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Notice of Appeal.

IN CHANCERY OF NEW JERSEY

Between

JOSEPHINE WARKER,
Complainant,

and

FRANK N. WARKER and EMMA
WARKER,
Defendants.

On Bill, etc.
65-149.

10

The complainant, Josephine Warker, hereby appeals from the final decree made by the Chancellor in the above entitled cause on August 19th, 1930, on advice of Vice-Chancellor John O. Bigelow from the whole and every part thereof, except the allowance of \$100.00 to Harry Lane as Special Master, to the Court of Errors and Appeals in the last resort in all causes.

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Dated August 28th, 1930.

JAMES J. MURPHY,
Solicitor and of Counsel with Complainant.

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

JAMES J. MURPHY,
Of Counsel with Complainant.

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Amended Notice of Appeal.**IN CHANCERY OF NEW JERSEY**

10	Between JOSEPHINE WARKER, Complainant, and FRANK N. WARKER and EMMA WARKER, Defendants.	} On Bill, etc. 65-149.
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20 The complainant, Josephine Warker, hereby appeals from that part of the final decree allowing to the solicitor of the complainant the sum of \$2500.00 for his services to include his disbursements and the sum of \$500.00 to be paid, to the receiver, David A. Nimmo, for his services and disbursements, made by the Chancellor in the above entitled cause on August 19th, 1930 on advice of Vice-Chancellor John O. Bigelow, to the Court of Errors and Appeals in the last resort in all causes.

Dated September 15th, 1930.

30 JAMES J. MURPHY,
 Solicitor and of Counsel with Complainant.

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

JAMES J. MURPHY,
 Of Counsel with Complainant.

Petition of Appeal.NEW JERSEY COURT OF ERRORS AND
APPEALS.

JOSEPHINE WARKER, Complainant-Appellant,	} On Appeal from the Court of Chancery.	10
vs.		
FRANK N. WARKER, <i>et als.</i> , Defendants-Appellees.		

TO THE HONORABLE COURT OF ERRORS AND APPEALS
IN THE LAST RESORT IN ALL CAUSES:

The petition of Josephine Warker, the appellant
in the above entitled cause respectfully shows that:

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1. The petitioner finds herself aggrieved by a
final decree advised in the Court of Chancery by
the Honorable John O. Bigelow, Vice-Chancellor,
and made by his Honor Edwin Robert Walker,
Chancellor of the State of New Jersey, bearing
date August 19th, 1930, in a certain cause wherein
the said Josephine Warker was complainant, and
the said Frank N. Warker and Emma Warker were
defendants, in this respect, to wit:

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That the said decree adjudges that there be al-
lowed to the solicitor of the complainant, the sum of
\$2500.00 for his services to include his disburse-
ments, and the sum of \$500.00 to be paid to the re-
ceiver, David A. Nimmo, for his services and dis-
bursements.

2. And your petitioner appeals from that part
of the decree of the Chancellor which decrees as

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Petition of Appeal.

aforesaid, upon the ground that the same is erroneous in that:

a. The Court of Chancery had no lawful power to make said order.

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The petitioner, therefore, prays that that part of the said order of the said Chancellor may be reversed, set aside and for nothing holden, and that petitioner may have such relief in the premises as to this court shall seem proper.

JAMES J. MURPHY,
Solicitor and of Counsel with
Complainant-Appellant.

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Bill of Complaint.

(Filed Aug. 10, 1927)

TO THE HONORABLE EDWIN ROBERT WALKER,
CHANCELLOR OF THE STATE OF NEW JERSEY.

Complainant, Josephine Warker, residing in the Village of Cliffwood, Township of Matawan, in the County of Monmouth and State of New Jersey, complaining against Frank N. Warker and Emma Warker, his wife, the above named defendant, says: 10

(1) Complainant, at the time of the transfers and conveyances of real and personal property hereinafter stated, was and is a maiden lady of the age of over sixty-five years, subject to the infirmities of advanced age, with frequent loss of memory and unexperienced in business affairs.

(2) Defendant, Frank N. Warker is related as a distant cousin to complainant and is not now actively engaged or employed in business. The above named defendant, Emma Warker, is the wife of Frank N. Warker. Both of these defendants reside at York, Pennsylvania. 20

(3) At the time of the conveyance of real estate hereinafter set forth, these defendants were living with complainant in the home furnished and owned by complainant in the Village of Cliffwood, Monmouth County, New Jersey. 30

(4) That on October 2nd, 1925, your complainant's brother, Edward H. Warker, died intestate, and leaving this complainant as his only heir at law; that he died seized and possessed of the following real estate: 40

Bill of Complaint.

ALL those certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate lying and being in the Village of Cliffwood in the County of Monmouth and State of New Jersey, in the Township of Matawan.

10 COMMENCING at a point on the westerly side of Ninth Street at a point distant two hundred feet northerly from the northwesterly corner of Ninth Street and Third Avenue running thence northerly along the westerly side of Ninth Street, two hundred and fifty feet; thence westerly and at right angles to Ninth Street, two hundred feet to Tenth Street; thence southerly along Tenth Street two hundred and fifty feet to a point two hundred feet northerly from the northeasterly corner of Third Avenue and Tenth Street; and thence easterly and at right angles to Tenth Street and parallel with
20 Third Avenue two hundred feet to the westerly side of Ninth Street, at the point or place of beginning.

In addition thereto the following described valuable personal property:

30	100 shares Common Stock, Chandler Motor Co. represented by certificates #O-847, for 60 shares, #O-5516, for 20 shares, and #O-18925, for 20 shares. At $26\frac{1}{2}$	\$3650.00
	1 share Preferred Stock, Chicago Great Western R. R. Co., represented by certificate #A-91416. At $24\frac{7}{8}$	24.85
	5 shares Common Stock, Kennecott Copper Corporation. Represented by certificate #B-52696. At $54\frac{1}{4}$	271.25
40	35 shares Common Stock. Caddo Central Oil & Refining Corporation. Represented by certificate #03737. At $\frac{7}{8}$	30.00

Bill of Complaint.

10 shares Common Stock, Sinclair Consolidated Oil Corp'n. Represented by certificate #015561. At 19	190.00	
10 shares Preferred Stock. International Mercantile Marine Co. Represented by certificate #15671. At 31 $\frac{1}{4}$	312.50	10
10 shares Preferred Stock, Pressed Steel Car Company. Represented by certificate #A-28385. At 80	800.00	
5 shares Common Stock, some corporation, Certificate #C-047597. At 108	540.00	
40 shares Common Stock, Famous Players-Lasky Corp'n. Represented by certificate #C-017631. At 108	1080.00	
20 shares Preferred Stock, Famous Players-Lasky Corp'n. Represented by certificate #P-05919, for 10 shares, and certificate #P-06664, for 10 shares. At 115 $\frac{1}{4}$	2350.00	20
20 shares Preferred Stock, National Lead Co. Represented by certificate #B-30434, for 10 shares. At 116	2320.00	
40 shares Common Stock, F. W. Woolworth Co. Represented by certificate #WO-1782. At 172	6800.00	30
	\$18323.60	

(5) That on October 6th, 1926, complainant was the owner in fee simple of the above described real estate, free and clear of all encumbrances, which she then occupied and still occupies.

(6) Complainant, at the times hereinafter mentioned did not own any other property, real or per-

Bill of Complaint.

sonal, except furniture in her home at Cliffwood aforesaid, and was dependent upon said property for her maintenance and support.

10 (7) That Frank N. Warker, was the administrator of the estate of said Edward H. Warker, deceased, and that so far as she now knows or remembers, she only received from said Frank N. Warker, administrator of the estate of Edward H. Warker, deceased, the sum of \$1,000.00, but believes that said Edward H. Warker has obtained her signature to the certificates of stock representing the shares hereinbefore mentioned and described.

20 (8) Shortly prior to October 6th, 1926, Frank N. Warker and Emma Warker came to Cliffwood, New Jersey, and visited complainant, and in some manner which your complainant does not now remember, obtained her signature to a deed dated October 6th, 1926, and recorded October 7th, 1927, in the Monmouth County Clerk's office and your complainant is now informed that the deed signed by her as aforesaid, conveyed to said defendants all the above described real estate in consideration of One (\$1.00) Dollar; with covenants of seizen, right to convey, quiet possession, free of encumbrances
30 and general warranty; that said deed purports to be acknowledged before one Arthur S. Van Buskirk, an attorney at law of the State of New Jersey, and is recorded in book #1372, page #62, of deeds for Monmouth County and was recorded on October 7th, 1926.

40 (9) Complainant alleges that the value of her property, personal, was of the value of \$18,000.00, and the value of her property, real, was of the value

Bill of Complaint.

of \$10,000.00; that complainant has no other property except a small deposit in bank and some household goods and furnishings of small value and was wholly dependent upon said property for her support and maintenance; that she has always resided on said real property but that recently Frank N. Warker has told her she must go to York, Pennsylvania with him, that she no longer owns the property; that said assignments and stock certificates, if signed by her, were so executed wholly without independent advice and without knowledge of the contents thereof or what she was doing; that said deed, if executed by her at all was executed wholly without independent advice and without knowledge of the contents thereof and without knowledge that she thereby was divesting herself of all property. Complainant did not receive any consideration whatever for the alleged assignments, bills of sale, or conveyance of deed; that from the date of the death of her brother, Edward H. Warker, up until a very recent period of time she has continued to occupy and enjoy the benefits of said real estate without any claim of ownership, being made by either Frank N. Warker or Emma Warker, his wife.

(10) Complainant was first informed of the alleged execution by her of the aforesaid deed of conveyance, transferring her ownership in the aforesaid premises, only a few weeks ago when she was so advised by the Clerk of Monmouth County in response to an inquiry made by her of him and thereupon demanded of said Frank N. Warker and Emma Warker, a cancellation of the alleged assignments, bills of sale and conveyances and a reassignment and reconveyance to complainant of all her interest under said instruments but that defendant

Bill of Complaint.

has declined and refused and still declines and refuses to comply with said requests.

(11) Complainant alleges that the aforesaid assignments, bills of sale or conveyance made by her, if made at all, were procured by fraud and misrepresentation and are wholly void.

10 Complainant further alleges that said instruments of assignment and conveyance, if executed by her at all, were procured by undue influence and without independent advice and wholly without consideration and are improvident and voidable or void.

(12) Complainant is without adequate remedy at law, and therefore prays for relief as follows:

20 (1) That the defendants, Frank N. Warker and Emma Warker make answer to this bill of complaint but without oath as fully as though the several allegations thereof were here repeated.

30 (2) That the aforesaid bills of sale, assignments or deeds of conveyance made, be adjudged to be void and that the same be set aside and that the defendants decreed to reconvey said premises to the complainant and return to her said certificates of stock hereinbefore set forth, or their value in money.

40 (3) That the defendants be enjoined and restrained from mortgaging, conveying, or in any manner charging or dealing with said premises and from interfering with the complainant in the possession and enjoyment thereof; that the defendants or one or both be enjoined and restrained from assigning, selling or transferring any of the certifi-

Bill of Complaint.

cates of stock hereinbefore set forth which are still in their possession, or under his, her or their control, and that they set forth in full, the moneys received by either or both of them from the sale of such stock, if sold.

(4) That a Receiver be appointed to take care of and rent, collect rents, etc. of the real estate of said Cliffwood premises and take possession of the certificates of stock hereinbefore numerated, pending the final hearing thereof. 10

(5) That complainant have such other and further relief as may be equitable and just.

(6) That the State's writ of subpoena issue out of and under the seal of this court, directed to the defendants, pursuant the course and practice of this court. 20

GEORGE D. HENDRICKSON,
Solicitor of and of Counsel
with Complainant.

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Bill of Complaint.

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

JOSEPHINE WARKER, being duly sworn, according to law, on her oath deposes and says:

10 That she has no property except a few dollars in the bank and her household goods and furnishings; that the annexed bill of complaint has been read to her and that so far as she knows or is able to remember, the allegations therein set forth are true.

That the defendants, Frank N. Warker and Emma Warker, his wife, reside at York, Pennsylvania.

JOSEPHINE WARKER.

20 Sworn and subscribed to before me }
 this 9th day of August, 1927. }

JAMES A. HENDRICKSON,
 Master in Chancery
 of New Jersey.

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Bill of Complaint.

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

LINCOLN SCOTT KEMPER, of full age, being duly sworn according to law, on his oath deposes and says:

That he knows Josephine Warker and Frank N. Warker and Emma Warker; that he has personal knowledge of the estate of Edward H. Warker, the brother of Josephine Warker. 10

Deponent further says that Edward H. Warker died intestate on October 2nd, 1925, leaving him surviving as his sole heir at law, his sister, Josephine Warker.

Deponent further says that he has read the bill of complaint hereto annexed; that said Edward H. Warker died possessed of the personal property described in the bill of complaint hereto annexed and of the real estate described in the said bill of complaint hereto annexed. 20

Deponent further says that to his knowledge Frank N. Warker has been endeavoring to obtain possession all of the property, both real and personal, which came to Josephine Warker.

Deponent further says that he knows the values of said properties and that the value of the personal property is about \$18000.00 and the value of the real estate is about \$10000.00 to \$12000.00. 30

LINCOLN SCOTT KEMPER.

Sworn and subscribed to before me }
 this 10th day of August, 1927. }

DAVID McCUA,
 Master in Chancery
 of New Jersey. 40

Bill of Complaint.

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

NATHAN EWIN, being duly sworn according to law, on his oath deposes and says:

10 That he is a practicing physician of the State of New Jersey, residing at Matawan, New Jersey, and has practiced his profession for over thirty years.

Deponent further says that he has personally known for upwards of five years, Josephine Warker and has been her physician at intervals for such period of time.

20 Deponent further says that in 1925, Josephine Warker suffered a cerebral hemorrhage, that it left its effect on her mind, that since then her mental faculties have been weakened to a marked degree and that she has suffered and is suffering an almost continuous loss of memory.

NATHAN EWIN.

Sworn and subscribed to before me }
 this 9th day of August, 1927. }

30 JAMES A. HENDRICKSON,
 Master in Chancery
 of New Jersey.

Ex parte Order Appointing Receiver.

(Filed Aug. 10, 1927)

It appearing to the court from the bill of complaint and affidavits annexed thereto, filed in the above entitled cause this day, that the defendants, Frank N. Warker and Emma Warker, are residents of the State of Pennsylvania; that the complainant, Josephine Warker is a resident of the State of New Jersey; that the complainant became the owner of certain valuable real estate in the Village of Cliffwood, Matawan Township, Monmouth County, New Jersey, and personal property of large value, by inheritance from a deceased brother, who departed this life on October 2nd, 1925; that the defendants or one or both of them have obtained title to such property without consideration being paid therefor and that there is danger that said real estate will be sold or transferred and said assets or the proceeds thereof diverted from the State of New Jersey and away from the rights of the complainant in this State and that immediate and irreparable injury will result therefrom and that it is necessary for the protection and preservation of the rights of the complainant that the real estate in this State be preserved and administered by a Receiver to be appointed by this court, and that a Receiver of the properties, real and personal, of the complainant, described in the bill of complaint filed herein, should be appointed herewith with powers herein granted.

