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Amended Notice of Appeal.

AMENDED NOTICE OF APPEAL.

Filed May 8, 1927.

In Chancery of New Jersey

Between

LOUIS BAHLER,

Complainant,

and

ROBERT TREAT BATHS, a New
Jersey corporation,

Defendant.

On Bill, &c.

Amended

Notice of

Appeal.

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Notice is hereby given that Louis Geltzeiler, a stockholder and creditor of the said defendant, Robert Treat Baths, a corporation, appeals to the Court of Errors and Appeals in the last resort in all causes from the following orders and decrees made by the Chancellor, on the advice of Vice-Chancellor Alonzo Church, in the above-stated cause.

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1. An order bearing date May 11, 1926, confirming the sale made by the Receiver in the above-stated cause.

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2. An order dated July 1, 1926, modifying the order of May 11, 1926.

3. An order dated October 27, 1926, approving Receiver's account and discharging the Receiver.

4. An order dated November 23, 1926, directing the Receiver to pay the balance of the funds in his hands to the Rolo Company.

Dated May 4, 1927.

FRANK E. BRADNER,
Solicitor for Appellant.

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Acknowledgment of Service.

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

FRANK E. BRADNER,
Of Counsel with Louis Geltzeiler, appellant.

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ACKNOWLEDGMENT OF SERVICE.
IN CHANCERY OF NEW JERSEY.

Between

LOUIS BAHLER,
Complainant,

and

ROBERT TREAT BATHS, a New
Jersey corporation,
Defendant.

On Bill, &c.
On Appeal.

Acknowledg-
ment of
Service.

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Service of a certified copy of Amended Notice of Appeal in the above stated cause, is hereby acknowledged this May 13, 1927.

LEBER & RUBACK,
Solicitors for Rolo Co.

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NATHAN H. BERGER,
Solicitor of Louis Bahler, *et al.*

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Petition of Appeal.

PETITION OF APPEAL.

Filed May 18, 1927.

New Jersey Court of Errors and Appeals

Between

LOUIS BAHLER,
Complainant-Respondent,

and

ROBERT TREAT BATHS, a New
Jersey corporation,
Defendant-Appellant.

On Appeal
from
Chancery.

Petition of
Appeal.

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To the Honorable the Court of Errors and Appeals in the last resort in all causes:

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The petition of Louis Geltzeiler respectfully shows:

First: Petitioner is the owner and holder of 49 shares of the capital stock of Robert Treat Baths, a corporation of New Jersey, and is also a creditor of said corporation; and finds himself aggrieved by four orders or decrees made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, in a cause pending in the said Court of Chancery, wherein Louis Bahler is the complainant, and Robert Treat Baths, a corporation, is defendant; and the said orders are as follows:

30

1. An order bearing date May 11, 1926, confirming the sale made by the Receiver in the above stated cause.

2. An order dated July 1, 1926, modifying the order of May 11, 1926.

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Petition of Appeal.

3. An order dated October 27, 1926, approving Receiver's account and discharging the Receiver.

4. An order dated November 23, 1926, directing the Receiver to pay the balance of the funds in his hands to the Rolo Company.

10 Second: Petitioner appeals from the order or decree bearing date May 11, 1926, confirming the sale made by the Receiver; upon the ground that the same is erroneous for these reasons:

1. Because the Receiver was not legally authorized to sell the property of the corporation free and clear of all liens.

20 2. Because in some instances the Receiver made sale only of the right, title and interest of the corporation of property in which the corporation had no legal interest.

Third: Petitioner appeals from the order dated July 1, 1926, modifying the order of May 11, 1926, upon the ground that the same is erroneous for these reasons:

1. Because the Receiver had no authority to make the sale.

30 2. Because the purchaser at the sale if legally bound to pay, was obliged to pay the full amount of the bid in cash.

3. Because the claim of the purchaser at the sale against the corporation, should have been presented in the ordinary course so as to have been subject to the objections of creditors and stockholders.

Fourth: Petitioner appeals from the order dated October 27, 1926, approving the Receiver's account and discharging the Receiver, upon the

Petition of Appeal.

ground that the same is erroneous, for these reasons:

1. Because the Receiver had not paid to the appellant his approved claim for salary as manager of the bath house, in the sum of \$280.00, which was a first lien on the assets.

2. Because the allowances made to the Receiver and to his counsel are unreasonable. 10

3. Because an appeal from the order directing sale of the property to be made, was then pending and had not been decided, and the Receiver should not have been discharged.

4. Because since the said order was made this Court has determined that the order or decree bearing date March 23, 1926, which directed a sale of the property, should be modified so that a sale could be made only subject to the mortgage held by the Franklin Savings Institution. 20

Fifth: Petitioner appeals from the order dated November 23, 1926, directing the Receiver to pay the balance of the funds in his hands to the Rolo Company, upon the ground that the same is erroneous for these reasons:

Because the claims for wages were a first lien upon the assets not included in the mortgage held by the Rolo Company and should have been paid out of those assets. 30

Sixth: Petitioner therefore prays that the said orders or decrees of the Chancellor may be reversed, set aside and for nothing holden; that petitioner may have such other relief as to the Court may seem equitable.

FRANK E. BRADNER,
Solicitor and of Counsel with
Appellant, Louis Geltzeiler.

Acknowledgment of Service.

ACKNOWLEDGMENT OF SERVICE.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	<i>Between</i> LOUIS BAHLER, <i>Complainant-Respondent,</i> <i>and</i> ROBERT TREAT BATHS, a New Jersey corporation, <i>Defendant-Appellant.</i>	}	<i>On Appeal from Chancery.</i> <i>Acknowledg- ment of Service.</i>
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20 Service of a copy of petition of appeal in the above stated cause, is hereby acknowledged this 19th day of May, 1927.

LEBER & RUBACK,
 Solicitors of Rolo Co.

NATHAN H. BERGER,
 Solicitor of Louis Bahler, *et al.*

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Answer to Petition of Appeal.

ANSWER TO PETITION OF APPEAL.

Filed June 4, 1927.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	<i>Between</i> LOUIS BAHLER, <i>Complainant-Respondent,</i> <i>and</i> ROBERT TREAT BATHS, a New Jersey corporation, <i>Defendant-Appellant.</i>	}	<i>On Appeal from Chancery.</i> <i>Answer to Petition of Appeal.</i>
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20 The answer of the above-named respondent to the petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that four decrees were made and entered in the Court of Chancery in the cause for the purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decrees are agreeable to equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

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NATHAN H. BERGER,
 Solicitor for Complainant-Respondent.

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Remittitur.

REMITTITUR.

Filed in Chancery February 24, 1927.

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

10

Between

LOUIS BAHLER,
Complainant-Respondent,

and

ROBERT TREAT BATHS, a cor-
poration,
Defendant-Appellant.

*On Appeal
from
Chancery.*

Remittitur.

