court said:

“After the filing of the bill application was made to the Court for the appointment of a receiver of the rents, issues and profits of the mortgaged premises, which was granted. The assignment by Grover to Leggett of the lease was made October 30, 1877, six days after the bill was filed. The mortgagees are entitled to the rents and profits which have accrued *since the appointment of the receiver* if necessary for the satisfaction of their mortgages.”

This case holds that a mortgagee is entitled to the rents only from the time a receiver for the rents is appointed in a suit brought by him for that purpose.

From a consideration of these cases, it may be seen that the courts of New Jersey have consistently adhered to the legal principle that in order to entitle a mortgagee to rents accruing upon the mortgaged premises, timely action must be taken by him to have the rents sequestered, so as to make them available to be applied upon any deficiency decree which may result in the foreclosure proceedings. In the case now being considered by this court, the bill was filed on August 15, 1927, and the receiver was appointed on that date, and he continued to act as such receiver and collected the rents until November 5, 1927, when the Court permitted him to abandon the property. The mortgagee, Frederick C. Henn, has never filed foreclosure proceedings on the mortgage given to him in the form of a deed, absolute on its face, but as security for an ad-

vance. He did nothing to displace the receiver or to oust the receiver from possession. The only thing that he did was to file a petition on November 10, 1927, asking that the receiver account to him for the rents. During all that time, the receiver, necessarily, with the knowledge of Mr. Henn as mortgagee, collected the rents, mingled them with the assets of the estate, and for all that appears, has diverted them to the payment of costs of the administration.

It can hardly be argued that Frederick C. Henn as mortgagee, has acted with the diligence and promptness required by the decisions hereinabove referred to.

If this were not sufficient to debar the petitioner from the relief prayed for, it is still respectfully insisted that the Court of Errors and Appeals of New Jersey has, in an early case which has been repeatedly followed, decided adversely to the petitioner.

Coddington v. Bispham, 36 N. J. Eq. 574.

The facts, briefly, are as follows: Smith Coddington died, leaving a will and appointing two executors. Besides personal estate, the deceased was seized of a house and lot in Rahway, New Jersey. The testator bequeathed pecuniary legacies to each of his children, and charged the payment of the same upon his lands in case of a deficiency of his personal estate to pay the same.

The three legatees subsequently filed a bill against the executors, charging maladministration of their trusts, praying an account of the debts and funeral expenses of the deceased, and of his personal estate, and the rents and profits of the real estate, for a receiver to collect the rents, and for a decree to have their shares paid

them. In compliance with the prayer of the bill a receiver was appointed to collect the rents of the Rahway house and lot.

The executors of Charles Bispham, deceased, held a mortgage on the Rahway property, made by Smith Coddington in his lifetime. About a year and a half after the appointment of the receiver to collect the rents in the suit instituted by the legatees, as aforesaid, the Bispham executors filed a bill to foreclose the mortgage, and obtained a decree of foreclosure and sale. The property was sold under the decree, and a balance of twelve hundred dollars (\$1,200) of the mortgage debt was left unpaid. The executors of Bispham filed a petition asking that the rent in the hands of the receiver be applied in payment of the debt remaining due on the bond, namely, to the deficiency. It was admitted that the expenses of the administration and all the testator's debts, except the deficiency on the bond, had been paid, and that the only persons who have any right to the balance in the receiver's hands, are the executors of Bispham and the legatees under the will. The Vice-Chancellor granted the prayer of the petition, and ordered the money paid on the deficiency, and one of the legatees appealed. Judge Depue, writing the opinion for the Court of Errors and Appeals, says:

“As mortgagees, the executors of Bispham are not entitled to this fund on the ground that they were suitors in the Court of Chancery for the foreclosure of the mortgage. The receiver was appointed in another suit. A receiver appointed in a suit is appointed for the benefit of such of the parties in that suit as afterwards appear to be entitled to the fund in controversy, but not for the benefit of strangers to the suit. *Thomas v. Brigstocke*, 4 Russ. 64; *Howell v. Ripley*, 10

Paige 43; *Post v. Dorr*, 4 Edw. Ch. 412; *in re Ingraham*, 2 Barb. Ch. 35. *A mortgagee has no title to the rents of the mortgaged premises which have been paid into court by a receiver appointed in a suit for establishing the will of the mortgagor, notwithstanding he may, after the receiver's appointment, have given notice to the tenants to pay the rents to him. He should have followed up the notice by applying to discharge the receiver, and then entered into possession himself, or filed his bill and applied for a receiver in his own suit. Thomas v. Brigstocke, supra; 2 Jones on Mort., Section 1524. He cannot in this way obtain priority over other creditors whose debts would be of equal degree with the mortgage debt in the general administration of the estate. A court of equity will always, in the administration of assets, place all the creditors on an equality as far as possibly can be done without disturbing existing liens. State Bank v. Receivers, 2 Gr. Ch. 266. The executors can make claim to the fund only as creditors, and on the ground that the moneys are assets for the payment of debts.*

* * * * *

The debt due to Bispham was secured by a bond made by Coddington in his lifetime, as well as by the mortgage. Part of it had been paid out of the proceeds of the foreclosure sale; the balance was a subsisting debt, to be paid out of the assets of the estate of the obligor. As creditors in virtue of the bond made by the deceased, the executors of Bispham were parties to the complainants' suit, which drew into the Court of Chancery the entire administration of the assets, and was a suit for the benefit of all persons interested either as creditors or legatees.