Now, THEREFORE, upon motion of George D. Hendrickson, Solicitor for and of counsel with the complainant,

IT IS on this 10th day of August, 1927, ORDERED that David Minimo of Red Bank be and he hereby

Ex parte Order Appointing Receiver.

10 is appointed Receiver of the complainant, Josephine Warker, and of the properties of the said complainant, real, personal or mixed, of whatever kind and description, including all lands, real estate and buildings, particularly described in said bill of complaint filed herein, together with all rents, issues and profits accrued or to accrue therefrom, and all assets and property of the complainant, Josephine Warker, of any and whatever kind, character and description whatsoever and wheresoever situate.

20 FURTHER ORDERED that said Receiver before entering upon his duties give bond to the Chancellor of this State in the sum of \$1000. (to be increased if assets come into his hands) conditioned that he will well and truly perform the duties of his appointment and duly account for all moneys and properties which may come into his hands and abide by and perform all orders of this court, which may be made herein, with sufficient surety or securities, which said bond shall be approved as to form and sufficiency by one of the Special Masters of this court and to be filed in the above entitled cause.

30 FURTHER ORDERED that the said defendants, Frank N. Warker and Emma Warker and any other person acting under his, her or their direction, and all other persons, firms or corporations, upon presentation of a certified copy of this order, and which may be certified by the solicitor of the complainant, shall deliver to said Receiver, any and all properties of the complainant, real and personal, in his, her or their possession or in his, her or their control, and that all persons by and they hereby are enjoined from in any wise disturbing the possession of the said Receiver and from commencing or

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Ex parte Order Appointing Receiver.

prosecuting any actions or suits which may affect the properties of the complainant.

FURTHER ORDERED that until further order of this court, the said Receiver be and he hereby is authorized forthwith to take over complete and exclusive control, possession and custody of the assets and properties, mentioned and described in the bill of complaint filed herein, and all persons, firms and corporations, including defendants, shall forthwith deliver to said Receiver, all properties in their possession and particularly described as follows, wheresoever located, to wit:

ALL those certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Village of Clifford, in the County of Monmouth and State of New Jersey, in the Township of Matawan.

COMMENCING at a point on the westerly side of Ninth Street at a point distant two hundred feet northerly from the northwesterly corner of Ninth Street and Third Avenue running thence northerly along the westerly side of Ninth Street, two hundred and fifty feet; thence westerly and at right angles to Ninth Street, two hundred feet to Tenth Street; thence southerly along Tenth Street two hundred and fifty feet to a point two hundred feet northerly from the northeasterly corner of Third Avenue and Tenth Street and parallel with Third Avenue two hundred feet to the westerly side of Ninth Street, at the point or place of Beginning.

FURTHER ORDERED in the event that the said Frank N. Warker and Emma Warker cannot be served with a copy of this order within the State of

Ex parte Order Appointing Receiver.

10 New Jersey, that a true copy of the same, certified by complainant's solicitor, be served within one day of the date hereof upon such defendants as cannot be served within the State of New Jersey, by mailing to such defendants, at York, Pennsylvania, and with such copy also a true copy of the bill of complaint and affidavits thereto annexed similarly certified, with postage prepaid and registered and return receipt demanded.

20 FURTHER ORDERED that the defendants, Frank N. Warker and Emma Warker show cause before the Chancellor, at the Chancery Chambers, in the City of Jersey City, on the 15th day August, 1927, at the hour of 10 o'clock in the forenoon (Daylight Savings Time) why the Receiver above appointed and the said Receivership should not be continued or made permanent, and this order shall, in the meantime, continue in full force and virtue until the return day and for such longer time to which it may be extended.

30 FURTHER ORDERED that said Receiver be and he is authorized and empowered to institute, prosecute and defend, compromise, adjust, intervene in or become party to such suits, actions or proceedings at law or in equity, in State or Federal Courts as may in his judgment be necessary or proper for the protection, maintenance, preservation, recovery or collection of the property and assets of the complainant or the carrying out of the terms of this decree.

E. R. WALKER,
C.

Respectfully advised.

40 JOHN BENTLEY,
V. C.

Answering Affidavits.

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

FRANK N. WARKER, being duly sworn according to law on his oath deposes and says:

I am one of the defendants in the above named suit. I am a cousin of the complainant; when the complainant's brother died in October, 1925; he died at my home in York, Pennsylvania, where he had lived for about four years since his retirement from business; his heir-at-law was Josephine Warker, the complainant in this suit; she did not want to undertake the administration of her brother's estate (he having died intestate) and her principal reason for not doing so was the distance that she would have to go from time to time from York, Pennsylvania to New York City, N. Y. I was appointed administrator and I employed Charles M. Beattie, of New York City as my attorney, who attended to such legal matters as were necessary to attend to in New York. Upon the death of my cousin his sister, the present complainant, came to live with my wife at York, Pennsylvania, where she lived during the winter of 1925 and where she also lived during the winter of 1926, and we came to an arrangement whereby she was to live with us during the winter, and we were to go from time to time to visit her home at Cliffwood, during the summer.

My cousin Edward H. Warker had stated to me, as he had stated to the complainant that he wanted her to have the house and his property during her lifetime and upon her death he wanted the property to go to me. During the early fall of 1926, the complainant told me that she wanted to convey to myself and to my wife the house and lot at Cliffwood,

Answering Affidavits.

because she wanted to carry out her brother's intentions and it was this statement by her, and her wish that this property be conveyed to me, that brought about our trip to Keyport where we employed a lawyer to prepare the deed and where she signed the deed, which was subsequently recorded.

10 I had no idea whatever that she wanted the property conveyed back to her and wanted the title of the property in her name until I received a copy of the bill of complaint and the order to show cause in this case, and upon receipt of it and after reading it I asked her what she meant by beginning this proceeding and she told me that she wanted her house and lot back, whereupon my wife and I went to a lawyer in Keyport, New Jersey, who prepared the deed and recorded the deed conveying the property back to her, the deed being dated August 22nd, 20 1927, and complainant has had possession of the deed since then.

I have not profited in any way from the property that belongs to my cousin. I always regarded the property at Cliffwood as her property, and the stocks and bonds as her stocks and bonds; I turned over to her all of the cash which her brother had at the time of his death and deposited to her credit in a savings bank, which amounted to a little less 30 than two thousand dollars (\$2,000) and I have expended on the upkeep of the property at Cliffwood, which was badly in need of repair, such dividends as were received from the stocks which she inherited from her brother.

My attention has been called to the fourth paragraph of the affidavit of Lincoln Scott Kemper, attached to the bill of complaint which states "deponent further says that he has knowledge that Frank- 40 N. Warker has been endeavoring to obtain posses-

Answering Affidavits.

sion of all of the property, both real and personal, which came to Josephine Warker"; I have had no intention whatever, nor have I any intention at this time of taking her property or property of anyone. I have means of my own ample to support me, having accumulated them as a result of my business which I sold ten years ago, having since that time been retired. Kemper was an employee in the office of Mr. Beattie, the attorney who represented me as I said above in the administration of the estate in New York. 10

It is untrue, as stated in the sixth paragraph of the bill of complaint that the complainant was entirely dependent on the real estate for her livelihood. She lived at my home at no cost or expense whatever. It is not true that she received but one thousand dollars (\$1000) from the estate, she having received almost two thousand dollars (\$2000). The real estate at Cliffwood was conveyed to myself by the complainant on her own volition, and without any suggestion on my part. She stated that she wanted to be sure that the property would reach me in the event of her death. I deny that there was any fraud, undue influence, improvidence, or mis-representation in the making of the deed aforesaid. Everything that was done was done openly with the knowledge of the complainant and for one purpose alone, that is, for the purpose of enabling me to take title to the property only after her death. 20 30

After the commencement of this suit and before the return day of the order to show cause, I went to the solicitor of the complainant and told him that by reason of the shortness of the time, and by reason of having guests at the house at Cliffwood, we could not get ready for the 15th of August, and he arranged for a continuance of it until the 19th of 40

Answering Affidavits.

September. Subsequently on Monday, the 15th of August I went with the complainant to the solicitor of the complainant and I heard her request him to drop this suit and he made no answer whatever, other than to indicate that it was in the hands of the court and would have to stay there.

10 It is entirely unnecessary for the complainant to begin this suit, had she have requested conveyance to the property back to her it would have been done immediately for in spite of the fact that my wife and I held legal title to the property, we regarded her as the actual owner thereof and the same is true as to the stocks that I hold, the title of the property having been conveyed to me and the stock certificates having been made out in my name both at the direction of and at the request of the complainant.

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FRANK N. WARKER.

Sworn and subscribed to before me }
this 16th day of September, 1927. }

CHARLES W. SYMANSKI,
Attorney at Law
of New Jersey.

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Answering Affidavits.

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

EMMA WARKER, being duly sworn according to law on her oath deposes and says:

I am one of the defendants in the above named suit and I am the wife of Frank N. Warker. I have read the bill of complaint. For the past three winters the complainant has lived with my husband and myself, at our home in York, Pennsylvania, where she has lived without cost or expense to her; prior to that time she has visited at our home. Her brother died there in 1925, and he had lived with us for four years prior to his death. I have heard the late Edward H. Warker, during his lifetime state that he wanted the complainant to have his property, during her life and upon her death, he wanted it to go to my husband, who was, aside from the complainant, his only living relative. I was not at Cliffwood on October 6th, 1926, the time the deed was made conveying the property there to my husband and myself, and I knew nothing whatever of that deed until later on in the month when the complainant came to York, Pennsylvania, and when my husband said to me, in her presence, that the property had been conveyed to us and the complainant stated that it was a fact that title had been vested in us. I practiced no fraud or misrepresentation or undue influence on the complainant to obtain said conveyance and as I stated, I did not know it was made until after it had been made.

During the early part of June, 1927, my husband had gone to Cliffwood and had written back home at York, Pennsylvania, that the ceilings in the house at Cliffwood had fallen down and would have to be replaced and stated a number of other repairs that

Answering Affidavits.

10 would have to be made; I told the complainant about it and she said that if she knew the house would have required so much money to be spent on it, she would have sold it, and I told her that she could not sell it because she had already sold it to my husband and myself. Nothing further was said and I knew nothing more about the matter until the bill of complaint was served on us. Upon receipt of the bill of complaint I joined in the execution of a deed conveying the property back to her.

I was with her in August, 1927, when we went to the complainant's solicitor and she requested him to drop the suit and said that she did not want to go on with it or do anything further.

EMMA WARKER.

20 Sworn and subscribed to before me }
this 16th day of September, 1927. }

CHARLES W. SYMANSKI,
Attorney at Law
of New Jersey.

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

JOSEPHINE WARKER, being duly sworn according to law on her oath deposes and says:

40 I am the complainant named in the foregoing bill of complaint and I am making this affidavit to be used on behalf of the defendants Frank N. Warker and Emma Warker. I am making this affidavit not at their request, but of my own volition and I have volunteered to them to make this affidavit in order

Answering Affidavits.

to correct the charges made against them in the bill of complaint, which charges are in the particulars hereinafter set out below unfounded and unjust.

My brother, the late Edward H. Warker, who died on the 2nd of October, 1925, owned the lot of land which is described in the fourth paragraph of the bill of complaint, and which is situated at Cliffwood, Monmouth County, New Jersey, and on which is built a brick and frame dwelling house. This belonged to him during his lifetime and was used by him as a summer residence; I have lived there for the past seventeen years with the exception of the time during the winter that I spent in York, Pennsylvania. My brother also had personal property consisting of cash and shares of stock in various companies. At the time of his death I became possessed of the house and lot aforesaid and of the cash and shares of stock as his heir-at-law, he having died intestate. 10 20

About four years prior to my brother's death he retired from his business and during that entire period lived with Frank N. Warker, at the latter's home in York, Pennsylvania. Frank N. Warker is a cousin of my deceased brother and myself, and he is the only relative that we have in the world so far as we know. 30

Prior to my brother's death he had stated to me on a number of occasions that he wanted me to have the house and lot at Cliffwood and the income from his personal property for as long as I lived and upon my death he wanted both the house and lot and the personal property to go to our cousin Frank N. Warker. That was my deceased brother's wish, which he expressed to me, and which was well known to my cousin and to our intimate associates. 40

Answering Affidavits.

When my brother died he was a resident of New York, but he died at my cousin's home in York, Pennsylvania, where, as I said above, he had lived for four years. At the time of his death I was at Cliffwood, New Jersey, and I went to York, Pennsylvania where I lived until June of 1926 when I returned to Cliffwood and stayed there for the summer of 1926 returning to York, Pennsylvania for the winter. It became necessary to have an administrator appointed for my brother's estate. I am seventy-five years of age and while I am in good health and was in good health at that time I did not feel like undertaking the administration of the estate because I understood it would be necessary for me to go to New York City from time to time and I did not feel like taking the journey of two hundred (200) miles from York, Pennsylvania, to New York City, consequently I requested my cousin to become administrator of the estate and he, at my request undertook the administration. I understood from him that he had employed a lawyer named Charles M. Beattie, to represent him in the Probate Proceedings in New York City.

During the latter part of the summer of 1926, I became ill and felt that I had but little longer to live. The reason for my state of mind was the attitude of the doctor who was attending me. I felt that in order to carry out my brother's wishes I should convey the house and lot at Cliffwood to my counsin. With this in mind my cousin and I went to Keyport to the office of Arthur S. Van Buskirk, who, at my direction, prepared a deed conveying the property at Cliffwood to my cousin and to his wife; the deed was dated the sixth of October, 1926, and recorded on the next day at the office of the Clerk of Monmouth County. During the winter

Answering Affidavits.

of 1926 I stayed at York, Pennsylvania, and came to Cliffwood, June 10th, 1927, with my cousin and his wife.

During the early part of the summer of 1927, upon returning to the house at Cliffwood, I observed that it needed considerable repairs and I said to Emma Warker the wife of my cousin that had I realized the house required so much money to be spent on it that I would have sold it, and she replied to me that I could not sell it because I had already sold it. This remark bothered me because I knew I did not sell the property in the sense that I had completely parted with the possession of it, and without asking my cousins wife or my cousin for any further information, and without saying anything more to them I wrote to Mr. Charles M. Beattie, the attorney in New York, who had attended to the legal matters in connection with the administration of my brother's estate, for information. Mr. Beattie did not answer my letter. Mr. Gillig, an attorney, who is associated with Mr. Beattie in the practice of law in New York, and whom I had met some time previously, came to Cliffwood and said that he would be back and bring another lawyer with him. Attached hereto is a copy of the letter that I sent to Mr. Beattie and that apparently brought Mr. Gillig to Cliffwood.