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This cause coming on to be heard before the Court upon the appeal of Louis Geltzeiler, a stockholder of the defendant Robert Treat Baths, a corporation, in the presence of Frank E. Bradner, of counsel with the appellant, and Nathan H. Berger, of counsel with the respondent; and the Court being of the opinion that the decree of the Chancellor bearing date February 16, 1926, appointing Harry G. Hendricks, receiver of said corporation, should be affirmed; and the Court being of the opinion that the decree of the Chancellor bearing date March 23, 1926, which authorizes the said receiver to sell the lands, machinery, furniture, equipment and personal property of said corporation, is erroneous insofar as it directs that the land shall be sold free from the mortgages, liens and encumbrances against the same without excepting the mortgage in the sum of \$55,000 held by the Franklin Savings Institution, because the legality of said mortgage was not brought in question; and being also of the opinion

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Remittitur.

that the decree last aforesaid should be modified accordingly: It is thereupon, on this 31st day of January, 1927, ordered, adjudged and decreed that the decree of the Chancellor bearing date February 16, 1926, in the above stated cause, which adjudges that the said corporation is insolvent and appoints Harry G. Hendricks, receiver of said corporation, be and the same is hereby affirmed; and it is further ordered, adjudged and decreed that the decree of the Chancellor in the above stated cause bearing date March 23, 1926, which authorizes the said receiver to sell the lands of the said corporation free from the mortgages, liens and encumbrances, be and the same is hereby reversed, to the extent that it authorizes such sale free from the lien of the mortgage held by Franklin Savings Institution, which was made by the said corporation; and it is further ordered, adjudged and decreed that the decree last mentioned shall be modified so that it shall only authorize a sale of the land and real property of the said corporation free from the mortgages, liens and encumbrances thereon, excepting only, that said property shall be sold subject to the lien and encumbrance of the mortgage aforesaid held by Franklin Savings Institution.

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And it is further ordered that the record and proceedings be remitted to the Court of Chancery, to be therein proceeded on according to law and the practice of said Court.

On motion of

FRANK E. BRADNER,
Solicitor and of Counsel with
Louis Geltzeiler, Appellant.

A true copy,

JOSEPH B. FITZPATRICK,
Clerk.

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Receiver's Report of Sale.

RECEIVER'S REPORT OF SALE.

Filed May 4, 1926.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> LOUIS BAHLER, <i>Complainant,</i> <i>and</i> ROBERT TREAT BATHS, a cor- poration, <i>Defendant.</i>	<i>On Bill, &c.</i> <i>Receiver's</i> <i>Report of</i> <i>Sale.</i>
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20 In pursuance of an order made by the Chan-
 cellor, in the above-stated cause, and dated on the
 3rd day of March, 1926, by which it was, among
 other things, ordered, adjudged and decreed, that
 the undersigned, the Receiver of the above-named
 defendant corporation should forthwith proceed
 to make sale of all and singular the premises,
 real and personal, in the said order for sale
 particularly mentioned and described, in part or
 as an entirety, free and clear, and freely and
 clearly acquitted and discharged of and from
 30 the lien of the mortgages, liens and encum-
 brances against said real and personal property,
 in the said order particularly mentioned and set
 forth, at public or private sale, for the highest
 and best price that could be obtained therefor,
 for cash, and that he forthwith, after such sale,
 make a report to this Court.

I, HARRY G. HENDRICKS, Receiver as aforesaid,
 do hereby report to His Honor, the Chancellor,
 that I did, by public advertisements, signed by my-
 self, and set up at five or more public places, in
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Receiver's Report of Sale.

the County of Essex, one whereof was in the Third
 Ward of the City of Newark, wherein the real
 estate and other premises of the said defendant
 corporation are situate, at least four weeks next
 before the time appointed for the selling of the
 same, and also published in the Newark Evening
 News and the Newark Sunday Call, two of the
 newspapers printed and published in the County
 of Essex, in which said real estate and building
 are situate, both which newspapers are printed
 and published at the county seat of said county,
 at least four weeks successively, once a week next
 preceding the time appointed for said sale, give
 public notice, that the aforesaid lands and real
 estate, together with the personal property of the
 defendant corporation, would be exposed at pub-
 lic vendue on Wednesday, April 28th, 1926, at
 2 o'clock in the afternoon, on the premises, in
 said notice described, in the following order:

First: The real estate and building thereon,
 as one parcel.

Second: The right, title and interest of the
 Receiver in the personal property to which
 claims have been made by various claimants, as
 hereinafter set forth.

Third: All of the personal property of the
 defendant corporation, free from any claims. 30

I gave notice that the same would be struck
 off to the highest bidder or bidders therefor, as
 the case may be; and at the time and place so
 appointed and advertised, in my discretion,
 deeming a public sale of said real and personal
 property, to be most for the benefit and advan-
 tage of all the parties interested therein (in fact,
 not having any offers for said property at pri-
 vate sale) did expose for sale the lands and
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Receiver's Report of Sale.

building, described in said advertisement of sale and in the schedule which was read, consisting together of the real estate of the defendant corporation, as one parcel.

10 (a) Rolo Co., a New Jersey corporation, then and there bidding for said real estate \$75,000, and no one bidding so much or more than that sum, the said real estate was thereupon struck off for sale to the said Rolo Co., for the sum of \$75,000.00.

20 (b) Rolo Co., aforesaid, bid the sum of \$75.00 for the right, title and interest of the Receiver in the contents of the hydriatic room, consisting of the following property: two electric bath cabinets, marble sides; one electric plaster cabinet, two adjustable cots with leather cushions, 30 two surgical stands, one chiropodist arm chair and stool, one spray machine with shower baths, one long mirror, one surgical cabinet with medicines and contents, one medicine chest, one vibrating machine, three wooden stools, four complete equipped resting cots, one abdomen reducing machine, and three chairs. Livezey Surgical Service, a corporation, claims a lien on said property, in the sum of \$1,900, and also claims the legal title to the said property, and the rights of the Receiver in said property are of doubtful value. No one bid as much or more than \$75.00 and the right, title and interest of the Receiver in said property was thereupon struck off for sale to the said Rolo Co., for \$75.00.

40 (c) The said Rolo Co., bid the sum of \$50.00 for the right, title and interest of the Receiver in 198 safe deposit boxes. Herring-Hall Marvin Safe Co., a corporation, claims a lien on said property, in the sum of \$507.48, and also claims the legal title to said property, and the rights

Receiver's Report of Sale.

of the Receiver in said property are of doubtful value. No one bid as much or more than the sum of \$50.00 and the right, title and interest of the Receiver in said property was thereupon struck off for sale to the said Rolo Co., for \$50.00.

(d) Rolo Co., aforesaid, bid the sum of 10 \$100.00 for the right, title and interest of the receiver in the 200 beds on the said premises. Benjamin Cooper claims a lien on said property in the sum of \$765.00, and also claims the legal title to said property, and the rights of the Receiver in said property are of doubtful value. No one bid as much or more than \$100.00, and the right, title and interest of the receiver in said property was thereupon struck off for sale to the said Rolo Co., for \$100.00. 20

(e) Rolo Co., aforesaid, bid the sum of \$15.00 for the right, title and interest of the Receiver in the equipment of the restaurant on said premises. Norbert Huttner claims to be the owner of all of the equipment in the said restaurant, and the right, title and interest of the Receiver in the equipment of the restaurant are of doubtful value. No one bid as much or more than the sum of \$15.00 and the right, title and interest of the Receiver in said restaurant equip- 30 ment was thereupon struck off for sale to the said Rolo Co., for the sum of \$15.00.

(f) Rolo Co., aforesaid, bid the sum of \$25.00 for the right, title and interest of the Receiver in the electric sign hanging in front of the premises, reading "Robert Treat Baths." Louis Bahler and Louis Geltzeiler claim that they personally paid for the said sign, and that it is not the property of the corporation. The rights of the Receiver in said sign are of doubtful value. 40

Receiver's Report of Sale.

No one bid as much or more than the sum of \$25.00, and the right, title and interest of the Receiver in said sign were struck off for sale to the said Rolo Co., for the sum of \$25.00.