* * * * *

The lands whereof the testator died seized being assets for the payment of debts, and the Court having taken charge of all the

assets, real and personal, for the purpose of administration, rents realized while the lands were in the custody of the Court in the process of administration are assets for the payment of debts equally with the lands themselves."

The Court then decided that:

"As between creditors, who are entitled to be paid first, and legatees, who take only the surplus after debts are paid, the equity is wholly in favor of the former, to have the assets in hand applied in satisfaction of their demands."

It is respectfully insisted that this case determines that the laws of New Jersey do not give to a mortgagee rights in the rents collected by the receiver of the defendant corporation superior to those of other creditors of the defendant corporation, and that a mortgagee who has a deficiency and who has not taken action to sequester the rents is merely an unsecured creditor and shares equally with other creditors of the mortgagor in the fund.

In law, Frederick C. Henn seemed to have relied on the security of the land for the repayment to him of his indebtedness, and there is no evidence to the contrary that the land is not sufficient security for the payment of his indebtedness. As a matter of fact, it affirmatively appears that the reason the receiver was permitted to abandon the premises, was that there was no equity over and above the indebtedness due to Frederick C. Henn for the moneys advanced by him.

POINT III.

The Order directing the receiver to abandon the property revested the title in the defendant corporation.

It must be noticed that the order directing the receiver to abandon the property did not direct him to convey it to the mortgagee in satisfaction of the mortgage indebtedness. It merely directed him to abandon the property. In this state of affairs, the title to the property did not pass to the mortgagee, but passed to the defendant corporation, and the only way that Mr. Henn can get a good and marketable title to the property is by filing a bill for the foreclosure of his mortgage.

The Court of Errors and Appeals determined this in the case of *Smith v. Wahl*, 88 New Jersey Law 623. The facts are that a trustee in bankruptcy was appointed for one Smith, who was the owner of certain property. A covenant against encumbrancers was broken, as soon as it was made. The trustee in bankruptcy filed a disclaimer for the real estate, and the Referee in Bankruptcy entered an order rejecting the real estate, and the trustee refused to take possession of the same.

The Court held that upon the disclaimer of the trustee, and the order of the Referee in Bankruptcy, the bankrupt could assert title to the land. *American File Co. v. Garrett*, 110 U. S. 288; *Sparhawk v. Yerkes*, 142 *Id.* 1; *Sesswin v. Romadka*, 145 *Id.* 29; *Dushane v. Beall*, 161 *Id.* 513; *First National Bank v. Lasater*, 196 *Id.* 115.

The Court further held that the right of action for the breach of the covenant against encumbrancers, would revest in the bankrupt upon the

disclaimer by the trustee, and that he could bring suit on that covenant which had been breached.

It, therefore, follows that when the Court permitted the receiver to abandon the property, that the title reverted in the defendant corporation, and the only way for Henn to get the title as stated above, is to file a bill to cut off the right of redemption that the defendant corporation still has.

POINT IV.

The order of April 12, 1928 denying the petition that the receiver account for the rents, should be affirmed.

Respectfully submitted,

WILLIAM HARRIS,
Solicitor for Defendant-Appellee.

SAMUEL KAUFMAN,
HERBERT L. ELINS,
Of Counsel.

31 OCT. 1. 1928
31
to be added in state of case

Stipulation.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

OCTOBER TERM, 1928.

10

<p>FREDERICK C. HENN, Petitioner-Appellant, <i>and</i> CLIFFORD J. HEATH, INC. (Harry G. Hendricks, Receiver), Defendant-Appellee.</p>	}	<p>On Appeal from the Court of Chancery. Stipulation.</p>
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On Appeal
from the Court
of Chancery.

Stipulation.

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It is hereby stipulated and agreed by and between the respective parties hereto, that so much of the testimony of Petitioner-Appellant given on August 20th, 1927, in an examination by Counsel for the above named Receiver, as is hereinafter set forth, be printed as a part of the State of the Case on this appeal.

TESTIMONY.

30

On page 11:

By Mr. Harris:

Q. So that the deed in effect was a mortgage?

By Mr. Henn:

A. No, the deed was a security.

Q. That is after the money was repaid to you, you were to reconvey? A. Yes.

40

Stipulation.