The next night a man came to my house in his automobile and I went with him to Mr. Gillig, a distance of about ten blocks where Mr. Gillig was standing along the road. He stopped and they both questioned me. Their questions were all about what property I had and where it was located, and what it consisted of. The next night he came back again and I went with him to about the same place, where there was still another man. They handed

Answering Affidavits.

me some papers and asked me to sign them. I signed them, the only place where I could rest the papers to sign them was on the straw hat of one of these gentlemen. I did not read the papers and I did not know what I had signed, only a copy of the bill of complaint was served on my cousin and they showed it to me and I read it over. The foregoing
10 is the story of how this suit was brought. After my cousin received the papers, Frank N. Warker came to me and asked me what it was about and I told him I wanted my house back. He asked me why I did not ask him to convey it back and he arranged, and within the next few days he and his wife signed a deed dated the 22nd day of August, 1927, recorded in the Office of the Clerk of Monmouth County, conveying back the property at
20 Cliffwood.

I went to the complainant's solicitor on August 15th, 1927, to his home and asked him to withdraw the suit as I did not want it to go on.

I have gone over the bill of complaint since it was served on my cousins and the following statements contained therein are not correct: (1) I am not subject to frequent loss of memory; (2) at the time the real estate was conveyed to the defendants in October of 1926 they were not living
30 with me, they were guests at my home, having come there for a visit; (6) I was not dependent alone on the property at Cliffwood for my maintenance and support; I had received from my cousin one thousand nine hundred eighty-five (\$1985) since the death of my brother in cash, which money came from his savings bank account. The home at York, Pennsylvania, that I lived in was supported and maintained by my cousins and I paid no board and
40 lived there without expense and the living expense

Answering Affidavits.

at Cliffwood was borne by my cousin and his wife, and I had little need for money, the cash that was received by me having been ample and since the death of my brother I have always had money deposited to my account in a savings bank, which I can withdraw at any time; (7) I never signed certificates of stock as referred to in this; (8) irrespective of what may have been my recollection at the time I have a very clear recollection now of the manner in which the property was transferred at Cliffwood; (9) the statement that my cousin told me that I was obliged to go to York, Pennsylvania, is not so; I have lived with my cousin during the winter at York, Pennsylvania, since the death of my brother, and I have gone there voluntarily and I regard their home as my home during the winter months; as I stated above I knew what I was doing when I conveyed the property to my cousin and my reason for so doing is set out above; (10) I never demanded of my cousin a cancellation of the deed or a return of the real estate until after the bill of complaint in this suit was served on them and they immediately reconveyed to me the real estate; (11) there was no fraud or misrepresentation practiced on me by my cousins nor was there any undue influence used. 10 20

The shares of stock that I inherited from my brother never stood in my name. They were transferred directly from my brother's estate to the defendant Frank N. Warker, by my written order. I know that the money that he has received for dividends from that stock has been expended on the property at Cliffwood, and I am perfectly satisfied and contented to let the shares of stock remain in his name. 30

Answering Affidavits.

I am satisfied and it is my desire that this suit be dropped.

I am competent to manage my own affairs and as I said above I am satisfied with the way my affairs are and I do not want any receiver or anyone else to take charge of my affairs and manage them other than the defendant Frank N. Warker.

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JOSEPHINE WARKER.

Sworn and subscribed to before me }
this 16th day of September, 1927. }

CHARLES W. SYMANSKI,
Attorney at Law
of New Jersey.

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Answering Affidavits.

Keyport, New Jersey.

July 20, 1924.

Mr. Moitland Beattie, Esq.

Dear Sir:—

Enclosed please find reply to my inquirer made to the "Franklin Savings Bank".

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Mr. F. N. Warker refused three times to show me "Bank Book" as well as my brother's deed of 1925.

He spent considerable money on house and tells people the property is his.

To my knowledge I signed no paper except my "Will" signed in the presence of Mr. Gillig.

Could my "Will" have acted as a "Deed"? I'm told I have no more right to the property, cannot sell it, I feel like doing.

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Pardon my taking up your valuable time, also awaiting your kind reply, I remain,

Yours truly,

JOSEPHINE WARKER.

c/o Mrs. L. Teisler

Box F1

Keyport

New Jersey.

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Reply to Answering Affidavits.

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

CARRIE BEDDEN, being duly sworn according to law on her oath deposes and says that I have known Josephine Warker intimately for three years.

10 During the summer 1927 she told me that Emma Warker and Frank Warker treated her very badly, that she had to take care of herself and do her own cooking, she was poorly dressed and looked badly. I know when this action was started and since then Frank and Emma Warker have been treating her extremely nice taking her out in their automobile and Josephine Warker only a few days ago told me they were now treating her all right. I live at Cliffwood, N. J., with my husband in the summer time.

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CARRIE HEDDEN.

Sworn and subscribed to before me }
this September 22nd, 1927. }

JAMES A. HENDRICKSON,
Master in Chancery of New Jersey.

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Reply to Answering Affidavits.

Cliffwood, N. J.

Sept. 19, '27.

Dear Willie:

Your ever welcome letter of the 11th inst., reached me this A. M.

I was so glad, gladder, gladdest to hear once more from you, after this long silence! I went back last Oct. 1926 stayed until last June, 1927, am here since, if possible will remain here until Christmas. I imagined all sorts of things to have happened to you. As regards the trouble I had about my possessions I never asked for another lawyer, did not ask for one. From my N. Y. lawyer the Mr. Hendrickson new I have the property, also some money and stocks. I asked him that I wanted the complaints dropped, twice, he gave no answer on that. He is a slick, smooth tongued villain, he went around here, calling on all the people that knew me, made me out feeble minded, asked the Court to have a Receiver appointed and control all my possessions.

The District Attorney of "York" took my case in hand, wrote to this Mr. Hendrickson. Of course being in the state of Penn. he could not go to N. J. to fight for me. He gave us the address of a Corporation Counsellor of Jersey City.

We called on him, heard some news. The bill of "complaint" was full of wrong statements; I wrote them down gave them to the "Jersey" lawyer, one of a company of three. I can tell you better and explain when I see you, which I hope will be soon! This Mr. H. thought I was void of friends with brains. Mrs. Gulden taught him different. She also advised me to write to you. I knew you had troubles of your own, knew also of having a true friend and adviser. Mr. H. took you in as he took

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Reply to Answering Affidavits.

Mrs. Gulden in. Try hard to come down soon, tell me about yourself and your mother; hope she is well. Do you still live in the same place in Plainfield?

- 10 Come down and see how Cliffwood Beach has improved. Have you had a vacation? if not, come and spend it here. Mrs. Davis, Edith, Douglass, Jessie, and sister called on me last July. Do take care of yourself, for so much depends upon you. Give my love to your mother, as well to the rest of your relations. Best wishes and regards to you.

J. WARKER.

P. S. Monday P. M.

- 20 My case was to come up in Chancery Chambers this morning, Monday, September 19th. The case took its usual turn, before it was reached, it was 4.30 O'clock. Therefore it was adjourned until next Monday, Sept. 26.

J. W.

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Reply to Answering Affidavits.

THE PLAINFIELD TRUST COMPANY

Plainfield, New Jersey.

Charles W. McCutchen

Chairman of the Board

Harry H. Pond, President.

Augustus V. Heely, Vice-Pres.

DeWitt Hubbell, Vice-Pres.

Arthur E. Crone, Vice-Pres.

F. Irving Walsh, Secretary.

H. Douglas Davis, Treasurer & Trust Officer.

Russell C. Doeringer, Asst. Sec'y-Treas.

Marjorie E. Schoeffel, Asst. Sec'y-Treas.

David M. Runyon, Asst. Sec'y-Treas.

Frederick H. Stryker, Asst. Treasurer.

Harry H. Coward, Asst. Treas.

Frederick I. Wilson, Asst. Trust Officer.

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September 23, 1927.

Mr. George D. Hendrickson,

75 Montgomery St.,

Jersey City, N. J.

My dear Mr. Hendrickson:

I am very glad to know that you have taken charge of the case of Miss Josephine Warker. I hope that you will be successful in having her property restored to her.

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My mother has known Miss Warker for the past fifty years and my recollection of her goes back as far as I can remember. Her father and mother and her brother were also known to the members of my family.

Miss Warker was always very reticent concerning her private affairs and we never had any knowl-

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Reply to Answering Affidavits.

edge of her personal finances. Her father at one time was a wealthy man, but lost his fortune trying out inventions of his own. We never knew of the Mr. Warker who lives in York, Pa., and never heard of him until very recently. I have seen him only once and that was nearly one year ago when we called upon Miss Warker at Cliffwood and at that time he stayed in the room all the time that we were there.

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Last July I saw Miss Warker once alone and at that time she said that her cousin was not treating her well and that he told her that the property at Cliffwood was no longer her own. She could not remember having signed a deed and seemed to have a hazy recollection of all that she had done, so that it was impossible to find out anything definite or even to decide whether she had been defrauded. From all that was transpired since, it would seem her relatives are trying to get her estate away from her and I hope that you will be able to prevent that.

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If there is any way in which I can be of assistance, I should be glad to help, although I feel there is very little information I can give you.

Yours very truly,

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HDD/F

(Signed) H. D. DAVIS.

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Reply to Answering Affidavits.

C. W. ALBERT ROCHOW
 Attorney-at-Law
 Ex-District Attorney
 Rooms 21-22 Central National Bank Bldg.
 York, Pa.

August 31, 1927.

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George D. Hendrickson, Esq.,
 Attorney-at-Law,
 75 Montgomery St.,
 Jersey City, N. J.

Dear Sir:

On August 10, 1927 a bill was filed by you as solicitor for Josephine Warker who resides in the Village of Cliffwood, New Jersey.

The bill is directed against Frank N. Warker and Emma, his wife, who are friends and clients of mine, and who live in the City of York.

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Through some friends of mine who are interested they have come to see me, and I see that the matter was graciously continued by you until September 19.

I think as I read the papers that the Chancellor will hear this matter in the Court House in Trenton, New Jersey. Am I correct about this, and will you kindly correct me if I am wrong.

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Since being notified of this and having had handed to me the complaint and orders etc., Josephine Warker, the complainant states that she does not desire to have this matter taken up by the Chancellor, and desires that the entire proceedings be dropped.

She states as I am reliably informed that the deed about which she made original complaint has been

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Reply to Answering Affidavits.

executed and delivered to her and that the stocks should remain as they are now because Frank N. Warker one of the defendants is acting for her and will deliver over to her the income from the various securities during her lifetime.

10 Of course I deem it that Josephine Warker desires that the proceedings be dropped, and that no further hearing be had upon the matter, and that she would probably be compelled to file a petition stating those facts.

Am I right in my conclusions?

Would you kindly write me immediately as to this matter referring particularly of course to the fact that Josephine Warker does not desire to have anything further done in the matter.

20 Of course if there are any charges or legal fees should have to be responsible for them.

I would appreciate a letter immediately from you as the time is getting short and possibly other proceedings may have to be started.

Thanking you in advance for your courtesy I am,

Truly yours,

CWAR/M

(Signed) C. W. ALBERT ROCHOW.

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Reply to Answering Affidavits.

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

OTTO A. GILLIG, being duly sworn, says: I am a practicing attorney of the State of New York, engaged in such practice since 1905. I reside at Red Bank, New Jersey, and share law offices with Charles Maitland Beattie at 220 Broadway, Manhattan, New York City. Mr. Beattie also lives at Red Bank, New Jersey. 10

I have read the answering affidavits of Frank N. Warker and Josephine Warker.

To my personal knowledge Mr. Beattie had been a close, personal friend of Edward H. Warker for over thirty years, as well as having advised him in a professional capacity, and I know that this was also known to Josephine Warker. 20

Upon Mr. Warker's death Frank N. Warker called on Mr. Beattie at his residence in Red Bank. I was present. Mr. Warker told us of Edward H. Warker's death, and said he knew Edward H. Warker would want Mr. Beattie to attend to his affairs; that was before the funeral. Mr. Beattie said that he would be glad to take care of any matters connected with Mr. Warker's estate, but that I would do the actual work for him, and he told Mr. Warker to bring Miss Warker to our office after the funeral. 30

The day after the funeral Miss Warker and Frank N. Warker came to our office. I asked them both whether Mr. Warker had left a will; Mr. Warker said he did not think so; I told them that that would be nothing less than astonishing, for Mr. Warker had been an executive in the New York County Sheriff's office for over thirty years, and was a very methodical man; Mr. Warker said he was certain no will had been left, but when he returned to his 40

Reply to Answering Affidavits.

home at York, Pennsylvania, he would make another search and advise me. We then discussed what to do in the event no will could be found. I told Miss Warker that she was entitled to apply for letters of administration; Mr. Warker said it would be better for him to be appointed administrator, for she was an elderly, feeble woman; I told them that
 10 whatever would have to be done by the administratrix or administrator would be purely formal, and could be attended to by her as well as by Frank N. Warker; in fact, better, for she lived at Cliffwood, New Jersey, near my home, while Frank N. Warker lived at York, Pennsylvania. However, he virtually insisted that he be appointed administrator, and Miss Warker said that she would acquiesce. Accordingly, I prepared papers by which
 20 Miss Warker renounced and Mr. Warker was appointed administrator.

With respect to pars. 1, page 2, of Frank N. Warker's affidavit; shortly after Mr. Warker's appointment as administrator Mr. Warker and his wife brought Miss Warker to my office and said she wanted to make a will leaving everything to them. I asked Miss Warker whether Edward H. Warker had ever indicated to her what he wanted done with the Cliffwood property in the event that he died
 30 before her, and she said he had never mentioned that because he expected to outlive her. I then asked her whether she wanted to leave everything to Mr. and Mrs. Warker, and she said that as she did not have any living friends, and knew of no other relatives in this country than Mr. and Mrs. Warker, she wanted to leave her estate to them. Accordingly, I prepared a will by the terms of which Miss Warker's estate was left to Mr. and
 40 Mrs. Warker.

Reply to Answering Affidavits.

Shortly after the execution of the will Frank N. Warker called on me at my office and said that Miss Warker wanted to deed the Cliffwood property to him. I told him that I would not do that, but would advise her against doing so, as it was against her interest to part with the property during her lifetime, particularly as by her will she had left everything to him and his wife. He said she was willing to transfer the property to him then, and that if I would not prepare a deed he would have some other attorney do so. I told him it appeared to me he was taking advantage of her and that he was nothing but a thief at heart. 10

Shortly after that I received a letter from Miss Warker, dated November 9, 1925, written from Frank N. Warker's home at York, Pennsylvania, where he had taken her from Cliffwood; a copy of which letter is hereto annexed. I immediately brought the letter to Mr. Beattie's attention, and on November 13, 1925, he wrote her a letter, a copy of which is hereto annexed. I sent this to Miss Warker by registered mail, enclosing a self-addressed stamped envelope for reply, and on November 15, 1925, Mr. Beattie received a return receipt from the P. O. Department #1581 signed by Miss Warker giving the date of delivery as November 14, 1925. 20 30

This return envelope was mailed to Mr. Beattie by Miss Warker with a letter from her in which she said, among other things:

"I think I understand and appreciate your valuable advice, and the interest you take in my affairs, and your intention to protect Mr. and Mrs. Warker sets my mind at rest. I told Mr. Warker that I shall not execute any papers

Reply to Answering Affidavits.

unless they are passed upon by you. * * * Is preparing a will and deeding property one and the same thing?"