10 (g) Rolo Co., aforesaid, bid the sum of \$600.00, for the personal property contained in the *front hall*, being five rubber runners, and four settes; *second hall*, being two rubber runners, one mirror, and one leather chair, the contents of the *waiting room*, being one runner, two rugs, one crex rug, five leather seating chairs, three-piece upholstered living room suite, one five-piece wicker set, the contents of the *store room* on the first floor being 2,000 drinking cups, two cases of toilet paper, and ninety pairs of slippers, the contents of the *office*, being one desk and chair, 20 two rubber runners on the stairway, the contents of the *bathroom*, being four wooden benches, twenty-two lunch chairs and one basket, the contents of the *side room* on the first floor, being one large rug, fourteen Vienna chairs and six lunch chairs, the contents of the *side room* on the second floor, being five Vienna chairs, four card tables, thirteen partitions around the private lockers, and two runners, also eighty dozen towels, 210 coats and 180 robes.

30 (h) Rolo Co., aforesaid bid the sum of \$1.00 for the right, title and interest of the Receiver in the trade name "Robert Treat Baths," and no one bidding as much or more than that sum, the right, title and interest of the Receiver in said trade name was thereupon struck off for sale to the said Rolo Co., for the sum of \$1.00.

40 (i) Rolo Co., aforesaid, bid the sum of \$40.00 for thirty-five dozen pillow cases, and no one bidding as much or more than the sum of \$40.00, the said pillow cases were struck off for sale to

Receiver's Report of Sale.

the said Rolo Co., for \$40.00. This property was sold upon the express condition that if there were more pillow cases than the number stated, that the purchaser would, in such event, pay a proportionate increased amount, and if there were less pillow cases than the number stated, that the purchaser would, in such event pay a proportionate reduced amount. 10

(j) Rolo Co., aforesaid, bid the sum of \$210.00 for 300 blankets, and no one bidding as much or more than the sum of \$210.00 the said blankets were struck off for sale to the said Rolo Co., for \$210.00. This property was sold upon the express condition that if there were more blankets than the number stated, that the purchaser would in such event, pay a proportionate increased amount, and if there were less blankets than the number stated, that the purchaser would, in such event, pay a proportionate reduced amount. 20

(k) Rolo Co., aforesaid, bid the sum of \$130.00 for 200 mattresses, and no one bidding as much or more than the sum of \$130.00, the said mattresses were struck off for sale to the said Rolo Co., for the sum of \$130.00. This property was sold upon the express condition that if there were more mattresses than the number stated, that the purchaser would, in such event, pay a proportionate increased amount, and if the purchaser would receive less mattresses than the number stated, that the purchaser would, in such event pay a proportionate reduced amount. 30

(l) Samuel Dlugich bid the sum of \$275.00 for 100 dozen sheets, and no one bidding as much or more than that sum, the said sheets were struck off for sale to the said Samuel Dlugich 40

Receiver's Report of Sale.

for that sum. This property was sold upon the express condition that if there were more sheets than the number stated, that the purchaser would, in such event pay a proportionate increased amount, and if there were less sheets, than the number stated, that the purchaser would, in such event, pay a proportionate reduced amount.

I further report that I caused the said real estate to be appraised by one Edward J. Maier, an expert appraiser of real estate, as will appear by his appraisal, filed in this cause, and he placed the value of this real estate at the sum of \$100,000.00 and that I had the personal property appraised by Albert Fantl, and Coval Schoonmaker, and that the appraised value of the personal property amounted to the total sum of \$7,208.25. The said appraisers did not take into consideration the claims of property and claims of lien against the said property, to which reference has been made hereinbefore.

HARRY G. HENDRICKS,
Receiver.

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

HARRY G. HENDRICKS, being duly sworn, according to law, on his oath deposes and says:

I am the Receiver named in the foregoing report, the matters and things therein contained are true to the best of my knowledge, information and belief.

HARRY G. HENDRICKS.

Receiver's Report of Sale.

Subscribed and sworn to before me this 4th day of May, 1926.

PLUME L. DOUGLASS,
Attorney-at-Law of N. J.

A true copy, _____ 10
THOMAS BARBER,
Clerk.

Order Confirming Sale.

ORDER CONFIRMING SALE

Filed May 20, 1926.

IN CHANCERY OF NEW JERSEY.

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Between

LOUIS BAHLER,

Complainant,

and

ROBERT TREAT BATHS, a N. J.
corporation,

Defendant.

On Bill, &c.

*Order
Confirming
Sale.*

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This matter being opened to the Court by Nathan H. Berger, of counsel with the Receiver of the above-named defendant company, and it appearing by the report of the said Receiver, on file in the office of the Clerk of this Court, that said Receiver has sold the entire assets, real and personal property of Robert Treat Baths, including its lands, tenements, and hereditaments, and that he realized for said real estate the sum \$75,000.00, and for said personal property the sum of \$1,521.00; and that these sums were the highest and best prices the same would then bring in cash; and proof being made of the mailing of notices of the order heretofore made in this Court, bearing date the 4th day of May, 1926, directing the stockholders and creditors of the above-named defendant company to show cause on the date hereof, why said sale should not be confirmed, and after hearing the arguments of Nathan H. Berger, of counsel with the Receiver, Samuel F. Leber, of counsel with Rolo Co., a New Jersey corporation, the holder of a

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Order Confirming Sale.

second mortgage of \$62,421.54, and of Adrian Riker, of counsel with Franklin Savings Institution the holder of a mortgage of \$55,000.00, in favor of the confirmation of said sale, and the argument of Frank Bradner, of counsel with Louis Geltzeiler, a stockholder of Robert Treat Baths, in opposition to the confirmation of said sale, and no reason appearing why said sale should not be confirmed;

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It is on this 11th day of May, 1926, on motion of Nathan H. Berger, ORDERED, ADJUDGED and DECREED, that said sale be and it is hereby in all things confirmed, and it is ORDERED, ADJUDGED and DECREED that the said Receiver do proceed to make, execute and deliver to Rolo Co., a New Jersey corporation, a deed for the real estate and a bill of sale for the said personal property bought by it; and to make, execute and deliver to Samuel Dlugich, a bill of sale for the personal property purchased by him, upon their complying with the condition of the said sale, said sale to be consummated within thirty days from the date hereof. It is further

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ORDERED, ADJUDGED and DECREED that the said Receiver do pay out of the proceeds of the sale of said real estate, the amount of the mortgage of Franklin Savings Institution, which is a first lien on the said real estate, together with accrued interest on the principal sum of said mortgage, immediately upon receipt by the Receiver of the amount bid for said real estate, by the said Rolo Co. And it is further

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ORDERED, ADJUDGED and DECREED that the said Receiver hold the balance of said moneys derived from said sale, to abide the further order of this Court. It is further

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Order Confirming Sale.

10 ORDERED, ADJUDGED and DECREED that the said Receiver, upon receipt of the balance of the said moneys shall give a bond to the Chancellor of the State of New Jersey, in the sum of \$10,000.00, in addition to the bond which he has heretofore given to the Chancellor, conditioned for the faithful performance of the duties, to be approved as to form and security thereof by Jacob L. Newman, one of the Special Masters of this Court.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

20 A true copy,

THOMAS BARBER,
Clerk.

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Order Modifying Order Confirming Sale.

ORDER MODIFYING ORDER CONFIRMING SALE.

Filed July 1, 1926.

IN CHANCERY OF NEW JERSEY.

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Between

LOUIS BAHLER,
Complainant,
and

ROBERT TREAT BATHS, a corporation,
Defendant.

On Bill, Etc.
Order
Modifying
Order
Confirming
Sale.