On pages 17 and 18:

10 Q. Who has collected the rents? A. The Collector, I presume, is Mr. Courtney. We had referred Mr. Courtney to Mr. Heath and took him up to the office and told him he was a capable man and that he needed a man such as Mr. Courtney to oversee all the properties. All the properties were in an unfinished condition. He put the property in good condition and he and Mrs. Stetler in the office collected the rents between them.

Q. What became of those rents? A. Were kept by Mr. Courtney.

Q. Deposited by Mr. Courtney? A. I presume they were.

20 Q. In whose account? A. I think in his account. We did not want to get the rent money mixed up with the mortgage money.

Q. Mr. Courtney was holding that money for Heath's benefit? A. Absolutely. I don't presume, however, at any time there was sufficient to pay the salaries or the upkeep of the buildings. Some weeks we advanced as much as \$400.00 or \$500.00 a week to pay running accounts. Public Service would come up and threatened to turn off the lights. Mr. Courtney called us up and we gave him a check.

30 Q. Is that property still in the name of Clifford J. Heath, Inc.? A. No, that is in my name.

Q. You have not transferred that property? A. Yes, I did transfer it. Mr. Heath said that he had a buyer; thought the deal may go through the same way with the corner lot.

40 Q. When was that? A. That was maybe two months ago. Had these mortgages in my name, that is the security mortgages, and in fact the title. I thought perhaps there may be a question of a merger of our mortgage with the title so I conveyed the title to a searcher in the Court

Stipulation.

House, Charles L. Cafiero and Mr. Cafiero has executed a deed to me.

On page 19:

Q. The rents for these properties, going back to them, are being collected by Mr. Courtney for Clifford J. Heath, Inc.? A. No question about that. 10

Q. So that the receiver is entitled to those rents? A. No, he isn't according to my theory.

Q. Never anything in writing about turning over these rents to Mr. Courtney? A. Represented the company, paid by the company.

Q. Company's agent entirely? A. No question about it.

Q. Subject to whatever orders the company gave him? A. No question about it. 20

On pages 19 and 20:

Q. Receiver standing in the place of the company is entitled to the rents? A. There is a mortgagee in possession.

Q. Mortgagee in possession? A. Yes, sir.

Q. Have you attempted to collect rents as mortgagee in possession? A. I have supervised the application of the moneys.

Q. But you never actually exercised the right that you had in such mortgage, if you had such rights to the collection of the rents? A. Yes, we saw that Mr. Courtney was collecting them. 30

Q. Mr. Courtney your agent or Mr. Heath's agent? A. I had 18 shares of the capital stock of Clifford J. Heath, Inc. Assume that I had some interest in the company.

Q. When did you get that stock? A. Some time in January 1927.

Q. For what purpose? A. By Beatrice Heath. 40

Q. Did you have any consideration for that? A. It was assigned to me as collateral security for the repayment of the loans, just like the deeds.

Stipulation.

Q. Advance any money to her? A. Advanced money to Clifford J. Heath, Inc.?

Q. Advance any money to Mrs. Heath at the time she transferred that stock? A. Not to her personally.

10 Q. How was she obligated to you? A. Obligated because she was an officer of the company.

Q. Never any actual consideration given to her? A. Not an actual turnover.

Q. You are the agent of Clifford J. Heath, Inc.? A. No, believe Clifford J. Heath is.

Q. Courtney wasn't your agent in any manner whatsoever in the collection of those rents? A. No, I will qualify that. He was the joint agent; he had collected the rents and applied them to obligations.

20 Page 24:

Q. And all the moneys being collected by Mr. Courtney are deposited by Mr. Courtney in some account—that you know? A. I don't know just what manner that he has deposited them in. Not deposited them in Clifford J. Heath, Inc., because of the judgment.

30 Q. If there had been no judgments he would have deposited them in Clifford J. Heath, Inc. A. Don't think he would. Then Mr. Heath and Mrs. Heath might sign checks and draw them out? Really Mr. Courtney's collecting the rents was for the purpose of having him, on behalf of Clifford J. Heath, Inc., apply the rents toward the carrying charges of the building.

PERKINS & DREWEN,
Solicitors for and of Counsel with
Petitioner-Appellant.

40 WILLIAM HARRIS,
Solicitor for and of Counsel with
Defendant-Appellee.

Dated, November 2, 1928.

Stipulation.

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Page 24:

Q. And all the receipts being collected by Mr. Courtney are deposited by Mr. Courtney in some account—that you know? A. I don't know just what manner that he has deposited them in. Not deposited them in Clifford J. Heath, Inc., because of the judgment.

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PERKINS & DEWEES,
Solicitors for and of Counsel with
Petitioner-Appellant.

30

WALTER HANSEN,
Solicitor for and of Counsel with
Defendant-Appellee.

Dated, November 2, 1928.