During a period of about a year following Mr. Warker's appointment as administrator I saw him frequently in my office, and several times I asked
 10 him whether Miss Warker had deeded the property to him, but he told me she had not, because Mr. Beattie had written to her advising her against that.

The first intimation I had that Miss Warker had deeded the property to Mr. Warker was when Mr. Beattie turned over to me a letter received by him from Miss Warker, dated July 24, 1927, in which she enclosed a reply she had received from the Franklin Society, a copy of both of which is hereto
 20 annexed.

At Mr. Beattie's request I went to Cliffwood and saw Miss Warker. She told me Mr. Warker was living there with her, while his wife was living at their home in York, Pennsylvania; she said that at the moment he was down at the beach front, and she hoped to be able to tell me of her trouble before he returned, as he had been treating her very badly, and she did not have any mail come direct to her home, but in care of Mrs. Geisler, a neighbor. I
 30 asked her what caused her to write to Mr. Beattie and she said that Mr. Warker claimed to own the property; that he was trying to sell the property and when he did she would have to return to York, Pennsylvania, with him. She said that she did not want to return to York, as when she was there she was very unhappy. I asked her whether she had signed any papers without my knowledge, and she said Mr. Warker had taken her to Keyport to sign some papers, which he told her were necessary to
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Reply to Answering Affidavits.

close up her brother's estate; she said she had written to the County Clerk at Freehold, asking whether she still owned the property, and that he had answered her saying that she had deeded the property to Mr. Warker. I asked her what she wanted to do, and she said she wanted to get her property back, and I told her it would be necessary for a New Jersey attorney to attend to that for her, and she asked me if I would recommend one to her; I told her I would speak to George D. Hendrickson, a New Jersey attorney also living in Red Bank, and if he would take her case I would bring him over to see her. I also asked Miss Warker what became of the cash and securities her brother had left, and she said that Frank N. Warker had only given her a little over \$1,000.00 and said that was all that was coming to her, and that when on several occasions she again asked him about the remaining cash and securities he pounded on the table and terrorized her into silence.

I spoke to Mr. Hendrickson about the matter the following day and the day after that he and I went to Cliffwood and spoke to Miss Warker; she told me, when I called on her at Mr. Beattie's request, that if I brought anyone to see her to do so about 7:30 P.M., as Mr. Warker always went to the beach-front after supper and she would be able to speak to us without having him know it. When Mr. Hendrickson and I got there that evening Miss Warker said she preferred to get away from the house, lest Mr. Warker return unexpectedly, and accordingly, we three got into Mr. Hendrickson's automobile and drove down the road to confer with her.

Sworn to before me this 23rd }
day of September, 1927. }

Reply to Answering Affidavits.

November 13, 1925.

Miss Josephine Warker,
766 West Market St.,
York, Pennsylvania.

Dear Miss Warker:

- 10 Mr. Gillig has shown me your letter of November 9th, asking him to prepare a deed to the Cliffwood property from yourself to Mr. Frank N. Warker for the nominal consideration of \$1.

- 20 Now, you know I was a very close friend of your brother Ed for many years, and as such I want to give you the best advice I can, and in fact, do everything I can for you. I understand that all you have in the world is what he left you, the Cliffwood property, the stocks, the money in bank, and the life insurance money, as the things in storage would not bring anything much if sold. Consequently I would advise you to keep everything you have in your own name, as that is the only way you could be protected in case of need. Mr. Gillig tells me that he prepared a will for you, by which you have left everything you have to Mr. and Mrs. Warker, and in view of the fact there is no reason why you should turn the property over to him so long as you
- 30 live. I don't know what understanding you have with Mr. Warker for deeding the property to him, but the fact is that once property is deeded to anyone, that person can dispose of it, even tho he may not have agreed to. Furthermore, the possible death of Mr. Warker before you would prevent him from fulfilling any promises he might make to you. It would be different if you had a lot of money to support yourself, but the Cliffwood property represents
- 40 a large part of all you have, and you will need all

Reply to Answering Affidavits.

your brother left you in order to live comfortably. If you feel obligated to Mr. Warker because you are temporarily living with him, and because you are related to him, you have done all that is necessary to show your feelings by willing everything to him. So I advise you to leave matters stand as they are, and not execute a deed to anyone until you are ready to sell the property for actual cash. You should tell Mr. Warker that you must not execute any papers unless they are passed upon by me. I am very desirous of protecting Mr. Warker and his wife, and expect to do so, but I do not feel that I would be doing what your brother would have expected me to do if I do anything or countenance your doing anything that may leave you stranded.

Please acknowledge receipt of this letter so I will know you understand what my advice is, and that you are going to follow it.

Yours very truly,

CHAS. MAITLAND BEATTIE.

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Opinion.

(Filed March 5, 1928)

BENTLEY, V. C.:

On bill to set aside conveyance.

10 The complainant is a very aged, feeble, and infirm woman who makes the unusual application that a receiver be appointed to take over and manage her own property. The bill sets forth that for sometime past, and especially since a rather recent illness, her memory has been affected so as to make it difficult for her to recall events that have transpired even in the very recent past; that she has reason to believe that she has executed voluntary conveyances and assignments to the defendants of all her property, real and personal, without independent advice. It is not denied that this is so. The defendants are residents of the State of Pennsylvania
 20 *where some of the land conveyed is located*, and jurisdiction of them was obtained by service while they were temporarily within this state.

Upon the return of the order to show cause, complainant's solicitor represented to the court that after this bill was filed and the order to show cause had been served, the defendants reinstated themselves in the good graces of the complainant and that the latter had notified her solicitor that she no longer wished to be represented by him, and desired
 30 that the bill should be dismissed upon her motion and the consent of both the defendants. Upon presenting this aspect of the situation the solicitor prayed the judgment of the court as to his proper conduct in his delicate and embarrassing position.

The defendants have filed a brief attacking the supporting affidavits of the bill, which are not drawn with the particularity that is ordinarily to be expected; but this is a most unusual case, and one that is absolutely novel so far as I have any
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Opinion.

knowledge. This complainant is not and does not pretend to be *non compos mentis*, and yet is laboring under a disability that renders it impossible for her to intrust her counsel as clients who are *sui-juris*, and to meet whose cases rules of pleading and practice are formulated, ordinarily can and do. It is true that the affiant Kemper should have stated facts rather than the allegation "that he has knowledge that Frank N. Warker has been endeavoring to obtain possession of all of the property both real and personal which came to Josephine Warker." But even eliminating such portions of the affidavits other than the complainant's, there is sufficient shown to spell out a proper statement of the facts as they appear above. The complainant's physician says that since a stroke of apoplexy, prior to the stripping herself of all her property, her memory has been almost destroyed. His affidavit is attacked upon the ground that he has not been in constant attendance upon her, but I am completely at a loss to understand how that weakens his testimony in any appreciable degree.

It is elementary that when ordinary litigants all agree to a termination of a suit pending between or among them, and the public interest is not affected, there is nothing for the court to do but permit them to withdraw and go about their respective affairs. But what is to be said where one of them is under a disability, not amounting to insanity or infancy and yet sufficient to put him at such a disadvantage in dealing with his own affairs as to make him utterly incapable of protecting himself and his property against the inroads and ravages of the others? It seems to me that this rhetorical sentence almost answers itself. If the disability were complete, as in the case of one who was insane, it is almost banal

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Opinion.

to say that for the purposes of the suit through which the Court of Chancery has obtained jurisdiction, such a party becomes a ward of the court acting as the agency of the state in its capacity of *parens patriae*. In the case entitled "In re Rhodes", 136 Atl. 408, a somewhat similar problem was presented where a petitioner in a lunacy inquisition directed her counsel, after the proceeding had been instituted, to dismiss it. The Chancellor held that it could not be done, partly for the reason that I have already indicated. It is true there was a distinction in that case because of the clear interest of the public in safeguarding its insane citizens and providing for the care of their property. However, to a less extent, it seems to me that the public are not without interest in instances such as is presented in the case at bar. The matter being dealt with is discussed and the discussion sustains this decision, in 3 Pomeroy's Jurisprudence, Section 1314 (4th ed.). The consent of the court will not be given to the dismissal of the bill, and the solicitor who filed it should continue to prosecute the suit.

The propriety of the appointment of a receiver is also attacked on behalf of the defendants. No one should have the slightest difficulty in coming to an agreement with the law they cite. It is, of course, elementary, as said in *Leddel v. Starr*, 19 N. J. Eq., 159, that a receiver is rarely appointed before answer filed, and no answer has been filed in this case. But the opinion just cited goes on to say, "There are a few exceptional cases where a receiver has been appointed upon petition; but these are in the cases of infants, whose position as wards of court gives them the right to apply by petition, *or in cases similarly situated*" (*Italics mine*). It seems to me that in view of what has already been said no further comment is necessary.

Opinion.

Of course, this cause cannot rest here. There is a justifiable issue between the complainant's representative on the one hand and the defendants on the other, any one of a number of defenses may be pleaded and, perhaps, proved. Subpoena should be taken out immediately, if that has not already been done, and the cause should be brought to final hearing. In the meantime, the receiver appointed on the filing of the bill will be continued until the determination of the cause, and the appointment of a permanent receiver if one is appointed, will be considered at that time when, perhaps, it may be considered advisable if the bill is retained to consider the substitution of some gentleman in whom the complainant had expressed, in writing, her unbounded confidence and trust before this litigation was commenced.

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Order Continuing Receiver.

(Filed April 5, 1928)

10 This matter being opened to the court by George
D. Hendrickson, solicitor for and of counsel with
the above named complainant, and in the presence
of William E. Decker, of Insley, Vreeland & Decker,
solicitors of defendants, and an order having been
made in this cause on the tenth day of August, 1927,
wherein, among other things, Frank N. Warker and
Emma Warker were directed to show cause before
the Chancellor at the Chancery Chambers, Jersey
City, New Jersey, on August 15th, 1927, at 10
o'clock in the forenoon (Daylight Saving Time) or
as soon thereafter as this matter could be heard,
why David A. Nimmo, the receiver heretofore ap-
pointed in this cause and said receivership should
not be continued or made permanent; and proof of
20 service of a true copy of said order and a true copy
of the bill of complaint upon each defendant, as re-
quired by said order, having been duly filed.

And it appearing from the receiver's report and
affidavits filed herein, that since the filing of the
bill of complaint herein and the appointment of a
receiver herein and service of true copies of the bill
of complaint and order appointing receiver upon
each of said defendants, and his demand upon them
for all real and personal property belonging to said
30 Josephine Warker, that they have reconveyed to the
complainant, Josephine Warker, the real estate
mentioned and described in complainant's bill of
complaint.

And it further appearing by the report of David
A. Nimmo, the receiver, that the said defendants
have refused to deliver to him the personal prop-
erty, mentioned and described in the bill of com-
plaint or any part thereof demanded by him of each
of the defendants personally, although they admit
40 such to be the property of complainant,

Order Continuing Receiver.

And it further appearing that the complainant is a lady seventy-five years of age and has suffered a stroke of paralysis with the result that her memory and business understanding is impaired and that the defendants herein, by reconveying to her said real estate, have caused her to believe that she is now fully protected and that thereupon she requested her solicitor, George D. Hendrickson, to discontinue this proceeding, all of which he has reported fully to this court, and it appearing to this court that the best interests of the complainant, Josephine Warker, would not be subserved by the withdrawing of this suit and that the solicitor of the complainant should proceed with the action, 10

IT IS on this nineteenth day of September, 1927, ORDERED that George D. Hendrickson, solicitor of the complainant, shall continue to prosecute the suit and shall not consent to a dismissal of the bill of complaint. 20

IT IS FURTHER ORDERED that David A. Nimmo, be and he is hereby continued as Receiver of the real and personal property of the complainant, Josephine Warker, of whatever kind and description and wheresoever situated and is hereby authorized and empowered to institute, prosecute and defend, compromise, adjust, intervene in or become party to such suits, actions or proceedings at law or in equity, in State or Federal Court, in this or any other state or territory of the United States of America, as may in his judgment be necessary or proper for the protection, maintenance, preservation, recovery or collection of the property and assets of the complainant. 30

IT IS FURTHER ORDERED that Frank N. Warker and Emma Warker forthwith deliver to said David A. 40

Order Continuing Receiver.

Nimmo, the receiver herein, all the following described personal property, to wit:

Shares

- | | | |
|----|-----|---|
| | 100 | Common Stock, Chandler Motor Car Co. represented by certificate #0-847, for 60 shares, #0-5516, for 20 shares, and #0-18925 for 20 shares. At $36\frac{1}{2}$. |
| 10 | 1 | Preferred Stock, Chicago Great Western R. R. Co. Represented by certificate #A-9141. At $24\frac{7}{8}$. |
| | 5 | Common Stock, Kennecott Copper Corporation. Represented by certificate #B-52696. At $54\frac{1}{4}$. |
| | 35 | Common Stock, Caddo Central Oil & Refining Corporation. Represented by certificate #03737. At $\frac{7}{8}$. |
| 20 | 10 | Common Stock, Sinclair Consolidated Oil Corp. Represented by certificate #0-105561. At 19. |
| | 10 | Preferred Stock, International Mercantile Marine Co. Represented by certificate #15671. At $31\frac{1}{4}$. |
| | 10 | Preferred Stock, Pressed Steel Car Co. Represented by certificate #Z28385. At 80. |
| 30 | 5 | Common Stock, Pressed Steel Car Co. Represented by certificate #0-047597. At 108. |
| | 40 | Common Stock, F. W. Woolworth Co. Represented by certificate #WO-1782. At 170. |
| | 10 | Common Stock, Famous Players Lasky Corp. Represented by certificate #c-017631. At 108. |

Order Continuing Receiver.

20 Preferred Stock, Famous Players Lasky Corp. Represented by certificate #p-05919, for 10 shares, and certificate #P-0664, for 10 shares. At 115 $\frac{1}{4}$.

20 Preferred Stock, National Lead Co. Represented by certificate #b-30433, for 10 shares, and certificate #B-30434, for 10 shares. At 116.

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And all other personal property in his, her or their possession and/or under his, her or their control and also deliver to him, statement showing all income and disbursements made therefrom.

IT IS FURTHER ORDERED that the time within which the defendants, Frank N. Warker and Emma Warker shall file answer to the bill of complaint herein be extended to April 24th, 1928, and that otherwise the bill of complaint filed herein shall be taken as confessed and decree forthwith entered by the solicitor of the complainant.

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E. R. WALKER,
C.

Respectfully advised,

JOHN BENTLEY,
V. C.

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Opinion.**NEW JERSEY COURT OF ERRORS AND APPEALS.**

10 Josephine Warker, Respondent, v. Frank N. Warker, et al., Appellants. (No. 121.) Court of Errors and Appeals of New Jersey. Octo. 15, 1928. Appeal from Decree of Court of Chancery. Insley, Vreeland & Decker, of Jersey City, for appellants. George D. Hendrickson of Jersey City, for respondent.