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This matter being opened to the Court by Leber & Ruback, Esqs., solicitors for and of counsel with Rolo Co., a New Jersey corporation, and it appearing to the Court that the said Rolo Co. did, at a public sale conducted by the Receiver appointed in this cause, purchase the real estate of the defendant company for \$75,000, and certain personal property for \$1,246.00; and it further appearing that the said real estate was sold free of the lien of a certain mortgage for \$55,000.00 held by the Franklin Savings Institution and free of the lien of a second mortgage upon said real estate in the sum of \$62,421.50 held by said Rolo Co., said mortgage liens attaching to the proceeds of sale, which sale was confirmed by order of the Chancellor on May 11, 1926, and which order of confirmation directed that a deed of conveyance for said real estate and a bill of sale for said personal property to be executed and delivered by the Receiver to said Rolo Co.,

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Order Modifying Order Confirming Sale.

upon its complying with the conditions of sale; and it further appearing to the Court that the amount realized at said sale is insufficient, after paying the mortgage lien of the Franklin Savings Institution to pay and satisfy the said second mortgage of the said Rolo Co., in consequence
 10 whereof there is a large and substantial deficiency with respect to the said mortgage of the said Rolo Co.; and the said Rolo Co. applying to this Court for permission to credit against the purchase price payable by it so much of said purchase price as would remain after satisfying the first mortgage lien of the Franklin Savings Institution, and this Court being of opinion that such permission should be granted providing that there be deposited with the Receiver in this
 20 cause the sum of \$10,000.00 to secure the expenses of the receivership and the allowances that will be made in this cause:

It is therefore, on this 1st day of July, 1926, on motion of Leber & Ruback, solicitors for and of counsel with the said Rolo Co., ORDERED, ADJUDGED AND DECREED that the said order confirming sale of May 11, 1925, be and the same is hereby modified in that the said Rolo Co., a corporation, is hereby given leave to credit against
 30 the purchase price so as aforesaid payable by it, so much of said purchase price as is in excess of the amount necessary to pay and satisfy the mortgage of the Franklin Savings Institution, Providing that the said Rolo Co. do first deposit with the Receiver appointed in this cause the sum of \$10,000.00 to secure the payment of the expenses of the receivership and the allowances that shall hereafter be made herein, towards which deposit of \$10,000.00 may be credited the

Order Modifying Order Confirming Sale.

\$7,500.00 heretofore paid by the Rolo Co. as a deposit on its bid:

And it is further ORDERED, that if the Franklin Savings Institution or its solicitor shall in writing waive the amount payable to it on its said mortgage, that then the said Rolo Co. shall be relieved of the necessity of paying to the Receiver herein the amount so due on said mortgage of the Franklin Savings Institution. 10

Respectfully advised,

ALONZO CHURCH,
V.-C.

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Final Account and Report of Receiver.

FINAL ACCOUNT AND REPORT OF RECEIVER.

Filed October 23, 1926.

IN CHANCERY OF NEW JERSEY.

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<p><i>Between</i></p> <p>LOUIS BAHLER, <i>Complainant,</i></p> <p><i>and</i></p> <p>ROBERT TREAT BATHS, a New Jersey Corporation, <i>Defendant.</i></p>	}	<p><i>On Bill, &c.</i></p> <p><i>Final</i></p> <p><i>Account and</i></p> <p><i>Report of</i></p> <p><i>Receiver.</i></p>
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On Bill, &c.
Final
Account and
Report of
Receiver.

20 I, HARRY G. HENDRICKS, Receiver heretofore appointed by the defendant company in the above-stated cause, do respectfully report to the Chancellor that the following is a just and true account of all moneys that have come to my hands as Receiver aforesaid, and also of the moneys that have been disbursed by me as such Receiver, and also an account of the claims against said company which have been presented and allowed by me.

30 Dated October 22, 1926.

Respectfully submitted,

HARRY G. HENDRICKS,
Receiver.

Final Account and Report of Receiver.

The accountant charges himself with the following:

RECEIPTS

1926.		
Feb. 16.	Cash paid by the officers of the defendant corporation to the accountant.....\$	510.41
Feb. 29.	Total receipts from the operation of the business of the defendant corporation and from all other sources	1,036.40
	Cash received from business and deposited on July 29th, 1926	7.70
April 29.	Received of Rolo Company on account of the purchase of the real estate of Robert Treat Baths	5,000.00
April 30.	Received deposit on account of the purchase of personal property of the defendant corporation	27.00
May 12.	Received of Rolo Company on account of the purchase of real estate known as Robert Treat Baths	2,500.00
May 12.	Received of Rolo Company, on account of the purchase of personal property of the defendant corporation	125.10
July 24.	Interest on bank balance.....	3.25
July 27.	Received of Rolo Company, on account of the purchase of real estate known as Robert Treat Baths	2,500.00
Aug. 28.	Interest on bank balance.....	11.89
Sept. 29.	Interest on bank balance.....	11.89
Oct. 21.	Received of Rolo Company, on account of purchase of personal property of defendant corporation	900.00
Oct. 21.	Interest on bank balance, anticipated to October 31st, 1926.....	11.89
Oct. 21.	Return premium of cancelled policy.....	35.49
	TOTAL RECEIPTS	\$12,681.02

Final Account and Report of Receiver.

DISBURSEMENTS

1926.

Feb. 16. To February 27th, 1926, cash disbursements in the conduct of the business of the defendant corporation, known as Robert Treat Baths\$ 1,501.56

Feb. 27. Disbursements by cash, by receiver, as follows:

10 Floorman, for back wages.....\$18.00
 Paid fireman 1 day extra wages..... 5.00
 Meal on Sunday for help..... 4.25
 Salary for policeman 10.00
 2 extra days for fireman..... 8.00
 \$45.25 45.25

May 14. George H. Maisel, for services as night watchman on premises of defendant corporation 305.00

May 18. Hilda B. Fantl, clerical services to appraisers, making inventory and appraisal..... 10.00

20 May 18. H. G. Hendricks, disbursements in cash as follows:
 Roy F. Anthony, approving bond.....\$ 5.00
 General Sign Co. 7.00
 Wm. Dubas, plumber 19.00
 Watchmen 260.00
 2 Scrub Women 16.60
 307.60 307.60

May 18. Albert Fantl, for inventory and appraisal of personal property of the defendant corporation 125.00

30 May 18. Fred N. Sommer, advertising sale of real estate and personal property of defendant corporation 61.60

May 18. Lindeman Co., coal for heating premises of defendant corporation 21.25

May 18. Coval Schoonmaker, day watchman on premises of defendant corporation..... 100.00

May 18. Newark Evening News, advertising sale of premises of defendant corp., and legal notices 176.82

May 18. National Surety Company, premium for bond of receiver 75.00

May 18. Electric Water Co., for water used on premises of defendant corporation60

40 May 18. Ace Letter Service, Multigraphing letters sent to creditors of defendant corporation..... 16.75

Final Account and Report of Receiver.

June 2. George H. Maisel, expenses for heating premises of the defendant corporation 30.39

June 13. Coval Schoonmaker, day watchman on premises of defendant corporation..... 235.00

June 15. E. J. Maier, insurance covering premises of defendant corporation 177.45

July 1. Newark Sunday Call, advertising sale of real estate and personal property of defendant corporation 34.84 10

July 9. George H. Maisel, night watchman on premises of defendant corporation 345.00

July 9. Coval Schoonmaker, day watchman on premises of defendant corporation 125.00

July 26. Riker & Riker, payment of taxes at time of passing of title to real estate of Robert Treat Baths to Rolo Company 271.00

July 27. Coval Schoonmaker, day watchman on premises of defendant corporation 95.00

July 26. George Maisel, night watchman on premises of defendant corporation..... 95.00

Aug. 4. Irving J. Trien, auditor for defendant corporation 150.00 20

Aug. 10. Samuel Dlugich, return of deposit on purchase of personal property from Robert Treat Baths 30.25

Sept. 21. Arthur Cross, printing briefs on appeal for Robert Treat Baths 14.50

Sept. 21. Public Service, for gas and electric used on premises of defendant corporation..... 23.90

Sept. 27. E. J. Maier, insurance covering premises of defendant corporation 100.00

Oct. 21. Check to H. G. Hendricks, cash advanced on May 18th, 1926, to watchman..... 20.00 30

TOTAL DISBURSEMENTS\$ 4,493.76

TOTAL RECEIPTS\$12,681.02

TOTAL DISBURSEMENTS 4,493.76

CASH ON HAND\$ 8,187.26

Final Account and Report of Receiver.

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

10 HARRY G. HENDRICKS, Receiver of Robert Treat Baths, a New Jersey corporation, being duly sworn, according to law, on his oath, deposes and says, that the within report, audit and account contains a just and true statement and account of the moneys received by him as such Receiver, or by any person or persons by his order, for the *account* of said receivership, and that the several sums of money mentioned therein as having been paid or allowed by him, were actually and truly so paid or allowed for the several purposes respectively therein mentioned, and that the said report, audit and account is in all things just and true, both as to the charge and discharge thereof, and in all other respects, to the best of his knowledge, information and belief.

HARRY G. HENDRICKS.

Subscribed and sworn to before me,
this 22nd day of October, 1926.

WILLIAM OSTEWELL,
A Notary Public of New Jersey.

30 A true copy.

THOMAS BARBER,
Clerk.

Claim for Wages.

CLAIM FOR WAGES.

Filed May 26, 1926.

IN CHANCERY OF NEW JERSEY.

Between
LOUIS BAHLER,
Complainant,
and
ROBERT TREAT BATHS, a corporation,
Defendant. } Notice.
Claim for Wages. 10

To Harry G. Hendricks, Esq., Receiver of Robert Treat Baths, a corporation. 20

PLEASE TAKE NOTICE that the Robert Treat Baths, a corporation of which you are Receiver, is indebted to me, Louis Geltzeiler, in the sum of Two hundred and eighty dollars (\$280.00), for salary as manager of the bath house at One hundred dollars (\$100.00) per week for three weeks preceding February 15, 1926, less \$20.00 paid on account.

I claim that I am entitled to preference in payment in accordance with the statute in such case made and provided. 30

Dated March 25, 1926.

Yours, &c.,
LOUIS GELTZEILER,
Claimant.

Claim for Wages.

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

LOUIS GELTZEILER, being duly sworn according to law, upon his oath says:

10 1. I am the claimant above named. There is due to me for salary as manager of Robert Treat Baths in the conduct of the business of said Company, in the sum of \$300.00 for the three weeks preceding February 15, 1926, less the sum of \$20.00 received on account, making a balance of \$280.00 now due and owing to me.

LOUIS GELTZEILER.

Sworn and subscribed before me this 26th day of March, 1926, at Newark, N. J.

20 BESSIE E. SNYDER,
An Attorney-at-Law of New Jersey.

Claim for Debt.

CLAIM FOR DEBT.

Filed March 26, 1926.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>LOUIS BAHLER, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>ROBERT TREAT BATHS, a corporation, <i>Defendant.</i></p>	}	<p><i>Notice.</i></p> <p><i>Claim for Debt.</i></p>	10
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To Harry G. Hendricks, Esq., Receiver of Robert Treat Baths, a corporation. 20

PLEASE TAKE NOTICE that Robert Treat Baths, a corporation of which you are Receiver, is indebted to me, Louis Geltzeiler, in the sum of Sixteen thousand six hundred and twenty-five dollars (\$16,625.00), for money loaned to and money paid out for the benefit of said corporation, by me, less the sum of Forty-nine hundred dollars (\$4,900.00) chargeable to me for my subscription for the capital stock of said corporation, leaving a balance due and payable to me of Eleven thousand seven hundred and twenty-five dollars (\$11,725.00). As near as I am able to ascertain at the present time, the items and dates of the amounts of money loaned to the Company and paid out by me for the benefit of the Company, are as follows: 30

Claim for Debt.

	July 28, 1924.....	\$ 418.50
	July 30, 1924.....	2,545.50
	Dec. 4, 1924.....	4,000.00
	June 3, 1925, Half of deposit in Bank.....	4,000.00
	June 4, 1925.....	250.00
10	June 30, 1925.....	90.00
	July 6, 1925.....	36.00
	July 18, 1925.....	2,350.00
	Oct. 8, 1925.....	2,000.00
		<hr/>
		\$15,690.00
	November 11, 1925.....	100.00
	Half of amount paid to Levin- son,	835.00
		<hr/>
20	Total	\$16,625.00
	Deduct for forty-nine shares of stock,	4,900.00
		<hr/>
	Balance due	\$11,725.00

This does not include my separate claim for wages of Two hundred and eighty dollars (\$280.00).

30 This claim does not include any claim that I may have by reason of my liability on a promissory note of the corporation endorsed by me, for Sixteen hundred dollars (\$1,600.00).

Dated March 25, 1926.

Yours, &c.,

LOUIS GELTZEILER,
Claimant.

Claim for Debt.

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

LOUIS GELTZEILER, being duly sworn according to law, upon his oath says:

1. I am the claimant above named and I believe that the Robert Treat Baths is indebted to me in the sum of \$11,725.00 as stated in said claim. I have stated the items as nearly as I am now able to ascertain the same. I have not received any certificate of stock from the said corporation, but I subscribed for forty-nine shares in the original certificate of incorporation. I have given credit for my liability for forty-nine shares and there is now due and owing to me the said sum of \$11,725.00.

LOUIS GELTZEILER.

Sworn and subscribed before me this 26th day of March, 1926, at Newark, N. J.

BESSIE E. SNYDER,
An Attorney-at-Law of New Jersey.

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Order Approving Receiver's Account, etc.

ORDER APPROVING RECEIVER'S ACCOUNT AND DISCHARGING RECEIVER.

Filed November 21, 1926.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> LOUIS BAHLER, <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>and</i></div> ROBERT TREAT BATHS, a New Jersey corporation, <div style="text-align: right;"><i>Defendant.</i></div>	<i>On Bill, &c.</i> <i>Order Ap- proving Re- ceiver's Account and Discharging Receiver.</i>
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20 An order to show cause having been made here-
 in on October 23, 1926, why the account and re-
 port of Harry G. Hendricks, Receiver of the
 above-named defendant company, should not be
 approved and the account filed by him allowed,
 and why an order should not be made fixing and
 determining the fees, costs and allowances of his
 counsel, and fixing and *determing* the fees, costs
 and allowances of the counsel for the complain-
 ant, and directing the distribution of the balance
 30 of the funds in the hands of said Receiver, if
 any; and it appearing that the final report and ac-
 count of the said Receiver have remained with the
 sergeant-at-arms, in the Chancery Chambers, In-
 dustrial Building, Newark, New Jersey, in ac-
 cordance with the directions of said order; and
 it appearing that notices of said order to show
 cause, together with a notice of the filing of said
 account and a statement of the allowances to be
 asked by said Receiver and his counsel as com-
 40 pensation for their services, have been mailed

Order Approving Receiver's Account, etc.

to each of the creditors of said defendant com-
 pany who have filed their claims with said Re-
 ceiver, or to their attorneys, as far as their ad-
 dresses could be ascertained, in accordance with
 the provisions of said order; and it appearing
 that said Receiver's account is correct, and the
 same ought to be allowed, and no reason ap- 10
 appearing or being shown to the contrary:

It is, thereupon, on this 27th day of October,
 1926, on motion of Nathan H. Berger, of counsel
 with the Receiver, ORDERED, ADJUDGED and DE-
 CREED that the account filed by the said Receiver
 in this cause be, and the same is hereby allowed
 and confirmed.