Per Curiam. The decree appealed from will be affirmed, for the reasons stated in the opinion filed in the court below by Vice Chancellor Bentley. 140A. 889.

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Answer.

IN CHANCERY OF NEW JERSEY.

JOSEPHINE WARKER,
Complainant,

vs.

FRANK N. WARKER, *et al.*,
Defendants.

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The answer of Frank N. Warker and Emma Warker, defendants in the above named suit, to the bill of complaint filed therein, respectfully shows:

1. These defendants admit that at the time of the transfers and conveyances of real and personal property, as stated in paragraph one of the bill of complaint, the complainant was a maiden lady, of the age of over sixty-five years, but deny that she was subject to the infirmities of advanced age, and deny that she had frequent loss of memory, and was inexperienced in business affairs. 20

2. These defendants admit the allegations of paragraph number two.

3. These defendants admit the allegations of paragraph number three. 30

4. These defendants admit the allegations of paragraph number four.

5. These defendants admit the allegations of paragraph number five.

6. These defendants admit the allegations of paragraph number six, except that they deny that the complainant was solely dependent upon her property for her maintenance and support, and say 40

Answer.

that during the time specified in the bill of complaint, the complainant was a resident of their home, and they provided maintenance and support for her.

10 7. These defendants admit that the defendant Frank N. Warker, was the administrator of the Estate of Edward H. Warker, deceased; they deny that the complainant received but one thousand dollars (\$1000) from the Estate of her brother, and say that she received about two thousand dollars (\$2000) in cash, from the Estate of her brother, and they deny that the said Frank N. Warker (stated in the bill of complaint to be Edward H. Warker, but intended to be Frank N. Warker) obtained her signature to the certificates of stock in the manner mentioned and described.

20 8. Answering paragraph eight these defendants deny the allegations thereof, except they admit that a deed dated October 6th, 1926, and recorded October 7th, 1926 conveying to the defendants the lands and premises at Cliffwood, Monmouth County, New Jersey was made, and the circumstances of the making of said deed, and the reason therefor are herein set out below.

30 9. These defendants deny that the property real and personal is of the value alleged in the bill of complaint, and state that it is of a lesser value. They deny the remaining allegations of paragraph nine.

40 10. These defendants deny the allegations of paragraph number ten of the bill of complaint, and specifically deny that any demand was ever made of the complainant for a re-conveyance of the property, or a cancellation of the assignments.

Answer.

11. These defendants deny the allegations of paragraph number eleven of the bill of complaint.

12. Further answering the allegations of the bill of complaint these defendants say:

The defendant Frank N. Warker, is a cousin of the complainant, and a cousin of Edward H. Warker, brother of the complainant, who is now dead, and so far as this defendant Frank N. Warker knows, he is the only living relative of the complainant, and was the only living relative of the late brother of the complainant, other than the complainant herself. The complainant's brother was employed for many years in the office of the Sheriff of New York County, in the State of New York; about the year 1921 the complainant's brother retired from his occupation because of his age, and came to live with these defendants, at their home, in York, Pennsylvania, where he continued to live as a member of their household until October, 1925, when he died; up until that time, the complainant lived at Cliffwood, in Monmouth County, New Jersey, in the home of her brother; the complainant was the sole heir-at-law of her deceased brother, and was entitled to administration of his estate; after the death of her brother she came to live at the home of these defendants in York, Pennsylvania. At her request, and in order to save her the necessity of making the journey from time to time of about two hundred (200) miles from York, Pennsylvania to New York City, the defendant Frank N. Warker was named the administrator of her deceased brother's estate; this defendant employed one Charles M. Beattie, an attorney-at-law of New York City to represent him in the administration of the said estate; the said Beattie was known to

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Answer.

this defendant, and had been for many years the legal advisor and personal attorney of the deceased Edward H. Warker; the complainant expressed a desire to live at the home of these defendants, and suggested that she live with them during the winter months, and they in turn live at the home at Cliffwood in New Jersey during the summer months.

10 Edward H. Warker that his sister, the complainant, It was the expressed wish and desire of the late have his real and personal property during her lifetime, and upon her death it was his desire that said property go to this defendant Frank N. Warker, if he survived her; this was known to the complainant as well as to these defendants, and during the early fall of 1926, the complainant informed the defendant Frank N. Warker, that it was her desire

20 and intention to convey the land and premises at Cliffwood, in Monmouth County, New Jersey to these defendants, and she went to Keyport, New Jersey, and engaged an attorney who prepared the deed of conveyance, which she signed and recorded; in the meantime she expressed a desire that the securities be transferred to the defendant Frank N. Warker in order that he be enabled to collect the income therefrom, and said securities were transferred when the estate of the late Edward H.

30 Warker was finally administered in New York; when the estate of the complainant's brother was finally settled there was a little less than two thousand dollars (\$2000) in cash, which was turned over to the complainant, which she now has to her credit in a bank. The defendant Emma Warker denies that she had any knowledge that the deed of conveyance of the Cliffwood property was made, until after it had been made and recorded, and at

40 the time the deed was made she was in her home in

Answer.

York, Pennsylvania. These defendants deny that they have profited whatsoever from the control of the real or personal property and say that said moneys as the defendant Frank N. Warker has received by way of dividends and interest on the securities have been expended on the up-keep of the property at Cliffwood, New Jersey. These defendants allege that at no time prior to the commencement of this suit did they have any knowledge, or any intimation from the complainant that she was dissatisfied with the arrangement that she had made; that they had no knowledge or information that this suit was contemplated; that the first demand that was made on them for the re-conveyance of the property was the service of papers in this suit; at the time the suit was brought, the complainant lived in Cliffwood in the same house as these defendants, and upon receipt of these papers, these defendants immediately asked the complainant the purpose and intention of bringing the suit, and upon being told by the complainant that she wanted her property back, these defendants immediately re-conveyed the same to her by deed which was acknowledged and recorded in the Office of the Clerk of Monmouth County. The complainant then informed these defendants that she did not want the securities standing in the name of Frank N. Warker turned back to her, and that she was perfectly satisfied and content with the arrangement as it was, and that it was her desire and intention that this suit be dismissed.

WHEREFORE, these defendants pray that the bill of complaint be dismissed.

INSLEY, VREELAND & DECKER,
Solicitors of Defendants.

Replication.**IN CHANCERY OF NEW JERSEY.**

Between
 JOSEPHINE WARKER,
 Complainant,
 and
 10 FRANK N. WARKER, *et al.*,
 Defendants.

The complainant joins issue on the answer of the
 defendant.

GEORGE D. HENDRICKSON,
 Solicitor of Complainant.

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Opinion.

(Filed July 15, 1930)

BIGELOW, V. C.

This suit was instituted by an aged woman to compel defendants, a distant cousin and wife, to re-convey lands of the value of \$12,500. and to redeliver corporate stocks of a value of \$15,000 transferred by her to defendants without consideration. Shortly after the bill was filed, the defendants reconveyed to complainant the land and effected a reconciliation with her. She then asked that the bill of complaint be dismissed. The late Vice-Chancellor Bentley who heard the motion, denied it and directed her solicitor to continue the prosecution of the suit. The Court of Errors and Appeals affirmed this order, 140 A. 889; 143 A. 921. The basis for the refusal of the Court to permit the bill to be dismissed is indicated in the following quotation from the opinion of Vice-Chancellor Bentley:

"It is elementary that, when ordinary litigants all agree to a termination of a suit pending between or among them, and the public interest is not affected, there is nothing for the court to do but permit them to withdraw and go about their respective affairs. But what is to be said where one of them is under a disability, not amounting to insanity or infancy, and yet sufficiently to put him at such a disadvantage in dealing with his own affairs as to make him utterly incapable of protecting himself and his property against the inroads and ravages of others? It seems to me that this rhetorical sentence almost answers itself. If the disability were complete, as in the case of one who was insane, it is almost banal to say that, for the purposes of the suit through which

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Opinion.

the Court of Chancery has obtained jurisdiction, such a party becomes a ward of the court acting as the agency of the state in its capacity of parens patriae."

10 The case has ^{Not} come on for final hearing. The complainant was sworn as a witness for the defendants. She vigorously insisted on the stand that the bill be dismissed and the receiver who had been appointed, be discharged and that she be permitted to manage her own affairs as to her seemed best. She is about 80 years old; she has had no business experience. She seemed on the stand to have about as much grasp of the present situation and memory of past events as would be expected of the average woman of her age and circumstances in life. If she

20 desired that the defendants be decreed to return to her the property she had given them, I would unhesitatingly advise ~~against~~ such a decree, but no such decree can be made without disregarding complainant's most important rights. She had never been adjudged to be non compos mentis. in the absence of such an adjudication this Court cannot, without violating the provisions of the Fourteenth Amendment of the Constitution of the United States, deprive her of the control of her property,

30 or against her will, invalidate the gift which she has made. This Court cannot, even with the best intentions, pick out one suitor and deny to her the rights which are accorded to all others. I do not think that this view conflicts with the decision of this Court and of the Court of Errors and Appeals on the motion to dismiss the bill. I take it that the purpose of refusing to consent to a dismissal was to enable the Court fully to investigate the situation.

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Opinion.

There can be no adjudication in this cause that the complainant is incompetent. Such a question can be determined only in a proceeding brought for that purpose. C. S. 2781. On that inquiry, Mrs. Warker would have the constitutional right of trial by jury. *In Re: McLaughlin*, 87 N. J. Eq. 138. To support a judgment of incompetency and the appointment of a guardian, it would be enough if, from any cause whether by age, disease or affliction, she has become incapable of managing her own affairs. *Perrir's Case*, 41 N. J. Eq. 409, 5 A. 579. 10

A somewhat similar situation was presented in *Howard v. Howard*, 9 S. W. 411, 1 L. R. A. 610. The Kentucky Court of Appeals held in that case that the suit should be stayed pending an inquiry by a jury into the mental capacity of the complainant. From my observation of Mrs. Warker while she was on the witness stand, I would surmise that she would be adjudged competent upon an inquiry into her mental condition. But her counsel who has prosecuted this case at the direction of the Court, has had a better opportunity to become familiar with her condition than I have had. If he thinks that a guardian should be appointed for her and that an inquest would probably result in an adjudication that she is incompetent, I will ask him to institute proceedings to that end, and will stay this suit meanwhile. Otherwise the bill of complaint will be dismissed. 20 30

Final Decree Dismissing Bill.

10 This matter coming on to be heard on final hearing (on notice of motion to settle form of Decree) before the Chancellor upon Bill, Answer, Replication and proofs in the presence of George D. Hendrickson, of counsel with complainant, Josephine Warker, and William E. Decker of Insley, Vreeland & Decker, of counsel with defendants, Frank N. Warker and Emma Warker, and David A. Nimmo, the Receiver herein, and the pleadings and proofs and the decree of this court directing the solicitor of the complainant to prosecute the cause to final hearing having been read and considered and testimony taken and the arguments of the respective counsel having been heard, and it appearing to the court that the complainant is entitled to the relief sought and prayed for by her in her Bill of Complaint but desires that her Bill of Complaint
20 be dismissed, and the Chancellor being of the opinion that complainant's request should be granted, and it appearing that the Bill of Complaint was filed to recover from defendants real and personal property, said real estate being particularly described as follows:

30 ALL those certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Village of Cliffwood, in the County of Monmouth and State of New Jersey, in the Township of Matawan.

40 COMMENCING at a point on the westerly side of Ninth Street at a point distant two hundred feet northerly from the northwesterly corner of Ninth Street and Third Avenue running thence northerly along the westerly side of Ninth Street, two hundred and fifty feet;

Final Decree Dismissing Bill.

thence westerly and at right angles to Ninth Street, two hundred feet to Tenth Street; thence southerly along Tenth Street two hundred and fifty feet to a point two hundred feet northerly from the northeasterly corner of Third Avenue and Tenth Street; and thence easterly and at right angles to Tenth Street and parallel with Third Avenue two hundred feet to the westerly side of Ninth Street, at the point or place of Beginning. 10

And George D. Hendrickson, solicitor of the complainant, and David A. Nimmo, the Receiver herein, in the presence of James J. Murphy, Esquire, appearing in behalf of the complainant, having applied to this court on due notice to parties complainant and defendant to fix and determine their respective allowances and decree payment of same, together with disbursements made, and the Chancellor having considered the same and being of the opinion that such application is proper and that application of the solicitor of the complainant and the Receiver should be granted. 20

And Harry Lane, Esquire, having applied to this court to fix and determine his allowance for services as Special Master herein. 30

IT IS on this 19th day of August, 1930, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED that the solicitor of the complainant be allowed for his services to include his disbursements made in complainant's behalf the sum of \$2,500 and until paid to be a lien on the real estate mentioned and described in complainant's Bill of Complaint. 40

Final Decree Dismissing Bill.

IT IS FURTHER ORDERED that the Receiver David A. Nimmo, be paid the sum of \$500 for his services and disbursements herein and until paid to be a lien on the real estate mentioned and described in the Bill of Complaint.

10 IT IS FURTHER ORDERED that Harry Lane for his services herein rendered as Special Master and in lieu of all other fees, be paid the sum of \$100 and until paid to be a lien on the real estate mentioned and described in the Bill of Complaint.

IT IS FURTHER ORDERED that the Receiver be and he hereby is discharged.

20 IT IS FURTHER ORDERED that the Lis Pendens filed in this cause against the lands hereinbefore described is hereby declared null and void.

IT IS FURTHER ORDERED that the Bill of Complaint filed herein be dismissed as to all of the defendants without prejudice to complainant.

30 IT IS FURTHER ORDERED that the writ of ne exeat be and the same is hereby discharged and the Sheriff of Monmouth County be and he is hereby directed to deliver up to defendant, Frank N. Warker, or his solicitor, the said bond given by him upon presentation to said Sheriff of a certified copy of this order.

40 IT IS FURTHER ORDERED, ADJUDGED and DECREED that in accordance with the statute in such case made and provided, George D. Hendrickson, solicitor of complainant, David A. Nimmo, Receiver, and Harry Lane, Special Master, have upon the prem-

Final Decree Dismissing Bill.

ises hereinbefore described, a lien for compensation for services in the sums hereinbefore set forth, such lien to subsist until paid against the complainant and against the lands hereinbefore described without further order of this court, and that executions may issue for the collection thereof according to the practice of the court.

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E. R. WALKER,
C.

Respectfully advised.

JOHN O. BIGELOW,
V. C.

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**Statement of Services of George D.
Hendrickson, Solicitor of Complainant.**

IN CHANCERY OF NEW JERSEY

10	Between JOSEPHINE WARKER, Complainant, and FRANK N. WARKER and EMMA WARKER, Defendants.	}	On Bill, &c.
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1927

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| 20 | Aug. 2 Conference with Mr. Gillig who
was associated with Mr. Beat-
tie, Miss Warker's New York at-
torney; went to Cliffwood, N.
J.; conference with Miss War-
ker, obtained name and address
of her physician; went to
Matawan and saw Dr. Irwin ½ day |
| 30 | “ 3 Ordered search of Cliffwood prop-
erty from Mr. Taylor, cost \$3.00,
examined office copy of papers
re: Estate of Edward Warker;
consultation with Mr. Gillig
and Mrs. Hedden; started inves-
tigation of equity jurisdiction
to appoint Receiver on applica-
tion of complainant All day |
| 40 | “ 8 Received search of property and
copy of deed from Miss Warker
to Frank N. Warker and wife;
continued investigation of au- |

Statement of Services of George D. Hendrickson.

- thorities for cases in point in this State or sister States; dictated Bill of complaint, affidavits, Petition for appointment of Receiver; Order appointing Receiver and Rule to Show Cause All day 10
- “ 9 Went to Cliffwood, Matawan; consultation with client, Dr. Irwin, Mrs. Hedden and others; obtained affidavits to Bill of complaint About 3 hrs.
- “ 10 Appeared before Bentley, V. C. filed Bill, presented petition and order to show cause for Receiver; submitted authority; discussed authority with the Vice Chancellor who read certain of the authority submitted; he appointed Mr. Nimmo Receiver, etc., prepared Receiver's affidavit; obtained Receiver's Bond; dictated Lis Pendens and subpoena ad respondendum; mailed Receiver's bond and oath of office to the Clerk and Lis Pendens to Clerk of Monmouth County for recording; sent subpoenas to Sheriff of Monmouth County with instructions for service, Sheriff's fee of \$5.38 20 30
- Practically $\frac{3}{4}$ of the day 40

Statement of Services of George D. Hendrickson.

About

- 10 Aug. 11 Mr. Warker came to my home and asked to have the hearing adjourned to give him opportunity to consult counsel; told him I would if he would enter Appearance in the suit; I prepared Appearances for both defendants and on August 19th, mailed same to the Clerk in Chancery.
- “ 15 Before Church, V. C., prepared and obtained Order continuing hearing to September 19th 2 hrs.

About

- 20 Aug. 24 Miss Warker with Frank N. Warker and Emma Warker called at my home. I was advised that they had executed and delivered to complainant, the Cliffwood real estate and they told me that Miss Warker now desired to have all proceedings stopped. I demanded the return of the personal property, with no result and told them I would present the matter to the court 1½ hr.
- 30 Sept. 2 Received long letter from Mr. Rochow, of York, Pa., attorney of Frank N. Warker and Emma Warker; answered letter advising him of Warker's refusal to return personal property and that I would bring the entire situation to the attention of the court; consultation with Re-
- 40

Statement of Services of George D. Hendrickson.

	ceiver, suggested he make inquiry of the Keyport Banking Co.	1½ hr.	
" 14	Wrote Chancery Clerk for file.		
" 16	Received defendant's answering affidavits, lengthy, examined same	2 hrs.	10
" 19	Before court; obtained continuance to September 26th at defendant's request	2 hrs.	
" 20	Consultation with Mr. Gillig, Mr. Davis, Mr. Wilson; went to Cliffwood, consultation with four different people there relative to Miss Warker's manner of living, etc.	1½ day	20
" 22	Dictated answering affidavits	2 hrs.	
" 23	Mailed copy of answering affidavits to solicitor of defendants.		
" 26	Before Bentley, V. C., presented answering affidavits; reported Miss Warker's request to discontinue; argument; court reserved opinion and requested briefs.	1½ day	30
	Between September 26th and November 15th, certain telephone conversations and letters to friends of Miss Warker.		
Nov. 25	Preparation of Brief	All day	
" 26	Redictated Brief	1½ day	

Statement of Services of George D. Hendrickson.

Dec. 1 Filed Brief with the Vice Chancellor; mailed copy to defendant's attorney.

1928

10 Jan. 19 Examined defendant's brief and read cases therein cited; dictated Answer and form of letter differentiating cases cited with present situation $\frac{1}{2}$ day

20 Mar. 3 Received Vice Chancellor's opinion continuing the Receiver and directing complainant's solicitor to continue to final hearing, etc. Wrote defendant's attorney suggesting that defendant turn over the personal property to some person other than the present Receiver as indicated by Vice Chancellor Bentley's opinion and end litigation; prepared Order continuing Receiver, etc. 2 hrs.

" 5 Wrote Mr. Wilson sending him copy of the court's opinion.

30 " 6 Sent to defendant's attorney, carbon copy of Order continuing Receiver, etc. asking them to advise me of any objections to the frame.

Apr. 5 At Vice Chancellor Bentley's Chambers; he signed Order continuing Receiver, etc. 1 hr.

40 " 15 Given up to preparation of Re-

Statement of Services of George D. Hendrickson.

&	16	spondent's Brief, Court of Errors	2 days	
"	24	Prepared and submitted to defendant's attorney, consent Order of reference; examined defendant's petition of appeal; prepared and filed Answer; examined defendant's answer to Bill; prepared and filed Replication; acknowledged service of Notice of appeal; Petition of appeal, and Notice of arugument received from defendant's attorney	1½ day	10
"	26	At solicitor of defendant's request examined file he submitted for State of the Case; called his attention to certain errors	1 hr.	20
"	27	Mailed to Clerk in Chancery consent Order of reference.		
May	3	Prepared consent Order fixing date of hearing; presented same to detendant's attorney	½ hr.	
"	28	Dictated report of present situation to Mr. Wilson, old friend of Miss Warker; argued appeal before Court of Errors, carfare and disbursements, \$5.00	1 day	30
June	13	Consultation with Receiver who asked for advice relative to instituting suit in Pennsylvania for the recovery of personal property of Miss Warker ad-		40

Statement of Services of George D. Hendrickson.

- mitted by defendants to belong to her by their answering affidavits; applied to Vice Chancellor Bentley for advice who stated that he felt the Receiver should not institute any proceedings outside the State of New Jersey until the Court of Errors had granted its opinion on the appeal 1 hr.
- “ 25 Dictated to Vice Chancellor Lewis letter enclosing Consent order designating time of hearing, this having been referred to him setting forth briefly the situation then existing.
- 20 Oct. 18 Advised that Court of Errors had sustained Bentley, V. C., prepared and forwarded to the Clerk, Remittitur ½ hr.
- “ 31 Filed true copy of Remittitur with Clerk in Chancery; again wrote solicitor of defendants directing him to justly advise me whether or not defendants would turn over personal property to the Receiver ½ hr.
- 30 Nov. 16 Having received no reply to this letter wrote solicitor of defendants at length advising him that unless it was done I would proceed further.

Statement of Services of George D. Hendrickson.

1929

- Feb. 2 Wrote letters of inquiry re: preparation for trial $\frac{1}{2}$ hr.
- Mar. 4 Dictated 5 letters advising defendants and others of day set for trial by Lewis, V. C. also wrote Miss Warker $\frac{1}{2}$ hr. 10
- May 2 At Chancery Court, neither Miss Warker or defendants appeared; gave Lewis, V. C. recital of entire situation; he stated that in view of nature of action and previous steps taken before Bentley, V. C. that it should be tried by him and directed me to so advise Bentley, V. C., saw Bentley, V. C. who directed the preparation of consent Order of re-reference 2 hrs. 20
- " 27 Presented to solicitor of defendants, consent order of re-reference.
- July 19 Advised solicitor of defendants court fixed October 24th, for final hearing. 30
- " 22 Prepared Petition, affidavit, order to show cause why defendants should not produce Miss Warker, same was allowed, returnable October 5th $\frac{1}{2}$ day.
- " 23 Prepared and filed affidavit of service of same $\frac{1}{4}$ hr.

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Statement of Services of George D. Hendrickson.

- Aug. 5 Prepared and filed Order continuing hearing 1 hr.
- “ 12 Prepared and filed Order continuing hearing to August 22nd 1 hr.
- 10 “ 22 Before Bentley, V. C. on hearing on Petition, Order allowed directing defendants to answer interrogatories and to take the testimony of Miss Warker de bene esse before Harry Lane, Master ½ day.
- Aug. 23 Conference with Mr. Lane, Mr. Decker re: taking testimony of Miss Warker at York, Pa. 1 hr.
- 20 “ 26 Examination of Miss Warker before Lane, Master, at Jersey City ½ day.
- “ 27 Mailed to Mr. Lane true copy of Order naming him and reported examination to New York attorneys ½ hr.
- 30 “ 29 Dictated letters either to transfer agents or home office of corporations whose stock belonged to Miss Warker 1 hr.
- By September 18th, receiver Answers; time given to reading of same and certain cases for certain information 1 hr.
- Sept. 20 At defendant's request prepared and submitted interrogatories to be answered by defendants 1 hr.

Statement of Services of George D. Hendrickson.

- Oct. 11 Acknowledged service of interrogatories; consultation with Mr. Gillig, wrote Mr. Wilson 1 hr.
- “ 15 Wrote Clerk in Chancery for file; wrote to Mr. Gillig, Davis, T. G. Warker, Dr. Irwin, Mrs. Geisler advising them of trial on October 24th 1 hr. 10
- “ 21 Ordered certified copies of deeds from Josephine Warker to Frank N. Warker and from Frank N. Warker back to Josephine Warker from Clerk of Monmouth County; went to Cliffwood, consultation with Dr. Irwin at Matawan; Mrs. Hendricks at Cliffwood; served subpoenas on Lena Geisler, Dr. Irwin, Mrs. Hendricks, witness fees paid \$15.00, Clerk of Monmouth County for certified copies of deeds \$5.00 1/2 day 20
- “ 23 Consultation with Mr. Gillig and Mr. Beattie re: preparation for trial, served subpoena on Mrs. Heden, \$2.00; examination of papers, law, etc. 1 day. 30
- “ 24 Before Bentley, V. C. trial of case 1 day.
- “ 25 Ordered transcript of testimony.
- 1930
- Jan. 18 Paid Mr. Bailey for copy of testimony, \$54.50.

Statement of Services of George D. Hendrickson.

- Apr. 23 Matter having been referred to Vice Chancellor Bigelow, reported to him the situation of Vice Chancellor Bentley's opinion and decision of the Court of Errors. Wrote Clerk in Chancery and Mr. Wilson.
- 10 Apr. 30 Continued trial of case before Bigelow, V. C. all day.
- May 15 Prepared Brief all day.
- " 20 Filed brief with Bigelow, V. C. sent copy to defendant's solicitor.
- July 25 Had copy of Vice Chancellor Bigelow's opinion made and forwarded same to Miss Warker with letter.
- 20 " 18 Copy of opinion, \$2.00.
- Aug. 4 Prepared Final Decree dismissing bill; notice of motion to settle decree; employed Mr. Love of York, Pa. to serve same, disbursements, \$15.00, disbursements covering papers filed, \$12.00, paid for transcript of testimony of parts of Emma Warker, testimony taken April 30th, \$2.70 1/2 day.
- 30

Statement of Services of George D. Hendrickson.

Amount of disbursement in excess of \$122.58

Filing fees of Lis Pendens and all papers filed in the Chancery Clerk's Office amounts to \$12.00 and in addition I have not included the cost of seven or eight trips to Cliffwood and Matawan.

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Total number of hours in excess of approximately 133

Exclusive of correspondence, telephone conversations, time given to locating new address of Mrs. Hedden and other items of service.

The statement of services of George D. Hendrickson and notice of an application for a counsel fee of \$3500.00 were duly served on the appellant.

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Receiver's Final Report.

IN CHANCERY OF NEW JERSEY.

10	Between JOSEPHINE WARKER, Complainant, and FRANK N. WARKER and EMMA WARKER, Defendants.	} On Bill, etc. 65149.
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TO THE HONORABLE EDWIN ROBERT WALKER, CHAN-
 CELLOR OF THE STATE OF NEW JERSEY :

20 The report of David A. Nimmo, Receiver herein
 respectfully shows:

1. That on August 10th, 1927 he was appointed
 Receiver of the complainant Josephine Warker and
 of the properties of the said Josephine Warker, real,
 personal and mixed of whatever kind and descrip-
 tion, including all lands, real estate and buildings,
 particularly described in the bill of complaint and
 all assets and property of said Josephine Warker
 30 of any and whatever kind, character and descrip-
 tion whatsoever and wheresoever situate.

2. On August 10th, 1927 he duly qualified and
 filed bond to the Chancellor of the State of New
 Jersey.

3. On August 10th, 1927 he personally served
 the defendants, Frank N. Warker and Emma
 Warker with copies of the bill of complainant and
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Receiver's Final Report.

the order appointing him receiver, each of which were certified to be true copies. Service was made upon the defendants at Cliffwood, N. J. at 7:30 P. M. and demand was made upon the said Frank N. Warker and Emma Warker for delivery to your receiver of all the property of Josephine Warker in the possession of the defendants. Frank N. Warker and Emma Warker admitted having in their possession the property demanded and refused to deliver possession thereof to your petitioner. 10

4. The defendants Frank N. Warker and Emma Warker live in and are residents of York, Pennsylvania and as such spend very little time within the State of New Jersey.

5. Cliffwood, New Jersey is located in Monmouth County near Keyport and your receiver therefore made inquiry at the Banks located in Keyport, N. J. for bank accounts or safe deposit boxes in the names of Josephine Warker, Frank N. Warker and Emma Warker. The Keyport Banking Company a bank at Keyport, N. J. informed your receiver that they did have an account in the name of Josephine Warker that had been closed out in 1926. 20

6. The only assets your receiver was able to discover were in possession of the defendants Frank N. Warker and Emma Warker. 30

7. On August 20th, 1927 made search of the Clerk's Office of Monmouth County at Freehold, N. J. for deeds to real estate into and out of Josephine Warker. Found of record that the property at Cliffwood, N. J. owned by Josephine Warker had been conveyed to the defendants Frank N. Warker and 40

Receiver's Final Report.

Emma Warker by deed dated October 6, 1926, acknowledged October 7th, 1926 and recorded October 7th, 1926 in Book 1372 of Deeds for Monmouth County on page 62.

10 8. On August 22, 1927 the defendants Frank N. Warker and Emma Warker re-conveyed the same premises to Josephine Warker by deed of that date acknowledged and recorded on the same day in Book 1408 of Deeds for Monmouth County on page 483.

20 9. The defendants Frank N. Warker and Emma Warker could not be found within the State of New Jersey particularly at Cliffwood, N. J. after suit was started and accordingly your receiver consulted with the solicitor for the complainant concerning the institution of suit by him (the receiver) in Pennsylvania as the defendants had what securities they had belonging to Josephine Warker at York, Pennsylvania. Was advised by the solicitor of complainant that in the opinion of Vice Chancellor Bentley any further proceeding out side of the State of New Jersey should await the outcome of the appeal of the case before the Court of Errors and Appeals of New Jersey.