And it appearing that the receipts of said Re-
 ceiver have amounted to \$12,681.02, and that his
 disbursements have amounted to \$4,493.76, leav- 20
 ing a cash balance in his hands of \$8,187.26; and
 that the account and report of said Receiver have
 been audited by Richard Stockton, Esquire, one
 of the Special Masters of this court, pursuant to
 the provisions of the order to show cause, above
 referred to.

It is ordered that Harry G. Hendricks, Receiver,
 as aforesaid, be allowed for his services the sum
 of \$3,750.00, together with his taxed costs, and
 that Nathan H. Berger, solicitor of said com- 30
 plainant and of counsel with said Receiver, be
 allowed for his services the sum of \$3,750.00,
 together with his taxed costs.

It is further ordered that the said Receiver
 pay to Richard Stockton, Special Master of this
 court, \$100 for his services as such Special
 Master, for auditing the account and report of
 said Receiver.

It is further ordered that after paying and
 satisfying the allowances hereinbefore awarded 40

Order Approving Receiver's Account, etc.

to said Receiver and counsel, and after the said Receiver pays any further disbursements incurred by him in this suit, the said Receiver pay and disburse to the general creditors of the said defendant company who have filed their claims with the said Receiver, all of the surplus remaining in his hands, pro rata, in proportion to their several and respective claims, as proved and allowed before and by the said Receiver, or to their several and respective solicitors.

It is further ordered that the said Receiver file with the clerk of this court a statement of his fees, disbursements and expenses in this proceeding, together with a statement and report of the distribution and disposition of the moneys that have come to his hands in this cause, and in case the Receiver shall be unable to comply with the directions of this order in the payment or disbursement of any of the moneys aforesaid, he shall in such case deposit such moneys with the clerk of this court, pursuant to the rules thereof.

It is further ordered, adjudged and decreed that upon making the payments and disbursements aforesaid, and carrying out the directions of this decree, the said Receiver be discharged from all obligations in relation to said trust.

E. R. WALKER, C.

Respectfully advised,

ALONZO CHURCH, V.-C.

A true copy.

THOMAS BARBER, Clerk.

Receiver's Account of Disbursements.

RECEIVER'S ACCOUNT OF DISBURSEMENTS.

Filed November 1, 1926.

IN CHANCERY OF NEW JERSEY.

Between LOUIS BAHLER, Complainant, vs. ROBERT TREAT BATHS, a New Jersey corporation, Defendant. On Bill, &c. Receivers Account of Disbursements.

The undersigned Receiver appointed in the above-entitled cause pursuant to the order approving his final account and discharging him as Receiver in this cause, hereby reports the disbursements of the funds in his hands as shown by said final account as follows:

Amount in the hands of receiver as per final account. \$8,187.26

DISBURSEMENTS.

Paid fee to Harry G. Hendricks in accordance with the directions of said decree approving his final account and discharging said receiver \$3,750.00
Paid Nathan H. Berger solicitor for complainant and receiver in accordance with the directions of said decree approving of final account and discharging said receiver. 3,750.00
Paid to Nathan H. Berger as solicitor taxed costs 131.79
Paid to Richard Stockton, master, in accordance with the above mentioned decree 100.00

Receiver's Account of Disbursements.

Paid to Rolo Company pursuant to an order of this court made subsequent to the decree above referred to 455.47

\$8,187.26 \$8,187.26

HARRY G. HENDRICKS,
Receiver for Robert Treat Baths.

10 A true copy.
THOMAS BARBER,
Clerk.

SCHEDULE A.
Claims filed and approved by Receiver.

	Colegate & Co.....	\$ 52.63
	Livezey Surgical Service, Inc.....	1,900.00
	B. Cooper.....	765.00
20	Elmer D. Wilson.....	1,836.88
	Gondolfo Messina.....	305.15
	Philip Feisea.....	23.72
	New York Quilt & Mattress Manufacturing Co.....	576.58
	Michael Couchman.....	34.03
	Arnolene Disinfectant Company.....	268.00
	United States Rubber Company.....	312.26
	Norbert Huttner.....	600.00
	P. M. Frank Disinfectant Company.....	10.00
	Louis Bahler.....	800.00
	Morris Bahler.....	45.00
	Louis Geltzeiler.....	280.00
	R. Odell & Sons Company.....	42.50
30	Louis Geltzeiler.....	11,735.00
	Louis Bahler.....	11,735.00
	N. Y. Telephone Company.....	56.19
	Columbia Marble Works, Inc.....	50.00

Claims allowed by Receiver, subject to counter-claim by Receiver.

Rolo Company.....\$ 4,588.76
Rolo Company..... 64,138.12

A true copy.
THOMAS BARBER,
Clerk.
40

Order to Pay.

ORDER TO PAY.

Filed November 23, 1926.

IN CHANCERY OF NEW JERSEY.

Between
LOUIS BAHLER,
Complainant,
and
ROBERT TREAT BATHS, a New
Jersey corporation,
Defendant.

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On Bill, &c.
Order.

This matter being opened to the Court by Leber and Ruback, of counsel with Rolo Com- 20
pany, a New Jersey corporation, and it appear-
ing that by an order of this Court, dated March
3, 1926, it is provided that the premises of the
defendant corporation, known as Robert Treat
Baths, should be sold by Harry G. Hendricks,
Receiver herein, free and clear of all liens and en-
cumbrances, the liens affecting said premises to
attach to the proceeds of the sale of said prem-
ises. And it appearing that the said premises 30
were, at the time of the making of said decree,
affected by two mortgages, one in the sum of
\$55,000.00, held by Franklin Savings Institution
and the other in the sum of \$62,421.54, held by
the said Rolo Company. And it appearing that
the said Harry G. Hendricks, as Receiver, sold
the said premises in pursuance of said decree of
sale; that the mortgage of Franklin Savings In-
stitution has been paid and satisfied, and that the
mortgage of Rolo Company is unpaid. And it
further appearing that after the payment of costs 40

Order to Pay.

and administration expenses in this cause, including allowances for the Receiver and his counsel, there are likely to be surplus moneys in the hands of the said Receiver, and by virtue of said decree of sale, the lien of the mortgage of the said Rolo Company attaches to the said surplus moneys, and that the same should be delivered in payment on account of the mortgage of the said Rolo Company. It is thereupon, on this 23rd day of November, 1926, on motion of Leber and Ruback,

10 ORDERED that Harry G. Hendricks, Receiver, do pay the said Rolo Company any moneys that may be left in his hands, as surplus moneys, after paying costs, administration expenses, allowances as aforesaid, and after complying with the order approving of the final account of said Receiver, and the discharge of said Receiver.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

A true copy.

30 THOMAS BARBER,
Clerk.

New Jersey Court of Errors and Appeals

Between

LOUIS BAHLER,
Complainant-Respondent,

and

ROBERT TREAT BATHS,
Defendant-Appellant.

*On Appeal
from
Chancery.*

BRIEF FOR APPELLANT.**Abstract of the Case.**

This appeal is taken by a stockholder and creditor of the defendant corporation and brings up for review by this court four orders or decrees made in the above-stated cause. This same case was before the court on appeal from an order appointing a receiver of the defendant corporation and from an order directing a sale of the land and personal property of the defendant corporation free and clear of all liens.

The opinion of this court disposing of the former appeal was filed on January 31, 1927, and is published in 5 N. J. Adv. Rep., p. 277. This court in effect affirmed the order appointing the receiver and modified the order for sale and an order was entered pursuant to the opinion remitting the record and the remittitur was duly filed in the Court of Chancery. The remittitur is printed in the state of the case (p. 8). While the appeal was pending the receiver proceeded to sell and filed a report of sale on May 4, 1926 (p. 10); which report shows that the sale was made free from any claims or liens. On May 20, 1926, an order was made confirming the sale (p. 18). On July 1, 1926, an order was made

on the application of the solicitors of Rolo Company, a New Jersey corporation, which was the purchaser at the sale, modifying the order confirming the sale (p. 21) so as to permit the purchaser to pay into court the sum of \$10,000 instead of \$75,000, the amount of its bid.

On October 23, 1926, the receiver presented his final account and report (p. 24), which shows total receipts of \$12,681.02 and total disbursements of \$4,493.76, leaving a balance of cash on hand of \$8,187.26. No part of the disbursements includes any payments to any creditor or stockholder or any claims for wages.

The appellant Louis Geltzeiler, had presented to the receiver a claim for wages amounting to \$280.00 (p. 29) which was not disputed by the receiver. He had also presented to the receiver a claim for debt amounting to \$11,725.00 (p. 31), which was not disputed by the receiver. Both of these claims appear in Schedule A annexed to the receiver's account of disbursements (pp. 37, 38). The same Schedule A shows that the Rolo Company presented two claims which were allowed by the receiver subject to the counter-claim.

On November 21, 1926, an order was made approving the receiver's account and discharging the receiver (p. 34). In this order the receiver is allowed \$3,750.00 together with his taxed costs, and the solicitor of the complainant, who is also counsel for the receiver, is allowed \$3,750.00 together with his taxed costs; and the special master for auditing the account and report of the receiver was allowed \$100.00. These allowances were paid out of the balance of \$8,187.26, and after the payment of the same, there was still in the receiver's hands \$455.47. This \$455.47 was

paid to Rolo Company, the purchaser of the property, by order made on November 23, 1926. There is nothing in the receiver's report to show the nature of the counter-claim against the Rolo Company, or the amount of it. The receiver's account of receipts (p. 25), shows that he received from the officers of the corporation and from the operation of the business and from other sources before the sale and from the sale of the personal property, \$2,606.61; and that he received on the sale of the real estate and for interest and cancellation of an insurance policy, \$10,074.41.

The Rolo Company has been joined in this appeal and notice of appeal and petition of appeal have been duly served on said company (pp. 2, 6).

Specification of Reasons for Reversal.

1. The order dated May 11, 1926, confirming the sale made by the receiver, is erroneous, because the Court of Chancery had no power to authorize the receiver to make such a sale.
2. The order dated July 1, 1926, modifying the order confirming the sale, is erroneous for the same reason as above stated; and also, because it in effect changed the bid and permitted the purchaser at the sale to pay less than the amount of its bid.
3. The order confirming the sale of the personal property, is erroneous, because the order of sale directed the sale free and clear of all liens which the court had no power to make, and because a sale of the right, title and interest of the corporation was made of property in which the corporation had no legal interest.

4. The order modifying the order confirming the sale of the real estate, is erroneous also, because the counter-claim of the receiver against the claim of the Rolo Company should have been heard and determined upon notice to the creditors and stockholders.

5. The order approving the receiver's account and discharging the receiver is erroneous, because the receiver had not paid the appellant's claim for salary, which was a first lien on the assets.

6. The order making the allowances to the receiver and to his counsel, is erroneous; because the allowances are unreasonable.

7. The order discharging the receiver is erroneous; because an appeal was pending from the order directing a sale of the property and had not then been decided and the receiver should not have been discharged.

8. The order dated November 23, 1926, directing the receiver to pay the balance of the funds in his hands to the Rolo Company, is erroneous; because the appellant's claim for wages was a first lien upon the assets not included in the mortgage held by the Rolo Company and should have been paid out of those assets.

BRIEF OF ARGUMENT.

1. The order confirming the sale of the property was made on May 20, 1926, and this appeal is taken from that order on the theory that it is a final decree.

This court held in *Bahler v. Robert Treat Baths*, 5 N. J. Adv. Rep. 277, that the decree for the sale of the land free and clear of the mortgage held by the Franklin Savings Institution,

was without legal justification. This sale is an apt illustration of what the court considered the objectionable feature of a sale free and clear of an undisputed mortgage; that is, it would almost necessarily prevent creditors from protecting their interests by becoming bidders at the sale, for it would require them to raise cash in the full value of the real estate to be sold. That is what happened at this sale. The Rolo Company was the only bidder; and as the record shows, the Rolo Company had made some arrangement with the Franklin Savings Institution.

The order for sale being without legal justification, it follows, of course, that the sale ought not to have been confirmed. The order modifying the order confirming the sale so as to permit the purchaser to pay less than the amount of his bid appears to have been made without giving stockholders and creditors any opportunity to be heard. The effect of such an order is to change the bid that was publicly made, to a private bid. If the order confirming the sale is erroneous, of course the order of modification must necessarily fall with it.

2. It has been shown that the receipts from the business and from the sale of personal property amounted to \$2,606.61. The appellant has a preferred claim for salary amounting to \$280.00.

The statute C. S. p. 1650, sect. 83, provides: "In case of the insolvency of any corporation the laborers and workmen and all persons doing labor or service of whatever character, in the regular employ of such corporation, shall have a first and prior lien upon the assets thereof for the amount of wages due to them respectively for all labor, &c." Assets as used in this statute means all the property which comes to the re-

ceiver to be administered, without reference as to whether it is encumbered by liens. *Fitzgerald v. Mfg. Co.*, 33 Atl. Rep. 1064 (not officially reported). Sect. 84 of the statute, however, provides that such lien shall be prior to all other liens that can or may be acquired upon or against such assets, except the lien and encumbrance of a chattel mortgage, &c., and except the lien of mortgages given upon the lands and real estate. Sect. 86 of the statute provides that before distribution of the assets among the creditors and stockholders, allowances shall be made to the receiver, &c.

These sections seem to have the effect of postponing payment of a lien for wages, so that the receiver and his counsel may be paid first. However, it is not necessary to decide that question in this case, because there was sufficient money in the receiver's hands after the payment of all administration expenses, to pay the appellant's claim of \$280.00 for wages and he should have been paid; and he should have been paid out of the proceeds of sale of the personal property, on which there was no other lien.

3. The allowances made to the Receiver and his counsel appear to be unreasonable in view of the circumstances.

There is nothing on the record to show what services were rendered by the receiver, and it appears that he was made very ample allowances for agents and subordinates. His account shows (p. 26) that he paid one Schoonmaker \$555.00 for services in watching the premises in the daytime; and in addition to that, he paid a night watchman. He paid an auditor for making up his account \$150.00.

There is nothing to show what services were rendered by the receiver's counsel.