30 10. In the month of July 1929 your receiver was informed that the defendants Frank N. Warker and Emma Warker were about to come into the State of New Jersey and your receiver then secured an order to show cause why the defendants should not be held in contempt for failure to comply with the order of the Court and deliver to the Receiver the property of Josephine Warker admitted in their possession. The defendants eluded service of the order to show cause and the time therein elapsed.

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Receiver's Final Report.

11. In the month of August 1929 your receiver was again informed that the defendants Frank N. Warker and Emma Warker were about to come into the State of New Jersey and were expected to arrive at Cliffwood, N. J. or vicinity and your receiver then made application for a writ of ne exeat and secured another order to show cause why they should not be held in contempt. The defendants again eluded service of the order to show cause and the writ of ne exeat. 10

12. Your receiver thereupon had a watch put upon Cliffwood and vicinity and about a month later (September 1929) when the defendants again appeared in New Jersey the writ of ne exeat was executed and the defendant Frank N. Warker incarcerated in the common jail at Freehold, N. J. The defendant Frank N. Warker only was taken into custody by the direction of Vice Cancellor Bentley and he was released the following day by giving bond in the sum of ten thousand dollars with the complainant Josephine Warker as surety. 20

13. The receiver herein spent considerable time in the search for property and things of value belonging to Josephine Warker, the search of the records in the Office of the Clerk of Monmouth County, the bank records in banks at Keyport, N. J., the securing of orders to show cause in contempt and preparation same, the preparation of petition and securing writ of ne exeat, the travel to and fro to Cliffwood, N. J. and arrest and lodging of the defendant in the jail at Freehold, N. J. 30

14. The receiver herein laid out moneys for disbursements; the fee for his bond of \$10.; the Spe 40

Receiver's Final Report.

10 cial Master's fee for approval of bond of \$5.00; the Sheriff's fee of Monmouth County re writ of ne exeat \$8.52; Transportation to and from Cliffwood by automobile as same is not readily accessible; transportation to and from Freehold, N. J. and transportation for Deputy Sheriff and defendant to and from Cliffwood to Freehold; in all an outlay of about \$100.00 including stationery and telephone.

Respectfully submitted this fifteenth day of August, 1930.

DAVID A. NIMMO,
Receiver.

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

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

I am the receiver named in the foregoing report, I have read the same and the same is true.

DAVID A. NIMMO.

30 Subscribed and sworn to before me }
this 19th day of August, A. D., 1930. }

MILTON M. UNGER,
Master in Chancery,
of New Jersey.

Receiver's final report and notice of Receiver's application for an allowance of \$500.00 were duly served on appellant.

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New Jersey Court of Errors and Appeals

JOSEPHINE WARKER,
Complainant-Appellant,

and

FRANK N. WARKER, *et als.*,
Defendants-Respondent.

ON APPEAL.

**MEMORANDUM ON BEHALF OF
COMPLAINANT-APPELLANT.**

This is an appeal from a final decree of the Chancellor (Bigelow, V. C.) allowing counsel for complainant \$2500.00 and the receiver \$500.00.

Facts.

During the year 1925, the complainant inherited from her brother, Edward H. Warker, a house at Cliffwood, Monmouth County, New Jersey, worth about \$12,500.00 and about \$15,000.00 in stocks and bonds. At her request the defendant Frank N. Warker, her cousin, was appointed administrator of her brother's estate. She lived with the defendants, Mr. & Mrs. Frank N. Warker of York, Pa., during the winter and they lived with her in the house at Cliffwood in the summer. The living expenses were borne by Frank N. Warker and his wife.

On October 6th, 1926, the complainant conveyed to the defendants Frank N. Warker and Emma Warker, the real estate at Cliffwood, New Jersey, and some time previous, by a written order, she di-

rected that the stock be transferred directly from her brother's estate to the defendant Frank N. Warker.

On August 10th, 1927, the complainant filed a bill in the Court of Chancery asking that the deed of conveyance and the transfer of the personal property be set aside and that the real estate be re-conveyed to her and the certificates of stock returned to her. She also asked that the defendants be restrained from mortgaging, conveying or in any way interfering with the complainant in the possession and enjoyment of the real estate and that the defendants be restrained from selling, or transferring any of the certificates of stock and that a receiver be appointed to take charge of and collect the rents of the real estate and take possession of the certificates of stock.

When the bill was filed, the court appointed David A. Nimmo, receiver, and issued an order to show cause why the receiver so appointed and the said receivership should not be continued and made permanent, and also directing the defendants to turn over the said real estate and stock to the receiver.

On the return day of the order to show cause the defendants, Frank N. Warker and wife, made affidavits that although they held legal title to the property they regarded the complainant as the actual owner thereof, and also the stock, and that as soon as the order to show cause was served on them they conveyed the real estate to the complainant. The complainant also made an affidavit on the return of the order to show cause in which she stated that the defendants had conveyed the real estate to her and that she was perfectly satisfied and contented to allow the shares of stock to remain in the name of Frank N. Warker as the money he received from dividends has been expended on the property at Cliffwood.

Counsel for defendant then moved to dismiss the bill which was denied and the receiver was made permanent, 140 A. 889. An appeal was taken from that order which was affirmed by this court, 143 A. 921.

An answer was filed by the defendants, Frank N. Warker and Emma Warker, in which they stated that they had conveyed the property at Cliffwood to the complainant and that complainant informed them that she did not want the securities turned back to her.

A replication was filed and the case was set down for final hearing and was subsequently heard by Vice-Chancellor Bigelow, who on the 19th day of August, A. D. 1930, advised a decree dismissing the bill.

Mr. Hendrickson served a notice on the complainant that he would apply to the court for an allowance of \$3,500.00 and also served a statement of services rendered by him. A notice was served by the receiver, with a copy of his final report, that he would apply to the court for \$500.00.

The receiver never had the custody or possession of the real estate or personal property.

On the 19th day of August, A. D. 1930, the court made a final decree and ordered that the solicitor of the complainant be allowed for his services to include his disbursements made in complainant's behalf, the sum of \$2,500.00 and that the receiver, David A. Nimmo, be paid the sum of \$500.00 for his services and disbursements.

From that part of the decree allowing the payments to counsel and receiver this appeal has been taken.

ARGUMENT.

The court had no power to make these allowances.

On the return of the order to show cause no expense had been incurred excepting that of consultation, preparing the bill, appearing before the court and serving the order to show cause. The receiver up to that time did not perform any services. At that time the defendants had conveyed the real estate to the complainant and the defendants stated in their affidavits that although they held title to the property they did not consider they owned it. The complainant made an affidavit in which she stated that the real estate had been conveyed to her and that she was perfectly willing to have the defendant, Frank N. Warker, hold the personal property as he was applying the income thereof to the up-keep of the real estate. The answer of the defendant set out that they had conveyed the real estate to the complainant and that she was willing that the defendant, Frank N. Warker, should hold the personal property. The court set the case down for final hearing. To try what? There was no issue. The real estate was in the hands of the complainant and the personal property was held by the defendant, Frank N. Warker, with the consent of the complainant. Everything that was done after the return of the order to show cause was against the wish of the complainant. She was obliged to have counsel whom she did not want. She is now ordered to pay counsel and receiver because the court ordered her to proceed in a cause which she desired to drop.

This is simply a case of the court fixing a fee between counsel and client. If costs and counsel fee were awarded to the defendants there would be no quarrel with the order.

If the court considered that the complainant was not capable of transacting her affairs the suit should have been stayed to test that question out. *Howard vs. Howard*, 9 S. W. 411, 1 L. R. A. 610. This case went to final hearing not to try out any issue, but to determine the capacity of the complainant to manage her own affairs. If Mr. Hendrickson is entitled to a fee and the complainant does not pay him, he has his remedy at law and she has the right to have that question passed upon by a jury. The receiver is not entitled to any compensation, because no assets ever came into his hands, he had performed no services up to the time of the return of the order to show cause, and everything he did after that was against complainant's wish, and contrary to what she wanted done.

Chancery Act Revision of 1902—Section 91 Compiled Statutes, page 445.

In any case, matter or proceeding in the Court of Chancery, the Chancellor may make such allowances by way of counsel fee to the party or parties obtaining the order or decree as shall seem to him to be reasonable and proper, and shall direct which of the parties shall pay such allowances; or where such allowances are ordered to be paid out of property or funds, shall specify and direct the property or funds liable therefor. The Chancellor may provide for the inclusion of such allowances in the taxable costs, or may provide for their collection in such other manner as is agreeable to the practice of the court. Such allowances shall be in lieu of any allowance for counsel fees now provided for by statute. In uncontested foreclosure causes, the allowance for counsel fees shall not exceed five per centum of the amount decreed for principal and interest and shall be regulated by the Chancellor from time to time by a general rule, but in contested foreclosure causes counsel fees may be al-

lowed to any party as herein provided for in other causes, matters or proceeding in the court of chancery.

The Court, upon making any order or decree, may charge the successful party with costs, or a reasonable counsel fee, or both, in any case in which the court shall deem it, just to do so, Supplement of 1915.

Diocese vs. Toman, 70 Atl. 881. The allowance of a counsel fee is in the discretion of the Chancellor, where costs are given against defendant; but where complainant does not recover costs he cannot obtain the allowance of a counsel fee.

Sparkes vs. Ross, 82 Eq. 121. The act does not authorize an allowance for a counsel fee to an unsuccessful litigant in a suit to quiet title to real estate.

Strong vs. Mundy, 52 Eq. 833. If it appear that there exists between a lawyer and his client a fair dispute, which can be decided only on the settlement of doubtful questions of fact or law, the court should not exercise its summary power but should leave the parties to their ordinary remedies.

6 *Corp. Jur.*, p. 754. In ordinary cases an attorney cannot have relief, in order to compel payment of his fees, by an order of the court in which they are earned, as he has an adequate remedy by action at law.

6 *Corp. Jur.*, p. 755. And in no case will the amount of compensation be determined in a summary proceeding; that question must be settled in an action at law.

Reading the statute together with the decision in the case of *Strong vs. Mundy*, I would say that the only authority for the Chancellor to grant an al-

lowance is that which is given to him by the statute. This would negative his right to grant an allowance under the facts suggested. The well known right of an attorney to compensation for his service and the additional assistance given us by *Strong vs. Mundy* leads to the conclusion that the question of a fee under the facts stated cannot be submitted to the court and must be settled between the parties or in an action at law. Under the latter, attention is called to the requirement that an itemized statement of the services rendered and the charge therefor must be served upon the client before a suit can be brought for collection.

I therefore respectfully insist that that part of the final decree fixing the allowances of counsel and receiver should be reversed.

JAMES J. MURPHY,
Counsel for Complainant.

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New Jersey Court of Errors and Appeals

Between

JOSEPHINE WARKER,
Complainant-Appellant,

and

FRANK N. WARKER, *et al.*,
Defendants.

On Appeal.

**BRIEF ON BEHALF OF
GEORGE D. HENDRICKSON,
Solicitor of Complainant, Respondent,
on appeal taken by Complainant
Josephine Warker from allowance to
him of counsel fee and disbursements.**

Facts.

Edward H. Warker died October 2nd, 1925, leaving as his next of kin and only heir at law, his sister, Miss Josephine Warker, the complainant herein. She inherited from her brother stocks and bonds of the then market value of \$18,323.60 and real estate at Cliffwood, N. J. of the value of \$12,500.00. This real estate originally stood in the name of Miss Warker and was transferred by her to her brother shortly prior to his death.

The defendant, Frank N. Warker, was appointed administrator of the estate. The winding up of the estate was handled by Mr. Otto Gillig, a New York attorney, associated with Mr. Beattie who had always been the attorney of the decedent, a resident of New York State.

The stocks and bonds belonging to the estate were deposited with the surety company which became surety on the administrator's bond. When the estate was closed and in order to recover possession of the stocks and bonds from the surety company, the New York attorneys prepared and delivered to Frank N. Warker a receipt dated October 8th, 1926, from Miss Josephine Warker for her signature which stated that she had received the shares of stock belonging to the estate of Edward H. Warker, deceased. She never had physical possession of this stock. There appeared in evidence a bill of sale which reads as follows:

York, Pa. May 24, 1926.

TO WHOM IT MAY CONCERN:

I, the undersigned, wishing to dispose and sell the following shares of stock and certificates, inherited from my brother, Edward H. Warker, do so at my own free will and so desire to sell them one and all to F. N. Warker and wife, Emma Warker, for the sum of \$10.00.

Witness:

Mrs. Luia Geisler

(Signed) Josephine Warker

to which an affidavit taken before a Notary Public in the County of York, Pa. containing no date is attached. Mrs. Luia Geisler resides at Cliffwood, N. J. and has never been in York, Pa.

On October 6th, 1926, recorded October 7th, 1926, in the Monmouth County Clerk's office, appears the deed from Josephine Warker to Frank N. Warker and Emma Warker, his wife, acknowledged before an Attorney at Law of New Jersey, by which legal title to this real estate passed to the above named defendants.

We charged that all three signatures by Miss Warker were obtained at the same time by Frank

N. Warker, Miss Warker had no recollection of executing any of them.

On July 20th, 1927 (see Case, p. 31, "1924 being an error in printing"), complainant wrote Mr. Beattie:

"To my knowledge I signed no paper except my Will signed in the presence of Mr. Gillig. Could my Will have acted as a deed? I'm told I have no more right to the property, cannot sell it."

On August 10th, 1927, respondent filed Bill of Complaint on behalf of Miss Warker in which Miss Warker asked that an Equity Receiver be appointed by the Court of Chancery of New Jersey to assist her in regaining her property. On the following day subpoenas were issued and *Lis Pendens* filed, describing the real estate in controversy. The Court of Chancery appointed Mr. David A. Nimmo, Receiver, and allowed a Rule to Show Cause returnable August 15th, 1927. The defendants were served personally in New Jersey with subpoenas and the Rule to Show Cause, and at their request, Order continuing hearing on the Rule to Show Cause to September 19th, 1927, was allowed.

On August 31st, 1927, respondent received a letter from Mr. Rochow, Attorney at Law, of York, Pa. (see Case, p. 37) in which respondent was informed that defendants had executed and delivered to complainant deed for the Cliffwood property. Deed reconveying the property to complainant was executed by defendants on August 22nd, 1927, and on the same day recorded in the Monmouth County Clerk's office. Twelve days after Bill was filed.

Sometime prior to September 26th, 1927, the defendants brought Miss Warker to my home and I—respondent was informed by them that they had reconveyed the real estate to Miss Warker and she

said that was so; that she was satisfied and desired to have the case discontinued; at which time this respondent requested the defendants to return the personal property either to Miss Warker or to the Receiver.

The Rule to Show Cause was argued before Vice Chancellor Bentley on September 26th, 1927, at which time respondent reported to the Court of Chancery Miss Warker's request that the matter be discontinued; that this respondent had been informed by her that she had received back the real estate and was satisfied and that everything was all right; that this respondent then and there asked Frank N. Warker to turn over the personal property to Miss Warker or the Receiver and that he refused to answer.

On March 5th, 1928, Vice Chancellor Bentley filed his Opinion and made an order, making the Receiver permanent, refusing complainant's request to dismiss the Bill and directing this respondent to continue to prosecute the suit and not to consent to a dismissal of the Bill of Complaint.