It appears that the general claims of creditors (p. 38) which includes the claims of the appellant and of his co-stockholder, Louis Bahler, amount to more than \$25,000, and it does seem to be somewhat unfair to pay out so much for administration expenses and give the creditors nothing whatever. At the time the receiver was appointed this was a going concern, and the receiver's account shows (p. 25) that he took in from the operation of the business over \$1,000.00 between February 16, 1926, the date of his appointment, and February 29, 1926, besides receiving over \$500.00 which the officers had on hand.

It is respectfully submitted that all the orders brought up on this appeal should be reversed and that an order should be made directing the receiver to make another sale; and directing the receiver and his counsel and the Rolo Company, to pay back the moneys they have received.

It is also respectfully submitted that the appellant is entitled to have his costs of these appeals, including a reasonable allowance to his counsel, paid out of the funds; for the reason that the appeals have been beneficial to the creditors and stockholders.

FRANK E. BRADNER,
Of Counsel with Appellant
Louis Geltzeiler.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

<p><i>Between</i></p> <p>LOUIS BAHLER, <i>Complainant-Respondent,</i></p> <p style="text-align: center;"><i>and</i></p> <p>ROBERT TREAT BATHS, <i>Defendant-Appellant.</i></p>	}	<p><i>On Appeal from Chancery.</i></p>
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REPLY BRIEF FOR APPELLANT.

1. The first point made by the respondent is that the orders appealed from should have been dealt with by the Court of Chancery.

It is submitted that it was the duty of the receiver to apply to the Chancellor to vacate the orders.

2. After this appeal had been taken and the petition of appeal had been served, Mr. Leber suggested that the appeal was unnecessary, because the relief desired could be obtained by consent of the parties in the Court of Chancery. I told him that if he and the receiver would make the necessary application to the Chancellor, I would consent and that I desired him to make any such application before I went to the expense of having the case printed on the appeal. I heard nothing more from him until after the case had been printed and served. It was then suggested that Rolo Company and the receiver would consent to a reversal of all the orders; and I said that such consent should be in writing signed by the solicitors of the Rolo Company and the solicitor of the receiver and presented to the appellate court.

On October 17, 1927, Mr. Ruback, of Leber & Ruback, telephoned to me that the Rolo Company would consent to a reversal and that I could so state to the Court. I refused to do so and told him that he must make the statement himself.

Mr. Berger telephoned to me on the same date and said he would consent to a reversal of the order confirming the sale. I told him that he ought to appear in court and make his statement. Mr. Berger did appear on Tuesday, October 18, 1927, but instead of consenting to a reversal, attempted to have the appeal dismissed, and his motion was denied.

3. The point that the appeals are from interlocutory orders and should have been taken within forty days is not available to the respondent. Under Rule 24 of this Court, it was the duty of the respondent to give notice within thirty days after service of the petition of appeal, of objection that the appeal was not made within the time limited by law. No such notice has been given.

4. The appellant did not know that the order discharging the receiver and the order directing the payment of the balance of the fund to the Rolo Company had been made until after the former appeal had been decided. No notice was given to the solicitor of the appellant of the motion for said orders.

Respectfully submitted,

FRANK E. BRADNER,
Of Counsel with Appellant.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

LOUIS BAHLER,
Complainant-Respondent,

and

ROBERT TREAT BATHS,
Defendant-Appellant.

*On Appeal
from
Chancery.*

BRIEF FOR RESPONDENT.

Abstract of Case.

This appeal seeks the reversal of three orders made in the Court of Chancery, as follows:

(1) An order bearing date May 11, 1926, confirming sale made by the receiver in the above-stated cause, as modified by an order dated July 1, 1926.

(2) An order dated October 27, 1926, approving receiver's account and discharging the receiver.

(3) An order dated November 23, 1926, directing the receiver to pay the balance of the funds in his hands to the Rolo Company.

This was an action brought to have the defendant corporation declared insolvent, and to have a receiver appointed for it. An appeal was taken from two decrees of the Court of Chancery, one adjudging the defendant corporation insolvent and appointing a receiver to take charge and administer its assets and property, and the other directing the receiver to sell lands, real estate and personal property of the corporation, free from mortgages, liens and encumbrances. In said appeal the Court found that the decree ad-

judging the corporation insolvent was justified, and the appointment of the receiver was proper; and found that the decree for the sale of the property of the corporation was improper, insofar *only* as it ordered the sale of the real estate, free from the mortgage of Franklin Savings Institution of \$55,000.00, because the validity of said mortgage was not disputed. This Court found that the decree for sale should be modified so as to provide for the sale of said property, subject to the lien of the mortgage of Franklin Savings Institution.

By remittitur to the Court of Chancery, printed in the State of Case (pp. 8-9).

"It is ordered that the record and proceeding be remitted to the Court of Chancery to be therein proceeded on, according to law and the practice of said Court" (State of Case, pp. 9, fol. 30).

All of the orders appealed from are in their very nature orders that should be dealt with and acted on by the Court of Chancery, pursuant to the provisions of the remittitur as quoted above.

Samuel F. Leber, Esquire, of counsel with Rolo Co. (the purchaser of the real estate and personal property at receiver's sale, and the holder of a second mortgage, in the sum of \$62,500), with the consent and approval of counsel for the receiver, offered to Mr. Frank Bradner, of counsel for the appellant, to proceed in the Court of Chancery to carry out the directions of the remittitur, and have this situation adjusted in the Court of Chancery, and to have a new decree for the sale of the property, free of liens and encumbrances, but subject to the lien of the mortgage of Franklin Savings Institution, in compliance with the opinion of this Court in the appeal above referred to. Mr. Bradner objected.

I.

The orders appealed from should be dealt with by the Court of Chancery.

The Court of Errors and Appeals has already disposed of the situation brought about by the entry of the orders appealed from, when this Court modified the decree for sale and in effect directed the Court of Chancery to make a new decree of sale. It is now for the Court of Chancery to carry out the directions of the Court of Errors and Appeals, and in doing so, it of necessity will deal with the situation created by the orders under consideration in this appeal.

These orders deal with two phases of the situation:

(1) The orders approving the sale, and providing for the manner of payment of the purchase price of the property by the bidder at such sale.

(2) The compensation of the receiver and his counsel and the discharge of the receiver. In the previous appeal, this Court decided that the appointment of the receiver was proper, and if that is so, the discharge of the receiver and the compensation of the receiver and his counsel cannot be challenged.

II.

This appeal should be dismissed because this Court is without jurisdiction to consider it.

The record in this case shows that the orders appealed from are not in any sense final decrees of the Court of Chancery. It appears by the notice of appeal (p. 1, State of Case) these orders are dated respectively May 11, 1926; July 1,

1926; October 27, 1926, and November 23, 1926. The notice of appeal is dated May 4, 1927, and was served on May 13, 1927 (State of Case, p. 2).

All appeals, except appeals from final decrees, must be made within forty days after filing of the order or decree appealed from (Cum. Supp. Comp. Stat., Vol. 1. p. 269, pp. 33-11). This requirement is statutory and since the appeal was not taken within the required period, this Court is without jurisdiction to hear this appeal. Rule 8 of this Court provides that no motion dismissing appeals shall be entertained, except on notice, or in the presence of the solicitor or attorney for the appellant. This rule would indicate that the motion if made in the presence of the attorney for the appellant, may be made without notice thereof. Rule 9 provides that *special motions* shall require a notice thereof, indicating that there are some motions that need no notice thereof to the other side. It would seem that where the question of jurisdiction of the Court is involved it becomes a matter no longer requiring the formalities of special motions.

It is respectfully urged that this appeal should be dismissed on the grounds aforesaid.

NATHAN H. BERGER,
Attorney of Complainant-Respondent.