From this Order defendants appealed. This court, on October 15th, 1928, affirmed the Decree appealed from for the reasons stated in the Opinion of Vice Chancellor Bentley (see Case, p. 46, 140 A 889).

On April 25th, 1928, defendants filed their Answer. From the time the defendants reconveyed the real estate to Miss Warker they kept her with them at all times.

In preparation for trial, respondent after making many efforts for an absolute assurance that the solicitor of the defendants would produce Miss Warker at the trial, applied to the court for an Order to take her testimony at York, Pa., and a few days thereafter was notified by the attorney of the defendants that she was in Jersey City and could

be examined. Such was done before Mr. Harry Lane, Special Master.

At the trial, respondent sustained all the allegations of the Complaint and Vice Chancellor Bigelow in his Opinion, stated that he would decree the return of the personal property, except Miss Warker requested otherwise (see Case, pp. 61-63).

In other words, this respondent was fully successful in the performance of the work which he was instructed to do by the Court of Chancery of the State of New Jersey.

This has been a very peculiar case, one in which the defendants, having stripped complainant of everything and having come to an open breach, with the result that she employed counsel to protect her rights, who started proper remedial action in her behalf. Thereupon Frank N. Warker and his wife consulted their own attorney in York, Pa., and succeeded in getting back into Miss Warker's good graces by reconveying to her the real estate, prevailed upon her to request the withdrawal of the suit and kept the personal property of the value of \$18,323.60.

Notice of application for allowance of \$3500.00, together with Petition for same, was duly served on complainant. She was represented on the application. Objection was made to the sum of \$3500. The court allowed the sum of \$2500.00 to include all disbursements, for services rendered as shown by the Petition for allowances filed (see Case, p. 68). An appeal from a part of the Order making the allowance was taken by complainant.

POINT I.

Through the filing of the *Lis Pendens* the real estate has always been within the jurisdiction of the Court of Chancery.

POINT II.

No question of the value of the services of counsel to complainant is raised by the appeal.

POINT III.

Respondent is an officer of the Court of Chancery. By order of the Court of Chancery, sustained by the Court of Errors and Appeals, this respondent was made an agent of that court and required to perform the services directed by its Decree and is entitled to have that court fix his allowance for services rendered and disbursements made, and decree payment thereof.

Re: Seidler vs. Branford Restaurant Inc., 97 N. J. Equity, 153. A Receiver should be paid a reasonable and proper allowance out of the funds before any distribution is made. If it were not so, the court would not be able to protect its appointees, who, on their appointment, become officers of the court, and as such are entitled to the Court's protection.

Re: Matter of Charles H. Sulk, alleged to be a lunatic, 74 Equity, 736. It appears that both

in this State and in England we have direct and positive statements by the courts to the effect that the petitioner in a lunacy proceeding, if acting from justifiable motives and in good faith, is entitled to an award of costs and expenses out of the estate of the subject of the inquisition, even if he be found of sound mind, provided there be a fund within the jurisdiction of the court out of which the award can be made.

Citing the case of *Cutis White*, wherein Chancellor Green says: "The petitioner is in justice entitled to be repaid his costs reasonably incurred, whether the lunacy be established or not."

The Court of Errors and Appeals in 97 Equity, 531, affirmed the Court of Chancery opinion re: *Seidler vs. Branford Restaurant Inc.* saying:

"Receivers are but the arms of Chancery. * * * He stands as a representative of the court. To hold that one thus chosen and thus serving should incur the expenses and perform the duties of the receivership at the risk of these expenses and services being beneficial or otherwise to the estate or to any of the parties in interest would be contrary to the whole theory of his office, deprive the courts of the services in many cases of competent administrators, and be subversive of the administration of this important branch of Equity Jurisdiction."

Dickinson's Chancery Precedents, Revised Edition, 1894. "But at a more recent period, in England, it was held that the Court had jurisdiction in cases where the mind had become unsound from old age, infirmity, etc.; that if one is incapable of managing his own affairs, his mind is unsound and this court has jurisdiction." Citing several English cases as well as New Jersey cases.

In re: Guardian Trust Co. vs. Kansas City Southern Railroad Co., 28 F. (2d). The Circuit Court of appeals holds that the English

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Court of Chancery had the jurisdiction to allow costs as between solicitor and client, in a case where the peculiar facts warranted the English Court of Chancery in so doing.

POINT IV.

The Court of Chancery of New Jersey having jurisdiction of the cause and exercising its equity jurisdiction has power in its discretion, to indemnify its agent under its general jurisdiction and under the attorney's lien law of the State of New Jersey to determine the amount of solicitor's compensation or the amount of the lien and enforce it.

The contention made by Appellant's Brief completely ignores the court's direction to her solicitor and counsel to pursue the suit through to final decree, whereby he was made the court's appointee as well as complainant's solicitor and counsel.

This order was sustained and affirmed by the Court of Errors and Appeals. Even had the court not expressly ordered the continuance of the suit through to a final decree, it would only be possible for the complainant Miss Warker to release her interest in the rights claimed in the suit which, so far as the land was concerned, was promptly regained for her, but she could not release the Attorney's lien nor give to defendants any discontinuance.

The Attorney's Lien, Act (P. L. 1914, Chap. 201, p. 410 Cumulative Supplements Vol. 1, p. 1805, Sec. 116-76), not only sustains this lien but provides especially that the court in which the suit is pending shall, by its order, fix the amount of the fees

to be allowed the attorney and determine the lien and its enforcement against the Res of the suit in whosoever's hands such shall be or come.

The decree of the Court of Chancery (See Case, p. 64), particularly described the Res, fixed the amount of compensation and ordered execution.

Prior to the court's direction to this Respondent to prosecute this case to final hearing, through this Respondent's work, complainant received back the real estate of the value of \$12,500.00.

The Court of Chancery, undoubtedly in fixing and determining the compensation awarded, took into consideration both the beneficial results obtained for Miss Warker by Respondent as well as services rendered in her behalf pursuant to the directions of the court.

It is respectfully submitted that the appeal be dismissed.

GEORGE D. HENDRICKSON,
Solicitor for and of Counsel *Pro Se*.

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New Jersey Court of Errors and Appeals

JOSEPHINE WARKER,
Complainant-Appellant,

and

FRANK N. WARKER, *et als.*,
Defendants-Respondents.

On Appeal.

**BRIEF ON BEHALF OF DAVID A. NIMMO,
Equity Receiver, respondent to appeal
taken by complainant Josephine Warker
from allowance of Receiver's fee and
disbursements.**

Facts.

On August 10th, 1927, this respondent, David A. Nimmo, was appointed Receiver of the complainant Josephine Warker and of the properties of the said Josephine Warker, real, personal and mixed of whatever kind and description, including all lands, real estate and buildings, particularly described in the bill of complaint, and all assets and property of said Josephine Warker of any and whatever kind, character and description whatsoever and where-soever situated.

On August 10th, 1927, copies of the bill of complaint and the order appointing Receiver, each of which was certified to be true copies, were served upon the defendants Frank N. Warker and Emma Warker at the house of Josephine Warker at Cliff-wood, N. J., and demand was made upon the said

Frank N. Warker and Emma Warker for delivery to the Receiver of all the property of Josephine Warker in the possession of the defendants. The defendants Frank N. Warker and Emma Warker admitted having in their possession the property demanded and refused to deliver possession thereof to the Receiver.

The defendants Frank N. Warker and Emma Warker are residents of Pennsylvania, residing at York, and as such spent very little time within the State of New Jersey.

The Receiver made diligent inquiry of the banks located in the vicinity of Cliffwood, N. J., and Keyport, N. J., for bank accounts and safe deposit boxes in the names of Josephine Warker, Frank N. Warker and Emma Warker. The Keyport Banking Company, a bank at Keyport, N. J., informed Receiver that they did have an account in the name of Josephine Warker, but that it had been closed out in 1926.

The only assets the Receiver was able to discover were in the possession of the defendants Frank N. Warker and Emma Warker.

The Receiver made search of the records in the Clerk's office of Monmouth County, at Freehold, N. J., for deeds to real estate and it was found of record that the property at Cliffwood, N. J., formerly owned by Josephine Warker, had been conveyed by her to the defendants Frank N. Warker and Emma Warker by deed dated October 6th, 1926, and recorded October 7th, 1926. The records of Monmouth County showed no property other than was described in the bill of complaint, which was already *lis pendens* immediately after the suit had been brought.

A further search of the records at Freehold, Monmouth County, disclosed that on August 22nd, 1927, twelve days after the appointment of the Re-

ceiver, the defendants Frank N. Warker and Emma Warker reconveyed the premises described in the bill of complaint to Josephine Warker by deed of that date, acknowledged and recorded on August 22nd, 1927.

The defendants Frank N. Warker and Emma Warker could not be found again within the State of New Jersey, particularly at Cliffwood, N. J., and accordingly the Receiver consulted with the solicitor for the complainant concerning the institution of suit by the Receiver in Pennsylvania, as the defendants had the securities described in the bill of complaint belonging to Josephine Warker at York, Pennsylvania.

The Receiver was advised by Vice-Chancellor Bentley that any proceedings outside of the State of New Jersey should await the outcome of the appeal which was taken before the Court of Errors and Appeals of New Jersey by the defendants Frank N. Warker and Emma Warker.

The Court of Errors and Appeals of New Jersey affirmed the Order of the Court of Chancery (see p. 54 of State of Case).

The defendants Frank N. Warker and Emma Warker had the securities of the complainant Josephine Warker in their possession secreted some place unknown to the Receiver. When they did appear in the State of New Jersey they eluded service of contempt orders with success until September, 1929, when they again appeared in New Jersey. The defendant Frank N. Warker was apprehended and taken into custody by the Sheriff of Monmouth County on a writ of *ne exeat* that had been issued and in the possession of the Sheriff of Monmouth County for some time. The defendant Frank N. Warker was incarcerated in the common jail at Freehold, N. J., and remained there over night. On the following day, by the Order of Vice Chancellor

Bentley, the defendant was released by giving bond in the sum of \$10,000.00, with the complainant Josephine Warker as surety, she pledging the property at Cliffwood as security. At this point I wish to call the attention of the Court to the fact that the complainant Josephine Warker was a woman eighty years of age and was again being used by the defendants for their own purposes, they apparently having gotten into her good graces again.

The Receiver was not represented by counsel and appeared in his own behalf in the securing of orders, issuance of writs and the drawing of petitions so far as affected him as Receiver, and spent considerable time for the search of property and things of value belonging to Josephine Warker and did expend a sum of money approximating \$100.00 for expenses.

The Receiver did not rent the property at Cliffwood, because the complainant Josephine Warker continued to live there after the reconveyance to her by the defendants, Cliffwood being her home in New Jersey. The Receiver did everything in his power to actively comply with and enforce the Orders of the Court appointing him.

The land in Monmouth County upon the filing of the bill and the filing of the *lis pendens*, came into the jurisdiction of this Court and is still the *res* in the Court because they are described specifically in the order for the dismissing of the bill and the issuance of execution for the collection of the allowances made therein.

POINT I.

The Court of Chancery of New Jersey has the power to make allowances to receivers appointed by it and to enforce the payment of these allowances.

Seidler vs. Branford Restaurant, Inc., 97 Equity, page 153. Affirmed by the Court of Errors and Appeals, 97 Equity, page 531.

Justice Lloyd delivering the opinion of the Court says, "Receivers are but the arms of Chancery, appointed to preserve the property of corporate and similar entities for the benefit of all parties in interest, and in cases of insolvency to administer the estate upon the direction of the Court. In theory of law, at least, a Receiver has no part in his own selection, but stands as the representative of the Court impartially between the parties. To hold that one thus chosen and thus serving, should incur the expenses and perform the duties of the receivership at the risk of these expenses and services being beneficial or otherwise to the estate or to any of the parties in interest would be contrary to the whole theory of his office, deprive the Courts of the services in many cases of competent administrators, and be subversive of the administration of this important branch of Equity Jurisdiction."

In the Matter of Charles H. Sulk, alleged to be a lunatic, 74 N. J. Equity, page 736.

Chancellor Warker, then Vice Chancellor, writing the opinion of the Court, at page 741, says, "I

take it that the Court has the power to compensate the Receiver irrespective of the consent, for the right to appoint a temporary Receiver presupposes that the appointment may be vacated upon full hearing. If such be the consequence, that is, if the receivership goes down upon the hearing, it does not follow that the petitioner procuring the appointment shall be mulcted in costs. Reading further in commenting upon the case of *Sewell v. Cape May and Somers Point Railroad Co.*, the court says, "*The power to appoint a Receiver is at least as high, or a higher power, than the power to toll the fund in the Receiver's hands for compensation and the costs of the litigation in which he was appointed. The one power, it seems to me, follows the other.*"

There is no objection to the amount of the allowance; the objection is to the jurisdiction of the Court of Chancery of New Jersey to fix Receiver's fee.

Viavatta vs. Munn Realty Corporation,
149 Atlantic, page 809.

Vice Chancellor Fallon in writing the opinion of the Court and citing many of the decisions of the Courts of this State says, "The rule as to allowance of Receivers' fees cannot be regarded as limited by sections 85 and 86 of the Corporation Act (citing compiled statutes)". *It is founded also upon general principals of equity.* The Receiver represents the Court and acts for the interest of all concerned. The case of *Seidler v. Branford Restaurant*, *supra*, is then cited and quoted.

Jeffers v. N. J. & Pennsylvania Railroad Co., 86 N. J. Equity, page 68. Affirmed by the Court of Errors and Appeals, 86 N. J. Equity, page 402.

Held, that the fees of the Receiver and counsel, *had priority in payment* before even the payment of Receiver's certificates which were stipulated to be a first lien upon the assets of the Receivership to any mortgage judgment or other liens or claims.

The case of *Diocese vs. Toman*, 70 Atlantic, page 881, cited by the appellant does not apply to the allowances of a Receiver.

The case of *Sparks v. Ross*, 82 Equity, page 121, cited by appellant does not apply to the case at bar as the power of the Court of Chancery to fix the allowance of Receiver's fee is not derived from any statute, but is part of the inherent power of the Chancellor and jurisdiction of the Court, from time immemorial.

The Receiver in the case at bar was duly appointed and qualified and entered actively into his office as such Receiver. It is clearly within the power of the Court of Chancery to make allowances to Receivers appointed by it from numerous decisions of this State and other States as well as of the Courts of England, from time immemorial. At this very moment there is within the jurisdiction of this Court and still retained by it real estate out of which the allowance is only a fractional part. The powers of the Court of Chancery were invoked by the complainant and effectively protected the interest of this eighty year old lady against the cupidity of members of her family, who had obtained possession of all her property, approximating \$30,000.00.

The work of the Receiver as required by the Order of appointment has been performed. There is property out of which the allowance can be paid. It is respectfully submitted that the appeal be dismissed.

DAVID A. NIMMO,
Pro Se.

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